

Rajeev Kumar Singh Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Nov-28-2000

Reported in : 2001(1)AWC229; [2001(88)FLR482]

Judge : V.M. Sahai, J.

Acts : U.P. Intermediate Education Act, 1921

Appeal No. : C.M.W.P. No. 51374 of 2000

Appellant : Rajeev Kumar Singh

Respondent : State of U.P. and Others

Advocate for Def. : M.C. Chaturvedi, S.C.

Advocate for Pet/Ap. : Kuldeep Kumar Singh, Adv.

Judgement :

ORDER

V. M. Sahai, J.

1. Father of the petitioner. Sita Sharan Singh was working as Art Teacher (L.T. Grade) in Sarvodaya Shiksha Sadan Inter College, Meerapur, Allahabad. He died in harness on 14.1.1999. The petitioner is the only son of the deceased. He passed High School in 1991, Intermediate in 1993 and B.Sc. in 1996. Thereafter,

he passed Intermediate examination 1998 in Drawing under Regulation 17-3, Chapter XII from Board of High School and Intermediate Education, U. P., Allahabad. In the same year, he passed Intermediate Grade Drawing Examination in 1998 conducted by Maharashtra Government. He belongs to backward class category. He moved an application on 19.5.1999 before the District Inspector of Schools, Allahabad (in brief D.I.O.S.) claiming appointment on the post of Assistant Teacher, under the dying-in-harness rules. The District Committee constituted under Regulation 105, Chapter III of the Regulations framed under the U. P. Intermediate Education Act, 1921 (in brief Regulations) considered the petitioner's claim on 18.1.2000 and since no class-III post was vacant, recommended appointment on a class-IV post. Letter for appointing the petitioner in Ishwar Saran Inter College, Allahabad, was issued on 19.1.2000 by the D.I.O.S. The petitioner did not accept the appointment on a class-IV post and challenged the order dated 19.1.2000 by means of Civil Misc. Writ Petition No. 17172 of 2000 before this Court claiming appointment on the post of Art Teacher, as per his qualification under the dying-in-harness rules. This Court on 22.4.2000 quashed the order dated 19.1.2000 for appointing the petitioner. And in view of decision of Division Bench of this Court in Sanjeev Kumar Dubey v. District Inspector of Schools, Etawah and others. 2000 (1) UPLBEC 634 : 2000 (1) ESC 635, disposed of the writ petition and directed the D.I.O.S. to decide the application of the petitioner in accordance with law. The application of the petitioner has been rejected by the D.I.O.S. by order dated 1.8.2000 which has been challenged in this petition.

2. Sri Kuldeep Kumar Singh, learned counsel for the petitioner has vehemently urged that in view of decision in Sanjeev Kumar Dubey (supra), petitioner possessed the qualification to be appointed Art Teacher, therefore, the D.I.O.S. Illegally rejected the application under the dying-in-harness rules. Learned counsel further urged that even if the petitioner could not be appointed on the post of assistant teacher, the petitioner was entitled for appointment on a class-III post as per his qualification and if no post of class-III was vacant, a supernumerary post should have been created by the D.I.O.S. On the other hand. Sri M. C. Chaturvedi the learned Additional Chief Standing Counsel appearing for respondent Nos. 1 to 3 urged that the petitioner was not qualified to be appointed assistant teacher,

therefore, the decision in Sanjeev Kumar Dubey (supra) was not applicable to the facts of this case. He further urged that since no class-III post was available and the petitioner did not accept his appointment on class-IV post, there is no option and the petition is liable to be dismissed.

3. The first question is whether the petitioner was qualified to be appointed as Assistant Teacher (Art). The D.I.O.S. rejected the claim of the petitioner as he was not 'trained' as provided in Appendix 'A' to Chapter II of the Regulations. The relevant para 2 to Appendix 'A' is extracted below :

'Under it in reference to prescribed qualifications the word 'trained' means post-graduate training qualification such as L.T., B.T., B.Ed., B.Ed., S.C. or M.Ed. of any university or institution as specified in earlier para or any equivalent (Degree or Diploma). It also includes departmental A.T.C. and C.T. with minimum teaching experience of five years J.T.C./B.T.C. grade teacher shall also be considered to be C.T., if he has worked in C.T. grade at least for five years.'

4. The petitioner was not 'trained', as he did not possess the qualification extracted above. But the learned counsel for the petitioner rightly urged that 'trained' was not an essential qualification for appointment to the post of Assistant Teacher (Art) for teaching class IX and X. In Appendix 'A' the essential and desirable qualification have been prescribed in column 3 and 5. 'Trained' is mentioned as a desirable qualification for the post. It is not an essential qualification for the post of Assistant Teacher (Art) for teaching classes IX and X. There is a difference in desirable or preferential qualification and essential qualification. If a candidate does not possess essential qualification, then he is ineligible for the post. Since 'trained' was only a preferential qualification, the petitioner could not be held ineligible, on this ground. Therefore, the D.I.O.S. committed an error in rejecting the application of the petitioner because the petitioner was not 'trained'. To this extent, the learned counsel for the petitioner appears to be correct but even then, unfortunately, the petitioner is not entitled to any relief.

5. The petitioner is no doubt B.Sc. One can appreciate his hesitancy in accepting appointment on class-IV post. But he can get benefit of the dying-in-harness rules and the ratio laid down by this Court in Sanjeev Kumar Dubey (supra) only if it is

permissible in law. The essential qualification for Assistant Teacher (Art) for teaching classes IX and X is not B.Sc. but a training certificate as mentioned in column 3 of serial number 10 of Appendix 'A' to Chapter II of the Regulations. The relevant is extracted below :

'10. Drawing and commercial art teacher for High School (classes IX and X).--

(1) Art Master's Training Certificate (formerly known as Teacher's Training Certificate) of Government Art and Craft College, Lucknow.

or

(2) Intermediate examination of U. P. Madhyamik Shiksha Parishad with technical art

or

(3) High School examination with technical art and any one of the following qualifications--

(a) B.A. with drawing or painting.

or

(b) Fine Art Diploma of Kala Bhavan of Shanti Niketan.

or

(c) Certificate of Government Drawing and Handicraft Centre, Allahabad.

or

(d) Final Drawing Teachership Examination of Calcutta.

or

(e) Teacher's Senior Certificate Examination of Mayo Schools of Arts of Lahore.

or

(f) Intermediate Grade, Drawing Examination of Bombay.

or

(g) Third Grade Arts School Examination of Bombay.

Note : (1) Under above-mentioned clause (2), passing of Intermediate examination is not compulsory for all. But if there is no proof of having taken technical art in that examination then in its place proof of knowledge of technical art of that standard can be accepted.

Teachers of girls schools are exempted from the qualification of technical art.

(2) Under above-mentioned clause (3), passing of High School Examination is compulsory for all. But if there is no proof of having taken technical art in that examination then in its place proof of knowledge of technical art of that standard can be accepted.

Teachers of girls schools shall be exempted from the qualification of technical art.'

6. The petitioner passed Intermediate Grade Drawing Examination conducted by Maharashtra Government in 1998. The learned counsel for petitioner claims that the petitioner was covered in clause (f) and, therefore, he had the essential qualification. This is disputed by the learned counsel for respondents. I have given my anxious consideration to this argument. Clause (3) (f) envisages, 'Intermediate Grade Drawing Examination of Bombay', as an essential qualification. Petitioner does not possess this qualification. The clause does not provide Intermediate Grade Drawing Examination conducted by Maharashtra Government. The entry is specific. It does not include similar courses conducted by Maharashtra Government. This is further clear from a perusal of other clauses of (3). For instance. Fine Art Diploma of Kala Bhavan of Shanti Niketan or Certificate of Government Drawing and Handicraft Centre, Allahabad or Final Drawing Teachership Examination of Calcutta, etc. The clause (3) recognise certificates issued by specific institutions mentioned of a particular city or State. Therefore, it is not possible to accept that the certificate obtained from any institution in Maharashtra would be covered in it. Clause (3) is not illustrative but it is

exhaustive. The certificate of Intermediate Grade Drawing Examination conducted by Maharashtra Government, possessed by the petitioner is not recognised as essential qualification in serial number 10 of Appendix 'A' to Chapter II of the Regulations. In Sanjeev Kumar Dubey (supra), the division bench has held that under the dying-in-harness rule, a candidate could be appointed if he possess the essential qualifications for appointment on the post of assistant teacher. Therefore, the decision in Sanjeev Kumar Dubey (supra), is of no help to the petitioner and he is not qualified to be appointed as Assistant Teacher (Art).

7. The next question is if a class-III post was not vacant, the D.I.O.S. should have created a supernumerary post of class-III for appointing the petitioner. The D.I.O.S. appointed the petitioner on class-IV post, as no class-III post was vacant. The Apex Court in Director of Education (Secondary) and another v. Pushpendra Kumar and others, 1998 (2) UPLBEC 1310, has held that under the Regulations if a vacancy is not available in class-III post, the dependant would be appointed on a class-IV post but a supernumerary post of class-III cannot be created nor any direction can be issued by High Court for creating a supernumerary post of class-III. The rejection of the application of petitioner by D.I.O.S. is upheld but for a different reason.

8. For the reasons aforesaid, I do not find any merit in this petition.

9. This petition falls and is accordingly dismissed.