

Yogesh Kumar Vs. State and anr.

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Court : Allahabad

Decided On : Dec-19-2000

Reported in : (2001)2UPLBEC1094

Judge : V.M. Sahai, J.

Acts : Uttar Pradesh Secondary Education Services and Selection Boards Act, 1982 - Sections 10, 18 and 33E; Deleting Removal of Difficulties Orders, 1982; [Constitution of India](#) - Article 19 and 19(1)

Appeal No. : Civil Misc. Writ Petition No. 53121 of 2000

Appellant : Yogesh Kumar

Respondent : State and anr.

Advocate for Def. : Sunita Agarwal, Adv.

Advocate for Pet/Ap. : Rakesh Tiwari, ;J.N. Tiwari and ;C.B. Gupta, Advs.

Disposition : Petition dismissed

Judgement :

V.M. Sahai, J.

1. The question that arises in this petition is whether deletion of U.P. Secondary Education Services Commission (Removal of Difficulties) Orders, 1981 by

insertion of Section 33-E in U.P. Secondary Education Services Selection Board Act. 1982 (in brief Act) amounts to placing unreasonable restriction on the right of committee of management to fill the substantive or short-term vacancy, and if so, whether it is against the public interest and is violative of Article 19(1)(g) of the Constitution ?

2. Sanatan Dharam Inter College, Orai, District Maun is an aided and recognised institution. A substantive vacancy of Lecturer fell vacant on 30.6.1999. It was filled by promotion of Sri Kaushlendra Kumar Sharnia with effect from 31.8.1999. On the same day, the committee of management sent a requisition in the meantime to the Board to fill the substantive vacancy of assistant teacher L.T. grade that fell vacant due to promotion of Sri Kaushlendra Kumar Sharnia. The promotion was approved on 5.1.2000. The Board did not recommend any candidate for appointment. After expiry of two months the management advertised the vacancy on 12.1.2000 in newspapers 'Karmyug Prakash' and 'Dainik Deewan' published from Orai, District Maun. The petitioner was selected on 23.1.2000. He was appointed ad-hoc assistant teacher L.T. grade on 24.1.2000. He joined on 28.1.2000. The management on 29.1.2000 forwarded the papers to the District Inspector of Schools for grant of financial approval. The District Inspector of Schools did not grant approval. The petitioner filed Civil Misc. Writ Petition No. 19596 of 2000 which was disposed of on 4.5.2000 and the District Inspector of Schools was directed to consider the matter of grant of approval. By order dated 31.10.2000 the District Inspector of Schools has held that ad-hoc appointment on substantive vacancy could not be made by the management, as the U.P. Secondary Education Service Commission (Removal of Difficulties) Order, 1981 have been rescinded. And ad-hoc appointment could be made by the Joint Director of Education under the Act. It is this order passed by the District Inspector of Schools on 31.10.2000, which has been challenged by the petitioner in this petition.

3. Sri J. N. Tiwari the learned Senior Counsel assisted by Sri C.B. Gupta urged that The order of District Inspector of Schools was illegal and liable to be quashed. He further urged that the deletion of U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981 amounts to placing unreasonable restriction on the right of committee of management to fill the

substantive or short-term vacancy. The learned Counsel submitted that it was against public interest and is violative of Article 19(1)(g) of the Constitution.

4. On the other hand Smt. Sunita Agarwal the learned Standing Counsel has urged that with effect from 25.1.1999. Section 33-E has been inserted in the Act by which Removal of Difficulties Orders have been rescinded and the ad-hoc appointment against substantive vacancy could be made by the Joint Director of Education as, per procedure prescribed by Section 18(8) of the Act. She further urged that after the deletion of Removal of Difficulties Orders and insertion of Section 33-E in the Act, there is no provision under which appointment on short-term vacancy could be made by the management as held by this Court in *Mukesh Kumar Sharma v. District Inspector of Schools, Aliqarh and Ors.*, 2000 (4) ESC 2303.

5. The object of enactment of the Act was to regulate the appointment and promotion of teachers working in aided institution. The Act curtailed the powers of the management making appointments both on substantive and short-term vacancy. Since the Act was enforced on 14th July, 1982 and the rules had not been framed, therefore, the U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981, First and, Second Order, were issued for carrying out the purposes of the Act. It permitted the management to fill the post on substantive or short-term vacancy during this period. Rules were framed in 1983. But the Removal of Difficulties Orders continued. Therefore, the management's were exercising the power. But once the Removal of Difficulties Orders have been rescinded the management cannot make any ad-hoc appointment except in accordance with Section 18 of the Act. In *Mukesh Kumar Sharma (supra)* it has been held that any ad hoc appointment after 25.1.1999 by the management is void. The District Inspector of Schools, therefore, did not commit any error in rejecting the claim of the petitioner.

6. The submission that deletion of Removal of Difficulties Orders violates constitutional rights of the management is devoid of any merit. The right guaranteed under clause (g) of Article 19 is not an absolute right. It is subject to reasonable restrictions which may be imposed by the State in the interest of

general public. The very object and reasons of Act show that the entire purpose of the Act is to have suitable teachers by fair and free selection in the interest of standard of education. The provision for appointing teacher on substantive vacancy through Board under Section 10 or ad hoc by selection committee under Section 18 are in public interest. It does not interfere with the right of management to establish educational institution for imparting education. In any case the petitioner has no right to raise this issue. Therefore, the argument of Sri Tiwari that the deletion of Removal of Difficulties Orders by insertion of Section 33-E in the Act amounts to imposing restrictions on the power of the management has to be rejected.

7. For the aforesaid reasons, I do not find any merit in this writ petition.

The writ. petition fails and is accordingly dismissed.

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