

(1995) 08 AHC CK 0159

Allahabad High Court

Case No: C.M.W.P. No. 20910 of 1992

Subhas Chand

APPELLANT

Vs

Committee of Management,
Mewalal Gupta Gurkul Junior H.S.
and Others

RESPONDENT

Date of Decision: Aug. 31, 1995

Citation: (1996) AWC 228 Supp

Hon'ble Judges: R.H. Zaidi, J

Bench: Single Bench

Advocate: R.C. Singh, for the Appellant; S.C. and B.B. Khare, for the Respondent

Final Decision: Dismissed

Judgement

R.H. Zaidi, J.

In the present petition, Petitioner prayed for a writ order or direction in the nature of certiorari quashing the orders dated 10.1.1992, 24.8.1991, 14.5.1991, 27.5.1989, 30.12.1988 and 28.10.1988 and further for a writ, in the nature of mandamus commanding the Respondents not to interfere with the working of the Petitioner as assistant teacher even after 30.6.1992 and to treat him in continuous service. He also prayed for a direction to the Respondents not to fill up the post on which he was working since 29.8.1988.

2. It was stated that in the year 1988, two posts in question were sanctioned by the Assistant Director of Gorakhpur which were advertised by the management, specifically mentioning that preference shall be given to the Schedule Caste candidates and in the event of non-availability of qualified candidate, they will be filled up the general candidates. He possessed the requisite qualifications, therefore, applied for his appointment and appeared before the selection committee on 25.9.1988. Since no suitable and qualified candidate belonging to the Schedule Caste was available, therefore, the selection committee selected Shri Akhilesh Dwivedi and the Petitioner for appointment on the said post. Shri Akhilesh

Dwivedi was placed on serial No. 1 and Petitioner on serial No. 2 in the selected list. Vide resolution dated 28.9.1988, the selection committee resolved to appoint the Petitioner and Shri Akhilesh Dwivedi on the post in question. On 29.9.1988, a letter of appointment was also issued in favour of the Petitioner in compliance whereof the Petitioner joined his duties on the same date. The papers relating to the selection and appointment of the Petitioner and Shri Akhilesh Kumar Dwivedi were submitted for approval to the Basic Shiksha Akhllesh. Vide order dated 28.10.1988, the Basic Shiksha Adhikari sought clarification from the manager of the college regarding the appointment of the candidate belonging to the Schedule Caste. The said letter was issued on the basis of the complaint of the members of Schedule Caste community. Vide order dated 3.11.1988, the committee of management submitted its clarification before Basic Shiksha Adhikari, to the effect, that no suitable and qualified candidate belonging to Schedule Caste was available; consequently, the candidates belonging to general candidates were appointed. However, the Basic Shiksha Adhikari insisted upon the management to readvertise the post on the ground that they were reserved for Schedule Caste candidates by his letter dated 30.8.1988. in the meanwhile, Shri Akhilesh Kumar Dwivedi was selected for appointment in railways, the management committee, therefore, vide its resolution dated 26.3.1989 resolved to appoint Shri Subhash Chand in place of Akhilesh Kumar Dwivedi and to readvertise the other posts. Consequently, the Basic Shiksha Adhikari approved the appointment of the Petitioner but for period of six months only vide his order dated 14.5.1991 which was extended till the end of Session 1992, Le., 30.6.1992 but not thereafter, therefore, Petitioner filed the writ petition for the above noted reliefs.

3. In the counter-affidavit filed on behalf of the Basic Shiksha Adhikari. It was stated that the post in question was reserved for the Schedule Caste candidate and only the candidates belonging to the Schedule Caste could be appointed on the said post, none else. The appointment of the Petitioner, a candidate belonging to the general category was as such illegal and invalid. Therefore, direction to readvertise the post was rightly issued. It has also been stated that the Petitioner cannot be adjusted in the vacancy caused, the said posts had to be readvertised and appointment could be made after holding selection in accordance with law on the post No. 1. Since no appointment in accordance with law was made, consequently, approval for the appointment of Petitioner was made only on ad hoc basis and on the basis of the said approval, he cannot claim the post in question as matter of right. It was also stated that the Petitioner by misstating and suppressing material facts, has succeeded in obtaining ex parte interim order in his favour which was liable to be vacated and the writ petition filed by him deserved to be dismissed.

4. The case of the Basic Shiksha Adhikari was, in brief, that the moment Akhilesh Kumar Dwivedi joined the post, selection process came to an end and on his vacation, the said post had to be re-advertised. The Petitioner cannot claim the said post on the basis of the selection on the second post which was reserved for

Schedule Caste and was not entitled to relief in the present petition.

5. I have heard learned Counsel for the parties and carefully gone through the record of the case.

6. It is not disputed that the post in question was reserved for a candidate belonging to the Schedule Caste, therefore, on the said post the Petitioner could not be appointed. The Petitioner simply asserted that since qualified and suitable Schedule Caste candidate was not available, therefore, he was rightly appointed on the said post by the committee of management. In view of several decisions of this Court and Hon'ble Supreme Court to the effect that on the post reserved for Schedule Caste and Schedule Tribe, candidate belonging to the general category could not be appointed. Therefore, the contention of the Petitioner for his appointment on the post in question cannot be accepted. Learned Counsel for the Petitioner in the alternative submitted that the post held by Sri Akhilesh Kumar Dwivedi fell vacant as he was selected for appointment in railways and has already joined there, therefore, the Petitioner was rightly appointed on the said post and he was entitled to be permitted to continue to hold the said post.

7. I am not prepared to accept the said argument, inasmuch as the selection process comes to an end the moment selected candidate is appointed and he takes over the charge of the post. Admittedly, Sri Akhilesh Kumar Dwivedi was selected for appointment from the general category quota. After his selection, appointment letter was issued by the committee of management in his favour on the basis of which he joined his duties, therefore, on his joining the post, selection process came to an end. Admittedly, the Petitioner was never appointed on the post in question after his selection by duly constituted selection committee in accordance with law. Since the post in question fell vacant as Sri Akhilesh Kumar Dwivedi joined in railways and vacated the post in question. The post in question, therefore, fell vacant and thereafter the appointment on the said post could be made after following the procedure prescribed under the law. The post is liable to be re-advertised and if the Petitioner so chooses, may apply for the said post and appear before the selection committee if called for interview. In the event, he is selected, he may be appointed, otherwise the committee of management shall be at liberty to make an appointment on the said post in accordance with law.

With the aforesaid directions and observations, the present petition is dismissed. No order as to costs.