

**(2012) 07 AHC CK 0276****Allahabad High Court****Case No:** Civil Miscellaneous Writ Petition No. 75244 of 2010

Haneef Ahmad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

**Date of Decision:** July 10, 2012**Citation:** (2013) 1 ADJ 266 : (2013) 2 ALJ 762 : (2013) 1 UPLBEC 202**Hon'ble Judges:** Sudhir Agarwal, J**Bench:** Single Bench**Advocate:** T.A. Khan, for the Appellant; Suresh Chandra Dwivedi, C.S.C. and T.I. Khan, for the Respondent**Final Decision:** Allowed

### **Judgement**

Sudhir Agarwal, J.

This writ petition is directed against the order dated 25.11.2010 passed by respondent No. 2, Director Secondary Education, U.P. rejecting representation of petitioner challenging appointment of respondent No. 6 Mohd. Arshad Farooqi as Assistant Teacher in Abdul Karim Khan Inter College, Amroha, District J.P. Nagar (hereinafter referred to as "the College"). Order dated 10.11.2006 whereby approval was granted to the appointment of respondent No. 6 by District Inspector of Schools, J.P. Nagar (for short "D.I.O.S.") has also been challenged to the extent it relates to respondent No. 6. The facts in brief giving rise to the present dispute are as under:

2. The College is a recognised educational institution by the Board of High School and Intermediate, U.P., Allahabad under U.P. Intermediate Education Act, 1921 (hereinafter referred to as the "Act 1921") and being an aided institution, for the purpose of payment of salary it is governed by U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 (hereinafter referred to as "Act 1971"). It is claimed to be a minority institution and its status as minority has also been recognised by the State authorities. In 1998 the College was granted approval to run classes upto Intermediate standard in Science

but the said approval was without any financial assistance. The petitioner was appointed as Lecturer.

3. In the year 2006 the committee of management advertised three vacancies in Arts, Mathematics/Science and General The aforesaid advertisement did not result in the ultimate appointment and instead another advertisement was published in February 2007 advertising again three vacancies of Assistant Teacher (L.T. Grade) in Maths, Social Studies and English. Though the petitioner also applied but he was not selected. Instead, he came to know that against the advertised vacancies, three appointments including that of respondent No. 6 have already been made. The petitioner sought necessary information under Right to Information Act and then challenged appointment of respondent No. 6, Mohd. Ashraf Farooqi in writ petition 21207 of 2010. The aforesaid writ petition was finally disposed of vide judgment dated 20.4.2010, permitting the petitioner to approach Director of Education who would have examine the grievance in view of power vested u/s 16-E (10) of Act 1921. In pursuance thereto the petitioner made a representation dated 6.5.2010 and by means of impugned order dated 25.11.2010 the same has been decided by the Director of Education, Secondary, rejecting the claim of petitioner and upholding appointment of respondent No. 6.

4. The dispute, therefore, in the present case is confined only to the extent, whether appointment of respondent No. 6 as Assistant Teacher (L.T. Grade) is valid and legal or not.

5. A counter-affidavit has been filed on behalf of respondent Nos. 3 and 4. It is stated therein that the College is aided upto Intermediate level. Three vacancies of Assistant Teacher (L.T. Grade) occurred out of which two fell vacant due to promotion of Sri Rajiv Shukla and Nasir Husain as Lecturer and one due to retirement of Sri Rafiq Ahmad. The committee of management sought permission to fill up the aforesaid three vacancies which was allowed by D.I.O.S. vide letter dated 26.8.2006. These vacancies were advertised in two newspapers, one in English and another in Hindi. Thereafter appointments were made inasmuch as, Sri Ranveer Singh was appointed as Assistant Teacher (Arts), Sri Mohd. Arshad Farooqi as Assistant Teacher (Maths/Science) and Mohd. Fakir Ghazali as Assistant Teacher (General). These appointments were approved, after obtaining decision of the Regional Level Committee, vide D.I.O.S.'s letter dated 10.11.2006. The petitioner's representation challenging appointment of respondent No. 6 was considered by the Director and appointment of respondent No. 6 was found valid and in accordance with law, hence the representation was rejected.

6. No separate counter-affidavit has been filed by other respondents but learned counsel for the parties agreed that this matter should be heard finally under the Rules of the Court on the basis of pleadings of the parties available on record and that is why I proceeded to hear this matter finally and the same is now being decided by this judgment.

7. Heard Sri T.A. Khan for the petitioner, learned Standing Counsel for respondent Nos. 1 to 4 and Sri T.I. Khan for respondent No. 6.

8. The only argument raised before this Court is that respondent No. 6 does not fulfill academic qualification for the post on which he was appointed. In the alternative it is also argued that the post of Assistant Teacher advertised was different and the appointment of respondent No. 6 has been made in different subject and, therefore, it is illegal.

9. The petitioner has filed copies of advertisement collectively as Annexure 9 to the writ petition. In Hindi newspaper it says "vacancies of three Assistant Teacher (L.T. Grade) in Arts, Mathematics-Science General". In English Newspaper, the advertisement reads as under:

Wanted Three Assistant Teachers One each in Arts, Maths, and General Science...

10. Qualification of respondent No. 6 is admittedly B.Sc., Computer Science. It is thus submitted, that respondent No. 6 is not eligible and qualified to be appointed as Assistant Teacher (Maths/Science) where the qualification prescribed under the Rules is Graduation in Physics, Chemistry and Maths.

11. The order of D.I.O.S. approving appointment of respondents 6 shows his designation as "Assistant Teacher (Science/Maths)". From the original record of selection in question placed before this Court for its perusal it is evident that respondent No. 6 passed B.Sc. From Rohilkhand University, Bareilly in subjects Maths, Physics and Computer Application and thereafter did B.Ed. from the said University.

12. There appears to be a clear discrepancy in the advertisements published by committee of management in two newspapers: one daily newspaper "Janmorchha" published on 5.9.2006 and another English newspaper, Times of India, Delhi dated 6.9.2006. In Hindi newspaper three vacancies of Assistant Teacher (L.T. Grade) have been mentioned as:

In English newspaper it says "Wanted Three Assistant Teachers One each in Arts, Maths, and General Science...". Therefore, in English version three Assistant Teachers are required in the subjects of Arts, Maths and General Science while in Hindi Newspaper there is no comma (,) after the word "Maths" and instead there is a hyphen (-) which suggest that management treats both the subjects together i.e., (Maths-Science General). It is also interesting that after the word (Science) there is no comma in Hindi newspaper distinguishing the word (General) from Science and to give it an independent status.

13. Now the qualifications required for an Assistant Teacher (L.T. Grade) in subjects of Maths and Science are as under:

Maths:

Science:

14. Resolution dated 5.10.2006 passed by management shows that it considered appointment of Assistant Teacher (L.T. Grade) mentioning requirement in both the subjects in a single person by stating that respondent No. 6 is being considered for the post of Teacher (Maths/Science) and thereafter resolved to appoint him. In joining letter, respondent No. 6 has also mentioned his designation as "Assistant Teacher (Maths and Science)". However, minutes of Selection Committee placed for perusal before this Court shows that the Selection Committee made selection as if it is considering appointment on the post of Assistant Teacher (Maths) only and i.e., how it has selected and recommended respondent No. 6 for appointment as Assistant Teacher (Maths). Not only this, even the application submitted by respondent No. 6 shows that he applied for the post of Teacher (Mathematics) only. The applications which were received by the management after the advertisement were processed by the Manager and therein also while giving details of various application, he has mentioned designation as "Assistant Teacher (Maths)" only. It is also interesting to notice that three incumbents who caused the above vacancies, were working as "Assistant Teacher, General, Arts and Mathematics. The Manager in his letter dated 7.8.2006 sought permission from D.I.O.S. for filling the post of Assistant Teacher in the subjects of General, Arts and Mathematics. There is no mention of "Science" in the aforesaid letter. Permission was granted by D.I.O.S. vide letter dated 26.8.2006 stating that appointment shall be made for the same subjects in which the earlier teachers were working but then in letter dated 10.10.2006 sent by the Manager to D.I.O.S. seeking approval on appointment of respondent No. 6, he has mentioned the designation of respondent No. 6 as "Assistant Teacher (Science)". A copy of advertisement which has been kept on original selection record contained manual cuttings on Hindi advertisement and therein the word "Science" has been scored out by pen. The aforesaid cutting has no initials. Then the letter of appointment dated 7.10.2006 issued to respondent No. 6 mentions his appointment on the post of "Assistant Teacher (Maths/Science)" and that is how in approval order dated 10.11.2006 issued by D.I.O.S. he has mentioned the designation of respondent No. 6 as "Assistant Teacher (Science/Maths)".

15. Ex facie, it is evident that respondent No. 6 does not fulfill educational qualification for appointment of Assistant Teacher, LT Grade in Science where the incumbent must be graduate in Science with subjects of Physics and Chemistry. The petitioner did B.Sc. without the subject of Chemistry. The committee of management however, has acted in a very casual and reckless manner by not caring to confine the appointment of respondent No. 6 as Assistant Teacher (Mathematics) but on the one hand being well aware that the vacancy had caused by the Teacher who was an Assistant Teacher L.T. Grade (Maths) and approval of D.I.O.S. for filling of the vacancy was also obtained for the same but then in the advertisement the word "Science" alongwith Maths was added. Then in selection the selection committee was represented as if the selection is to be made for Assistant Teacher

(Maths) only but after recommendation of selection committee, the committee of management considering the appointment on the post of Assistant Teacher (Maths/Science) resolved for the same and thereafter letter of appointment was issued accordingly appointing respondent No. 6 as Assistant Teacher (Maths/Science). It is this letter of appointment which was sent to D.I.O.S. who did not care to consider these facts apparent from record and in a mechanical manner granted approval to the appointment of respondent No. 6 by impugned order dated 10.6.2006. The Director of Education also unfortunately has not considered these facts and also that respondent No. 6 was not appointed as Assistant Teacher (Maths) only but was appointed as Assistant Teacher (Maths/Science). That being so he lacked qualification for appointment as Assistant Teacher (Science) and hence his appointment as such was illegal and contrary to statute.

16. It is also strange for this Court that in the resolution passed by committee of management, the appointment letter and the approval letter dated 10.11.2006 issued by D.I.O.S. everywhere they mention respondent No. 6 is being appointed as Assistant Teacher (Maths/Science) though selection was made as Assistant teacher (L.T.) (Maths). This fact has also remained unnoticed by the Director otherwise it could not have upheld the appointment of respondent No. 6.

17. From the above discussion, it is evident that the management, of the College either has not understood the distinction between the fact that two different qualifications are prescribed for Maths and Science on the post of Assistant Teacher (L.T. Grade) and, therefore, one person cannot be appointed in both the subjects or that it has deliberately played with marked deviation at different stages sometimes mentioning requirement of Maths only and sometimes as Maths/Science. In my view, since the appointment letter of respondent No. 6 shows that he has been appointed as Assistant Teacher (L.T. Grade) in Maths and Science both, such appointment cannot sustain inasmuch as respondent No. 6 lacked requisite qualification to hold the post of Assistant Teacher (L.T. Grade) Science.

18. In view of the above, the order dated 10.11.2006 passed by D.I.O.S., respondent No. 4 is hereby quashed. Director of Education's order dated 25.11.2010 (Annexure 17 to the writ petition) is also quashed to the extent it relates to appointment of respondent No. 6. The appointment of respondent No. 6 is held illegal. It is also directed that he shall not be entitled to payment of salary from the State Exchequer.

19. So far as further reliefs sought by petitioner that respondents be directed to appoint petitioner as Assistant Teacher (Maths) in the College, is concerned, the Court finds that the entire process of selection culminating in appointment of respondent No. 6 has not been made correctly and there has been an overlapping with regard to subjects, inasmuch as sometimes it has been mentioned only Maths and sometimes Maths and Science both. Therefore, on the basis of such a selection no direction for appointment of petitioner can be issued. The respondent authorities should proceed to make fresh selection/appointment in accordance with law.

20. The writ petition is allowed as above. There shall be no order as to costs.