

Pramod Kumar vs U.P.Sec.Education Services Com. & Ors on 7 March, 2008

Equivalent citations: AIR 2008 SUPREME COURT 1817, 2008 (7) SCC 153, 2008 AIR SCW 2507, 2008 LAB. I. C. 2596, 2008 (4) ALL LJ 207, 2008 (5) SRJ 201, (2008) 65 ALLINDCAS 104 (SC), 2008 (65) ALLINDCAS 104, 2009 (1) SERVLJ 207 SC, 2008 (4) SCALE 580, 2008 (72) ALL LR 60 SOC, (2009) 1 LAB LN 128, (2008) 2 SCT 699, (2008) 4 SERVLR 692, (2008) 4 SCALE 580

Author: S.B. Sinha

Bench: Harjit Singh Bedi, S.B. Sinha

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2568 OF 2006

Pramod Kumar

...Appellant

Versus

U.P. Secondary Education Services
Commission & Ors.

...Respondents

JUDGMENT

S.B. SINHA, J :

1. Appellant was appointed as an Assistant Teacher in C.T. Grade in an Intermediate College. Admittedly, essential qualifications and other conditions for recruitment therefor are prescribed by Uttar Pradesh Secondary Education Services Selection Boards Act, 1982 (the Act) and the Rules framed thereunder. Section 16 of the Act provides for the essential qualifications. In terms of the Act, rules were framed by the State of Uttar Pradesh in 1993 known as the Uttar Pradesh Secondary Education Services Commission Rules (the Rules).

Section 16 of the Act reads, thus :

"16. Appointments to be made only on the recommendations of the Board - (1) Notwithstanding anything to the contrary contained in the Intermediate Education Act, 1921 or the regulations made thereunder but subject to the provisions of Sections 12, 18, 21-B, 21-C, 21-D, 33, 33-A, 33-B, 33-C, 33-D, 33-E and 33-F, every appointment of a teacher, shall on or after the date of the commencement of the Uttar Pradesh Secondary Education Services Selection Board (Amendment) Act, 2001 be made by the management only on the recommendation of the Board":

Provided that in respect of retrenched employees, the provisions of Section 16-EE of the Intermediate Education Act, 1921, shall mutatis mutandis apply:

Provided further that the appointment of a teacher by transfer from one Institution to another, may be made in accordance with the regulations made under Clause (c) of sub-section (2) of Section 16-G of the Intermediate Education Act, 1921:

(2) Any appointment made in contravention of the provisions of sub-section (1) shall be void."

2. The minimum qualification for Masters and Teachers were laid down in the Rules as prescribed under Section 16E, 16F and Section 16FF of the Act.

Rule 3 of the Rules reads as under:-

"3. Qualifications and experience, etc. for appointment as teacher. - (1) The minimum academic qualification for appointment as teacher shall be as given in Regulation 1 under Chapter II of the Regulations, framed under the Intermediate Education Act, 1921. (2) No male person shall be eligible for appointment to the post of the head of an institution or teacher in a girls institution.

Provided that nothing contained in this sub-rule shall apply in relation to -

(i) a teacher already working in a permanent capacity in a girls institution for promotion or appointment to any higher post of a teacher not being the post of the head of an institution in the same institution.

(ii) Appointment as a teacher for the subject of music in an institution to a person who is blind.

Provided further that when a suitable lady candidate is not available for appointment in a girls institution for the post of a teacher, not being the post of head of institution, or for any other sufficient reason, the Commission is satisfied that it is in the interest of the students so to do, it may recommend a male candidate for such post:

Provided also that, before recommending a male candidate in accordance with the preceding proviso, the Commission may obtain and consider the views of the Director and Management."

4. It is neither in doubt nor in dispute that prior to coming into force of the said Act, the matters relating to recruitment of Assistant Teachers used to be governed by the U.P. Intermediate Education Act, 1921 (1921 Act). A bare perusal of the aforementioned provisions read with those of 1921 Act would clearly show that the possession of a graduate degree from a University recognized under the University Grants Commission Act (UGC Act) or any other State Act was at all material and still is imperative.

5. Appellant admittedly did his B.Ed. Degree from Maithili Vishwa Vidyapeeth, Sankat Mochan Dham Darbhanga, Bihar. The name of the said institution allegedly figured in a 'Directory of Institutions for Higher Education', published by Ministry of Education and Culture, Government of India in the year 1982. It, however, stands admitted that it was not an institution recognized under the UGC Act.

6. He was appointed on 29.11.1988 by the Principal/Manager, Shri Jawahar Inter College Bamnauli (Meerut) stating;

"You are hereby informed with pleasure that the teacher's selection committee of the college has appointed you in short term vacancy as ad-hoc assistant teacher in C.T. Grade on the basis of interview held on 20.11.1988 up to the reversion of Sh. Shiv Kumar Sharma at his post or vacancy filled up and joined with a person selected by commission at the above post.

Please join the duty at above post within 10 days, otherwise this appointment letter of yours will be deemed as cancelled."

7. It became known to the University that he had not been possessing a degree granted by a university recognized by the Commission.

He was asked to obtain a B.Ed. degree from a recognized University within a period of two years. An opportunity was granted to him to obtain such a degree by a letter dated 18.2.1993 stating;

"You, Shri Pramod Kumar, Asst. Teacher CT Grade, know that you have acquired B.Ed. degree from Maithili Vishwavidyapeeth Darbhanga. We came to know from reliable sources that the said University from where you have acquired B.Ed. degree has not been recognized by University Grants Commission.

Earlier also by the Manager of Institution Shri Naresh Singh Rathi has also directed you to acquire B.Ed. degree from a recognized University within a period of two years. Now I, as a last opportunity, direct you to acquire B.Ed. degree from a recognized University. You are requested to acquire B.Ed. degree in future otherwise Managing Committee shall be constrained to take appropriate action."

8. He prayed for appearing in the said examination in B.Ed. Correspondence Examination from Maharshi Dayanand University, Rohtak (Haryana). Allegedly, such permission was granted and he

obtained a requisite degree. Before us, however, only a marksheet issued by the Controller of Examination of Maharshi Dayanand University, Rohtak has been placed. Whether the Correspondence Course for B.Ed. Degree granted by the said University is valid and recognized by the State of U.P. or not is not known.

9. Inter alia on the premise that he had not been paid his salary, he filed a Writ Petition before the High Court of Judicature at Allahabad which was marked as Civil Miscellaneous Writ Petition No. 1338 of 1989. Upon noticing that he had been getting his salary from 1.1.1991, by a Judgment and Order dated 5.7.1996, the High Court directed the respondents to pay the arrears of salary from 1.12.1988 to 31.12.1990.

10. Allegedly, as the said Order was not complied with, a Contempt Petition was filed wherein a show cause notice was issued by the High Court.

It is, however, not in dispute that a notice to show cause was served upon him on or about 11.1.1987, on the premise charge that he had obtained his appointment on the basis of a fabricated and illegal B.Ed. degree. Cause was shown by him on 16.1.1997.

11. A departmental proceeding was thereafter initiated against the appellant. On completion thereof, his services were terminated by an order dated 12.2.1997. He filed a Writ Petition questioning the correctness of the said order. By reason of a judgment and order dated 9.3.1997, a learned Single Judge of the High Court dismissed the said Writ Petition stating :

"After considering respective contentions of the parties and in view of the admitted facts, I find that the petitioner was appointed originally when admittedly he was not having proper qualification. The petitioner has failed to show under what circumstances he could be validly appointed on the basis of such qualification of bachelor of education degree awarded by a university which was non recognised. That being so the appointment itself is bad. No question of estoppel also arises in such case. The law in this connection has been decided in the case of Ravinder Sharma and Another versus State of Punjab and Others reported on 1995 1 S.C.C. 138.

In present case the petitioner's appointment was not having an approval and he was only paid salary under the court's order. Moreover, admittedly the petitioner's appointment was without there being a proper qualification and as such the appointment of the petitioner was in violation of section 16-E of the U.P. Intermediate Education Act, 1921. In the circumstances, the petitioner is not entitled to protection under section 16-C(3) of the said act."

12. The High Court, furthermore, in its judgment took into consideration the contention of the appellant that his services should have been regularised in terms of Section 33-A and Section 33-B of the Uttar Pradesh Secondary Education Services Selection Board Act, 1982, as he had been possessing the prescribed qualification at the material point of time.

13. A Special Appeal preferred by the appellant against the said judgment and order has been dismissed by the Division Bench holding;

"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 de hors 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 of B.Ed. We are in full agreement with the Ld. Single Judge who has not found any good ground for interference under the extra ordinary 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 merits and is hereby dismissed with no order as to cost."

14. Mr. P.S. Patwalia, the learned senior counsel appearing on behalf of the appellant in support of this appeal inter alia submitted :

(i) Keeping in view the fact that the appellant did not conceal any material fact and the management was aware that the degree possessed by him was not granted by a recognized university, it is not a case where he can be said to have committed a fraud upon the institution.

(ii) In any event, as the management had permitted him to obtain a fresh degree which having been obtained, his services should have been directed to be continued.

(iii) The action of the management was mala fide as the departmental proceeding was initiated only after the change in management and in view of institution of a contempt petition against the management of the institution.

(iv) Appellant having served the institution for more than nine years from 1988, the High Court should have allowed the writ application.

15. Mr. S.R. Singh, the learned senior counsel appearing on behalf of the respondents, on the other hand, submitted :

(a) Appellant having not possessed any valid degree from a University recognised by the University Grants Commission, his appointment was illegal.

(b) Rule 3 of 1993 Rules providing for a degree from a recognised university as a sine quo non for appointment to a post. A subsequent acquisition, therefore, would not come to his rescue.

(c) Appellant having not fulfilled the conditions precedent for regularization of his services in terms of the provisions of the Uttar Pradesh Secondary Education

Selection Board Act, 1982, the High Court has rightly rejected the said prayer.

17. The qualifications for holding a post have been laid down under a statute. Any appointment in violation thereof would be a nullity.

18. It is a matter of some concern that appointments are being offered by the authorities of the State without verifying the fact as to whether the degree(s) possessed by the candidate(s) are valid or not. It was an ad hoc appointment. Why despite the same, he was allowed to obtain degree from another university is not known

19. If the essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Such an act cannot be ratified. An appointment which is contrary to the statute/statutory rules would be void in law. An illegality cannot be regularized, particularly, when the statute in no unmistakable term says so. Only an irregularity can be. {See Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others [(2006) 4 SCC 1] National Fertilizers Ltd. and Ors. Vs. Somvir Singh [(2006)5SCC493] and Post Master General, Kolkata and Ors. Vs. Tutu Das (Dutta) [(2007)5SCC317] }

20. Various institutions have sprung up in different parts of India representing that their degrees are recognized. However, even no such representation appears to have been made to the appellant by the said institution. The directory of institutions for higher education merely gives details of the institutions. No statement was made therein that it was a recognised university.

21. Maithili Vishwa Vidyapeeth Sankat Mochan Dham was a name given to an institution. It was not a University. It is said to have been founded in the year 1962.

Admittedly, it is a privately managed institution. Although it offered a large number of courses like Madhyama, Visarad, Shastri, Acharya, Vidyabhaskar, Vidyaratna, Vidyavaridhi, Vidyavachaspati, Mahamahopadhyaya, the number of teachers therein were nine only. What sort of education was imparted therein is not known. How an institution could be run with a teacher strength of nine can very well be imagined.

It is not in dispute that the said institution was not recognized by any University. A degree is recognized only if it is granted by a University constituted in terms of the University Grants Commission Act, 1956 or under any State or Parliamentary Act. No University can be established by a private management without any statutory backing.

22. The management of the school, when it came to learn that the appellant did not possess a degree of B.Ed. from a recognised University, should have terminated his services forthwith. It did not do so for reasons best known to it. It has not been shown to us that the management of the school had any authority to allow the appellant to obtain the requisite degree from any other University during the tenure of his services. Even the Commission in its counter affidavit, although otherwise supports the case of the appellant, did not say so.

Our attention has been drawn to a decision of the Punjab and Haryana High Court in Ram Bhagat Sharma and Others Vs. State of Haryana and Others [1997 (4) RSJ 134] wherein it was directed :

"With a view to protect the interest of the students community, we direct the Government of Haryana to take steps to prevent future recruitment of persons possessing qualifications awarded by Hindi Sahitya Sammelan, Allahabad, and/or Hindi Sahitya Sammelan, Prayag, Allahabad, and at the same time take appropriate measures to dispense with the services of the unqualified teachers. For this purpose, the Government of Haryana is directed to issue written instructions to all concerned that in future no appointment be given to the persons possessing qualifications by the institutions referred to herein above. We also direct the Government of Haryana to take steps for terminating the services of all such teachers who have secured employment on the basis of degrees/diplomas/certificates issued by Hindi Sahitya Sammelan, Allahabad and/or Hindi Sahitya Sammelan, Prayag, Allahabad. However, those who have completed three years service should be given an opportunity to acquire the requisite qualification within a stipulated time. In case they fail to acquire such qualification, then appropriate order be passed to dispense with the services of such persons."

23. We, with respect, do not subscribe to the said view. In any event, it is not a case where, this Court is to protect the interest of the students. The question herein is as to whether the services of the appellant can be said to have been illegally terminated or not.

24. A departmental proceeding against the appellant might have been initiated after the change of management. We will also assume that the said proceeding was initiated after the contempt proceeding was initiated. Appellant, however, has filed a writ application for issuance of or in the nature of a writ of mandamus. He, therefore, must establish existence of a legal right in himself and a corresponding legal duty in the State. If he did not possess the requisite qualification to hold a post, he could not have any legal right to continue. It was, therefore, immaterial as to why and when the said proceeding had been initiated against him.

Reliance placed by Mr. P.S. Patwalia on Shainda Hasan Vs. State of Uttar Pradesh and Others [(1990) 3 SCC 48] is not apposite. Therein a concession was made on behalf of the State that the University had agreed that asking the appellant therein to leave the job after 16 years will be doing injustice to her. Such a view might have been taken by this Court in exercise of its extra ordinary jurisdiction under Article 142 of the Constitution of India. The question, however, that arose therein was as to whether the Selection Committee could grant relaxation of the educational qualification vis-à-vis the experience required to be obtained. It was held that such a power did not exist in the Selection Committee.

It was, therefore, a case where relaxation in regard to experience was sought for and granted. It was not a case where the appellant therein lacked basic educational qualification. Herein, we are concerned with a case where the appellant lacked basic educational qualification.

25. Reliance has also been placed by Mr. Patwalia on Dr. M.S. Mudhol and Another Vs. S.D. Halegkar and Others [(1993) 3 SCC 591]. Therein a writ of quo warranto was sought for in a case involving the question as to whether a degree granted in favour of the appellant therein was equivalent to another degree or not. It was found that as public interest would not suffer, a writ of quo warranto may not be issued. The Court, therefore, did not exercise its discretionary jurisdiction.

26. Yet again reliance has been placed on Santosh Yadav (Smt.) Vs. State of Haryana and Others [(1996) 9 SCC 320]. Appellant therein was having a diploma which was not approved by the State of Haryana and despite the same, teachers were appointed to meet the State's educational needs. The validity of the said degree was not in question. Not only appointments were made but also appointment to the appellant was offered in 1980. His services were confirmed in 1984 and sought to be terminated in the year 1990. This Court noticed that a relaxation was granted by the State itself which was available to her and others similarly situated. She, having obtained regularisation in her service, it was wrong and arbitrary on the part of educational department and the school to deprive her of the job. The same is not the case here.

27. A similar question, on the other hand, came up for consideration before this Court in Ravinder Sharma (Smt.) and Another Vs. State of Punjab and Others [(1995) 1 SCC 138] wherein a three Judges' Bench held;

"12. The appellant was directly appointed. In such a case, the qualification must be either:

(i) A Graduate/Intermediate second class or,

(ii) Matric first class.

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."

28. Almost to the same effect is the decision of this Court in Mohd. Sartaj and Anr. Vs. State of U.P. and Others [JT 2006 (1) SC 331] holding;

"It is settled law that the qualification should have been seen which the candidate possessed on the date of recruitment and not at a later stage unless rules to that regard permit it. The minimum qualification prescribed under Rule 8 should be fulfilled on the date of recruitment. Equivalence of degree of Moallium-e-Urdu, Jamia Urdu Aligarh with that of B.T.C. in the year 1994 would not entail the benefit to the appellants on the date they were appointed. The appellants could not have

been appointed to the post of Asstt. Teachers without having training required under Rule 8. That being the case, the appointments of the appellants were de hors the Rules and could not be treated to be continued. For the aforesaid reasons, we do not find any substance in the appeals and are, accordingly, dismissed."

29. Recently again in Ashok Kumar Sonkar Vs. Union of India and Others [(2007) 4 SCC 54], it was held;

"16. Indisputably, the appellant herein did not hold the requisite qualification as on the said cut-of date. He was, therefore, not eligible therefor."

30. Some arguments have also been advanced before us in regard to applicability of Removal of Difficulties Orders Issued under U.P. Secondary Education Services Selection Board Act, 1982. The services of the appellant had been terminated in the year 1997 and the cut off date having been fixed on 1998, the said act, in our opinion, is not applicable. The benefits rendered thereunder would not be not applicable in view of the Full Bench decision of the High Court in Radha Raizada Vs. Committee of Management, Vidyawati Darbari Girls' College [1994 All. L.J. 1077] which has been approved by this Court in Prabhat Kumar Sharma and Others Vs. State of U.P. and Others [(1996) 10 SCC 62].

32. For the reasons aforementioned, there is no merit in this appeal. The appeal is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

.....J. [S.B. SINHA]J. [HARJIT SINGH BEDI] New Delhi;

March 7, 2008