Ikramul Haq Vs Mohammad Sabir and Others

Special Appeal No''s. 1044 and 1045 of 1997

Court: Allahabad High Court

Date of Decision: Nov. 22, 2005

Hon'ble Judges: Vikram Nath, J; S. Rafat Alam, J

Bench: Division Bench

Advocate: R.G. Padia, P. Padia, S.F.A. Naqvi and P.K. Bisariya, for the Appellant; A.B.L. Gour and M.S. Haq and S.C., for the Respondent

Final Decision: Dismissed

Judgement

Vikram Nath, J.

These intra Court appeals have been preferred under the Rules of the Court against the judgment of learned single Judge

dated 11.11.1997 whereby Writ Petition No. 4134 of 97 Iqramul Haque v. District Inspector of Schools Allahabad and Ors. was dismissed and

the Writ Petition No. 16261 of 97 Mohd. Sabir v. the Committee of Management Majidia Islamia Inter College, Allahabad and Ors. was allowed.

2. There is an institution by the name of Majidia Islamia Inter College, Allahabad (in short referred to as the Institution) which is on the grant in aid

of the State Government and is an aided institution. The service conditions of the teachers are governed by the U.P. Intermediate Education Act

1921 and the Rules and Regulations framed thereunder, as also the U.P. High School and Intermediate Colleges (Payment of Salary the Teachers

Act) 1978. Sri Mohd. Khalid lecturer in Urdu & Persian in the Institution retired on 30.06.1996 and as such a substantive vacancy arose in the

lecturer grade. The appellant Ikramul Haque, Mohd. Sabir contesting respondent in both the appeals and also fourother teachers in the L.T. grade

in the institution applied for promotion on the post of lecturer which.had fallen vacant on account of retirement of Sri Mohd. Khalid. The

Committee of Management passed a resolution dated 18.8.96 resolving to promote Ikramul Haque the appellant as Lecturer Urdu &Persian.

Mohd. Sabir contesting respondent filed Writ Petition No. 29261"" of 1996, challenging the resolution of the Committee of Management to

promote the appellant on the post of lecturer. The said writ petition was disposed of vide order dated 18.9.96 with the direction to the DIOS to

look into the matter and pass appropriate orders in accordance with law after hearing the concerned parties.Pursuant to the aforesaid direction of

the Court, the DIOS passed an order dated 4.1.1997 holding that on the date of vacancy theappellant Iqramul Haque did not possess the

minimum qualification and as such the resolution of the Committee of Management dated 18.8.96 could not be accepted. The DIOS however did

not passany orders with regard to the claim of Mohd. Sabir the contesting respondent.

3. Two writ petitions were filed before this Court. The appellant Iqramul Haque filed writ petition No. 4134 of 1997 for a direction to the

respondent no.l therein i.e. the DIOS to grant approval to the resolution of the Committee dated 18.8.96 on the other hand Mohd. Sabir the

contesting respondent filed writ petition No. 16261 of 1997 with the prayer to direct the Committee of Management to promote him as lecturer of

Urdu & Persian and the papers may be forwarded to the DIOS to grant approval of the same.

4. Both the petitions were consolidated and heard together by the learned single Judge.

5. The contentions of Iqramul Haque (appellant in both the appeals) was mainly based upon the fact that he had acquired master''s degree before

the date of occurrence of vacancy i.e. 30.6.96 and therefore, possessed the eligibility qualification and should have been considered for promotion.

The learned single Judge examined all the aspects of the matter and came to the conclusion that on the date of the occurrence of the vacancy

Iqramul Haque did not possess the required minimum qualification i.e. Master''s degree in Persian and therefore, could not be considered for

promotion to the post of lecturer Urdu & Persian, whereas Mohd.Sabir possessed the qualifications and was liable to be considered for

promotion. Learned single Judge accordingly dismissed the writ petition No. 4134 of 1997 filed by Iqramul Haque and allowed the Writ Petition

No. 16261 of 1997 filed by Mohd. Sabir. Aggrieved by the said judgment Iqramul Haque has filed the aforesaid two appeals.

6. We have heard Sri S.F.A. Naqvi learned counsel for the appellant and Sri M.S. Haque learned counsel for the respondent Mohd. Sabir and

learned Standing Counsel.

7. The contention raised before us by the counsel for the appellant is that the post in question was that of lecturer in Urdu only and not lecturer in

Urdu & Persian and for the post of lecturer in Urdu, the educational qualification required was only master''s degree in Urdu and therefore, there

was no requirement for acquiring master''s degree in subject of Persian and therefore, even if it is assumed that the appellant did not possess the

master''s degree in Persian on the date of occurrence of the vacancy, it could not disqualify or dis-entitle the appellant from being considered for

promotion to the post of lecturer in Urdu.

8. On the other hand Sri M.S. Haque learned counsel for Mohd. Sabir and learned Standing Counsel have refuted the said contention on the

ground that firstly the post in question was of lecturer in Urdu & Persian and not lecturer in Urdu and therefore, the appellant admittedly having not

acquired the master''s degree in subject of Persian on the date of occurrence of vacancy was rightly not considered for promotion. The second

objection by the learned counsel for the respondent is that this is a new plea which is being raised by the appellant for the first time in this appeal

and has never being raised before in the previous round of litigation either at any stage before the DIOS or before this Court in the last several

years. Such a plea therefore, cannot be allowed to be raised in this appeal. It is further submitted by learned counsel for the respondent that such

plea is also without any basis and is not supported by any document to establish that the post in question was that of lecturer in Urdu only, where

as from the several documents available on record it is clearly established that the post on which Sri Mohd. Khalid was working was that of

lecturer in Urdu & Persian.

9. We have gone through the material placed before us in the paper book which contains complete copy of both the writ petitions counter

affidavits and also rejoinder affidavits as well assupplementary affidavits.

10. A perusal of the writ petition filed by the appellant (WP4134/97) establishes beyond doubt that the basis of his claim was that he had acquired

the master''s degree in the subject of Persian on 29.06.1996, a day before the vacancy arose on the retirement of Mr. Mohd. Khalid, Lecturer in

Urdu & Persian on 30.06.1996. Through out the petition what has been asserted is that the post of lecturer in Urdu & Persian has fallen vacant

and on the said post he may be promoted as he had acquired the master''s degree in Persian. Along with the petition is annexed a letter of the

DIOS, Allahabad dated 18.03.1970 as Annexure-5, addressed to the Principal of the Institution mentioning the list of the approved teachers in the

Institution. At serial No. 1 in the said letter is mentioned the name of Sri Syed Ziaul Hasan, Lecturer in Urdu & ersian. On the said post Sri Mohd.

Khalid was appointed after retirement of Sri Syed Ziaul Hasan and upon retirement of Sri Mohd. Khalid, the said post of lecturer Urdu & Persian

is the subject matter of issue in these appeals. Thus it can be easily noticed that right from the beginning the post is of lecturer Urdu & Persian.

Even the resolution of the Committee of Management dated 18.06.1996 resolving to promote the appellant categorically mentions that out of six

candidates who had applied for promotion to the post, four were not possessed of the basic qualification of master''s degree in Persian and had

only master''s degree in Urdu and therefore could not be considered. It further mentioned thatonly the remaining two candidates that is the

appellant and the contesting respondent were possessed of the required qualification asthey had master''s degree in Persian as well as in Urdu and

therefore only these two names were taken up for consideration. It would also be relevant to mention that in the counter affidavit filed by the

Assistant DIOS, in WP No. 4134/97 it lias been specifically mentioned that the post was of Lecturer in Urdu & Persian and the same stand was

also taken in the order of the DIOS dated 04.01.1997 which was impugned by the appellant in his WP No. 4134 of 1997. Thus from the above

the inevitable conclusion is that the post in question was Lecturer in Urdu & Persian and not Lecturer in Urdu alone.

11. During the pendency of the petitions the appellant it appears realised that on the grounds raised in his petition could not succeed and therefore

came up with a new case in his Ilnd Supplementary Affidavit alleging that the post was of lecturer In Urdu only and therefore the qualification of

master''s degree in Persian was not relevant required at all. In support of this averment the appellant filed a list of the teaching staff of the Institution

along with the Ilnd Supplementary Affidavit, but interestingly enough the said document also did not support the appellant as it mentioned at SI.

No. 2 the name of Sri Syed Abid Ali as lecturer in Urdu & Persian. No other document has been filed by the appellant to support his contention.

Thus [the contention of the appellant that the post in question was of lecturer in Urdu also fails in the absence of any documentary proof, rather on

the basis of the material on record referred to above it is established otherwise that the post is of lecturer in Urdu & Persian.

12. Now coming to the question as to whether or not the appellant possessed the qualification for being promoted as lecturer in Urdu & Persian.

There is no dispute that the qualification required for the post of lecturer in Urdu & Persian is master''s degree in Urdu as well as Persian. The

appellant obtained master''s degree in Urdu in the year 1977 and claims to have obtained master''s degree in Persian on 29.06.1996 where as

according to the respondents the results of final year of M.A.(Persian) of Allahabad University for the year 1995-96 was declared on 18.07.1996

and therefore, the appellant at the time when the vacancy arose on 30.07.1996 did not possess the qualification. There is yet another objection to

the master''s degree in Persian acquired by the appellant that he was an institutional day scholar of the University without having obtained study

leave from the Committee of Management and approved by the DIOS, therefore could not have fulfilled the minimum attendance required and his

degree would amount to an irregular degree not liable to be recognised rather liable to be cancelled. Even the ADIOS in his counter affidavit in

WP 4134/97 had mentioned that the salary for the two years study period should be recovered from the appellant as he could not have pursued

both the teaching and studying assignments simultaneously.

13. Learned single Judge has.dealt with in detail all these aspects and has recorded categorical finding that the results of final year M.A.(Persian) of

the Allahabad University for the year 1995-96 were declared on 18.07.1996 and therefore the appellant did not possess the required qualification

on the date of occurrence of vacancy on 30.6.1996. Learned counsel for the appellant has also not confronted us with the finding recorded by the

learned single Judge. We therefore, do not find any fault in the judgment of the learned single Judge with regard to qualification of the appellant.

14. In so far as contesting respondent is concerned categorical findings have been recorded by the DIOS as well as the learned single Judge that

he had obtained master''s degree in Urdu in 1982 and that in Persian in 1989 and was fully eligible on the date of occurrence of vacancy to be

considered for promotion as Lecturer in Urdu & Persian. In the circumstances the direction issued by the learned single Judge in favour of the

respondent Mohd. Sabir is justified and does not suffer from any infirmity.

15. Thus for all the reasons recorded, above, both the special appeals fails and are accordingly dismissed with costs.