
(2010) 04 AHC CK 0354

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 23024 of 2010

Yash Pal Singh Pundir

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-04-2010

Acts Referred:

Citation : (2010) 04 AHC CK 0354

Hon'ble Judges : Arun Tandon, J

Judgement

Arun Tandon, J.—Notice on behalf of respondents no. 1, 3 and 4 has been accepted by the Standing Counsel. Respondent no. 2 is represented by Shri S.C.Dwivedi, Advocate.

2. Issue notice to respondents no. 5 and 6 fixing a date in the first week of July, 2010. Steps may be taken within a week. All the respondents may file counter affidavit by the next date fixed.

3. List in the first week of July, 2010.

4. Vacancy on the post of Principal in Janta Inter College, Ambheta Chand, Saharanpur was subject matter of Advertisement No. 01 of 1999. The proceedings pertaining to the said advertisement were subject matter of challenge in large number of writ petitions culminating into the judgment of the Supreme Court in the case of Balbir Kaur and another vs. U.P. Secondary Education Services Selection Board, Allahabad and others reported in 2008 (3) ESC 409 (SC). The Supreme Court has held that the selection process so initiated was in accordance with law.

5. In between it so happened that one Satpal Singh was selected for the post of Principal under Advertisement No. 01 of 1997 for another institution namely B.S. Inter College, Sona Arjunpur, Saharanpur. His selection was challenged by two persons including Mohd. Hasan Ansari on the ground that he was working as ad hoc Principal since prior to 6.04.1993 in the institution at Arjunpur, therefore, he was entitled to be regularized on the post of Principal under the provisions of the

U.P. Secondary Education Services Selection Board Act, 1982 (herein after referred to as the Act, 1982) as amended from time to time, by means of Civil Misc. Writ Petition No. 11821 of 1999. The writ Court vide order dated 17.08.2000 held that Mohd. Hasan Ansari was entitled for regularization as he was working as ad hoc Principal since prior to 06.04.1993 under Section 33C of the Act, 1982. Therefore, it was further directed that the selected candidate Satpal Singh be adjusted against any other vacancy in accordance with law within one month of the order.

6. Satpal Singh is stated to have been adjusted against the vacancy which was subject matter of Advertisement No. 1 of 1999 qua Janta Inter College, Ambheta Chand, Saharanpur vide order of the District Inspector of Schools dated 16.12.2000. The petitioner because of such adjustment submits that the vacancy stood exhausted, therefore, no person can now be appointed against the vacancy which was subject matter of Advertisement No. 1 of 1999.

7. It is stated that Satpal Singh has retired on 30.06.2002, therefore, a fresh vacancy has been caused in the year 2002 which has not been advertised. Therefore, the select panel pertaining to the vacancy of Advertisement No. 01 of 1999 need not be given effect to.

8. I have heard learned counsel for the parties and have gone through the records of the present writ petition.

9. This Court may record that against the vacancy available in Janta Inter College, subject matter of Advertisement No. 01 of 1999 could not be offered to Satpal Singh for adjustment for the following reasons :

(a) Satpal Singh was selected under Advertisement No. 01 of 1997, he could not be appointed because of regularization of the ad hoc Principal namely Moh. Hasan Ansari. Accordingly his selection itself became illegal in view of the judgment of the Hon"ble Supreme Court in the case Munishwar Dutt Pandey vs. Ramjeet Tiwari and others reported in 1997 UPLBEC (1), 199 wherein it has been held that no vacancy can be said to be existing wherein ad hoc Principal is entitled for regularization by operation of law.

(b) The writ Court vide order dated 17.08.2000 directed that Satpal Singh be adjusted against a vacancy in another institution in accordance with law. Satpal Singh was entitled to be considered for appointment in any other institution having regard to the merit secured by him against vacancies subject matter of Advertisement No. 01 of 1997 only. He could not be adjusted against the vacancy which was subject matter of Advertisement No. 01 of 1999.

10. This Court has specifically held in the case of Raja Ram & another vs. State of U.P. others (Civil Misc. Writ Petition No. 40377 of 2008) decided on 30.11.2009 that a teacher or Principal selected in response to an advertisement can be adjusted only against the vacancies which were subject matter of the same advertisement. There can be no adjustment of a selected candidate of an

earlier advertisement against a subsequent vacancy in view of the provisions of Rule 13(5) of the U.P. Secondary Education Services Selection Board Rules, 1998. A similar view has been taken by a Division Bench of this Court in the case of Yagya Narain Shukla vs. State of U.P. & others reported in 2009 (10) ADJ 182 to which I was a member. It has been held that a candidate could be offered appointment in response to the advertisement only against the vacancies which were subject matter of the same advertisement and not against any other advertisement.

11. Therefore, this Court has no hesitation to hold that adjustment granted in favour of Satpal Singh under the order dated 16.12.2000 was in teeth of the Act, 1982 therefore, a nullity in view of the provisions of Section 16 of the Act, 1982. Such appointment of Satya Pal Singh Saini will not result in the vacancy which was subject matter of Advertisement No. 1 of 1999 being filled as per the law. This Court would have directed for fresh consideration of the adjustment of Satyapal Singh against a vacancy subject matter of Advertisement No. 01 of 1997 however no such direction is required as he has already retired.

12. In view of the aforesaid this Court hold that the vacancy in Janta Inter College which was subject matter of Advertisement No. 01 of 1999 continues to exist in the eyes of law irrespective of the appointment of Satpal Singh. Therefore, the Selection Board after completing the process of selection is legally justified in notifying the panel dated 23.03.2010.

So far as the other grievance raised by the petitioner is concerned, this Court finds that the writ petition is completely silent about the fact as to whether any letter was received from the Selection Board qua names of two senior most teachers being sent for interview or not, therefore, at this stage no case is made out for grant of an interim order.

13. Let the selected candidate be appointed in term of the select panel prepared on 23.03.2010. His appointment shall however abide by the orders to be passed in the writ petition.