

Subhash Chandra Yadav vs The State Of U.P. And Others on 13 April, 2018

Author: Ajit Kumar

Bench: Ajit Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. - 13

Case :- WRIT - A No. - 19054 of 2008

Petitioner :- Subhash Chandra Yadav

Respondent :- The State Of U.P. And Others

Counsel for Petitioner :- Anil Bhushan, Miss. Rashmi Tripathi, Siddharth Khare, Y.K. Saxena

Counsel for Respondent :- C.S.C., Narendra Rana, S.K. Verma, Shailendra Verma, T.D. Verma

Hon'ble Ajit Kumar, J.

Heard learned counsel for the parties.

By means of this writ petition under Article 226 of Constitution of India, the petitioner is seeking to challenge the order passed by Assistant Director of Education Officer, Kanpur Region Kanpur rejecting the candidature of the petitioner basically on the ground that academic qualification of the petitioner was not as per U.P. Recognized Basic Schools (Junior High Schools) (recruitment and Conditions of Service of Teachers) Rules, 1978 (hereinafter referred to as "1978 Rules") and, therefore, he being not qualified with minimum qualification recognised under the Rules, his appointment could not be approved.

The facts of the case are that institution, namely, Radha Krishna Madhyamik Vidyalaya, Baisai, Barthana, Itaura is recognized and aided institution under the U.P. Basic Education Act, 1972 made

a selection of the petitioner as Assistant Teacher in the institution. The petitioner having completed 10 years of service on the post of Assistant Teacher applied for exemption from training as the exemption was offered under the Government Order. It appears later on vacancy of Headmaster of the institution fell vacant and the permission was sought by the institution from the District Basic Education Officer to make selection and appointment against the vacancy. The District Basic Education Officer accorded the same and consequently vacancy came to be advertised and the petitioner applied against the said post. the District Basic Education Officer vide order dated 22nd October, 2001, (Annexure 4 to the writ petition) accorded the approval to the selection of the petitioner with rider that if the facts were found to have been concealed or the documents were found to be forged, the approval will cease to exist automatically.

It transpires from the record that later on Committee of Management found that petitioner was not qualified with graduation degree and that he had failed in B.A. so Committee of Management resolved to terminate the services of the petitioner. However, later on, on the basis of some certificate of Uttama (Sahitya Ratna) obtained from Hindi Sahitya Sammelan, Prayag, Allahabad the termination of the petitioner was recalled by the Committee of Management by adopting a resolution and the petitioner was permitted to be reinstated in services and papers were accordingly forwarded to the district Basic Education Officer. A letter sent by Manger to the District Education Officer dated 26th March, 2007, (Annexure 7 to the writ petition) acknowledges this fact. It appears that after institution came on grant-in-aid list in the year 2006, the question arose regarding approval of appointment of teachers for the payment of salary from the public exchequer and the matter of three institutions were forwarded by the District Basic Education Officer to the Assistant Basic Education Officer vide letter dated 29th March, 2007 for necessary orders.

The matter pertaining to the staff of the institution in question figures at item no. 2. After due verification of the qualification of the teachers in institution in question, Regional, Assistant Director of Education refused payment of salary to the petitioner on three grounds: (a) At the time of initial appointment, petitioner was minor as his age was less than 18 years; (b) B.A. marksheet of the petitioner during verification were found to be forged and that he had failed in B.A. Examination; and (c). The petitioner for the purpose of appointment had relied upon Uttama Certificate/ degree of Hindi Sahitya Sammelan, Allahabad for the purpose of appointment under the Rules, 1978 against post of Head-master which was not as per rules recognized degree, therefore, appointment of the petitioner was invalid in view of the Rules, 1978, and thus petitioner held as of not possessed with requisite qualification and so not entitled for any payment of salary.

Rule 4 of the 1978 Rules read as under:

"4. Minimum Qualification.--(1) The minimum qualifications for the post of Assistant Teacher of a recognised school shall be Intermediate Examination of the Board of High School and Intermediate Education, Uttar Pradesh or equivalent examination (with Hindi and a teacher's training course recognised by the State Government or the Board such as Hindustani Teaching Certificate, Junior Teaching Certificate, Basic Teaching Certificate, or Certificate of Training).

(2) The minimum qualifications for the appointment to the post of Headmaster of a recognised school shall be as follows:

(a) A degree from a recognised University or an equivalent examination recognised as such;

(b) A teacher's training course recognised by the State Government or the Board, such as Hindustani Teaching Certificate, Junior Teaching Certificate, Basic Teaching Certificate, or Certificate of Training; and

(c) Three years teaching experience in a recognised school.

5. Eligibility for appointment.--No person shall be appointed as Headmaster or Assistant Teacher in substantive capacity in any recognised school, unless--

(a) he possesses the minimum qualifications prescribed for such post;

(b) he is recommended for such appointment by the Selection Committee."

The question of qualification as equivalent to the one prescribed under the Rules can only be considered in case State Government has decided to recognize a particular certificate or degree qualification to one prescribed under the Rules. On repeated query being made, learned counsel for the petitioner could not point out any such Government order by which the qualification of Uttama certificate issued Hindi Sahitya Sammelan has been directed to treated as equivalent to the one prescribed under the Rules.

In Rajasthan Pradesh v. S. Sardarshahar and Another, AIR 2010 SC 2221, Supreme Court has held that in case of Charan Singh & Ors. Vs. State of U.P. & Ors. AIR 2004 All. 373, the Allahabad High Court considered the validity of the certificate issued by the Hindi Sahitya Sammelan, Prayag and came to the conclusion that the said institution had absolutely no authority to confer any degree or diploma of "Vaidya Visharad" and "Ayurved- Ratna" after 1967 and any person who has acquired such certificate after 1967 was not entitled to practice at all.

Supreme Court has also referred to the judgment in the case of Virender Lal Vaishya Vs. Union of India and Ors. 2003 (2) Mah. LJ 64, wherein a Division Bench of the Bombay High Court held that hindi Sahitya Sammelan, Prayag was not a recognised university/board and thus could not award degree, diploma or certificate and thus Supreme Court concluded vide para 32 as under:

"32 Thus, from the above, it is evident that under the then prevailing rules, certificates issued by the Hindi Sahitya Sammelan Prayag remained recognised only upto 1967. The Authorities under the statute, on the report submitted by the State of U. P. had taken a decision not to recognise the said courses any further. The Society for the reasons best known to it never made an attempt to get recognition after fulfilling the legal requirements and getting the Entry no.105 in Second Schedule of

the Act, 1970, modified. "

In yet another case of *Urmila Devi v. Stae of U.P. And Another*, 2012 1 ADJ 346, division bench of the High Court has held that Prathama and Madhyama Visharad conducted by Hindi Sahitya Sammellan, Prayag, Allahabad is not equivalent to Intermediate. Division Bench has further held that Hindi Sahitya Sammellan does not have the requisite recognition to grant certificates and degrees that could be recognized as equivalent to the Education Board and Universities recognized under the State and Central Act respectively.

Admittedly, Hindi Sahitya Sammellan is not created under statute to conduct any examination equivalent to that of the U.P. Board or Central Board of Secondary Education so as to confer diploma certificate which may have equivalence to the one issued by the State Board or the Central Board for Secondary Education. Similarly, Hindi Sahitya Sammellan being not university or deemed university created by State or Central statute does not have power to confer degree.

Vide 15 of the Judgement of Division Bench (supra) it held thus:

"15. There is another aspect to the matter namely that if the qualification conducted by private societies, in respect of language are treated as equivalent to the statutory boards, the candidates passing the examination from the statutory board will be seriously discriminated in appointments in Government Service, which is regulated by the statutory rules. The Court cannot permit the equivalence to be considered so casually. In *Rajsthan Pradesh V.S. Sardarshahar & Anr.* (Supra) the Supreme Court considered the legal status of Hindi Sahitya Sammelan and found that it is neither university/ deemed university nor an educational board. It is society registered under the Societies Registration Act and is not an educational institutions imparting education in any subject. There is no school/ college imparting education in any subject affiliated to it. It also does not have any recognition from any statutory authority, even in respect of medical qualifications after 1967. "

Thus no private society merely because it so registered under the Societies Registration Act, 1860, gets an authority to issue certificate/diploma in a field already occupied by Central and State legislation. Upto Intermediate courses are recognized by the State and beyond that higher education is covered by University Grants Commission or All India Council for Technical Education or any State Level or Central Level Council recognized or created under a statute. So under no circumstances a society unless recognized by such authorities can run a course equivalent to the one prescribed for nor, is authorized to issue certificate diploma or degree unless authorized for. Even an appropriate government is duty bound to examine first the institution, its infrastructure, curriculum run by it whether at par with those prescribed for, before treating any certificate/diploma degree by a private body as equivalent to one prescribed for under the Recruitment Rules. It is not the case of the petitioner either.

In view of above, degree of Uttama possessed by the petitioner cannot be said to be equivalent to that of the criteria as required under the Recruitment Rules, 1978.

In view of above, writ petition lacks merit and is accordingly dismissed.

Order Date :- 13.4.2018 Sanjeev