

Court No. - 35

Case :- WRIT - A No. - 10661 of 2021

Petitioner :- C/M Shri Mahaveer Digambar Jain Sanskrit
Uchchatar Madhyamik Vidyalaya

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Aklank Kumar Jain

Counsel for Respondent :- C.S.C.

Hon'ble Vivek Agarwal,J.

1. Heard Sri Aklank Kumar Jain, learned counsel for the petitioner. Instructions furnished by Sri Pranav Ojha, learned Additional Chief Standing Counsel for the State are taken on record.

2. Learned counsel for the petitioner has filed this petition seeking issuance of a writ in the nature of mandamus commanding respondent no.2 Deputy Inspector (Regional), Sanskrit Pathshalaya, Jhansi Region, Jhansi to ensure recruitment on sanctioned vacant post of Assistant Teacher and also for recruitment of Principal in Shri Mahaveer Digambar Jain Sanskrit Uchchatar Madhyamik Vidyalaya, Sadumal, District-Lalitpur which is aided minority institution as expeditiously or within a defined time.

3. Learned counsel for the petitioner submits that earlier petitioner-Institution was affiliated to Sampurnanand Sanskrit Vishwavidyalaya, Varanasi. Thereafter in 2000, Sanskrit Board was constituted by the State Government and since then, petitioner-Institution is having affiliation with the State Sanskrit Board. Though, when asked then he is unable to show copy of order of affiliation from the documents available on record.

4. Petitioner's grievance is that State Authorities are not filling up the post of Assistant Teacher and Principal in the Sanskrit School being run and managed by the petitioner, but when he is

confronted with the instructions produced by learned Additional Chief Standing Counsel, Sri Pranav Ojha, wherein it is mentioned that taking into consideration shortage of teaching staff in non-governmental aided Sanskrit Madhyamik Vidyalaya and Government Sanskrit Schools, Additional Chief Secretary, State of U.P. vide order dated 24.07.2021 directed the Authorities, especially the District Magistrate to constitute a District Level Selection Committee and when Inspector of Schools, Lalitpur vide communication dated 12.08.2021 asked the Manager of the petitioner-School to publish an advertisement for appointment of teachers on honorarium, the Manager of the petitioner-School refused to comply with such order and vide communication dated 20.08.2021 claimed that petitioner being a minority educational institution, which has been recognized by the State of Uttar Pradesh also, claimed that salary be paid from the Government funds to the persons already appointed by the Manager/School Committee on ad-hoc basis.

5. It has come on record that Manager of the petitioner-school vide communication dated 20.08.2021 refused to comply with the orders of the District Inspector of Schools, Lalitpur dated 12.08.2021 on the ground that he has filed a writ petition before the High Court and till decision in the writ petition, he is not in a position to publish an advertisement.

6. This kind of conduct of the petitioner in not following the directives of the competent authority merely on the basis of some uncertain awaited result, can not be given seal of approval.

7. Sri Pranav Ojha, learned Additional Chief Standing Counsel for the State submits that appointment of teachers and principal is governed by the provisions contained in संस्कृत संस्थाओं के

शिक्षकों/कर्मचारियों की नियुक्ति तथा सेवा शर्तें विनियमावली, 2009.

8. Regulation 3(1) provides for recruitment of the Principal of the concerned Sanskrit School. Regulation 6(1) provides that appointment of teacher shall be made except for provisions contained in sub-Rule 2 may be filled up through direct recruitment. Sub-rule 2 of Rule 6 provides that 50% of the sanctioned post may be filled up by promotion of lower grade teachers working in the School and remaining posts will be filled through direct recruitment.

9. Regulation 5 provides that if there are permanent or temporary teachers who are not having prescribed qualification when recognition is granted under Section 11, then such temporary teachers, who have not been selected in terms of the provisions contained in the Act and the regulations can be dispensed with after giving one month's notice or salary of one month.

10. Regulation 9 provides for the procedure for direct recruitment of the Principal and the teachers. It provides for constitution of a Selection Committee consisting of:

- "1. सम्बन्धित अशासकीय संस्कृत माध्यमिक विद्यालय के प्रबन्धक - अध्यक्ष
2. सम्बन्धित जनपद के जिलाधिकारी द्वारा नामित जनपदीय अधिकारी - सदस्य
3. सम्बन्धित जनपद के जिला विद्यालय निरीक्षक - सदस्य सचिव
4. मंडलीय उप निरीक्षक, संस्कृत पाठशालायें - सदस्य
5. सम्पूर्णानन्द संस्कृत विश्वविद्यालय, वाराणसी द्वारा नामित-02 विशेषज्ञ - सदस्य"

11. Thus, it is evident that, a transparent system has been provided for recruitment under the Regulations framed under the provisions of उत्तर प्रदेश माध्यमिक संस्कृत शिक्षा परिषद अधिनियम, 2000 and these regulations are binding on all the

concerned parties.

12. When regulations itself provides for a mechanism for appointment, then contention of the petitioner that a one set of ad hoc teachers are being replaced with another set of ad-hoc teachers has no or little sanctity, especially when detailed scheme has been provided for recruitment. This aspect attains further importance in the light of the fact that State Government has to bear the expenses for payment of honorarium which is Rs.12,000/- per month for पूर्व मध्यमा स्तर and Rs.15,000/- per month for उत्तर मध्यमा स्तर.

13. This circular also provides for the marks which are to be allotted on different parameters for recruitment and makes the process very transparent.

14. Replacement of one set of persons appointed without following the due procedure with another set of persons sought to be appointed after following a transparent procedure cannot be said to be replacement of one set of ad-hoc appointees with another set of ad-hoc appointees.

15. Thus, contention of the petitioner's counsel that one set of ad-hoc appointees are being replaced with another set of ad-hoc appointees is not made out, inasmuch as, there is a detailed procedure prescribed for recruitment, which is to be followed and once a detailed procedure is provided for recruitment, then it cannot be said that procedure is mechanical and devoid of application of mind.

16. Fact of the matter is and as held in case of ***K.A. Abdul Majeed Vs. The State Of Kerala & Others (2001) 6 SCC 292*** provides that an appointment made after selection pursuant to advertisement for the post could not be termed as backdoor

entry. This aspect is of great significance when the authorities are trying to bring transparency in the appointments which is necessary for proper functioning of the system.

17. Law in regard to judicial review of an order of appointment is also settled that judicial review is permissible on the grounds of illegality, non-application of mind and *mala fide* etc. It is also settled principle of law as discussed in case of ***Dr. M.C. Gupta and others Vs. Dr. Arun Kumar Gupta; (1979) 2 SCC 339*** that the administration should not be thwarted in the usual course of making appointments because somehow it displeases judicial relish or the court does not agree with its estimate of the relative worth of the candidates. That is, the sympathy, should not be misplaced. Equity jurisdiction cannot be invoked on the touchstone of sympathy at the cost of merit and transparency.

18. Sri Jain, counsel for the petitioner submits that as per the order of the Supreme Court in case of ***Hargurpartap Singh Vs. State of Punjab and others; (2007) 13 SCC 292***, practice of replacing ad-hoc appointees with another set of ad-hoc appointees has been deprecated.

19. Petitioner has also placed reliance on judgment of Lucknow Bench in Service Single No.20410 of 2021, whereby the court has stayed the operation and implementation of advertisement dated 21.08.2021 as is contained in Annexure-1 to the said writ petition on the analogy drawn from the judgment of Supreme Court.

20. Fact of the matter is that in the present scheme, Inspector of Schools only asked the petitioner-Institution to publish an advertisement calling for names of interested candidates to be appointed on a fixed honorarium as faculty for teaching Sanskrit subject. It is not the intent of the Inspector of Schools

to replace a set of ad-hoc teachers with another set of ad-hoc teachers. The only purpose of seeking publication of an advertisement is to promote merit rather than favouritism, inasmuch as, once advertisement is published, then all the eligible candidates interested in taking up vocation of teaching Sanskrit will be able to apply and thereafter on the basis of their merits, suitable candidates can be adjudged. Therefore, ratio of the law laid down in case of Hargurpartap Singh Vs State of Punjab and others (**supra**) is not applicable especially under the fact situation that petitioner is trying to get aid for his own appointees without allowing them to go through the process of selection and rigor of testing of their merit. Therefore, this judgment is distinguishable both on facts and its own merits.

21. After going through the judgment, I am afraid that facts of this case are applicable to the facts of present case. Firstly, petitioner refused to publish an advertisement; secondly, aspect of seeking persons of merit and meritorious background has not been considered by a co-ordinate Bench of this Court at Lucknow Bench, while staying the proceedings by applying the ratio of law laid down in case of Hargurpartap Singh Vs State of Punjab and others (**supra**).

22. Fact of the matter is that, if in an Institution aid is to be provided by a Government organization, then there has to be some transparency in providing aid and backdoor entries who have been appointed at the whims and fancies of the management/manager cannot be allowed to continue and be given benefit of the aid at the cost of transparency in the procedure and also at the cost of the merit and, therefore, the ratio of law laid down in case of Hargurpartap Singh Vs State of Punjab and others (**supra**) will not be applicable to the facts of the present case and, therefore, interim order passed by a co-

ordinate Bench is neither binding on this court, nor can be used as a precedent for this Court and, therefore, both the judgments of Supreme Court as well as interim order passed by a co-ordinate Bench being distinguishable on facts and interim order of co-ordinate Bench having failed to take into consideration the aspect of merit, ad-hocism and lack of transparency is not applicable to the facts and circumstances of the present case. There is no merit in the challenge to the directions, issued by the State Government or the gesture of District Inspector of Schools in getting them enforced Petition fails and is **dismissed.**

Order Date :- 30.9.2021

Ashutosh