

Asha Ram Chauhan Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: Dec. 22, 2010

Acts Referred: Allahabad High Court Rules, 1952 " Rule 5

Constitution of India, 1950 " Article 226

Uttar Pradesh Intermediate Education Act, 1921 " Section 16E(10)

Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Services of Teachers) Rules, 1978 " Rule 10, 4, 4(2), 7

Citation: (2011) 2 ADJ 455

Hon'ble Judges: Arun Tandon, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Arun Tandon, J.

Heard Sri H.N. Pandey, learned Counsel for the Petitioner, Sri R.N. Singh, learned Senior Advocate assisted by Sri

Vinod Kumar Singh, Advocate for Respondent No. 4 and learned Standing Counsel for State-Respondents.

2. The present writ petition has been filed for following reliefs:

(I) A writ, order or direction in the nature of certiorari calling for the records of the case and quashing the impugned order of the Zila Basic Shiksha

Adhikari, Mathura dated 23-10-2002 (approving the selection and appointment of Respondent No. 4), letter of appointment dated 24-10-2002

(Annexure-5) issued by Manager of the institution to Respondent No. 4 appointing him as Head Master of the institution and the entire selection

proceedings in respect of the post of Head Master of Shri Narain Das Vidya Mandir, Raipura, Jat, Mathura, in which Respondent No. 4 has been

alleged to be selected.

(II) A writ, order or direction in the nature of mandamus directing the concerned Respondent to hold fresh selection against the post of Head

Master of Shri Narain Das Vidya Mandir, Raipura, Jat, Mathura in accordance with law.

(III) Any other writ, order or direction to which this Hon"ble Court may deem fit and proper in the nature and circumstances of the case.

(IV) Award the cost of the petition.

(V) To issue a suitable Writ order or direction including a writ in the nature of Quo-Warranto declaring the Respondent No. 4 is not entitled to

hold post office of the Head Master of the Institution and his appointment against the said post is nullity.

(VI) To issue a suitable Writ order or direction including a writ in the nature of Mandamus directing the concerned Respondents and the State

Authorities to recover the amount of money paid to Respondent No. 4 as salary from Respondent No. 4 and other Respondents and Authorities

responsible for making payment of salary to Respondent No. 4.

3. This Court on 25th November, 2010 had noticed two preliminary objections, which were raised by Sri V.K. Singh, learned Counsel for

Respondent No. 4 as well as reply submitted thereto.

4. The Court may; therefore, deal with the preliminary objections raised first.

5. On behalf of Respondent No. 4 it is contended that the Petitioner has no locus to maintain the present writ petition in view of the fact that he

was not a candidate for the post and therefore, writ petition filed by him ought not be entertained. For the purpose, a Division Bench Judgment of

this Court dated 9th November, 2009 passed in Special Appeal (Defective) No. 1172 of 2009 Km. Vijeta Tripathi v. State of U.P. and Ors. has

been relied upon.

6. Since the judgment in the special appeal is short judgment, it would be appropriate to reproduce the same herein below:

Respondent No. 7 - Appellant, aggrieved by order dated 18.9.2009 passed by learned Single Judge in Civil Misc. Writ Petition No. 50482 of

2009, has preferred this appeal under Rule 5 Chapter VIII of the Allahabad High Court Rules, 1952.

The order impugned looks innocuous as the writ petition has been disposed of with a direction to the Director of Education to examine the matter

u/s 16-E(10) of the Intermediate Education Act.

Mr. Ashok Khare, Senior Advocate, appearing on behalf of the Appellant, submits that as the writ Petitioner - Respondent No. 7 (hereinafter

referred to as the "writ Petitioner"), was not a claimant to the posts held by the Appellant as also Respondent Nos. 4, 5 and 6, the grievance

raised by him about their illegal appointments does not give him a personal cause so as to file a writ petition cognizable by a Single Judge. He

submits that in case the writ Petitioner attempted to question their appointments, he should have filed a public interest litigation and that too was not

fit to be entertained, as the issue relates to the service matter.

Be that as it may, as the writ Petitioner was not a candidate for appointment, the writ petition filed by him ought not to have been entertained by the

learned Single Judge on this ground alone.

Accordingly, we set aside the order dated 18.9.2009 passed by the learned Single Judge, giving liberty to the writ Petitioner to take recourse to

any other proceeding permissible in law.

In the result, appeal is allowed with the observation aforesaid.

7. From a reading of the aforesaid Division Bench judgment, it is apparently clear that the Court held that since the writ Petitioner was not a

candidate for the post, the writ petition ought not to have been entertained. This observation has to be read in the background of the facts noticed

in first three paragraphs of the judgment, wherein the Court has recorded the contentions raised on behalf of the Appellant to the effect that the writ

Petitioner was not a claimant to the post. It is in this background that the Court held that petition at her behalf ought not to have been entertained.

8. In the facts of the present case, it has been amply demonstrated before this Court that the Petitioner is a claimant for the post in question.

According to the Petitioner, the vacancy was not advertised in accordance with Rule 7 of the Uttar Pradesh Recognised Basic Schools (Junior

High Schools)(Recruitment and Conditions of Service of Teachers) Rules, 1978 (hereinafter referred to as the "Rules, 1978") and therefore, he

could not submit his application. This contention of the Petitioner has been replied on behalf of Respondent No. 4 by contending that the Petitioner

himself made an application in writing in response to the advertisement published. It, therefore, does not lie in the mouth of the Respondent No. 4

to contend that the Petitioner was not a claimant for the post in question. Consequently, the first preliminary objection raised on behalf of the

Petitioner is rejected.

9. The second preliminary objection raised on behalf of Respondent No. 4 is that the Petitioner has not approached this Court with clean hands

inasmuch as he had made an application for the post in his own hand writing, but wrongly stated in the present writ petition that he was not aware

of the advertisement. This stand is false, inasmuch as if the Petitioner was not aware of the advertisement, there was no occasion for him to make

an application.

10. The objection so raised on behalf of Respondent No. 4 is opposed by learned Counsel for the Petitioner by contending that the alleged

application is not in his own handwriting and it is prepared document only for the purposes of frustrating the present proceedings. The application is

stated to be dated 15th July, 2002 when the last date for making of the application under the alleged advertisement was 25th June, 2002.

11. This Court is not required to enter into the disputed issues of fact qua making of the application by the Petitioner, inasmuch as it may ultimately

require opinion of Hand Writing Expert and other evidence to be considered. In the opinion of the Court, it would be appropriate, to only record

that in the facts of the present case, this Court is satisfied that the Petitioner is not guilty of deliberately filing a false affidavit before this Court or of

not approaching this Court with clean hands. Consequently, the second preliminary objection raised on behalf of Respondent No. 4 is also

rejected.

12. One additional preliminary objection has been raised on behalf of Respondent No. 4 today i.e. the present writ petition suffers from laches,

inasmuch as selection had taken place in the year 2002 and the present writ petition has been filed in the year 2003. He has placed reliance

upon the judgment of a learned Single Judge dated 22nd November, 2010 passed in Civil Misc. Writ Petition No. 38703 of 2006 *Guru Narain*

Singh v. State of U.P. and Ors.

13. In order to deal with the aforesaid objection, it may be recorded that according to Respondent No. 4, his appointment as headmaster of the

institution was approved by the Basic Shiksha Adhikari on 23rd October, 2002 and he joined the institution on 1st November, 2002. The writ

petition has been presented before this Court on 14th October, 2003 with the allegation that the Petitioner was earlier given to understand that the

Respondent No. 4 had been appointed by way of transfer and it is only when he was informed that such appointment has been made by direct

recruitment, that the present writ petition has been filed.

14. Be that as it may, this Court holds that the Petitioner cannot be said to have slept over his rights nor can it be said that the writ petition suffers

from unexplained laches, so as to defeat his right under Article 226 of the Constitution of India. So far as the judgment of learned Single Judge

dated 22nd November, 2010 referred to above is concerned, this Court may record that the learned Single Judge had held in that case that there

was undue delay and laches of more than two and half years. Reference paragraph-7 of the judgment of learned Single Judge dated 22nd

November, 2010 and therefore the writ petition was not entertained.

15. The facts of the present case are clearly distinguishable and therefore, the judgment is of no help.

NOW ON THE MERITS OF THE CASE

16. Sri Narain Das Vidya Mandir, Raipura Jat, District Mathura is a recognized and aided junior high school. The provisions of Rules, 1978 are

admittedly applicable to the teachers of the said institution. Petitioner before this Court claims to be working in the said institution since 1974 and is

stated to be possessed of the following teaching qualifications (a) Bachelor of Arts and (b) Basic Teaching Certificate Course. The vacancy on the

post of head-master of the institution was caused on 30th June, 1997 with the retirement of Gopi Chandra Shashtri, the regular head-master. It is

in respect of this vacancy and the appointment made against the same of Respondent No. 4 that the present writ petition has been filed. In the writ

petition it has been stated that under Rule 7 of Rules, 1978, the vacancy is to be advertised in two newspapers, one having adequate circulation

throughout the State and other at the local level. Since the advertisement in terms of Rule 7 of Rules, 1978 was not made, the Petitioner could not

apply. Subsequently, it was brought to his notice that the Respondent No. 4 has been appointed in the institution by direct recruitment with the

approval of the Basic Shiksha Adhikari. He has, therefore, approached this Court with the prayers as quoted herein above.

17. It is further contended that no selection infact has taken place in the institution and only papers have been manufactured suggesting the selection

of Respondent No. 4. Lastly it is submitted that the Respondent No. 4 was not possessed of the prescribed minimum qualifications as per Rule 4

of Rules, 1978 and was therefore, ineligible to be appointed as head-master in the said institution. It is explained that Respondent No. 4 had never

worked in any recognised junior high school and therefore, he has no teaching experience as required under Rule 4(2)(c) of Rules, 1978. The

certificate relied upon by Respondent No. 4 for establishing his teaching experience qua working in an recognised junior high school is only a waste

paper, inasmuch as said Respondent No. 4 has failed to establish that he was ever appointed in the recognised junior high school with the approval

of the Basic Shiksha Adhikari, which is a condition precedent for any valid appointment in a recognised junior high school. It is further stated that

Respondent No. 4 has to his credit a degree of B.Ed. only, when under Rule 4(2) he has to have a training qualification such as Hindustani

Teaching Certificate, Junior Teaching Certificate, Certificate of Training or Basic Teaching Certificate etc. Learned Counsel for the Petitioner

submits that the legal position with regard to B.Ed. degree being not equivalent to Hindustani Teaching Certificate, Junior Teaching Certificate,

Certificate of Training or Basic Teaching Certificate etc. has already been settled by the Hon"ble Supreme Court of India in the case of Mohd.

Sartaj v. State of U.P. and Ors. JT 2006 (1) 331. It has been laid down that essential qualifications for recruitment to the post are to be

seen/satisfied on the date of recruitment and not on any later point of time. Reference is made to the judgment of the Hon"ble Supreme Court of

India in the case of Pramod Kumar v. U.P. Secondary Education Services Commission and Ors. 2008 (4) ALJ 207, wherein the judgment in the

case of Mohd. Sartaj (Supra) has been approved and it has been further held that essential qualifications for recruitment to a post, if not f satisfied

at the time of recruitment, the same cannot be condoned. Such acts cannot be rectified, appointment contrary to the Statute/statutory Rules would

be void and illegality, in that regard, cannot be regularized.

18. Faced with the aforesaid contention, Sri R.N. Singh, learned Senior Advocate appearing for Respondent No. 4 contends that Petitioner after

making the application did not participate in the selection and therefore, it is not open for him to challenge the selection. It is then contended that

teaching experience certificate produced by Respondent No. 4 is from a recognized junior high school, which has rightly been held to be valid for

the purposes of satisfying the requirement of Section 4(2)(c) of Rules, 1978. With regard to the academic qualifications, legal proposition as laid

down by the Hon'ble Supreme Court in the case of Mohd. Sartaj (Supra) could not be disputed. However, it is explained that by subsequent

amendment made in 2008, a degree of B.Ed. has now been included as valid teachers training course under Rule 4(2)(b) and therefore, as on date

Respondent No. 4 is qualified for the post in question. It is further stated that the original records pertaining to the selection have already been

examined by this Court after summoning the same from the office of the Basic Shiksha Adhikari including the advertisement and therefore, this

Court may not interfere in the writ petition.

19. I have considered the submissions made by the learned Counsel for the parties and have gone through the records of the present writ petition.

20. In terms of the order dated, 25th November, 2010, the Court has examined the original records as produced by the Basic Shiksha Adhikari. It

may be recorded that the vacancy was advertised in two newspapers published from Agra, namely, Aaj and Swaraj Time. There is no material,

which could substantiate that Swaraj Time is local newspaper, so far as the city of Mathura is concerned. The notice was sent to the applicants by

registered post only on 23rd September, 2002, when the interview was fixed for 29th September, 2002 i.e. just six days prior to the date of

interview. From the interview-sheet this Court finds that as against 13 applicants, candidates empanelled at serial Nos. 1, 8, 9 and 12 did not have

any teaching experience, candidates empanelled at serial Nos. 2, 3 and 4 were shown as absent, candidate empanelled at serial No. 6 was shown

as under-age. Against the name of the Petitioner, at serial No. 13, it is recorded stated that application has been received by hand, but he did not

participate in the selection. It is, thus, clear that only the candidates empanelled at serial Nos. 5, 7, 10 and 11 i.e. in all four candidates were found

eligible and all these four candidates possessed a degree of B.Ed. only as teaching qualification. Therefore, no candidate was eligible for being

considered for appointment on the date of selection, qua the post as per Rules, 1978.

21. The Basic Shiksha Adhikari has been conferred the power of approval with an intent to ensure that the statutory rules are complied. Under the

order of approval in this case, no relevant facts have been noticed.

22. This Court may only refer to Section 10(5) of Rules, 1978, which deals with the power of the Basic Shiksha Adhikari, after receipt of the

recommendations of the on the recommendations of Selection Committee qua appointment on the post of teachers under Rules, 1978. The same

reads as follows:

10. Procedure for selection.--

(5)(i) if the District Basic Education Officer is satisfied that:

(a) the candidates recommended by the Selection Committee possess the minimum qualifications prescribed for the post;

(b) the procedure laid down in these rules for the selection of Headmaster or Assistant Teacher, as the case may be, has been followed he shall

accord approval to the recommendations made by the Selection Committee and shall communicate his decision to the Management within two

weeks from the date or receipt of the papers under Clause (4).

(ii) If the District Basic Education Officer is not satisfied as aforesaid, he shall return the papers to the Management with the direction that the

matter shall be reconsidered by the Selection Committee.

(iii) If the District Basic Education Officer does not communicate his decision within one month from the date of receipt of the papers under Clause

(4), he shall be deemed to have accorded approval to the recommendations made by the Selection Committee.

23. From reading of Section 10(5) it is clear that Rule making authority has taken care to provide that the Basic Shiksha Adhikari has to satisfy

himself that (a) the candidate recommended by the Selection committee satisfies the minimum qualifications prescribed for the post, (b) procedure

prescribed has been followed, (c) and it is only then that he is required to take decision for approving the appointment, otherwise, he has to return

the papers to the Management for fresh selections.

24. Entire selections would fall atomically on the ground that none of the candidates, on the date of selection, was possessed of the minimum

prescribed qualifications i.e. teaching qualification for being considered for appointment for the post of head-master as per Rules, 1978.

25. This Court may also deal with the issue with regard to the teaching experience claimed by Respondent No. 4. From the original records

pertaining to the selection, this Court finds that there is a teaching experience certificate, issued by the Principal of Sri Gajadhar Prasad Junior High

School, Rui Ki Mandi, Shahganj, Agra, which records that Respondent No. 4 has been working in the said institution since 1st July, 1998 till May,

2002 and that he was on leave without pay between November, 2000 to July, 2001. Before this Court Respondent No. 4 could not demonstrate

that his alleged appointment in Gajadhar Prasad Junior High School, which was a recognised junior high school was made with the approval of the

Basic Shiksha Adhikari. Rule 10 of Rules, 1978 clarifies that no appointment in a recognised junior high school on the post of a teacher can be

made except without prior approval of the Basic Shiksha Adhikari.

26. It is held that any appointment made without there being any order of approval in writing would be a nullity. This Court, therefore, has no

hesitation to hold that the teaching experience pleaded by Respondent No. 4 on the strength of such illegal appointment is no experience in the

eyes of law.

27. Therefore, it is recorded that (a) the Respondent No. 4 was not possessed of the academic qualifications prescribed for the post, (b)

Respondent No. 4 was not possessed of the teaching experience as required under Rule 4 (2)(c) of Rules, 1978. On both the grounds he was

completely ineligible to be appointed in the institution.

28. The Hon"ble Supreme Court of India in the case of Mohd. Sartaj and Pramod Kumar (Supra) has explained that all qualifications are to be

seen on the date of appointment as per the rules applicable and if any appointment has been made in teeth of the statutory provisions, of a

candidate not possessed of the required qualifications, such appointment would be void and cannot be regularised at latter point of time. Any

length of service on the strength of such illegal appointment will not have the effect of curing the defect in the appointment.

29. This Court, therefore, holds that Respondent No. 4 was ineligible to be appointed on the date, he was recommended for the post and had

been offered appointment as head-master.

30. In support of the conclusion recorded; reference is made to the judgments of this Court in the following cases:

(a) Committee of managements. State of U.P. and Ors. 2009 (1) ADJ 331 (DB),

(b) Arun Kumar Chaturvedi v. State of U.P. and Ors. 2009 (5) ESC 3573 (All),

(c) Bashir Ahmad Khan (D.) through L.Rs. Vs. Deputy Director of Consolidation and Others,

(d) Akhilesh Kumar Pandey and Anr. v. State of U.P. and Ors. 2009 (9) ADJ 9 (DB): 2009 (5) ESC 3299 (All)(DB).

(e) Smt. Gyanwati Devi v. State of U.P. and Ors. Civil Misc. Writ Petition No. 71210 of 2005 decided on 12th August, 2009.

31. This Court may record that any subsequent amendments made in the Rules, 1978 altering the minimum essential qualifications will not improve

the case of Respondent No. 4, who on the date of selection/appointment was not eligible for the post as per the statutory rules applicable then.

32. For the reasons recorded above, the impugned orders dated 23rd October, 2002 and dated 24th October, 2002 cannot be legally sustained

and are hereby quashed. The present writ petition is allowed.