

Sushil Kumar Singh and anr. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Feb-11-2009

Reported in : 2009(85)AWC1852

Judge : Shashi Kant Gupta, J.

Appellant : Sushil Kumar Singh and anr.

Respondent : State of U.P. and ors.

Disposition : Petition allowed

Judgement :

Shashi Kant Gupta, J.

1. This writ petition has been filed by the petitioners for quashing the order dated 2.1.2006, whereby the representation of the petitioners for sending them on Special B.T.C. Training Course, 1998 has been rejected by the respondent No. 2.

2. The brief facts in a nutshell are as follows:

3. The respondent No. 2 published an advertisement on 8.3.1998 inviting applications from eligible and qualified candidates for filling up the post of Assistant Teachers in the Primary Schools through Special B.T.C. Training Course. The petitioners applied for the same within time enclosing all necessary documents. On the meantime petitioner appeared in the back paper examinations

of B.Ed. for improving their marks in the theory papers and the result whereof was declared and the petitioner secured better marks therein. Therefore, the petitioners made request through representation dated 28.8.1998 and 2.9.1998 to the respondent No. 2 to entertain the new mark-sheet for recalculating the quality points marks of the petitioners for the preparation of merit list for the appointment in Special B.T.C. Training Course.

4. Even though the new mark-sheets of the petitioners were duly received in the office of respondent No. 2 before the declaration of Special B.T.C. Training Course but still the respondent No. 2 without taking into account the revised mark-sheet of the petitioners declared the result of Special B.T.C. Training Course in March, 1999, wherein the petitioners did not find their names in the select list, although the merit of the petitioner was much above the last selected candidate. The merit of last selected candidate was 52.99 and whereas the merit of the petitioner Nos. 1 and 2 was 56.71 and 55.41 respectively. After the declaration of the result petitioners made several representations to the authority concerned with a request to consider and entertain the revised mark-sheet submitted by the petitioner and to permit the petitioner to undergo training of Special B.T.C. Course but the authority concerned did not pay any attention to the request of the petitioner.

5. In the meantime this Hon'ble Court delivered a judgment dated 22.5.2003 on identical facts and circumstances in Writ Petition No. 39289 of 2000, Kamlesh Kumar Yadav v. Director, Rajya Shaikshik Anusandhan Evam Prashikshan Parishad, U.P., Lucknow and Ors. commanding the respondents to consider the revised mark-sheet issued by the University for calculating the merit for the appointment in Special B.T.C. Training Course (Annexure-2 to the writ petition).

6. The petitioners subsequent thereto made a fresh representation dated 23.8.2004 annexing the copy of the said judgment passed in Writ Petition No. 39289 of 2000 requesting the authority to permit the petitioner to undergo training of Special B.T.C. Course in the light of the judgment in the case of Kamlesh Kumar Yadav (supra). It was further stated in the writ petition that on the basis of judgment dated 22.5.2003 respondents duly considered the claim of Kamlesh Kumar Yadav and was sent for training. When no response was given by the

authorities the petitioners filed Writ Petition No. 3911 of 2004 before this Court and this Court issued a direction on 16.11.2004 directing the respondents to pass a fresh order in the matter of petitioners in the light of the judgment passed in Writ Petition No. 39289 of 2000, Kamlesh Kumar Yadav (supra). The said order dated 16.11.2004, passed by this Court, was submitted by the petitioners alongwith their representations of the concerned authority and in pursuance of the same respondent No. 2 issued a letter for counselling on 23.12.2004. However, the respondent No. 2 subsequently rejected the claim of the petitioners by order dated 2.1.2006. Hence, the present writ petition.

7. This Court in the present writ petition passed the following interim order on 24.1.2006:

Heard Sri Sidheshwari Prasad learned senior advocate assisted by Sri M.P. Singh, advocate for the petitioner and the learned standing counsel for the respondents,

The order dated 2.1.2006 has been assailed by the petitioner on the ground that the findings recorded, proceed on erroneous assumption of facts and law.

Learned Counsel for the petitioner has pointed out that the judgment in the case of Kamlesh Yadav has been wrongly construed by the respondents while proceeding to decide the dispute inasmuch as the mark-sheet which had been issued to Kamlesh Yadav was on 25.8.1998 and not prior to 30.3.1998 as recited in the impugned order. The second discrepancy pointed out is with regard to the findings recorded in para 9 of the impugned order pertaining to the date of the issuance of mark-sheet of the petitioner No. 2 Santosh Kumar Singh. The said mark-sheet which has been produced in original indicates that it was issued on 22.9.2001 and not on 22.9.2004 as recorded in the impugned order.

In these circumstances, since the order prima facie proceeds on an incorrect assumption of fact, therefore, the operation of the order dated 2.1.2006 is stayed until further orders with a direction to the respondent No. 2 to consider the claim of the petitioner and pass appropriate order as expeditiously as possible preferably within three weeks of the date of presentation of a certified copy of this order before the said respondent. While passing the order, the said respondent shall

also decide the dispute on the basis of marks obtained by the petitioner on the basis of the results after the petitioner had appeared in the improvement examination.

A certified copy of this order shall be produced by the petitioner before the respondent No. 2 within a week.

Learned standing counsel shall file counter-affidavit within three weeks. A week thereafter is granted for filing the rejoinder-affidavit.

List after expiry of the aforesaid period.

8. The respondent No. 2 did not pass any fresh order in pursuant to the order dated 24.1.2006, passed by this Court but have supported the reasoning of the impugned order dated 2.1.2006 in its counter-affidavit.

9. Learned Counsel for the petitioner has stated that the facts of the case of the petitioners and Kamlesh Yadav are totally identical. The petitioners as well as Kamlesh Yadav applied for the Special B.T.C. Training Course well within the time prescribed as provided in the advertisement dated 8.3.1998 and the petitioners alongwith Kamlesh Yadav appeared in the back paper examination of B.Ed. for improving their marks on the same date and the result was also declared on the same date, i.e., 25.8.1998 and the revised mark-sheet was also submitted by them on the same date on August/September, 1998 much before the declaration of Special B.T.C. Training Course, 1998, therefore no distinction can be drawn between Kamlesh Yadav and the petitioners. It was further submitted that this fact has also been considered by this Court while passing the interim order dated 24.1.2006 in the present writ petition wherein it has been observed as follows:

The order dated 2.1.2006 has been assailed by the petitioner on the ground that the findings recorded, proceed on erroneous assumption of facts and law.

Learned Counsel for the petitioner has pointed out that the judgment in the case of Kamlesh Yadav (supra) has been wrongly construed by the respondents while proceeding to decide the dispute inasmuch as the mark-sheet which had been issued to Kamlesh Yadav was on 25.8.1998 and not prior to 30.3.1998 as recited

in the impugned order. The second discrepancy pointed out is with regard to the findings recorded in para 9 of the impugned order pertaining to the date of the issuance of mark-sheet of the petitioner No. 2, Santosh Kumar Singh. The said mark-sheet which has been produced in original indicates that it was issued on 22.9.2001 and not on 22.9.2004 as recorded in the impugned order.

10. Learned standing counsel on the other hand has supported the impugned order and tried to distinguish the case of the petitioners with that of Kamlesh Kumar Yadav.

11. Heard the learned Counsel for the petitioner, learned standing counsel and perused the record.

12. Bare perusal of the record clearly reveals that the judgment in the case of Kamlesh Yadav (supra) has been wrongly construed by the respondents while proceeding to decide the dispute inasmuch as the mark-sheet which had been issued to Kamlesh Yadav (petitioner of Writ Petition No. 39289 of 2000) was on 25.8.1998 and not prior to 30.3.1998 as recited in the impugned order. The photostat copy of the mark-sheet of Kamlesh Yadav has been annexed as Annexure-7 to the writ petition which clearly shows that the mark-sheet is of 25.8.1998. Similarly the mark-sheets of the petitioners filed alongwith the writ petition also shows that the revised mark-sheet is dated 25.8.1998 and 22.9.2006 respectively as such the same was issued much before the declaration of the result of Special B.T.C. Training Course. It is also relevant to observe that even the degrees of the petitioners as well as of Kamlesh Yadav contain the same date 1.2.1998.

13. It is also clarified by the learned Counsel for the petitioner that degrees are always issued on Basant Panchami irrespective of the date of issuance of mark-sheet as such all the three degrees (petitioners as well as of Kamlesh Yadav) bear the same date 1.2.1998. Material available on the record clearly shows that the case of Kamlesh Yadav is totally identical with the petitioners and no distinction can be drawn between them. It has also been clarified by the learned Counsel for the petitioner that at the time of counselling the original revised mark-sheet of petitioner No. 2 was misplaced as such the duplicate revised mark-sheet issued by

the University was submitted, on account of which the duplicate revised mark-sheet of the petitioner No. 2 bears a different date.

14. Suffice it to say that the revised mark-sheet of Kamlesh Yadav could not have been submitted before the last date as stipulated in the advertisement, since Kamlesh Yadav had appeared in back papers much after the last date, i.e., March, 1998 and the result of back paper was declared on August, 1998 alongwith the result of the petitioners.

15. The respondent No. 2 despite the specific observations made by this Court in its order dated 24.1.2006 still preferred to ignore the said observations and proceeded on the wrong assumption that the revised mark-sheet of the Kamlesh Yadav was submitted before the last date specified in the advertisement, i.e., 31.3.2008. The impugned order dated 2.1.2006 is based on a complete misreading of the case and misconception of legal position relevant to the matter and is totally erroneous and perverse.

16. The case of the petitioner is squarely covered by the judgment and order dated 22.5.2003 rendered in Writ Petition No. 39289 of 2000, Kamlesh Kumar Yadav (supra). It is notable that the Special Appeal No. 86 of 2004, Director Rajya Shaikshik Anusandhan Evam Prashikshan Parishad, U.P., Lucknow v. Kamlesh Kumar Yadav, filed against the order dated 22.5.2003 has been dismissed on 11.9.2007 by the Division Bench of this Court as such the order dated 22.5.2003 has attained finality.

17. In view of the aforesaid discussion, it cannot be disputed that the petitioners had passed B.Ed. Course and had secured better marks viz., first division in theory paper and first division in practical papers. They filed the mark-sheet before the concerned authority much before the declaration of the result of the Special B.T.C. Training Course. Thus, the authorities ought to have taken into consideration the marks obtained by the petitioners in pursuant to back paper examination.

18. Accordingly this writ petition is also allowed in terms of judgment dated 22.5.2003, passed in Writ Petition No. 39289 of 2000, Kamlesh Kumar Yadav v.

Director, Rajya Shaikshik Anusandhan Evam Prashikshan Parishad, U.P., Lucknow and Ors. (supra). Consequently the impugned order dated 2.1.2006, passed by respondent No. 2 is hereby quashed. The respondent No. 2 is directed to recalculate the quality point marks of the petitioner on the basis of the revised mark-sheet submitted by the petitioners within one month from the date of filing of the certified copy of this order before it. Thereupon, the petitioners shall be considered for Special B.T.C. Training Course.

19. There shall be no order as to cost.

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