

Shri Ram Singh Vs. State of U. P. and Others

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Court : Allahabad

Decided On : Jul-29-1998

Reported in : 1998(4)AWC298

Judge : I.P. Vasishth, J.

Acts : Uttar Pradesh Intermediate Education Act, 1921 - Sections 16F

Appeal No. : Writ Petition No. 3348 of 1981

Appellant : Shri Ram Singh

Respondent : State of U. P. and Others

Advocate for Def. : C.S.C.

Advocate for Pet/Ap. : S. K. Kalia, Adv.

Judgement :

I. P. Vasishth, J.

1.The petitioner prays for a writ of certiorari for quashing the radiogram dated 7.4.1981 (Annexure-1) issued by the respondent--State of Uttar Pradesh freezing the new appointment of teachers including Head Masters under the U. P. Intermediate Education Act, 1921.

2. The propagation is that in response to a public advertisement issued by the District Inspector of Schools, Unnao, the petitioner applied for the post of Head Master of Nehru Higher Secondary School, Paharpur Subas, Unnao. On being called for interview, he appeared before the selection committee comprising of the President of the institution, one of the nominee of its managing committee and three experts nominated by the Regional Deputy Director of Education on 12.4.1981. The petitioner states that he was selected and the managing committee transmitted the minutes of the selection committee along with its own resolution to the District Inspector of Schools for according sanction to his appointment on 18.4.1981. Simultaneously, an appointment order was also issued to him and in pursuance thereof, he Joined the institution. It was complained that later on the District Inspector of Schools refused to accord the approval in view of the radiogram message alleged to have been issued by the respondent--State on 7.4.1981 (Annexure-1) putting a ban on fresh recruitment of principals, head-masters and teachers in all non-Government aided schools. According to the petitioner, the respondent--State had no such powers and as such its action in issuing the aforesaid radiogram was void ab initio and deserves to be quashed. The petitioner, therefore, besides praying for a writ of certiorari as mentioned herein-before urged for issuance of a mandamus commanding upon the respondents to treat his appointment as Head Master of Nehru Higher Secondary School, Paharpur Subas, Unnao as a regular one and refrain from giving effect to the impugned radiogram.

3. This petition was filed in the Court in July, 1981 and an interim order was passed in favour of the petitioner on 16.7.1981 restraining the respondents from implementing the impugned radiogram. As a natural corollary, the petitioner continues to be in service because no application has so far been moved on behalf of respondents to seek the vacation of this interim arrangement. It may also be worth-while to note that despite due opportunity, for the reasons better known to them, the respondents have opted against filing of any counter-affidavit during all this period of seventeen long years. Today when the matter came up for hearing, the learned standing counsel submitted that according to his instructions, the process of alleged selection of the petitioner was unauthorised because the selection committee did not comprise of an observer of the department and

otherwise also the experts who were supposed to participate in that selection process had also been apprised of the Government instructions contained in the radiogram, Annexure-1 putting a freeze on the fresh appointments. Despite seeming attraction, the submission of the learned standing counsel does not warrant any serious attention. The pertinent point is that he does not have any logistic support. To be precise, neither any counter-affidavit nor any other document emanating from any of the respondents was placed on record and this despite the passage of a very 'small and meagre time of good seventeen years'--a period during which the petitioner continues to hold the post, of course under the judicial protection. This apart, the submission of the learned counsel goes contrary to the 'magnanimity' of the respondents in refraining from seeking the vacation of the interim order vide which the petitioner was allowed to function as Head Master of the institution.

4. Be that as it may, the petitioner's averment of due selection by a committee constituted under the provisions of Section 16F of U. P. Intermediate Education Act, 1921 stands un rebutted. It is rather supported by his affidavit. A bare perusal of the provisions of Section 16F would rule out the proposition of association of any observer to be nominated by the State Government or any of its functionaries in the affairs of the selection of teachers. Taken at its best, the case of the respondents could be that the members of the selection committee violated the direction contained in this impugned radiogram, but then the problem with the respondents is that they do not have any material to show whether this radiogram was ever served on the members of the selection committee or as to whether they were otherwise aware of its existence.

4A. It may not be out of context to mention here that in the year 1981, all the appointments of teachers including principals and head-masters used to be made within the scheme of U. P. Intermediate Education Act, 1921 and the U. P. Secondary Education Service Commission came into existence at a later stage in the year 1982. In a manner of speaking, the function of appointing teachers was taken over from the body envisaged under the 1921 Act by a duly constituted Commission. In the case of *Km. P. Dikshit v. U.P.M.S.S. Ayog*, 1992 (10) LCD 337, an issue came before the Court as to whether the Government has the

powers to impose a ban on fresh recruitment for the posts falling within the purview of the Commission, the Court answered the proposition in the negative. Taking the ratio to the logical end. It may not be going off the target to say that similar position prevailed with regard to the filling up of the posts under the earlier arrangement, meaning thereby raising serious doubts about the powers of the Government to put a complete ban on the recruitments by issuance of orders in the nature of radiogram' --Annexure-1.

5. Be that as it may, the impugned radiogram came up for consideration before yet another bench in a similar petition brought by one Muneshwar Singh v. State of U. P., registered as Writ Petition No. 3432 of 1981 which was decided by this Court on 7.7.1997. In that case also, a similarly selected teacher who was allowed to continue under the protection of judicial orders, was ordered to be regularised. In the same vein, it was further brought to the Court notice that the State Government has regularised all the ad hoc teachers who were recruited in the year 1989 and are working uninterruptedly since then.

6. That being the situation, this Court feels that the demand of the substantial Justice is to regularise the petitioner's appointment in pursuance to his selection by a duly constituted selection committee on 12.4.1981.

7. Hence for the reasons recorded above, the petition is allowed and the respondents are directed to treat the petitioner as a regularly selected and appointed head master. He would obviously be entitled to all the consequential benefits.

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