

U.P. SHIKSHA AND EDUCATION BOARD

RAJENDER PRASAD GUPTA

FEBRUARY 26, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Service Law :*

*Appointment—Untrained Teacher—Two opportunities given to undergo training—Not availing the opportunity—Not permitted to continue in service—Challenge—Rejected by Tribunal—High Court holding that termination without following the procedure was illegal and directing reinstatement—On appeal held, letter discontinuing his services not illegal—High Court was wrong in its finding that the required procedure was to be completed for discontinuance of untrained teachers' service before service came to an end.*

*U.P. Basic Shiksha Parishad and Anr. v. Hari Deo Mani Tripathi and Ors, SLR Vol. 87 (1993) 1 held inapplicable.*

CIVIL APPELLATE JURISDICTION Civil Appeal No. 4288 of 1996.

From the Judgment and Order dated 9.3.1994 of the Allahabad High Court in Spl. A No. 36(SB) of 1993.

Sunil Gupta and H.K. Puri for the Appellants.

D.K. Garg for the Respondents.

The following Order of the Court was delivered :

Leave granted.

Heard counsel on both sides.

This appeal by special leave arises from the judgment of the High Court of Allahabad, Lucknow Bench made on March 9, 1994 in Special Appeal No. 36(SB) of 1993.

The respondent was appointed as an untrained teacher in the

proceedings dated May 5, 1964. He was given an opportunity to undergo training on September 29, 1968, but he did not avail of the opportunity. He was given another opportunity on July 28, 1969, but he again did not avail of the same. Since he had not availed of the opportunity, he was not permitted to continue in service. Consequently, he filed a civil suit which came to be transferred to the service Tribunal which dismissed the petition. Then he moved the High Court. The High Court by its impugned order has held that termination without following the prescribed procedure is illegal and consequently it directed reinstatement of the respondent in the service with consequential benefits. Thus this appeal by special leave.

It is contended by Mr. Gupta, learned counsel appearing for the appellant, that the appointment was on temporary basis and the candidate being untrained teacher, he was required to undergo training; and when he failed to avail of that opportunity, as per the policy of the Government the appellant had no option except to discontinue the services of the respondent. Consequently, he is not entitled to remain in service from 1968.

It is stated by Mr. Garg, learned counsel appearing for the respondent, that Government had extended the time for the training but he has not been given opportunity. The letter of appointment did not indicate that his service would come to an end in accordance with the procedure. Subsequent correspondence indicates that appropriate action was to be taken against the respondent if he would not undergo training. No such action has been taken as per service rules. Since no action has been taken, the termination of the respondent's service following proper procedure for not undergoing training, is illegal. The High Court was, therefore, right in giving direction to the appellant to reinstate the respondent in service irrespective of the fulfilment of the condition of training.

The respondent is an untrained teacher appointed by order dated May 5, 1964 on a monthly pay of Rs. 40. His service were terminated without any notice. It is also an admitted fact that opportunity was given to him to undergo training but he did not avail of that opportunity on the ground that he was bitten by dog. Under these circumstances and the admitted position, the question is : whether the respondent can continue in service without completing his training and whether the appellant's predecessor was empowered to discontinue the services of the respondent?

It is true that letters have been issued by the Government to give

training facilities on executing a bond but he did not avail of that opportunity and subsequently he was directed to be continued on fixed pay of the untrained teacher. That situation does not arise nor helps the respondent for the reason that he was discontinued from services since the year 1969. He was required to undergo training as prescribed by the Government. Since he had not undergone training, the letter discontinuing the services cannot be said to be illegal. The High Court, therefore, was wholly wrong in its finding that required procedure was to be completed for discontinuance of untrained teachers' service before service came to an end.

Mr. Garg also relied upon the decision of this Court in *U.P. Basic Shiksha Parishad and Anr. v. Hari Deo Mani Tripathi and Ors.* SLR Vol. 87 (1993) 1 15. In that case though the respondents were untrained temporary teachers and after they obtained training certificates in 1976 this Court directed the appellants to fix seniority from the date of obtaining training certificates. The ratio of this case has no application to the facts of this case.

The appeal is accordingly allowed. The writ petition stands dismissed. No order as to costs.

Appeal allowed.