

Suresh Kumar and Others Vs. Director of Education (Basic), U.P., Lucknow and Others

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Court : Allahabad

Decided On : Dec-08-1999

Reported in : 2000(1)AWC542; (2000)1UPLBEC498

Judge : Sudhir Narain, J.

Acts : Uttar Pradesh Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 - Rules 9, 10, 10 (1), (3) and (4); Payment of Salaries Act, 1979

Appeal No. : C.M.W.P. Nos. 13638 with 23922 of 1994

Appellant : Suresh Kumar and Others

Respondent : Director of Education (Basic), U.P., Lucknow and Others

Advocate for Def. : S.C. and ;P.N. Saxena, Adv.

Advocate for Pet/Ap. : Raj Kumar Jain, Adv.

Judgement :

Sudhir Narain, J.

1. Suresh Kumar, Smt. Neelam Devi, Anil Kumar Niranjana, Rajwant Sachan and Udai Narain, the petitioners in Writ Petition No. 13638 of 1994, claim that they have been duly selected as Assistant Teachers in Subhash Vidyapeeth, Daheli. Kanpur Dehat (in short the institution) and they should be paid their salary.

2. The facts, giving rise to this writ petition, are that Sri Subhash Vidyapeeth is a recognized Junior High School and the teachers are paid salary under the provisions of Payment of Salaries Act. 1979. There were 8 posts of Assistant Teachers in the said institution. The Mandaliya Sahayak Shiksha Nideshak (Basic) by its letter dated 26.9.1986 created 5 more posts and the total posts in the institution became 13. The District Basic Education Officer granted permission by its letter dated 7.6.1991 to fill up 5 posts of Assistant Teachers and to advertise the same. The Management took steps to advertise those posts. 25.6.1991 was fixed as the date for interview by the Selection Committee.

3. The Manager sent to the District Basic Education Officer a list of seven candidates alleged to have been selected by the Selection Committee and sought his approval for appointment on posts. The District Basic Education Officer did not pass any order granting approval. The Manager. Sri. Gorey Lal, filed Writ Petition No. 17652 of 1992, Committee of Management v. Zila Basic Shiksha Adhikari and others, for a writ of mandamus to direct the Zila Basic Shiksha Adhikari to accept the papers sent by him and to grant approval. This Court allowed the writ petition on 8.2.1993 with the direction to the District Basic Education Officer to pass order in accordance with law in regard to grant of approval to the selection within a period of one month. The District Basic Education Officer by letter dated 21.3.1993 asked for a report from Sri Bhagwat Prasad Pal regarding the selection dated 25.6.1991. Sri Bhagwat Prasad Pal by his letter dated 21.3.1993 wrote that no work was done by the Selection Committee as dispute had arisen between the rival committees of management. On 22.3.1993, the Basic Education Officer passed an order directing the Manager that selection be held again.

4. The Manager of the institution sought permission from the District Basic Education Officer vide letter dated 14.10.1993 to permit him to advertise 5 posts again for holding selection. The District Basic Education Officer granted permission to him

by letter dated 2.12.1993. Five posts were re-advertised in 'Dainik Deshmeet' on 5.12.1993. The District Basic Education Officer sent her nominee Sri Dinesh Kumar Dubey, Sub-Deputy Inspector of Schools as member of Selection Committee. The Selection Committee held the interview on 19.12.1993 and selected three candidates for each post. The petitioners in Writ Petition No. 13638 of 1994 claim that they stood first in order of merit in respect of posts selection was held.

5. The Committee of Management considered the report of the Selection Committee and in its meeting held on 19.12.1993 passed a resolution accepting recommendation of the Selection Committee. The papers were forwarded to the District Basic Education Officer for approval and the District Education Officer by letter dated 23.12.1993 granted approval to the selection held on 19.12.1993. The petitioners were issued appointment letters dated 24.12.1993. They joined the institution on 28.12.1993. The petitioners claimed their salary. A complaint was made against the selection held on 19.12.1993 to the Director of Education (Basic). He by order dated 18.1.1994 directed the District Basic Education Officer not to pay salary to the petitioners till the completion of enquiry. The petitioners preferred Writ Petition No. 13638 of 1994. On 22.4.1994 an interim order was passed in the writ petition directing the Director of Education (Basic). U.P.. Lucknow to complete the enquiry within six weeks and pass a reasoned order after giving opportunity to the petitioners and to other persons who may be affected by the order. Respondent No. 1 has passed the order on 8th July, 1994 holding that the selection of the above named petitioners was valid.

6. Upendra Singh and others have filed Writ Petition No. 23922 of 1994 against the order of the Basic Shiksha Adhikari dated 22.3.1993 whereby their selection held on 25.6.1991 was held invalid and the order of the Deputy Director of Education (Basic) dated 8.7.1994 affirming the said order.

7. The order of District Basic Education Officer dated 22.3.1993 indicates that he did not approve the previous selection on the following grounds :

(1) The selection list consists of 7 persons while according to Rule 10 of U. P. Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of

Service of Teachers) Rules, 1978 (in short the Rules) for each of the post names of three selected candidates should have been prepared in the list but it consists the names of only seven candidates.

(2) The selection list has not been signed by the nominee of District Basic Education Officer and the Principal of the institution as there was dispute on the date of selection.

8. Shri P.N. Saxena, learned counsel for the petitioners in Civil Misc. Writ Petition No. 23922 of 1994 submitted that there were five posts of assistant teachers for which the advertisement was made and for each of the posts the names of two additional candidates can be taken from that list and if the names of two additional candidates are there, the list cannot be treated as invalid.

9. The selection has to take place for appointment to the post of assistant teachers in accordance with Rules 9 and 10 of the Rules. Rule 9 provides that the Management shall constitute a Selection Committee for appointment of assistant teachers consisting of--

(1) Manager,

(2) Headmaster of the recognised school in which the appointment is to be made.

(3) a nominee of the Basic Education Officer.

Rule 10(1) provides that the Selection Committee shall, after interviewing such candidates as appear before it on a date to be fixed by it in this behalf, of which due intimation shall be given to all the candidates prepare a list containing as far as possible the names, in order of preference, of three candidates found to be suitable for appointment. Sub-rule (3) further provides that the Selection Committee shall as soon as possible, forward such list together with the minutes of the proceedings of the Committee to the management. On receiving such list, the management shall send a copy of the lists to the Basic Education Officer. Where the appointment is to be made of a teacher for a subject, it is necessary that the names of three candidates for the said subject in the order of preference should have been indicated. A copy of the advertisement dated 8.6.1991 (Annexure-2) in

Writ Petition No. 13683 of 1994 discloses that the five teachers were required for the subjects--(1) Science, (2) English. (3) Mathematics. (4) Social Subjects, and (5) Gymnastics.

10. A teacher may be expert in teaching Science but not Social or other subjects. The selection was to be made keeping in view this aspect. Therefore, the selection was to be made subject-wise and for each subject, the name of three candidates in preference, should have been given.

11. Secondly, it has been found that the list was not signed by the Principal and nominee of the District Basic Education Officer. The list is to be prepared by the Selection Committee and if any member of the Selection Committee does not put his signature, it shall not be treated a list submitted by the Selection Committee. The nominee of the District Basic Education Officer had submitted a report that to his knowledge, no selection had taken place. From his report, it was clear that he did not put his signature in the selection proceedings. The dispute arose at the time of the interview. The Manager could forward a list to the District Basic Education Officer under sub-rule (4) of Rule 10 when the Selection Committee has forwarded the list together with the minutes of the proceedings of the Committee to the management. As the Selection Committee consisting of two other persons had not signed the list, it could not have been forwarded and accepted by the District Basic Education Officer.

12. Learned counsel for the petitioners contended that it was incumbent upon the District Basic Education Officers to record a finding whether the selection had, in fact, taken place or not. The District Basic Education Officer is to approve a selection list which may be presented to him duly forwarded by the Selection Committee and if out of three, two members of the Committee had not put their signatures, the District Basic Education Officer is not bound to accept the same.

13. It is submitted that the petitioners were not afforded an opportunity of hearing by the Director of Education while passing the impugned order dated 8.7.1994. The petitioners have made a vague allegation in paragraph 20 of the writs petition that respondent No. 1 passed the order dated 8.7.1994 without giving an opportunity of hearing to the petitioners. They have not indicated that they were

either not given any notice and nobody represented their version before respondent No. 1. In paragraph 59 of the counter-affidavit, this fact has been denied. It has been stated that the petitioners. Ex-Manager, present Manager and District Basic Education Officer and Sri Harish Chandra Dikshit were present. The petitioners' case was argued by Sri Harish Chandra Dikshit. In paragraph 47 of the rejoinder-affidavit it is stated that Sri H.C. Dikshit was present at the time of hearing as the President of U. P. Madhyamik Shiksha Sangh. Kanpur Nagar and participated in the inquiry but he never represented the petitioners. It has not been stated that Sri H. C. Dikshit was representing the interests of the contesting respondents. I had passed an order in Writ Petition No. 13638 of 1994 on 22.4.1994 directing respondent No. 1 to make inquiry after giving an opportunity of hearing to all the parties concerned. The order was passed in presence of Shri P.N. Saxena, learned counsel for the petitioners. The petitioners have not indicated that they had no knowledge of the order passed by me. Respondent No. 1 was directed to give opportunity to all the parties concerned. He has made an observation in his order that he had given notice to all the parties concerned and also heard them. There is no reason to believe that respondent No. 1 would not have given opportunity of hearing to the parties concerned.

14. Even on merits, I have considered the case of the petitioners and I do not find any merit in their contention that they were duly selected on the basis of the advertisement dated 8.6.1991.

15. The petitioners in Writ Petition No. 13638 of 1994 have been selected subsequent to the disapproval of the selection of the petitioners in Writ Petition No. 23922 of 1994. Their selection has been approved by the District Basic Education Officer and they have Joined the institution on 28.12.1993. I do not see any reason that they should not be paid their salary.

16. In the result, Writ Petition No. 23922 of 1994 is dismissed and Writ Petition No. 13638 of 1994 is allowed and the District Basic Education Officer, Kanpur, respondent No. 3 is directed to pay the entire salary to the petitioner within a month from the date of production of a certified copy of this order before him.

17. The parties shall, however, bear their own costs.

