

Pramod Kumar Vs. U.P. Secondary Education Services Commission Through Its Secretary and ors.

Pramod Kumar Vs. U.P. Secondary Education Services Commission Through Its Secretary and ors.

SooperKanoon Citation : sooperkanoon.com/487394

Court : Allahabad

Decided On : Aug-24-2004

Reported in : 2005(2)AWC1957; (2004)3UPLBEC2957

Judge : M. Katju and ;Umeshwar Pandey, JJ.

Acts : Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981; Uttar Pradesh Secondary Education Service and Selection Board Act, 1982 - Sections 33B(1); Uttar Pradesh Intermediate Education Act, 1921 - Sections 16G(3); [Constitution of India](#) - Article 226

Appeal No. : Special Appeal No. 216 of 1997

Appellant : Pramod Kumar

Respondent : U.P. Secondary Education Services Commission Through Its Secretary and ors.

Advocate for Def. : S.K. Verma, ;S.K. Srivastava, ;R.K. Singh, ;Siddharth Verma, Advs. and ;S.C.

Advocate for Pet/Ap. : Ashok Khare and ;P.N. Ojha, Advs.

Judgement :

Umeshwar Pandey, J.

1. This special appeal has been directed against the impugned judgment and order of the learned Single Judge dated 9.3.1997 whereby the appellant's writ petition seeking the relief for quashing of termination of service as an Assistant Teacher in Shri Jawahar Inter College, Bamrauli, District Meerut was dismissed.

2. The appellant petitioner was selected in a short-term vacancy as Assistant Teacher in the institution and the management sent the necessary papers for approval of the appointment to the District Inspector of School (here-in-after abbreviated as D.I.O.S.) with a covering letter dated 22.11.1988. The letter remained unreplied. Since no approval was communicated by the D.I.O.S. within the statutory period of seven days as contemplated under Clause 2(3)(III) of U.P. Secondary Education Services Commission (Removal of Difficulties) (II) Order, 1981, the management appointed the petitioner as Assistant Teacher after expiry of the said period. He started functioning in the institution w.e.f. 1.12.1988 but no salary was paid to him for want of financial approval from the D.I.O.S. Accordingly, the petitioner moved this Court through a Writ Petition No. 13382 of 1989 and obtained an interim order directing the respondents i.e. D.I.O.S. etc. to pay salary to him. The said writ petition was finally allowed and a writ of mandamus was issued directing payment of salary w.e.f. 1.12.1988 with interest on the amount of arrears. In the year 1993, the management of the institution raised some objection with regard to the essential qualifications of the petitioner for this appointment to the post of Assistant Teacher. It was found that the Bachelor degree of education obtained by the petitioner from Maithili Vishwa Vidyapith-Sankat Mochan Dham, Darbhanga, Bihar, was not a valid degree, as the said University was not recognized by the University Grants Commission. Thereafter, the petitioner obtained permission from the management to carry out his fresh B.Ed. course from another University in pursuance to which he obtained the degree from Maharshi Dayanand University, Rohtak in the year 1993-94. However, the management found that since the very selection of the petitioner in the year 1988 was dehors the rules and void ab-initio for want of 'the essential qualification from a recognized University, he was given show cause notice in January, 1997 and ultimately by the order dated 12.2.1997 which is challenged in the petition, his services were

terminated. The appellant-petitioner then, has come up before this Court under Article 226 of the [Constitution of India](#).

3. The respondent-management had filed a counter affidavit and had taken the plea that since the initial selection of the petitioner as Assistant Teacher was void for want of the necessary qualification for such appointment, he did not acquire any right to continue in the institution and hence his services has been terminated. Subsequent acquisition of the degree of B.Ed. from another University in the year 1993-94 could not rectify the inherent illegality of his selection made in the year 1988.

4. The learned Single Judge, after considering the respective contentions of the parties, held that the petitioner-appellant was not at all entitled to apply to the management of the institution for his selection as Assistant Teacher on the basis of a degree of Bachelor of Education awarded by a University which was not duly recognized by the University Grants Commission nor was created under a statute of the State or the Centre. Since the petitioner was admittedly not having the necessary qualification prescribed under the Rules, he was not entitled for selection to the post nor could he claim any right to continue on the post by virtue of the subsequent regularization of his appointment by the U.P. Secondary Education Service Commission. Thus, finding no force in the Writ Petition, the learned Single Judge passed the impugned judgment and dismissed the Writ Petition.

5. We have heard Sri Ashok Khare, learned Senior Counsel assisted by Sri P.N. Ojha, appearing for the appellant-petitioner and Sri Siddarth Verma, learned Counsel for the respondents.

6. It is not disputed that the appellant-petitioner when selected for the appointment to the post of Assistant Teacher in the institution was not having the essential qualification required for the said post because the degree of B.Ed. course, which he was holding at the time of his selection, was issued from a University viz. Maithlli Vishwa Vidyapith-Sankat Mochan Dham, Darbhanaga, State of Bihar which was subsequently found to be a University not recognized by the University Grants Commission nor created under a State or Central statute. Conceding this

fact the petitioner again underwent a correspondence course for acquiring such degree of B.Ed, from another University namely Maharshi Dayanand University, Rohtak and obtained it in the year 1993-94. It was under these circumstances that the management of the institution found the petitioner lacking in essential qualification rendering his initial appointment in the institution as inherently illegal and hence his services was terminated by the order dated 12.2.1997 challenged in this petition. Accordingly under the facts and circumstances present in the case, it would not be open to the petitioner to claim as a matter of right, to hold the post for which he was illegally selected. It is also not disputed that for selection to the post of Assistant Teacher, the candidate was necessarily required to have a degree of B.Ed. from a recognized University. In the year 1988 when the petitioner was selected for the said post of Assistant Teacher, he was having a B.Ed, degree of an unrecognized University. Obviously, he was not qualified for the post upon which the selection was made and appointment was given.

7. It is a settled law that if a person does not possess the requisite qualification, his appointment is void, even though the person who sought such employment has never made any mis-representation or played any kind of fraud. In the case of Smt Ravinder Sharma and Anr. v. State of Punjab and Ors., 1995 (1) SCC 138, the Supreme Court has held that if a person does not possess the requisite qualification, his appointment is bad, A Bench consisting of three Hon'ble Judges of the Supreme Court in the aforesaid case has laid down the principle of law as below :-

' Admittedly, the appellant did not possess this qualification. That being so, the appointment, is bad. The Commission recommended to the Government for relaxation of the qualification under Regulation 7 of the Regulations. The Government rejected that recommendation. Where, therefore, the appointment was clearly against Regulation 7, it was liable to be set aside. That being so, no question of estoppel would ever arise. We respectfully agree with the view taken by the High Court.'

8. A Division Bench of this Court in the case of Arya Kanya Pathshala and Anr. v. Smt. Manorama Devi Agnihotri and Ors., 1971 ALJ 983, has in very categorical

terms held that an appointment made in contravention of the mandatory rules is no appointment at all in the eye of law. Referring to the case law of State of Punjab v. Jagdip Singh, AIR 1964 SC 521, the Division Bench has further held that when on account of the appointment being illegal, the order is subsequently cancelled, there would be no breach of the provisions of Article 311(2) of the Constitution.

9. A Full Bench decision of this Court in Smt. Pramila Mishra v. Deputy Director of Education, Jhansi Division, Jhansi and Ors., (1997) 2 UPLBEC. 1329, has held that a candidate has a right to be considered along with other eligible candidates for appointment in the substantive vacancy if he possesses the requisite qualifications.

10. In another decision of this Court rendered by the learned Single Judge in G.K. Inter College, District Saharanpur v. Deputy Director of Education and Ors., 1975 ALR 323, it was held that where the initial appointment of the probationer teacher itself was illegal being contrary to the provisions of the relevant regulations, his services can be terminated without following the procedures laid down under Section 16-G (3) (a) of UP. Intermediate Education Act, 1921. The learned Single Judge has followed the ratio laid down in the case of Arya Kanya Pathshala (supra).

11. The basic issue in the case is that when the petitioner obtained his appointment as Assistant Teacher in the institution he was not possessing the requisite qualification prescribed for such post under the Rules. After some time when the management gathered information that the University from which the degree for essential qualification (B.Ed.) was obtained was a University not created under any statute nor approved by the University Grants Commission, the petitioner was given a show cause notice. Considering the aforesaid disclosures of the fact about himself lacking in qualification for continuance upon the post held by him, the petitioner approached the Manager of the institution for permission to obtain the requisite degree of B.Ed. from another University, which he subsequently obtained in the year 1993-94. Admittedly, he did not possess the requisite qualification prescribed under the regulations for appointment to the post in the year 1988 when his selection was made and appointment was given. Thus,

his initial appointment being illegal and void could not confer any right upon him whatsoever to hold the post. If the management in the above background of facts has chosen to terminate the services of the petitioner, no illegality could be found in the same. We are of the view that while exercising equity jurisdiction under Article 226 of the [Constitution of India](#), it would not be just and proper as a Court to perpetrate the illegality any further by giving relief as has been sought for in the petition. The Courts are also not meant to permit illegal gains indefinitely. The petitioner is not supposed to approach the Court only with clean hands but also with clean mind, with clean heart and with clean objectives. In this content reference may be made to the decisions in the Ramjas Foundation and Ors. v. Union of India and Ors., AIR 1993 SC 852; G. Narayanaswami Reddy (dead) By LRs and Anr. v. Government of Karnataka, AIR 1991 SC 1726 and K.R. Srinivas v. R.M. Premchand and Ors., 1994 (6) SCC 620.

12. It is also contended on behalf of the appellant petitioner that the decision dated 5.7.1996 rendered in Writ Petition No. 13382 of 1989 operates as resjudicata between the parties because it has attained finality and thus the respondent management could not raise objections as to the validity of initial appointment of the petitioner. At the very outset it may be pointed that the decision given in the aforesaid petition by the learned Single Judge in fact, did not involve a finding on the facts and issues as raised in the present petition between the parties. In the earlier petition of 1989 no controversy was raised with regard to the validity of the initial appointment of the petitioner made by the management on the post of Assistant Teacher. The issue of the petitioner not having the requisite qualification for appointment to the post, was not present for decision before the learned Single Judge in that petition. The only issue upon which the decision was given in the earlier Writ Petition No. 13382 of 1989 was whether the petitioner could be entitled to receive his salary while working as Assistant Teacher in the institution even without there being specific approval of his appointment from the D.I.O.S. The learned Single Judge in that case, upon the facts and circumstances as demonstrated in the pleadings of the parties, was of the view that by virtue of Clause 2 (3) (III) of UP. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981, if the approval is not communicated by the D.I.O.S. within seven days of the date of receipt the required approval would be

deemed to have been given. It was for that reason that the petitioner's prayer for the relief in the said petition was granted. Therefore, the aforesaid judgment given in the said petition can hardly to operate as res-judicata between the parties for the issues, which are involved in the present petition. We are, therefore, of the view that the earlier decision given by the learned Single Judge (Hon'ble J.C. Gupta, J.) is of no consequence as to give occasion to hold that the respondent Committee of Management could not be legally question the legality of petitioner's initial appointment on the post of Assistant Teacher for want of his having the requisite qualification for selection on the post of Assistant Teacher.

13. The learned Counsel for the appellant has also submitted that the management was not legally competent to terminate the services of the petitioner in the manner as has been done in the present case. The termination order under question could not be passed without adverting to the procedural compliance of Section 16-G (3)(a) of UP. Intermediate Education Act, 1921 which enjoins upon the management to obtain prior approval in writing of the District Inspector of Schools before serving a notice of termination upon a teacher. The learned Counsel in this context has placed reliance upon the case law of Smt Pramodini Agarwal v. Regional Inspectress of Girls Schools, Bareilly and Ors., AIR 1994 (23) Alld. 208 and Managing Committee, Sohan Lal Higher Secondary School, Lucknow v. Sheo Dutt Gupta and another, 1974 Lab. I.C. 1036 (Alld.).

14. The facts of the aforesaid two cases cited on behalf of the appellant- petitioner are obviously distinguishable from the facts of the present case. In both cases of Smt. Pramodini Agmwal (supra) and Managing Committee (supra) there was no inherent illegality in the appointments of those petitioners upon the respective posts held by them in the institution, as we have in the present case.

15. In the backdrop of the case law of Smt. Ravinder Sharma (supra) propounded by a Bench of three Hon'ble Judges of the Apex Court, it has been made categorical that if a person does not possess the requisite qualification for his appointment on a particular post and still his selection was made on the post and the appointment was given, his appointment would be void even though the person, who sought employment, never made any mis-representation or played

any kind of fraud. The case law of O.K. Inter College (supra) and that of Arya Kanya Pathshala (supra) makes it quite evident that the provisions of Section 16-G (3)(a) aforesaid cannot be attracted in the case of such staff or teacher appointed in a school who has been illegally appointed under some misapprehension while he did not possess the requisite and basic qualification for such appointment.

16. Emphasis has also been given from the side of the appellant that his appointment as Assistant Teacher in the institution having been regularized by the U.P. Secondary Education Selection Board as back as 1991, the service could not have been validly terminated as has been done in the present case. In this context reference may be had to Sections 33-B (1)(b) and (e) of U.P. Secondary Education Service and Selection Board Act, 1982. The aforesaid two clauses are as below :

'Regularisation of certain other appointments-(1) Any teacher, other than the Principal or Headmaster, who-

(b) possesses the qualifications prescribed under, or is exempted from such qualifications in accordance with, the provisions of the Intermediate Education Act, 1921;

(c) has been found suitable for appointment in a substantive capacity by a Selection Committee constituted under sub-section (2), shall be given substantive appointment by the management.'

17. As we find in the aforesaid provision, the regularization of a particular teacher of an institution is subject to his possessing the qualification prescribed under the provisions of U.P. Intermediate Education Act, 1921. Such teacher alone who possessed the prescribed qualification can validly be given appointment by the management. The appointment of the petitioner -appellant, when tested, in the light of the aforesaid provisions, is in our opinion void, because even if it has been regularized subsequently and is taken to be a substantive appointment, still it remains a void appointment in the light of the aforesaid case law of Smt. Ravinder Sharma (supra), G.K. Inter College (supra) and Arya Kanya Pathshala (supra) and the appointment cannot be deemed to have any legal foundation. In the Full Bench

decision of this Court in Smt. Pramila Mishra's case (supra), it has been made quite specific that a teacher can be appointed in a substantive vacancy if he is selected in accordance with the procedure and in the manner laid down in the relevant provisions of the Acts, Rules, Regulations and Removals of Difficulties Orders. As we have already observed above, the petitioner did not fulfill the requisite qualification of having B.Ed. degree for regularization of his appointment on a substantive post by the U.P. Secondary Education Service and Selection Board and hence any such recommendation of the Board would not be of any legal consequence. The appointment of the petitioner on the post of Assistant Teacher will continue to remain illegal as void and such a so-called regularly appointed teacher does not possess a valid claim for regularization vide Smt. Pratima Chauhan and Anr. v. Regional Dy. Director of Education (Madhyamik), Agra and Ors., (1999) 2 UPLBEC. 1621. In the Division Bench decision of this Court of Arya Kanya Pathshala (supra), the Court has gone to the extent of propounding that if an order of appointment is illegal, and has been subsequently cancelled, there would be no breach of the provisions of Article 311(2) of the [Constitution of India](#).

18. Thus in the aforesaid view of the matter, we do not have any hesitation to hold that the present petitioner having no right of appointment to the post of Assistant Teacher at the initial stage itself he cannot be said to have acquired a right to the post held by him after the appointment. As such, he is also not entitled to challenge the order of termination of his service on the ground of the management not complying to the provisions of Section 16-G (3)(a) of U.P. Intermediate Education, Act, 1921.

19. Considering the totality of the facts and circumstances as discussed above, we are of the view that the initial appointment of the petitioner, being wholly illegal and void by virtue of its being dehors the rules his appointment to the said post of Assistant Teacher in the institution could not be permitted to continue any more, even if he had managed subsequently to obtain another degree of B. Ed. We are in full agreement with the learned Single Judge who has not found any good ground for interference under the extraordinary jurisdiction envisaged under Article 226 of the [Constitution of India](#). The decision given in the Writ Petition, thus, does

not require to be disturbed in the present intra Court appeal, which lacks merit and is hereby dismissed with no order as to cost.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com