(2004) 09 AHC CK 0186

Allahabad High Court

Case No: C.M.W.P. No. 11316 of 1999

Pratap Singh		APPELLANT
	Vs	
Director of Education (Secondary) and Others		RESPONDENT

Date of Decision: Sept. 30, 2004

Acts Referred:

- Uttar Pradesh Secondary Education Services Commission and Selection Boards Rules, 1996 - Rule 11

Citation: (2005) 1 AWC 125

Hon'ble Judges: Arun Tandon, J

Bench: Single Bench

Advocate: R.K. Pandey, for the Appellant; Ashok Khare, V.K. Singh, R.S. Mishra, R.P. Dubey and R.K. Singh and S. Mishra, S. C., for the Respondent

Final Decision: Disposed Of

Judgement

Arun Tandon, J.
Heard Sri R. K. Pandey on behalf of the petitioner, learned standing counsel on behalf of respondent Nos. 1 to 3, Sri R. S. Mishra on behalf of respondent No. 4 and Sri Vinod Kumar Singh on behalf of respondent No. 6. No body is present on behalf of respondent No. 5.

2. Petitioner Pratap Singh, who claims to have been appointed as ad hoc Principal of the Sarvodaya Inter College Banboee, district Bulandshahr, has filed this writ petition against the recommendation of the U. P. Secondary Education Services Selections Board dated 15.4.1997, as also against the order of the District Inspector of Schools passed in compliance of the order of Director of Education (Secondary) dated 22.1.1999 recommending the name of respondent No. 6 namely Baljeet Singh for the post of Principal of Sarvodaya Inter College.

3. Various facts and grounds have been raised on behalf of the petitioner for challenging the said selections of respondent No. 6.

4. On behalf of the petitioner one of the contention raised is that he was amongst the two senior-most teachers of the institution and as such was entitled to be considered for selection on the post of Principal in accordance with the Rule 11 of the U. P. Secondary Education Services Selection Board Rules of 1996. Since the respondents have not considered the claim of two senior most teachers, including the petitioner, while making recommendation for the post of Principal of the institution, there has been manifest violation of Rule 11, which is statutory and mandatory in nature and, therefore, the selection made on the post of Principal of the institution is legally not sustainable. In support of the said contention, the petitioner has placed reliance upon the judgment of this Court in 1984 UPLBEC 914. : 1999 (1) UPLBEC 786 and 1986 ESC 273.

5. On behalf of the respondent it is contended that the petitioner is not amongst the two senior-most teachers of the institution and he has no right to be considered for the post of Principal of the institution under Rule 11 of the U. P. Secondary Education Services Selections Board Rules. The Committee of Management of the institution has also filed an affidavit and has stated that the petitioner is amongst two senior most teachers as such entitled to be considered for the post of Principal.

6. No counter-affidavit has been filed on behalf of the State Authorities despite time being granted. On behalf of the State it has been stated that having regard to the judgment of Hon''ble Supreme Court in the case of Kiran Gupta v. State of U. P. and Ors. 2000 (4) AWC 3223 : 2000 (4) ESC 2436, it would be appropriate that this Court may require the Director of Education to decide the issue as to whether the petitioner is amongst the two senior-most teachers, who was entitled to be considered for appointment on the post of Principal under Rule 11 of the U. P. Secondary Education Services Selections Board Rules, and further to decide the issue as to whether the selection of respondent No. 6 is in accordance with the rules.

7. Having regard to the facts and circumstances of the case, which have been raised in the present writ petition and having regard to the directions issued by the Hon''ble Supreme Court in the case of Kiran Gupta (supra), it would be appropriate that the petitioner may be required to make a detailed comprehensive representation before the Director of Education (Secondary) U. P., Allahabad, establishing his right for being considered for the post of Principal of the institution in accordance with the rules as then applicable and may also, accordingly, question the legality and validity of the respondent No. 6. On said representation being made within 20 days from today, the Director of Education shall afford opportunity of hearing to the parties concerned and shall decide the representation made by the petitioner by means of reasoned speaking order with specific reference to the provisions of Section 33C (6) as well as to other provisions, which may be applicable. The Director of Education shall also afford opportunity of hearing to the Committee of Management of the institution.

8. The aforesaid exercise may be completed by the Director of Education preferably within two months from the date the representation is made. For a period of three months/till the decision of the Director of Education, as aforesaid, the status quo as of date shall be maintained with regards to the post of Principal of the institution.

9. With the above observations, writ petition stands disposed of.