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(2010) 12 AHC CK 0183

Allahabad High Court

Case No: Writ Petition No. 28662 of 2009

Basudev Pandey		APPELLANT
	Vs	
State of U.P. and Others		RESPONDENT

Date of Decision: Dec. 10, 2010

Acts Referred:
Uttar Pradesh Intermediate Education Act, 1921 â€" Section 18, 33

Citation: (2010) 12 AHC CK 0183

Hon'ble Judges: V.K. Shukla, J

Bench: Single Bench

Final Decision: Allowed

Judgement

V.K. Shukla, J.
Petitioner has approached this Court questioning the validity of the notification dated 24.01.2009 notified by U.P.

Secondary Education Services Selection Board, Allahabad, Respondent No. 2 to the extent of empanelment of Mangal Mani Tripathi, at serial

No. 1 for being appointed as Principal of Krishak Inter College Bishunpur Kala Deoria.

2. Brief background of the case is that U.P. Secondary Education Services Selection Board, Allahabad advertised the post of Principal of Krishak

Inter College Bishunpur Kala Deoria through Advertisement No. 1 of 2002. Pursuant to aforesaid advertisement Petitioner as well as Respondent

No. 6 Mangal Mani Tripathi both applied for consideration of their candidature for being appointed as Principal of Krishak Inter College

Bishunpur Kala Deoria. Said selection was not at all finalized on account of litigation having commenced before this Court with regard to the

validity of the advertisement and the selection proceedings pursuance thereto and ultimately matter has been finalized by Hon''ble Apex Court in

the case of Balbir Kaur v. U.P. Secondary Education Service Selection Board 2008 (3) UPLBEC 2376, decided on 16.05.2008. After the

judgment has been delivered by Hon''ble Apex Court in the case of Balbir Kaur (supra) on 16.05.2008, then on 04.11.2008 result has been

notified pursuant to advertisement No. 1 of 2002 and U.P. Secondary Education Services Selection Board, Allahabad notified the panel on

24.01.2009 for the post of Principal, Krishak Inter College Bishunpur, Kala Deoria and therein Magal Mani Tripathi has been placed at serial No.

1. Petitioner has been placed at serial No. 2. Petitioner after notification of the panel discovered that Mangal Manti Tripathi has obtained

appointment on the post of Principal by misrepresenting and defrauding upon the Board as his initial promotion as Lecturer in Hindi itself was null

and void. Petitioner has proceeded to mention that Magal Mani Tripathi was appointed as Assistant Teacher in L.T. Grade in the year 1975, 2/3rd

of C.T. Grade as he was untrained at that time as he was possessing merely B. Sc. Mathematics degree to his credit and in the year 1977 he has

done his B. Ed as regular candidate and Mangal Mani Tripathi since then has been accorded L.T. Grade. Petitioner has stated that during his

continuance in service he pursued his Master''s degree in Hindi and Petitioner has further proceeded to mention that Mangal Mani Tripathi in spite

of fact that he was not qualified to be appointed as Lecturer in Hindi succeeded in getting promotion as Lecturer on 30.08.1995, as such his

continuance and functioning as Lecturer in Hindi is nullity and based on said appointment/experience by no stretch of imagination he could be

offered appointment as Principal of the institution. With this prayer Petitioner has approached this Court for quashing of the panel dated

24.01.2009 to the extent of Mangal Mani Tripathi, Respondent No. 6 as Principal of the institution.

3. Counter affidavit has been filed by the Standing counsel and therein it has been stated that initial appointment of Respondent No. 6 was made at

Sri Krishak Inter College, Barhaj, Deoria on 01.11.1975 as L.T. Grade teacher on the basis of his B. Sc. degree and thereafter he has passed his

B. Ed. examination in the year 1977 and Respondent No. 6 passed his Master Degree with Hindi in the year 1991 and on 30.08.1995 he was

promoted as Lecturer in Hindi and was given promotional pay scale of L.T. Grade also. Promotion of Respondent No. 6 was approved on

19.01.1996 while he was passed his M.A. examination in the year 1991.

4. Counter affidavit has been filed on behalf of Mangal Mani Tripathi, Respondent No. 6 and therein it has been stated that he has completed his

Master Degree in Sanskrit and therein Hindi was one of the Special paper and he has wide knowledge in Sanskrit and good knowledge in

Sanskrit, as such he has rightly been promoted as Lecturer in Hindi and same has duly been approved as such collateral challenge is not at all

permissible in law. It has also sought to be contended that special subject of Sanskrit in M.A. is better qualification in compression to B.A. in

Sanskrit, in this background it has been stated that objection raised is unsustainable.

5. Rejoinder affidavit has been filed and therein entire assertion is that essential qualification for the post of Lecturer in Hindi is M.A. in Hindi and

B.A. with Sanskrit. As far as Mangal Mani Tripathi is concerned he was B. Sc. and was not at all having, requisite qualification in such a situation

in this background once appointment of Respondent No. 6 as Lecturer in Hindi is void, then based on said experience by no stretch of imagination

he could be offered appointment as Principal of the institution.

6. After pleadings mentioned above have been exchanged, present writ petition has been taken up for final hearing and disposal with the consent of

the parties.

7. Sri R.C. Dwivedi, Advocate learned Counsel for the Petitioner contended with vehemence that once promotion accorded to Mangal Mani

Tripathi as Lecturer in Hindi is void and nullity as he was not at all fulfilling the requisite statutory qualification as he was not having to his credit B.A

with Sanskrit which was essential qualifications and was merely having B. Sc and Master''s degree in Hindi to his credit as such his functioning as

Lecturer in Hindi is of no consequence and his subsequent selection as Principal is uncalled for and has to be set aside as such writ petition as it has

been framed and drawn deserves to be allowed.

8. Sri R.K. Ohja, Advocate appearing with Sri Chandra Shekher Kushwaha, Advocate for Respondent No. 6 on the other hand contended that

collateral challenge is not at all permissible in law after such a long period and in the present case Respondents No. 6 has better qualification as

while pursuing Masters degree in Hindi, Sanskrit was there as one of the special subject and expert body i.e. Selection Board has considered the

matter and found Respondent No. 6 to be suitable for being appointed as Principal then present writ petition at the behest of Petitioner whose

merit status is inferior qua Respondent No. 6 is liable to be dismissed.

9. Sri Neeraj Tiwari Advocate representing U.P. Secondary Education Services Selection Board, Allahabad as well as Sri K.K. Chand, learned

Standing counsel on the other hand contended that entire facts are before the Court and whatever decision is taken by this Court same would be

abided with by authority concerned.

10. After respective arguments have advanced factual position on which there is no dispute that Mangal Mani Tripathi has been selected as

Principal of Krishak Inter College Bishunpur Kala Deoria which was advertised by means of Advertisement No. 1 of 2002 and result of the same

was declared after matter has been finalized by Hon''ble Apex Court on 16.05.2008 in Balbir Kaur''s case (supra), panel was notified on

24.01.2009 wherein Mangal Mani Tripathi has been empaneled at serial No. 1 & Basudev Pandey, Petitioner was empaneled at serial No. 2.

Entire ground of attack leveled by Petitioner qua the selection and appointment of Respondent No. 6 as Principal is on the ground that his initial

appointment as Lecturer in Hindi is nullity and once his appointment as Lecturer is nullity then experience acquired by Respondent No. 6 as

Lecturer is also nullity and consequently subsequent appointment and selection as Principal is also to be treated as nullity and void.

11. Question is as to whether such collateral or incidental challenge is permissible or not.

12. This is accepted position is that Mangal Mani Tripathi was appointed as untrained C.T. Grade teacher on 01.11.1975 and his educational

qualification at the point of time of entering into the institution has been B. Sc.(Mathematics) and he completed his B. Ed and was accorded L.T.

grade in the year 1977. Accepted position is that Mangal Mani Tripathi has not at all got B.A with Sanskrit and during his continuance as L.T.

grade teacher in the institution concerned he pursued Master''s Degree in Hindi in the year 1991 and thereafter he has been accorded promotion as

Lecturer in Hindi on 30.08.1995 Educational qualification for the post of Lecturer in Hindi has been provided in Appendix-A of Chapter II of U.P.

Act No. II of 1921 as follows-

Appendix ''A'' Chapter II

1.M.A. in Hindi and

Hindi Teacher B.A. with Sanskrit or

Shashtri

Intermediate (Classes 11-12) University, examination

Government Sanskrit

College, Varansai,

now Sampurnannd

Sanskrit Varanasi

2. Desirable training

qualification

(Government Order

No. Ma/4428/15-

72/13 according to

Government

Notification No.

Ma/4428/15-72 (13)

-76 dated

16.3.1979, for

teachers appointed

prior to 5th April,

1997 for teaching

High School college

according to the

regulations prevailing

at that time, if he

possesses other

educational

qualification then for

them B.A. With

Sanskrit shall not be

necessary for the

purpose of their

promotion as the

post of lecturer in

Hindi for

Intermediate classes.

13. Bare perusal of the provision as quoted above would go to show that for being appointed as Lecturer in Hindi requisite eligibility criteria

provided for is that an incumbent should possess Masters Degree in Hindi to his credit and at graduation level incumbent should have to his credit,

Sanskrit or Shashtri examination Government Sanskrit College, Varansai, now Sampurnannd Sanskrit University, Varanasi as one of the subject.

14. Division Bench of this Court in the case of Chet Ram Gangwar v. State of U.P. and Ors. reported on 2009 (7) ADJ 47 has already taken

view that qualification as mentioned in Chapter II Regulation I Appendix A of the Regulation framed under U.P. Act No. II of 1921 is mandatory.

Relevant extract of said judgment is being quoted below :

(i) The first question is answered in negative.

A teacher, who does not possess B.A. with Sanskrit but possess degree of Shitya Ratan (Two years course) from Hindi Sahitya Sammelan is not

eligible for promotion as Lecturer (Hindi) to teach Classes XI and XIII.

Thus, the Purshottam Das case does not lay down the correct law and is over ruled.

(ii) The second question is also answer in negative.

The qualification mentioned in Chapter II Regulation I Appendix A of the Regulation framed under the U.P. Intermediate Education Act, 1921 is

mandatory.

The degree of Sahitya Ratan (two years course) cannot be treated as qualification for promotion-appointment on the post of Lecturer (Hindi) to

teach Classes XII and XII.

31. In view of the findings recorded herein above the writ petition is dismissed. There is no order as to cost.

16. Hon''ble Apex Court in the case of Prabhat Kumar Sharma and others Vs. State of U.P. and others, considering the appointment made in

violation of the procedure prescribed under the Removal of Difficulties Order, held as under:

7. It would thus be clear that any ad hoc appointment of the teachers u/s 18 shall be only transient in nature, pending allotment of the teachers

selected by the Commission and recommended for appointment. Such ad hoc appointments should also be made in accordance with the

procedure prescribed in para 5 of the First 1981 Order which was later streamlined in the amended Section 18 of the Act with which we are not

presently concerned. Any appointment made in transgression thereof is illegal appointment and is void and confers no right on the appointees. The

removal of difficulties envisaged u/s 33 was effective not only during the period when the Commission was not constituted but also even thereafter

as is evident from second paragraph of the preamble to the First 1981 Order which reads as under:

And whereas the establishment of the Commission and the Selection Boards is likely to take some time and even after the establishment of the said

Commission and Boards, it is not possible to make selection of the teachers for the first few months.

Hon''ble Apex Court in the case of Pramod Kumar Vs. U.P. Secondary Education Services Commission and Others, has taken the view that once

essential qualification is lacking and missing at the point of initial appointment such appointments are nullity and void. Paragraphs 16 to 19 are being

extracted below :

17. The qualifications for holding a post have been laid down under a statute, any appointment in violation thereof would be a nullity.

18. It is a matter of some concern that appointments are being offered by the authorities of the State without verifying the fact as to whether the

degree(s) possessed by the candidate(s) are valid or not. It was an ad hoc appointment. Why despite the same, he was allowed to obtain degree

from another university is not known.

19. If the essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Such an act cannot

be ratified. An appointment which is contrary to the statute/statutory rules would be void in law. (See Secretary, State of Karnataka and Others

Vs. Umadevi and Others, National Fertilizers Ltd. and Others Vs. Somvir Singh, and Post Master General, Kolkata and Others Vs. Tutu Das

(Dutta),

22. The management of the school, when it came to learn that the Appellant did not possess a degree of B. Ed. from a recognised University,

should have terminated his services forthwith. It did not do so for reasons best known to it. It has not been shown to us that the management of the

school had any authority to allow the Appellant to obtain the requisite degree from any other University during the tenure of his services. Even the

Commission in its counter affidavit, although otherwise supports the case of the Appellant, did not say so.

Our attention has been drawn to a decision of the Punjab and Haryana High Court in Ram Bhagat Sharma and Ors. v. State of Haryana and Ors.

1997 (4) RSJ 134 wherein it was directed:

With a view to protect the interest of the students community, we direct the Government of Haryana to take steps to prevent future recruitment of

persons possessing qualifications awarded by Hindi Sahitya Sammelan, Allahabad, and/or Hindi Sahitya Sammelan, Prayag, Allahabad, and at the

same time take appropriate measures to dispense with the services of the unqualified teachers. For this purpose, the Government of Haryana is

directed to issue written instructions to all concerned that in future no appointment be given to the persons possessing qualifications by the

institutions referred to herein above. We also direct the Government of Haryana to take steps for terminating the services of all such teachers who

have secured employment on the basis of degrees/diplomas/certificates issued by Hindi Sahitya Sammelan, Allahabad and/or Hindi Sahitya

Sammelan, Prayag, Allahabad. However, those who have completed three years'' service should be given an opportunity to acquire the requisite

qualification within a stipulated time. In case they fall to acquire such qualification, then appropriate order be passed to dispense with the services

of such persons.

25. Reliance has also been placed by M.S. Mudhol and Another Vs. S.D. Halegkar and Others, . Therein a writ of quo warranto was sought for

in a case involving the question as to whether a degree granted in favour of the Appellant therein was equivalent to another degree or not. It was

found that as public interest would not suffer, a writ of quo warranto may not be issued. The Court, therefore, did not exercise its discretionary

jurisdiction.

26. Yet again reliance has been placed on Smt. Santosh Yadav Vs. State of Haryana and others, Appellant therein was having a diploma which

was not approved by the State of Haryana and despite the same, teachers were appointed to meet the State''s educational needs. The validity of

the said degree was not in question. Not only appointments were made but also appointment to the Appellant was offered in 1980. His services

were confirmed in 1984 and sought to be terminated in the year 1990. This Court noticed that a relaxation was granted by the State itself which

was available to her and others similarly situated. She, having obtained regularisation in her service, it was wrong and arbitrary on the part of

educational department and the school to deprive her of the job. The same is not the case here.

27. A similar question, on the other hand, came up for consideration beforethis Court in Smt. Ravinder Sharma and Another Vs. State of Punjab

and Others, wherein three Judges'' Bench held:

12. The Appellant was directly appointed. In such a case, the qualificationmust be either :

(i) A Graduate/Intermediate second class or,

(ii) Matric first class.

Admittedly, the Appellant did not possess this qualification. That being so,the appointment is bad. The commission recommended to the

Governmentfor relaxation of the qualification under Regulation 7 of the Regulations. TheGovernment rejected that recommendation. Where,

therefore, theappointment was clearly against Regulation 7, it was liable to be set aside. That being so, no question of estoppel would ever arise.

We respectfullyagree with the view taken by the High Court.

17. View to the similar effect has been expressed in the case of Mohd. Sartaz v. State of U.P.JT 2006 331 wherein view has been taken that any

length of working would not cure the defect of lacking essential qualification at the time of initial appointment and such appointment has to be

accepted as nullity and void.

18. Division Bench of this Court in the case of Committee of Management MUMJHS v. State of U.P. 2009 (1) ESMC 414 after taking into

account various dictum of Apex Court, has summed up by concluding that appointment of a person who does not possess requisite qualification

prescribed in the Rules is illegal/void since its inception. It does not confer right, upon such person to hold the post, and therefore would not result

in any advantage to such appointee. Such appointment is nonest.

19. Essential qualification for recruitment to the post of Principal has been specified and same has been dealt with an extenso in the case of Balbir

Kaur v. U.P. Secondary Education Service Selection Board 2008 (3) UPLBEC 2376. This Court in the case of Dharm Vir Singh v. State of U.P.

writ petition No. 60348 of 2010 decided on 22.10.2010 has taken the view that an incumbent who does not fulfill the minimum eligibility criteria

prescribed for being considered has no right to apply for consideration of his candidature and in case incumbent succeeds in getting his candidature

considered, and eventually leading to selection then he has to be accepted as usurper his appointment has to be accepted as nullity, since its

inception and has to be treated as nonest, conferring no right whatsoever on the said incumbent.

20. Law on the subject has been clarified that if the essential qualification for recruitment to a post is not satisfied ordinarily the same cannot be

condoned and such an act cannot be ratified and an appointment which is contrary to the statute/statutory rules would be void in law.

21. Qualification has to be seen which the candidate possessed on the date of recruitment and not at a later stage and if candidate does not

possess the requisite qualification to hold the post, he could have no legal right to continue. Once incumbent lacked essential basic educational

qualification and there is no provision of relaxation then in such a situation and in this background appointment if any made has to be treated nullity

and void and same would not result in any advantage to appointee and validity of the said appointment specially when it is void and nullity,

whenever it surfaces can be examined even if no specific challenge is made, even collaterally and incidentally but before coming to the conclusion

that it is nullity opportunity should be provided for to incumbent. A ""Nullity"" is nonest in the eye of law. A nonest action with the State help cannot

be regularized and it is settled principal that question of nullity can be raised even in collateral proceedings.

22. Here in the present case position which is emerging that Respondent No. 6 has done B. Sc. and pursued his Master''s Degree in Hindi where

Sanskrit was one of the subject but and at no point of time Respondent No. 6 possessed B.A. with Sanskrit. It is true that at master''s degree level

Sanskrit subject was special subject but it cannot be accepted that he has been fulfilling eligibility criteria prescribed under Appendix-A of Chapter

II of U.P. Act No. 1921. This is also accepted position that under U.P. Act No. v. of 1982 and Rules framed therein no authority whatsoever has

been vested with U.P. Secondary Education Services Selection Board to relax any one of the eligibility criteria provided for making selection and

appointment as Lecturer and teacher. Once educational qualification provided under Appendix-A of Chapter II of U.P. Act No. 1921 is

mandatory in character, there is no provision to relax in such a situation and in this background promotion which has been accorded to Mangal

Mani Tripathi, Respondent No. 6 was nullity. This Court in the case of Shakuntla Devi v. State of U.P. 2005 (5) ESC 148 has while considering

the eligibility of Lecturer in Hindi where candidate was not having Master''s Degree in Hindi and B.A with Sanskrit as one of the subject and to

contrary was having Master''s Degree in Sanskrit, took the view that incumbent was not possessing the essential qualification prescribed under

Rules and merely because a person possesses a better qualification or a higher qualification same could not be ground to disregard the essential

qualification prescribed under the Rules.

23. Once Respondent No. 6 has no legal right to function as Lecturer in Hindi his promotion being nullity lacking essential necessary qualification

and on the strength of the same he succeeded in getting his appointment on the post of Principal then incumbent whose right has been sought to be

defeated on account of said incumbent whose very existence as Lecturer is illegal, has every right to question the validity of his promotion even in

collateral and incidental proceedings, as null and void appointment can be questioned at any point of time and can be ignored also.

24. Judgments cited at the bar by Sri R.K. Ojha, Advocate are also being examined. In the case of Buddhi Nath Chaudhary and Others Etc. Vs.

Abahi Kumar and Others, Hon''ble Apex Court noted that every candidate possessed necessary qualification except one who possessed

equivalent qualification and qua the experience which they lacked having worked for long time, lack of experience if any at the time of recruitment

is made good now. On equitable consideration judgment was passed. Here in the present case, it is not lack of experience, rather it is lack of

essential qualification itself to be promoted as Lecturer and promotion being accorded to incumbent who lacked requisite minimum eligibility

criteria. In the case of B.C. Myfarppa v. R. Vekatsubaih JT 2008 (11) 73 , Hon''ble Apex Court found experts opinion as final and concluded that

eligibility was fulfilled, after taking into account the two experiences i.e. experience as Lecturer and experience as Research Assistant, satisfied the

condition of eligibility. In this case also eligibility has not at all been compromised. The judgment in the case of Suresh H. Rajput etc. Vs. Bhartiben

Pravinbhai Soni and others etc., will not help the Petitioner, as issue therein was as to whether sample has been taken as per PF Act, if any

contravention is there what would be its effect on the prosecution is to be considered and his qualification cannot be looked into while judging the

case of prosecution. The said judgment itself mentions that it should not be treated as precedent in further cases. Judgment in the case of M.S.

Mudhol v. S.D. Halegkar 1993 SCC 986 by Hon"ble Apex Court has been re-examined in the case of Pramod Kumar (Supra) by Hon"ble Apex

Court by mentioning that therein writ of quo warranto was asked for in a case involving the question, as to whether a degree granted in favour of

Appellant therein was equivalent to other degree or not. It was found that as public interest would not suffer, writ of quo warranto may not be

issued. The Court therefore, did not exercise its discretionary jurisdiction and thereafter has proceeded to take view, that if incumbent lacks

requisite eligibility to hold a post he could not have any right to continue and it was immaterial as to why and when said proceeding had been

initiated against him.

25. Consequently, in the facts of the case once this is accepted position that promotion accorded to Respondent No. 6 as Lecturer in Hindi is null

and void then any subsequent selection made on the basis of the same as Principal is also nullity and the same cannot be approved of. Selection of

Respondent No. 6 as Principal of the institution is quashed and set aside.

26. In term of aforesaid discussion, present writ petition succeeds and allowed.