

Court No. - 2

Case :- WRIT - A No. - 7625 of 2021

Petitioner :- Mohd. Qayum Khan

Respondent :- State Of U.P.Thru Prin.Secy. Secondary Education Lko And Ors.

Counsel for Petitioner :- Faisal Ahmad Khan,Israa Rais

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

Heard.

By means of this writ petition, the following reliefs have been sought:-

"(i) Issue an appropriate writ, order or direction declaring the amendment made in Regulation 101 of Chapter III of the Regulations framed under U.P. Intermediate Education Act amended on 24.04.2014, so far as it prohibits appointment on Class-IV posts in minority aided Educational Institutions as ultra vires to the provision of Article 30 of the Constitution of India.

(ii) Issue a writ, order or direction in the nature of CERTIORARI quashing the amendment made in Regulation 101 of chapter III of the of Regulations framed under U.P. Intermediate Education Act amended on 24.04.2014, so far as it prohibits appointment on Class IV posts in minority aided Educational Institutions as ultra vires to the provision of Article 30 of the Constitution of India.

(iii) Issue a writ, order or direction in the nature of MANDAMUS staying the operation and implementation of the order dated 20.07.2019, passed by respondent no. 03 as contained in Annexure no. 02, to this petition.

(iv) Issue a writ, order or direction in the nature of CERTIORARI quashing the order dated 20.07.2019, passed by respondent no. 03 as contained in Annexure no. 02, to this petition.

(v) Issue a writ, order or direction in the nature of MANDAMUS commanding the respondent no. 03/District Inspector of Schools, Balrampur, to accord financial Approval to the petitioner's appointment, as "Anuchar" (Class IV), in the respondent no. 04, institution on the permanent post which has fallen vacant on 12.03.2017.

(vi) Issue a writ, order or direction in the nature of Mandamus directing the respondent no. 03/District Inspector of Schools, District- Balrampur, to pay the salary to the petitioner on the post of "Anuchar" (Class-IV), w.e.f. the date of his joining i.e. on 02.01.2018, and to pay the same as and when it falls due."

As regards, relief no. (i) and (ii), (i) & (ii) are redundant. The said issue is no longer *res integra*, as the vires of the same provision was under challenge before this Court and the Division Bench of this Court vide its judgment dated 19.11.2018 held that Regulation 101 of the Intermediate Education Act, 1921 was unconstitutional. Ultimately, the matter went up to Hon'ble the Supreme Court, by means of

Special Leave Petition filed by the State of U.P. which were converted into Civil Appeals bearing no's. 865, 2816, 2817, 2753, 866, 2754, 2819, 2820, 2818 and 2815 of 2021 leading appeal being **Civil Appeal No. 865 of 2021, State of U.P. & Ors. Vs. Principal Abhay Nandan Inter College & Others; AIR 2021 SC 4968**. The Supreme Court of India set aside the judgment of the Division Bench referred hereinabove and held Regulation 101 aforesaid to be *intra vires* the Constitution. The question of its applicability to minority institutions was also considered and it was held that it was applicable to minority institutions also, such as the opposite party no. 4 institution, therefore, the said reliefs are declined in terms of the judgment in the case of **Principal Abhay Nandan Inter College (Supra)**.

As regards, relief no. (iii), (iv), (v) & (vi), by the order dated 20.07.2019, the D.I.O.S, Balrampur decided the representation of the petitioner in pursuance to an order passed by this Court in Writ Petition No. 30059 (S/S) of 2018 and held that his appointment was not in accordance with rules, accordingly, his claim to the Class IV post and to be paid salary of the said post was declined.

The contention of the petitioner's Counsel is that in the year 2011, when a ban had been imposed on appointments on Class IV post in educational institutions vide order dated 06.01.2021 issued by the Government, a writ petition was filed by the opposite party no. 4 herein, bearing **Writ Petition no. 6213 (M/S) of 2011, Abdul Gaffar Hashmi Inter College Saadullahnagar Vs. State of U.P. & Another**, wherein an interim order was passed on 18.10.2011, which reads as under:-

"Notice on behalf of the opposite parties has been accepted by the learned Chief Standing Counsel.

Learned counsel for the petitioner submits that the petitioner is a minority institution and it has a right to establish and administer the educational institution under Article 30 of the Constitution of India.

Vide impugned Government Order dated 06.01.2011, a ban has been imposed on the appointment of Class IV posts and on that basis by impugned letter dated 06.07.2011, the opposite party no. 2 has refused to grant the permission to the petitioner's institution for making appointment on Class-IV posts.

Submission of the petitioner's counsel is that the petitioner's institution being a minority institution has a right to make appointment on Class-IV posts, the Government Order dated 06.01.2011 would not be applicable.

Prima facie, it appears that the Government Order dated 06.01.2011 cannot be made applicable on a minority institution.

In this view of the matter, the operation of the impugned order dated 06.07.2011 shall remain stayed. The petitioner's institution shall be permitted to make necessary appointment on Class-IV posts.

The opposite parties shall file counter affidavit within four weeks.

In case counter affidavit is filed, petitioner may file rejoinder affidavit within two weeks thereafter.

List thereafter."

According to him, his appointment was made on the Class IV post in the opposite party no. 4 institution as a consequence of the aforesaid interim order albeit on 02.01.2018, but this aspect of the matter has been ignored by the D.I.O.S., Balrampur while passing the order dated 20.07.2019.

On the other hand, learned Counsel for the State submitted that prior to the appointment of the petitioner, Regulation 101 had been amended and as per the amended regulation, Class-IV post in an educational institution including a minority institution, could only be filled up through outsourcing. Therefore, even if the interim order dated 18.10.2011 passed in the case of **Abdul Gaffar Hashmi Inter College Saadullahnagar (Supra)** is taken into consideration, it cannot be read, understood and applied so as to permit appointment dehors Regulation 101. Admittedly, the petitioner was not appointed through outsourcing but he was appointed by the Principal of the institution as per a procedure which he deemed fit and which was not in accordance with rules. This is precisely, what has been said in the order dated 20.07.2019, therefore, in view of the decision in **Principal Abhyanandan Inter College (Supra)**, the petitioner does not have any right, certainly not to receive salary from the State exchequer. He also informs that the opposite party no. 4 institution where the petitioner claims to have been appointed as aforesaid, is an aided minority institution, he therefore says that the petition be dismissed.

Having gone through the records, especially the order dated 20.07.2019, even though, so far as the ground taken therein with regard to ban on Class IV appointments, the same has been disapproved by this Court in several cases but the fact remains that even if the interim order dated 18.10.2011 is taken into consideration, Regulation 101 of the Regulations framed under the U.P. Intermediate Education Act, 1921 were amended sometime in 2013, thereby incorporating a provision by which Class-IV post in all educational institutions including minority institutions were to be filled only through outsourcing. No doubt centralized system for filling up of such posts through outsourcing came into force, as is mentioned in the order dated 20.07.2019, vide Government Order dated 12.02.2018 but this does not mean that prior to it appointments could be made dehors Regulation 101, therefore, the petitioner's claim that he was appointed prior to 12.02.2018 is misplaced. Regulation 101 had already been amended, therefore, the appointment could not have been made by the Principal dehors the said amended

Regulation 101, vires of which has been upheld by Hon'ble the Supreme Court in the case of ***Principal Abhyanandan Inter College (Supra)*** wherein it has also been held that the said provision applies to minority institutions also with equal force. As regards the reliance placed upon the judgment dated 19.11.2018 passed by a Division Bench of this Court declaring Regulation 101 to be unconstitutional in the case of of ***Principal Abhay Nandan Inter College, Vishnu Mandir and another Vs. State of U.P. and others***, firstly, the petitioners appointment was made prior to it i.e. in January, 2018 and at that time this judgment was not available, therefore, the benefit of the judgment cannot be made available to him and secondly, this judgment has been set aside and Hon'ble the Supreme Court which has held Regulation 101 to be *intra vires*, as already observed. All judgments of Court apply retrospectively unless specifically made prospective.

In this view of the matter, we are of the opinion that no interference is called for with the order dated 20.07.2019 and the petitioner cannot claim salary from the State ex-chequer nor can he claim a right to appointment or to continue on a sanctioned Class-IV post in the opposite party no. 4 institution. However, if he is in service and as informed by the petitioner's Counsel is being paid wages / salary by the opposite party no. 4 then he may continue to do so on a post other than the sanctioned post, if the institution so requires, and we have nothing to say in the matter, but, as far as the claim of the petitioner to any right on a sanctioned Class-IV post in the opposite party no. 4 institution and for salary from the State ex-chequer, the same cannot be accepted. For all these reasons relief no. (iii), (iv), (v) and (vi) cannot be granted by this Court.

The writ petition is **dismissed** in the aforesaid terms, subject however to the observations made herein above.

Our order shall not be made the basis for ousting the petitioner from service of the opposite party no. 4, subject however to what we have stated herein above.

Order Date :- 14.8.2024

Lokesh Kumar

[Om Prakash Shukla, J.] [Rajan Roy, J.]