

Dr. Deepak Bhatiya and ors. Vs. State of U.P. and ors.

Dr. Deepak Bhatiya and ors. Vs. State of U.P. and ors.

SooperKanoon Citation : sooperkanoon.com/487615

Court : Allahabad

Decided On : Sep-17-2009

Reported in : 2010(1)AWC48

Judge : Arun Tandon, J.

Appellant : Dr. Deepak Bhatiya and ors.

Respondent : State of U.P. and ors.

Judgement :

Arun Tandon, J.

1. Heard learned Counsel for the parties.

2. The controversy involved in the writ petition pertains to the consideration of the experience obtained by the teachers while working in recognized institutions affiliated to Central Board for Secondary Education, New Delhi (C.B.S.E.) for the purpose of being eligible for appointment as Principal/Headmaster of the institutions recognized under the Intermediate Education Act. Petitioners have made application for the purpose of being considered for the post of Principal in response to the advertisement published by the U.P. Secondary Education Services Selection Board, being Advertisement No. 2/2008. Under Appendix-A to Chapter-II of the regulations framed under the Intermediate Education Act for being considered for appointment on the post of Principal, a teacher has to be

possessed of necessary teaching experience of imparting education to students of classes IX to XII.

3. In the facts of the case the teaching experience required is four years. Petitioners claim that they have been working as regular teacher in the institutions recognized/affiliated to the C.B.S.E., New Delhi for more than four years. However, their applications have not been entertained on the ground that the experience gained while working in the institutions recognized by the C.B.S.E. cannot be taken into consideration for the purpose of Item-I of Appendix-A to Chapter-II of the Regulations framed under the Intermediate Education Act.

4. This Court vide order dated 4th September, 2009 required the Secretary (Education) of the State to file an affidavit disclosing his stand in the matter.

The Director of Education has filed an affidavit before this Court on behalf of the respondent No. 1 as well as on his behalf. In the affidavit the only reason disclosed for not considering the experience gained by the petitioners while teaching in the institutions recognized by the C.B.S.E. is that they are paid salary by the management of the institution from its own resources and for this reason an attempt has been made to equate the petitioners with the part-time teachers appointed under Section 7AA of the Intermediate Education Act, i.e., in self-financing Intermediate College. Reliance has also been placed upon Section 7AB of the Intermediate Education Act, which provides that in respect of part-time teachers appointed under Section 7AA provisions of the U.P. High School and Intermediate Colleges (Teachers and other Employees) (Payment of Salary) Act, 1971 and those of U.P. Secondary Education Services Selection Board Act, 1982 will not be applicable.

5. I am of the considered opinion that the reference to Sections 7AA and 7AB of the Intermediate Education Act is totally misplaced, The petitioners are not part-time teachers. They have been appointed as full time teachers in the institutions affiliated to the C.B.S.E., New Delhi for imparting education to students of Classes IX to XII. Therefore, non-consideration of the experience gained by the regular teachers of such institutions, only because payment of salary is made by the management, cannot be the basis for excluding such experience gained. Even

otherwise it may be noticed that Section 7AB, when it talks exclusion of the U.P. High School and Intermediate Colleges (Teachers and other Employees) (Payment of Salary) Act, 1971 and those of U.P. Secondary Education Services Selection Board Act, 1982 qua part-time teachers, it only means that qua payment of salary, appointment and dismissal of part-time teachers appointed under Section 7AA, the provisions of the aforesaid Acts will not be applicable in the facts.

6. At this stage counsel for the petitioners makes a reference to the letter of the State Government dated 16th April, 2004 addressed to the President, U.P. Secondary Education Services Selection Board wherein it has been stated that the teaching experience gained by the candidate while working in C.B.S.E./I.C.S.C. Institutions cannot be ignored and has to be taken into consideration as valid experience for the purposes of appointment as Principal in a recognized Intermediate College.

7. In the totality of the circumstances noticed herein above, this Court is of the considered opinion that the State Government must examine the entire matter qua the teaching experience obtained by the persons like the petitioners from the institutions recognized by the C.B.S.E., New Delhi to be treated as valid for the purposes of requirements of Item-I of Appendix-A of Chapter-II of the Regulations framed under the Intermediate Education Act and to issue appropriate clarifications in accordance with law.

8. Let, the respondent No. 1 pass a reasoned speaking order, preferably within four weeks from the date a certified copy of this order is filed before the Secretary concerned. All consequential action shall be taken by the U.P. Secondary Education Services Selection Board accordingly.

9. With the aforesaid observation/direction the present writ petition is disposed of.