

(2009) 05 AHC CK 0617
In the Allahabad High Court

Uday Raj Upadhyay

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 06-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0617

Hon'ble Judges : V.K.Shukla, J

Final Decision : Dismissed

Judgement

V.K.Shukla, J.

Present writ petition has been filed by the petitioner questioning the validity of the select list dated 09.01.2009. Further prayer has been made not to interfere in the peaceful functioning of the petitioner on the post of adhoc Principal.

Brief background of the case is that there is recognised aided institution known as Sri Krishna Inter College, Gajendrapur Jaunpur. Post of Principal fell vacant and same has been advertised by means of Advertisement No. 1 of 1998 on 14.08.1998 in daily newspaper Aaj. One Raj Narain Pandey questioned the validity of the said selection proceeding by preferring Civil Misc. Writ Petition No. 804 of 1999 and therein interim order was passed and said Raj Narain Pandey continued to function on the post of Principal and received salary till June 2006. Petitioner has contended that he has been appointed as adhoc Principal and continuing on the said post of Principal and financial approval has also been accorded to his adhoc appointment. Petitioner has contended that State Government on 14.09.2007 has issued Government Order to consider the matter of regularisation and same has again been reiterated on 11.04.2008. Petitioner submits that matter of regularisation is also pending consideration and readvertisement has been made as such impugned recommendation dated 09.01.2009 is bad.

Sri B.S. Pandey, learned counsel for the petitioner contended with vehemence that in the present case once vacancy in question has been readvertised then by

no stretch of imagination said panel dated 09.01.2009 can be enforced specially when proceedings of regularisation is going on, as such writ petition deserves to be allowed.

Countering said submission, learned Standing counsel as well as Sri A.K. Yadav, Advocate contended that no fresh selection has been undertaken and earlier selection proceedings has been finalized qua which panel has been issued and as far as extending the benefit of regularisation is concerned same cannot be accorded as no provision has been incorporated under U.P. Act No. V of 1982 as such writ petition as it has been framed and drawn as on date liable to be is dismissed.

After respective arguments have been advanced factual position which is emerging in the present case is that post of Principal for the institution in question was advertised by means of Advertisement No. 1 of 1998 and said selection has been challenged by one Raj Narain Pandey then then adhoc Principal who preferred Civil Misc. Writ Petition No. 804 of 1999 and therein interim order was passed. Said writ petition was dismissed and Special Appeal filed against the same, was allowed and thereafter Special Leave Petitioner was filed before Hon"ble Apex Court against the same and same was allowed on 16.05.2008 and pursuant to the same select panel has been issued on 09.01.2009. Petitioner is adhoc Principal, as such petitioner cannot question the validity of the said panel which has been finalized as life span of adhoc appointee is till the regularly selected incumbent comes and joins on the said post. Adhoc appointee will have to pave way to regularly selected candidate. Here select panel is clearly indicative of the fact that selection proceedings has been over after long round of litigation and same has to be complied with specially in the background when qua selection proceedings no infirmities have been pointed out.

In reference to the Advertisement No. 1 of 2008 published on 04.09.2008, Specific statement of fact has been mentioned by Sri A.K.Yadav, Advocate that pursuant to the same no fresh selection has been undertaken and under some misconception said advertisement has been published and now decision has been taken not to make any recommendation qua they said advertisement.

As far as other prayer is concerned qua regularization, it would be relevant to mention that meeting has been convened on 26.06.2007 wherein Director of Education and Principal of Pradhancharya Parisad had participated and therein resolution was passed that except for institution wherein selection proceedings has been undertaken, for rest of the institution as per provision as contained, under U.P. Act No. II of 1921 proceedings for regularization be considered and for the same Director of Education Secondary alongwith requisite resolution shall transmit the matter to the State Government and pursuant to the said resolution passed details were to be furnished to the State Government. Thereafter it appears that letter was written by the District Inspector of Schools asking for full particulars in this regard. It appears that thereafter requisite particular have been furnished and as State Government has not taken any decision in respect of

extending the benefit of regularization. Prayer has been made to regularize the petitioner on the post of Principal as per Government Policy.

In the present case merely because proposal is in pipe line same does not ipso facto mean that petitioner has got crystallized right for consideration of his claim for regularization. Even the said resolution talked of regularisation in terms of provision of U.P. Act No. II of 1921 and not beyond the same. Section 16 of U.P. Act No. V of 1982 clearly provides that appointment made in contravention of provision of U.P. Act No. V of 1982 shall be void. Petitioner is claiming his regularization on the post of Principal under U.P. Act No. V of 1982. Till date there is no statutory provision for extending the benefit of regularization to adhoc Principals who have been appointed after 30.06.2006 and in the absence of any statutory provision no direction can be issued for regularization of petitioner on the post of Principal as per Government Policy, inasmuch as said policy is of no consequence unless and until statutory amendment is incorporated in U.P. Act No. V of 1982 in the same way and manner as Sections 33(iA),(iB) (iC),33B,33C,33D,33E and 33F have been incorporated. This Court in the case of Smt. Kanti Bansal Vs. State of U.P. and others (Civil Misc. Writ Petition No. 20920 of 2009) decided on 20.04.2009 has taken similar view.

Consequently in the facts of the case as on date no relief can be accorded to the petitioner, as such writ Petition as it has been framed and drawn is dismissed.