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Harendra Singh Vs. Joint Director of Education and ors.

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Court : Allahabad

Decided On : Nov-01-2002

Reported in : 2003(1)AWC361

Judge : Rakesh Tiwari, J.

Acts : Uttar Pradesh Secondary Education Service Selection Board Act, 1982 - Sections 18(4)

Appeal No. : C.M.W.P. No. 28488 of 2000

Appellant : Harendra Singh

Respondent : Joint Director of Education and ors.

Advocate for Def. : J.K. Pandey, ;A. Bhushan and ;A.K. Shukla, Advs. and ;S.C.

Advocate for Pet/Ap. : K. Shahi and ;N.N. Verma, Advs.

Disposition : Petition dismissed

Judgement :

Rakesh Tiwari, J.

1. Heard the learned counsel for the petitioner and the standing counsel and perused the records.

2. By means of this writ petition, the petitioner has challenged the order dated 22.6.1999, passed by the District Inspector of Schools, Kushinagar, Annexure-3 to the writ petition and the order dated 30.3.2000, passed by the Joint Director of Education, VIIIth Region, Gorakhpur, Annexure-7 to the writ petition.

3. The dispute relates to the qualification and appointment of the petitioner and respondent No. 4 to the post of Principal, which fell vacant in Janta Inter College, Ramkola, Deoria, due to retirement of Sri Uma Shankar Pandey on 30.6.1999.

4. The date of appointment and the qualification of the petitioner and respondent No. 4 are as follows :

Name

Date of appointment Qualification

1.

Harendra Singh

22.10.1970

M.Sc.

2.

Vishwanath Lal Srivastava (Respondent No. 4)

14.7.1967 B.Sc. Post Graduate Diploma

5. It is contended by the petitioner that the qualification for the post of Principal as per Appendix-A of Regulation-I of Chapter-2 of the U. P. Intermediate Education Act is as under :

Head of Institution.--(1) Trained M.A. or M.Sc.

(2) First or Second graduate degree along with the teaching experience of ten years in Intermediate classes of any recognised institution or third class of post

graduate degree with teaching experience of fifteen years.

(3) Trained post graduate diploma holder in Science. The condition is that he has passed this diploma course in Ist or IInd class and have efficiently worked for 15 or 20 years respectively after passing such diploma course.

Note.--Assistant teacher having atleast second class post graduate degree and specialised teaching experience of 10 years in Intermediate Classes of a recognised institution may be completed for training qualification.

6. The dispute relates to the qualification of respondent No. 4 as to whether respondent No. 4 is qualified for the post of Principal or not.

7. It appears from the records that the petitioner filed an objection on 7.5.1999 before the Joint Director of Education, District Inspector of Schools and the Committee of Management to the effect that respondent No. 4 is not a trained post-graduate diploma holder and as such he is not eligible for being promoted on the post of Principal. The Joint Director of Education, Gorakhpur directed the District Inspector of Schools, Kushinagar vide his letter dated 3.6.1999, Annexure-1 to the writ petition, to take appropriate steps for promotion of qualified Lecturer on the post of Principal. The D.I.O.S. by order dated 22.6.1999, directed the Manager to promote Vishwanath Lal Srivastava, respondent No. 4 on the post of Principal.

8. Aggrieved by the aforesaid order dated 22.6.1999, the petitioner filed Writ Petition No. 30603 of 1999, which was disposed of by this Court vide order dated 26.7.1999 with a direction to the Joint Director of Education, Gorakhpur, to decide the representation of the petitioner in pursuance of the order of this Court dated 26.7,1999. In pursuance thereof, the petitioner filed a representation before the Joint Director of Education on 5.8.1999, raising objections, inter alia, that respondent No. 4 is not a trained post graduate diploma holder and is not eligible, as he is a simple post graduate diploma holder. In this regard, reliance was placed upon the case of Bansh Lal Singh Sengar v. D.I.O.S., Kanpur Dehat and Ors., 1989 (1) UPLBEC 425 (DB), wherein it has been held that the post graduate diploma is not a qualification for being promoted on the post of Principal in the

institution.

9. The representation of the petitioner was rejected by the impugned order dated 30.3.2000, Annexure-7 to the writ petition holding that respondent No. 4 was qualified for the post of Principal on the basis of the circular of the Director of Education dated 24.12.1988 by which respondent No. 4 was entitled for exemption from training.

10. Aggrieved by the impugned order dated 30.3.2000, Annexure-7 to the writ petition, passed by the Joint Director of Education, VIIIth Region, Gorakhpur and the order dated 22.6.1999, passed by the District Inspector of Schools, Kushinagar, the petitioner filed the present writ petition challenging the aforesaid orders on the ground that : (i) respondent No. 4 is not a trained post graduate diploma holder, (ii) the exemption from training is applicable in case of degree holder, i. e., M.A./M.Sc./M.Com. as provided in the note (i) of the qualification prescribed for the post of Principal, as such the exemption is not applicable in case of diploma holder.

11. In support of his contention, the petitioner has relied upon the following cases :

(1) Bansh Lal Singh Sengar v. D.I.O.S., Kanpur Dehat and Ors., 1989 (1) UPLBEC 425 (DB).

(2) Shamshul Zama v. D.I.O.S., Chandauli and Ors., 2001 (3) UPLBEC 2172.

(3) Shamshul Zama v. D.I.O.S., Chandauli and Ors., 2001 (4) AWC 2911 ; 2001 (3) UPLBEC 2181 (DB).

(4) Writ Petition No. 6314 of 2001, Harihar Prasad Kushwaha v. Director of Education and Ors., decided on 12.3.2001.

12. It is submitted that in the aforesaid four cases, it has been held that post graduate diploma holder is not entitled for the post of Principal as the post graduate diploma holder is not equivalent as trained teacher. The word 'trained' has been defined in Appendix-A of Regulation 1 of Chapter II of U. P. Intermediate Education Act.

13. Counter-affidavits have been filed by respondent No. 4 as well as the Committee of Management of the college. Respondent No. 4 in his counter-affidavit has stated that after completion of 15-20 years of service, he is entitled to exemption from training and further after amendment of Section 18, the word 'qualification' has been deleted. It has been submitted on behalf of respondent No. 4 that the Committee of Management has decided ad hoc/officiating appointment on the post of Principal and in this regard a resolution has been passed in his favour appointing him as officiating Principal under Section 18 (4) of the U. P. Secondary Education Services Selection Board Act, 1982 Act, which provides for appointment to the post of ad hoc Principal. He is a senior-most teacher. It is further averred that he had taken charge as officiating Principal on 1st July, 1999. His signature has also been attested by the D.I.O.S. on 11th July, 1999. He is continuously functioning as officiating Principal since then. Learned counsel for the respondent No. 4 further submits that the petitioner is junior to respondent No. 4 and his representation has already been rejected by the Joint Director of Education. Only respondent No. 4 is entitled to function as ad hoc/officiating Principal. It is submitted that respondent No. 4 is post graduate diploma holder and has experience more than 20 years of teaching higher classes as lecturer and according to the clarification dated 24.12.1988 by the Joint Director of Education he is entitled to work as ad hoc/officiating Principal. The letter of Joint Director of Education dated 24.12.1988, for clarification is as under :

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14. The circular letter dated 24.12.1988, as mentioned by the Joint Director of Education, Gorakhpur in the impugned order dated 30.3.2000, itself provides that the trained post graduate diploma holder, who has passed the said course in Ist or IInd class and has completed 15 or 20 years teaching service is qualified for the post of Principal and those degree holders mentioned in Class (II) are entitled for exemption from training. Clause I of the order dated 24.12.1988, provides that the trained post graduate diploma holder is qualified for the post of Principal.

15. It is averred from the perusal of the aforesaid letter dated 24.12.1988, that respondent No. 4 is entitled for exemption from training as it is not in dispute that he is senior-most lecturer in the Institution and is entitled for the post of officiating Principal as per law laid down in Full Bench in Radha Raizada's case, 1994 (3) UPLBEC 1551. It is submitted that the post of Principal in the Intermediate College as well as in Degree College is filled up by the direct recruitment by the U. P. Secondary Education Services Selection Board as well as U. P. Higher Education Services Commission respectively on substantive vacancy. If the vacancies are not filled up by regularly selected candidate, then there is a provision for the officiating principal in the Intermediate Education Act as well as in State Universities Act.

16. For the Intermediate Colleges, Sub-section (4) of Section 18 of U. P. Secondary Education Services Selection Board Act, 1982, provides for appointment to the post of ad hoc Principal; Section 18 (4) reads as under :

'Section 18 (4).---A vacancy on the post of Principal may be filled up by promoting the senior-most teacher in the lecturer's grade.'

17. For Degree Colleges, the Statute provides for appointment of an officiating/ad hoc Principal. For ready reference, statute 13.20 is being reproduced below ;

'Statute 13.20.---Where the office of the Principal of an associated college fails vacant, the Management may appoint any teacher to officiate as Principal for a period of three months or until the appointment of a regular Principal, whichever is earlier. If on or before the expiry of the period of three months, any regular Principal is not appointed or such a Principal does not assume office, the senior-most teacher in the college shall officiate as Principal of such college until a regular Principal is appointed.'

18. Under Section 18 (4) as well as the Statute 13.20 provides that a senior-most teacher/lecturer is entitled to function as an ad hoc/officiating Principal of the institution. Since respondent No. 4 is the senior-most teacher, hence, he is entitled to function as a Principal. This aspect of the matter has been considered by the Division Bench of this Court in the case of A.P. Singh (Dr.) v. State of U. P. and Ors., 2000 (1) UPLBEC 638. For kind perusal of this Court, paras 4 and 6 are being extracted below :

'Para 4. It is evident from the provision aforesaid that in the event of occurrence of a vacancy on the post of Principal, the Management of an affiliated college has been given a discretion to appoint 'any teacher' to officiate as Principal for a period of three months or until appointment of a regular Principal whichever is earlier. If on or before the expiry of the period of three months, any regular Principal is not appointed or such a Principal does not assume office, the senior-most teacher in the college shall officiate as Principal of such college until a regular Principal is appointed. The language employed in Statute 13.20 makes it abundantly clear that if a regular Principal is not appointed within three months or such Principal does not join before the expiry of three months, the senior-most teacher in the college 'shall' officiate as Principal of such college until a regular Principal is appointed. The right of the senior-most teacher in the college to officiate as Principal till a regular Principal is appointed, is not dependent on any formal order of appointment by the management or Vice Chancellor. It is not disputed that the fourth respondent is not the senior-most teacher in the college and the petitioner is

admittedly senior to the fourth respondent. In paragraph No. 14 of the writ petition it has been averred that Prof. B.B.L. Agrawal, the senior-most teacher of the college, has already retired and Dr. A.K. Gupta next in the order of seniority has proceeded on long leave for the last several years and has, perhaps, taken job in United States of America and Dr. T.N. Verma, the third teacher in the order of seniority, has also retired and Dr. D.K. Agarwal, ranking fourth in the seniority list has declined to work as officiating Principal and therefore, the petitioner being next senior-most teacher became entitled to officiate as Principal after expiration of period of three months from the date the fourth respondent was appointed as officiating Principal of the college.

Para 6. It is then contended by the counsel for the respondents that the petitioner was not qualified for appointment as a Principal in the Post Graduate Department. In our opinion, the criteria for appointment as officiating Principal in an affiliated college is seniority. The petitioner being senior to the fourth respondent is entitled to work as officiating Principal. The fourth respondent has no right to work as officiating Principal.'

As per judgment in A.P. Singh (Dr.) (supra), the petitioner is entitled to function as officiating Principal of the institution.

19. Counsel for the respondents contended that the case of Bansh Lal Singh Sengar v. D.I.O.S., Kanpur Dehat and Ors., is not a binding precedent as U. P. Secondary Education Services Commission (Removal of Difficulties), Order, 1981, was being considered therein. Apart from the above, the Judgment of Bansh Lal Stngh Sengar v. D.I.O.S., KanpurDehat, 1989 (1) UPLBEC 425 (DB). would not be binding as it cannot override Section 18 (4) of U. P. Act No. 5 of 1982 and, therefore, the Division Bench judgment would be per incuriam in view of the judgment in 1991 (4) SCC 39.

20. During the arguments, it has been submitted that the requisition letter for the post of Principal of the college has been sent for recruitment of a permanent Principal. Interview for the post of Principal is likely to be held on 11th June, 2003. The State Government has issued an order restraining any further ad hoc appointment on the post of Principal, therefore, the petitioner is not entitled for his

appointment in view of the letter dated 11th June, 2002, which is as under :

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21. From the facts and law stated above, it is established that respondent No. 4 is the senior-most lecturer in the institution having experience of more than 30 years. Since ad hoc appointment on the post of Principal cannot now be made in view of the requisition letter dated 11.6.2002, which has already been sent for recruitment of a permanent Principal, it would not be proper to disturb the functioning of the institution, until or unless the aforesaid Government order is declared ultra vires, which has not been challenged by way of amendment and it cannot be by-passed as has been held by the Apex Court in paragraphs 7, 11 and 12 in Life Insurance Corporation of India v. Asha Ramchandra Ambekar (Mrs.) and Anr., (1994) 2 SCC 718.

22. For the reasons stated above, the writ petition is dismissed. No order as to costs.

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