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Lallu Ram, Babu Lal, Mohd. Inam Ansari and Shailesh Kumar Vs State of U.P., Director of (Higher Education), Shiksha Degree Sewa Anubhag, Regional Higher Education Officer and Principal, Smt. Indra Gandhi Government Degree Collage

None

Court: Allahabad High Court

Date of Decision: Jan. 28, 2008

Citation: (2008) 2 AWC 1176

Hon'ble Judges: Tarun Agarwala, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Tarun Agarwala, J.
Heard Sri Ashok Khare, the learned Senior Counsel appearing for the petitioner and the learned Standing Counsel for

the respondents. The petitioners are aggrieved by the orders dated 08.09.2006 and 29th January, 2007, passed by the Director of Education

(Higher Education) Uttar Pradesh, Allahabad, by which their representation has been rejected and their appointment as Class IV employees has

been held to be illegal and void.

2. The brief facts leading to the filing of the writ petition is, that there exists a government degree college known as Smt. Indira Gandhi Government

Degree College in Lalganj in the district of Mirzapur (hereinafter referred to as the college), in which the service conditions of the teachers along

with non-teaching staff are governed by the provisions of the Uttar Pradesh Higher Education Services Commission Rules and the Act. It

transpires that the Government of Uttar Pradesh issued an order dated 18th March, 2005 taking a policy decision to recruit class III and class IV

employees in all the departments of the State Government, except the Medical, Health and Family Welfare Department as per the situation

prevailing prior to the issuance of the Government Order dated 12th March, 2005. Pursuant to the aforesaid Government Order, the Director

Higher Education, Allahabad communicated to all the Principals of the institution by a letter dated 21st November, 2005, to undertake the

recruitment process to fill up the class III and class IV posts, after taking into consideration the reservation policy. The Regional Higher Education

Officer, Varanasi, in turn, also communicated the same to all the Principals of his region, and further, directed the Principals to advertise the posts

between the 20m June, 2006 to 30th June, 2006, and that the last date for inviting the applications was fixed as 31st July, 2006. The Regional

Higher Education Officer further directed that the process of interview should be completed by August, 2006. Based on the aforesaid directions,

the Principal of the college duly advertised the vacancies on 25lh of June and 27th June, 2006 inviting applications for four posts" of Class IV

employees in two daily newspapers, namely, Amar Ujala and the Dainik Jagaran, both, published from Varansi. In terms of Rule 16 of Group-D

Service Rules, 1985, the Principal constituted a three-member selection committee. The interviews were held on 27, 28 and 29th of August, 2006,

and the petitioners were selected for the Class IV posts, and appointment letters were issued to them by the Principal on 29th August, 2006 itself.

Based on certain complaints, the Director Higher Education issued an order dated 8th September, 2006 directing for stoppage of the salary of the

petitioners on the ground that some complaints were received with regard to their illegal appointments. The petitioners, being aggrieved, filed Writ

Petition No. 62629 of 2006, which was disposed of by a judgment dated 16.11.2006 directing the Director of Education to examine the legality of

the appointment of the petitioners. Based on the aforesaid directions, the impugned order was passed, after hearing the petitioners, holding that the

appointment of the petitioners was invalid and consequently cancelled the appointment of the petitioners. The petitioners, being aggrieved by the

aforesaid decision, have filed the present writ petition.

3. In the impugned order, the petitioners" appointment has been cancelled on a variety of grounds. The main ground which has engaged the

attention of the Court is, that the selection committee was constituted in violation of the Government Order dated 3rd March, 2006, and therefore,

the entire selection process held by the selection committee was wholly illegal, invalid, and consequently, the appointment of the petitioners was

void ab initio. Under Rule 16 of the Group-D Service Rules, 1985, a three-member selection committee is required to be constituted by the

Principal, in which one member is required to be appointed from the backward class, the second member from a scheduled caste category, and

the third member is the appointing authority himself. A Government Order dated 3rd March, 2006 was issued known as the Uttar Pradesh Direct

Recruitment to Group-D Posts (inclusion of Members nominated by the District Magistrate in the Selection Committee) Rules, 2006, amending the

constitution of the Selection Committee directing that w.e.f. 3rd March, 2006 a nominee of the District Magistrate will also be a member of the

selection committee. Consequently, for appointments of Group-D posts, the selection committee was required to include a nominee of the District

Magistrate. The Director of Education found that the selection committee taking the interviews held on 27, 28 and 29th August, 2006, did not

include a nominee of the District Magistrate, and therefore, an invalid selection committee took the interview and selected the candidates. Shri

Ashok Khare, the learned Senior Counsel submitted that the amended Rules as per the Government Order dated 3rd March, 2006 could not be

made applicable inasmuch as the vacancies were required to be filled up as per the existing orders as on the date of the issuance of the letter dated

21st November, 2006, by which, the Director, Higher Education had directed the authorities to undertake the recruitment process of Class III and

Class IV posts. The learned Counsel submitted that since the selection process had started on 21st November, 2005, the amended Rules of 3rd

March, 2006 had not come into existence. Consequently, the vacancies were required to be filled up as per the Rules and Regulations and

Government Circulars existing as on 21st of November, 2005. The learned Counsel submitted that the amended Rules of 3rd March, 2006 was

clearly prospective in nature and could not apply retrospectively to the vacancy which was notified on 21st November, 2005, and in which, the

selection process had been initiated.

4. In support of his submission the learned Counsel for the petitioners placed reliance upon the decisions of the Supreme Court, namely, P.

Mahendran and others Vs. State of Karnataka and others, ; N.T. Devin Katti and Ors. v. Karnataka Public Service Commission and Ors. 1990

SCC (L 86) 446 ; and Gopal Krushna Rath Vs. M.A.A. Baig (Dead) by Lrs. and Others, in which it has been held that the Rules or Orders

prevailing on the date when the selection process was initiated by the issuance of the advertisement would apply to such vacancies, and that

subsequent imendments made in the existing Rules or Orders would not affect the selection process, unless a contrary intention was expressed or

impliedly indicated in the amended Rules. The learned Counsel for the petitioner further submitted that in any case the amended Rules of 3rd

March, 2006 were not known to the department, namely, the Educational Department, nor was it known to the Principal (the appointing authority)

and since there was no allegation of mala fides in the selection process, consequently, the selection process, having been conducted in a fair

mariner, the appointments should be validated even if the Court found that the selection committee was not properly constituted. On the other

hand, the learned Standing Counsel, Shri Mohan Yadav, submitted that the selection committee was not properly constituted and was against the

Rules of 3rd March, 2006., which was mandatory in nature and non-compliance of the mandatory rules was fatal to the entire selection process.

The petitioners were selected by an invalid selection committee and their appointments cannot be validated under any circumstances.

5. Having considered the submissions of the learned Counsel for the parties, this Court is of the opinion that the petitioners cannot be granted any

relief. The order of the Director of Education dated 21st November, 2005 only issued a direction to the authorities to initiate the recruitment

process. The selection process had not started by that order. In my opinion, the selection process starts from the date of the issuance of the

advertisement. In the present case the advertisement was issued on 25 and 27th of June, 2006 and prior to the issuance of the advertisement the

amended rules were gazetted on 3rd March, 2006 which became applicable. The selection committee was required to be constituted in

accordance with the amended rules of 3rd March, 2006.

6. In the present case, the selection committee was constituted in accordance with Rule 16 of the Rules of 1985. which did not include a nominee

of the District Magistrate. In my opinion, the rules relating to the constitution of the selection committee is mandatory, and non-compliance of this

mandatory provision invalidates the entire selection process vis-a-vis the recommendations made by the selection committee and, consequently, the

appointment orders. Consequently, this Court is of the opinion that the selection committee was illegally constituted in violation of the mandatory

provision of the rules of 3rd March, 2006. Non-compliance of the amended rules vitiated the selection process. Consequently, the petitioners''

appointment as Class IV posts became invalid and illegal.

7. The submissions of the learned Counsel for the petitioner that the amended rules of 3rd March, 2006 were not known either to the department

or to the appointing authority is patently erroneous. The moment the rules are gazetted, it is deemed to be in the knowledge to all the authorities.

Since I have already helci that the constitution of the selection committee is mandatory and that there cannot be any variation in the constitution of

its members, the deviation made by the appointing authority was fatal to the selection process. In view of the aforesaid, there is no infirmity in the

impugned order. The writ petition fails and is dismissed. Since I have held that the selection committee was wrongly constituted, consequently, I

direct the appointing authority to reconstitute the selection committee in the light of the amended rules of 3rd March, 2006 and hold a fresh

interview from all the candidates who had appeared pursuant to the advertisement dated 25 and 26th of June, 2006. The petitioners would also be

called for the interview along with other candidates and selection would be made in accordance with law. The entire process shall be completed by

the appointing authority within three months from the dale of the production of a certified copy of this order. Shri Mohan Yadav, the learned

Standing Counsel will ensure that a certified copy of this order is sent to the appointing authority within three weeks from today.