

Mohammad Idris and Baboo Khan Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Mar-24-1999

Reported in : 1999(2)AWC1627

Judge : N.K. Mitra, C.J. and ;S.R. Singh, J.

Acts : Uttar Pradesh Intermediate Education Act, 1921 - Sections 16E;
[Constitution of India](#) - Article 226

Appeal No. : Special Appeal No. 661 of 1993

Appellant : Mohammad Idris and Baboo Khan

Respondent : State of U.P. and Others

Advocate for Def. : R.N. Singh and;A.K. Saxena, Adv.

Advocate for Pet/Ap. : Man Mohan Das Agrawal, Adv.

Judgement :

N.K. Mitra, C.J. and S.R. Singh, J.-

1. Heard Sri M.M.D. Agarwal for the appellants and Shri R. N. Singh for the respondents.

2. The appointment of the fifth respondent Mohd. Tariq, as Principal H. M. S. Inter College, Etawah was sought to be cancelled under Section 16E (10) of the U. P.

Intermediate Education Act, 1921. The State Government rejected the representation preferred by the petitioners and maintained the appointment of the fifth respondent. Aggrieved, the petitioners filed the writ petition which came to be dismissed by the learned single Judge vide judgment under challenge in this appeal holding, inter alia, that the selection committee had considered the academic qualifications, experience certificates and other relevant materials in respect of all the candidates and then recommended the name of the fifth respondent for appointment.

3. Sri R. N. Singh raised a preliminary objection that the writ petition itself was not maintainable at the behest of the petitioner in that none of the non-selectees chose to challenge the selection and appointment of the fifth respondent. The learned counsel placed reliance on a decision of the Supreme Court in *R. K. Jain v. Union of India and others*, AIR 1983 SC 1769, in which it was held as under :

'In service jurisprudence, it is settled law that it is for the aggrieved person, i.e., non-appointee to assail the legality of the offending action. Third party has no locus standi to canvas the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public spirited person.'

4. It is true that non-selectees did not assail the selection and appointment of the fifth respondent but the remedy under Article 226 of the Constitution being a public law remedy could be availed of by the petitioners one of whom claims to be a member of the General Body of the Institution and the other a public spirited person being a freedom fighter. The learned single Judge has dismissed the writ petition on merits and not as not maintainable. In *Amrit Chand Tripathi and others v. University of Allahabad and others*, 1986 All LJ 1485, a Division Bench of this Court held that 'even if the petitioners are not personally aggrieved and the interest of the public is involved, a citizen can maintain the writ petition.' It cannot be gainsaid that in the appointment to the, post of Principal, there is always involved an element of public interest. In the circumstances of the case, therefore, the submission made by Shri R. N. Singh about maintainability of writ petition at the behest of the petitioners cannot be sustained.

5. On merits we find that the selection of the fifth respondent was approved by the authorities under the U. P. Intermediate Education Act, 1921, and challenge to the appointment was made by the petitioners four years after his selection and appointment. The challenge, it may be observed, was based on the ground that the fifth respondent was found using unfair means at the Intermediate examination and he was debarred from appearing in the subsequent examination. The learned counsel submitted that the said conduct of the fifth respondent would show that he was undesirable and unsuitable for the post of Principal which is a post of pivotal importance in the life of an institution. Reliance has been placed on a decision of Supreme Court in *Daya Shankar Pandey v. High Court of Allahabad and others*, AIR 1987 SC 1469. In our considered view, the decision therein has no application to the facts of the present case. The appellant therein was appointed as a judicial officer and thereafter, with the permission of the Court, he appeared in L.L.M. Examination at Aligarh University, where he was found using unfair means. This conduct of the judicial officer led to his removal from service. In the instant case, the offending conduct of the fifth respondent was not after he was selected for the post of Principal. Therefore, the decision aforesaid is of no avail to the appellants.

6. In the result, therefore, the appeal is dismissed. The parties shall bear their own cost.