

Shainda Hasan

Vs

State of Uttar Pradesh and Others

Civil Appeal No. 1135 of 1981

(P. B. Sawant, Kuldeep Singh JJ)

25.04.1990

JUDGMENT

KULDIP SINGH, J. -

1. Karamat Muslim Girls College, Lucknow (hereinafter called the 'College') is being managed by Anjuman Muslimat-e-Hind which is a society registered under the Societies Registration Act, 1860. The avowed object of the society is to advance the cause of education among the women of India. The College has been recognised by the State of Uttar Pradesh as a religious minority institution within the meaning of Article 30 (1) of the Constitution of India and as an affiliated of Lucknow University.

2. The post of lady Principal in the degree section of the college was advertised on April 5, 1974 indicating the following qualification/requirements :

- (1) First or good second class Master's Degree in any of the subjects taught in the institution;
- (2) At least five years experience of teaching degree classes as also administrative experience;
- (3) Must possess working knowledge of Urdu;
- (4) Willing to reside in the college premises.

3. In response to the advertisement the appellant along with others applied for the post. The appellant did not fulfil the qualification of five years experience. She alone appeared for the interview and the Selection Committee relaxed the qualification of experience in her favour and selected her. The management thereafter sought the approval of the University to appoint the appellant as required under Section 31 (11) of the Uttar Pradesh State Universities Act, 1973 (hereinafter called the 'Act'). The University, however, declined to approve and directed the management to re-advertise the post. The appellant challenged the decision of the University by way of a writ petition under Article 226 of the Constitution of India Before the Lucknow Bench of the Allahabad High Court on the ground that the college being a minority institution any interference by the University under the Act is violative of Article 30(1) of the Constitution. It was also contended that there was no basis or justification to withhold the approval.

4. The High Court rejected the attack on the ground of Article 30 of the Constitution of India by

holding that the provisions of the Act are regulatory and are primarily for the purpose of maintaining uniformity, efficiency and standards of education in the minority institutions. On the merits the High Court held that the Selection Committee was not justified in relaxing the qualification without reserving that right to itself in the advertisement. The High Court also found that the qualification "possessing working knowledge of Urdu" was unjust. On the above findings the writ petition was dismissed. This is how the appellant is before us via Article 136 of the Constitution of India.

5. The High Court has rightly held the relaxation granted by the Selection Committee to be arbitrary. In the absence of statutory rules providing power or relaxation, the advertisement must indicate that the Selection Committee/appointing authority has the power to relax the qualifications. Regarding "working knowledge of Urdu" we do not agree with the High Court that the said qualification is unjust. The college being a Muslim minority institution prescribing the said qualification for the post of Principal, is in conformity with the object of establishing the institution.

6. In the view which we are taking in this case it is not necessary to go into the argument based on Article 30(1) of the Constitution of India.

7. We heard the arguments in this case on February 23, 1990 and adjourned the case with the following order :

"It is admitted by the parties that as a result of the Court orders the appellant Ms. Shainda Hasan in continuing to work as Principal in the Karamat Husain Muslim Girls College, Lucknow since 1974. Having served the institution for over 16 years it would be unjust to make her leave the post. Under the circumstances let the University reconsider the whole matter sympathetically."

8. The case was taken up in chambers on April 20, 1990 when Mrs. Shobha Dikshit learned counsel for the State after obtaining instructions from the University agreed with us that asking the appellant to leave the job after 16 years would be doing injustice to her.

9. Keeping in view the facts and circumstances of the case and in the interest of justice we direct the Lucknow University and its Vice Chancellor to grant the necessary approval to the appointment of the appellant as Principal of Karamat Husain Muslim Girls College, Lucknow, with effect from the date she is holding the said post. We further direct that the appellant shall be entitled to the salary, allowances and all other consequential benefits to which a regular Principal of the said college would have been and is entitled. We dispose of the appeal with the above directions. There shall be no order as to costs.

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