

(2007) 09 AHC CK 0197

Allahabad High Court

Case No: None

Smt. Sangeeta Kaushik, Smt.
Sharda and Committee of
Management, Janta Adarsh Girls
Junior High School

APPELLANT

Vs

State of U.P., Regional Joint
Director of Education (Basic),
Agra Region and District Basic
Shiksha Adhikari

RESPONDENT

Date of Decision: Sept. 26, 2007

Citation: (2008) 6 AWC 6100

Hon'ble Judges: H.L. Gokhale, C.J; Anjani Kumar, J

Bench: Division Bench

Final Decision: Allowed

Judgement

H.L. Gokhale, C.J.

Heard Sri S.N. Tiwari in support of this appeal and Sri Y.K. Yadav, learned Standing Counsel appearing for respondent Nos. 1, 2 and 3.

2. The appellants seek to challenge the Judgment and order dated 27th October, 2006 passed by learned Single Judge dismissing the; writ petition filed by the appellants hererin.

3. The appellant No. 1 is a Sanskriti teacher and appellant No. 2 is Urdu teacher selected by the Committee of Management of the concerned Junior High School known as "Janta Adarsh Girls Junior High School" Ruheri, District Hathras.

4. The case of the appellants is that the Committee of Management was granted the permission to have Urdu and Sanskrit teacher both in the year, 1997-98. There are two specific orders issued by the Basic Education Officer in that behalf. The first one is dated 20th December, 1997 which refers to three languages formula and states

that Smt. Sangeeta Kaushik who is M.A., B.Ed, may be appointed in that formula as Sanskrit teacher in the pay-scale of Rs. 1350-2070. Similarly there is another order passed by the Basic Education Officer in favour of the appellant No. 2 dated 27th April, 1998 for being appointed as Urdu teacher on fixed pay of Rs. 850/-. It so happened that both the teachers continued thereafter and they have been teaching continuously.

5. The appellants are challenging the Government Order dated 21st June, 1999 whereunder in High School only one post under the three languages formula would be covered and both the teachers who are teaching from 1997 cannot be paid salary by the State Government, as according to relevant Government Orders only one teacher can be appointed.

6. So far as this submission of counsel for appellants is concerned, there is some difficulty. In as much as in three languages formula only one out of thirteen Indian languages was to be covered. Three languages to be taught there (i) Hindi; (ii) One Indian Language which is other than (Hindi) i.e. one out of 13 languages (Sanskrit, Urdu, Asami, Bengali, Oriya, Punjabi, Kashmiri, Gujarati, Marathi, Kannada, Tamil, Telugu and Malayalam) which are mentioned in the 8th Schedule of the Constitution; and (iii) English.

7. In the circumstance, the appellant could not have succeeded in getting the grant-in-aid for both the posts. At the same time, it is material to note that not merely the Basic Education Officer but Assistant Director of Education also, approved the post of Sanskrit teacher on 7th October, 1997. In this communication he has made a remark as follows:

Out of four teachers, one will be of Sanskrit in three language formula and this is approved.

8. It is material to note that on 31st March, 1998. Regional Assistant Director of Education (Basic), Agra cleared part of the payment of one Sanskrit teacher of the School in the year, 1997-98, i.e. communication dated 31st March, 1998 under three language formula.

9. In the circumstance, although the appellant No. 3 may not succeed to get payment from Government for both the teachers but there is a case for clearance of the salary of Sanskrit teacher.

10. The respondents contended that this clearance of the teachers under three language formula was not to be granted after 11th May, 1992 and reliance is placed on Clause 3 of the communication from the Director of Education (Basic), U.P. dated 21st June, 1999.

11. The learned single Judge who heard the matter was impressed by submission and formed opinion that both the teachers were appointed beyond the sanctioned strength, therefore dismissed the writ petition. Hence, this appeal.

12. As stated by Standing Counsel who did refer to the aforesaid Clause of the Government Notification which states that after 11th May, 1992 no additional post will be sanctioned under three language formula. The fact however, remains as noted above, that in the year, 1997 both the teachers for Urdu and Sanskrit were approved by the Basic Education Officer. In the year, 1998 Assistant Director of Education also gave approval and also in the year, 1998 funds were released for Sanskrit teachers.

13. In the circumstances, the school authorities are now faced with the situation that although their school has come under Grant-in-Aid but the Sanskrit and Urdu teachers are not to come under the Grant-in-Aid. So far as the coverage of Sanskrit teacher is concerned, although both the teachers could not be covered under three language formula there is an order in favour of Sanskrit teacher releasing part payment by Regional Director of Education, Agra. We refer the Judgment of the Hon'ble Apex Court reported in the case of [M.S. Mudhol and Another Vs. S.D. Halegkar and Others](#), That was a case where requirement for appointment to the post of Principal was degree of M.A. with at least 2nd Division. That was for the post of Principal. The person concerned did not have degree in 2nd Division but he had passed in 3rd Division. The Apex Court held as under:

Since it was the default on the part of the 2nd respondent, Director of Education in illegally approving the appointment of the first respondent in 1981 although he did not have the requisite academic qualifications as a result of which the 1st respondent continued to hold the post for the last 12 years now, it would be inadvisable to disturb him from the post at this late stage particularly when he was not at fault when his selection was made. He had not at that time projected his qualifications other than what he possessed. If, therefore, in spite of placing all his cards before the selection committee, the selection committee for some reason or the other had thought it fit to choose him for the post and the 2nd respondent had chosen to acquiesce in the appointment, it would be inequitable to make him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd respondent. They are alone to be blamed for the same.

Whatever may be the reasons which were responsible for the non-discovery of the want of qualifications of the 1st respondent for a long time, the fact remains that the Court was moved in the matter after a long lapse of about 9 years. The post of the Principal in a private school though aided, is not of such sensitive public importance that the court should find itself impelled to interfere with the appointment by a writ of quo warranto even assuming that such a writ is maintainable. This is particularly so when the incumbent has been discharging his functions continuously for over a long period of 9 years when the court was moved and today about 13 years have elapsed. The infraction of the statutory rule regarding the qualifications of the incumbent pointed out in the present case is also not that grave taking into consideration all other relevant facts. In the circumstances

we deem it unnecessary to go into the question as to whether a writ of quo warranto would lie in the present case or not, and further whether mere laches would disentitle the petitioners to such a writ.

The judgment his appointment undisturbed.

14. There is an element of promise in the clearance given by the Basic Education Officer, Assistant Director of Education and then Regional Director of Education way back since the year, 1997-98. Therefore, the principal of promissory estoppel will apply in the case. The appellant is teaching Sanskrit for the last over ten years. Hence the present case in our view the State government ought to release the salary of the first appellant when the school is now covered under the Grant-in-Aid. In our view, appeal will have to be allowed to the limited extent and we allow the appeal in part to the extent of the first appellant. So far as the second appellant's claim is concerned, her claim cannot be entertained.

The appeal is allowed in part though without order to any cost.