

Vasudeo Das Alias Vasudeo Ram Vs. District Social Welfare Officer and ors.

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Court : Allahabad

Decided On : Feb-16-2009

Reported in : 2009(85)AWC1918

Judge : S.U. Khan, J.

Appellant : Vasudeo Das Alias Vasudeo Ram

Respondent : District Social Welfare Officer and ors.

Disposition : Petition dismissed

Judgement :

S.U. Khan, J.

1. After the elevation of learned Counsel for the respondent No. 4, notice was issued to him to engage another counsel. He did not engage any other counsel. Accordingly, at the time of hearing only arguments for learned Counsel for the petitioner and learned standing counsel for respondent Nos. 1 and 2 were heard.

2. Petitioner claims that he was appointed as Assistant Teacher in C. T. grade in Jan Seva Bal Vidyalay, Shiksha Samiti, Ram Garh (Mathia), Ghazipur (hereinafter referred to as 'the school') on 15.2.1977. It has been stated in the writ petition that the school was recognised on 29.4.1981. It has further been stated that on 24.3.1995, petitioner was promoted as Headmaster on the ground that he was

senior most teacher. The post of Headmaster had fallen vacant as the earlier Headmaster, Sri Ram Lal had been appointed in another school. It is stated that Basic Shiksha Adhikari, Ghazipur approved the appointment of the petitioner as Headmaster.

3. Annexure-8 to the writ petition is copy of a letter by District Basic Shiksha Adhikari to Assistant Director of Education, Basic, V-Mandal, Varanasi. In the said letter, it is mentioned that petitioner had completed more than 10 years service and had applied for exemption from training, which was being forwarded with the recommendation for exemption in view of G.O. dated 21.10.1994. Annexure-9 to the writ petition is a certificate granting exemption from training dated 31.10.1995 issued by Assistant Director Basic, V-Mandal, Varanasi stating therein that on the basis of recommendation of District Basic Shiksha Adhikari dated 6.9.1995 exemption from training in view of G.O. dated 21.10.1994 was granted as he had completed 10 years of service on 1.9.1994. The prayer in the writ petition is that respondents may be directed to pay salary to the petitioner of the post of Headmaster w.e.f. 24.3.1995. In the counter-affidavit filed on behalf of respondent Nos. 1 and 2, District Social Welfare Officer and District Basic Shiksha Adhikari, Ghazipur, it has been stated that the person, who promoted the petitioner on the post of Headmaster, was not validly elected Manager. It has further been stated that District Basic Shiksha Adhikari and Deputy Inspector of Schools had attested the signatures of Ram Nath Ram, respondent No. 4 as Headmaster on 1.9.1995 and 19.4.1998. It is also stated that similar letter had also been issued by respondent No. 2 on 4.3.1995 recognising Sri Ram Nath Ram as Headmaster. It is also stated in the counter-affidavit that in Annexure-1 to the writ petition petitioner has shown to have been appointed on 15.2.1977. While in Annexure-8, which is recommendation of Basic Shiksha Adhikari for granting exemption on 6.9.1995, it is mentioned that petitioner was working since 15.7.1980. It has also been stated that salary of Headmaster is being paid to Ram Nath Ram, respondent No. 4 and he is performing all the duties of Headmaster, whose signatures had been attested by District B.S.A.

4. In the counter-affidavit filed by respondent No. 4, it has been stated that petitioner was not qualified to become Headmaster as he was untrained teacher.

5. Learned Counsel for the petitioner has cited an authority of this Court in Jagdish Narain Shastri v. Basic Shiksha Parishad, Etawah and Ors. 1986 UPLBEC 1058. In the said authority, interpreting Rule 18 of U. P. Basic Education (Teachers) Service Rules, 1981 it has been held that criteria for promotion to the post of Headmaster is seniority alone even though training may have been obtained afterwards and seniority cannot be counted from the date of training. The said authority is not applicable to the facts of the instant case as petitioner did not obtain training. Question of exemption from training has not been considered in the said authority. In the said authority, U. P. Basic Education (Teachers) Service Rules, 1981 were considered. Said Rules apply to Basic Schools run and managed by Basic Shiksha Parishad, privately managed but recognised by Basic Shiksha Parishad Schools are governed by U. P. Recognised Basic Schools (Recruitment and Conditions of Service of Teachers and Other Conditions) Rules, 1975 or U. P. Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978. Under the Rules of 1978, minimum qualification for the appointment to the post of Headmaster is degree from a recognised University and teachers training course recognised by the State or the Board and the three years' teaching experience. Under Rule 9 of the Rules of 1975, it is provided that Manager shall not select any untrained teacher (probably the school in question is Junior High School).

6. By virtue of G.O. dated 21.10.1994, exemption from B.T.C. Training is granted to untrained teachers of Junior Schools and Basic Schools either run by Basic Shiksha Parishad or recognised by it. However, Rules of 1978 or of 1975 or of 1981 have not been amended. Service Rules framed under some Act or under Article 309 of the Constitution of India cannot be amended or superseded by a G.O. In this regard reference may be made to Union of India v. Central E. and M. Engineer Service AIR 2008 SC 3. Para 10 of the said authority is quoted below:

10. It is now a well-settled principle of law that an executive order must be passed in conformity with the Rules. Power of the State Government to issue executive instructions is confined to filling up of the gaps or covering the area which otherwise has not been covered by the existing Rules. (See Sant Ram Sharma v. State of Rajasthan and Anr. : (1968)ILLJ830SC and D.D.A. and Ors. v. Joginder

S. Monga and Ors. : (2004)2SCC297). Such office orders must be subservient to the statutory rules.

7. Accordingly, it cannot be said that petitioner was entitled to be promoted to the post of Headmaster even though he did not have B.T.C. Training.

8. No fault can therefore be found with the appointment of respondent No. 4 as Headmaster. Petitioner did not qualify to be appointed as Headmaster as he was not trained. Under the relevant Rules, there is no provision of exemption from training.

Accordingly, writ petition is dismissed.

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