

Yogendra Kumar Singh and Others Vs. State of U. P. and Others

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Court : Allahabad

Decided On : Dec-03-1997

Reported in : 1998(2)AWC967

Judge : J.C. Gupta, J.

Acts : Uttar Pradesh Intermediate Education Act, 1921 - Sections 16E, 16F and 16F(2); Uttar Pradesh Secondary Education Services Commission and Selection Boards Ordinance, 1981 - Sections 1 and 1(2), 3 and 16; [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 8958 of 1981

Appellant : Yogendra Kumar Singh and Others

Respondent : State of U. P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Gyan Chandra Dwivedi and ;Ganga Prasad, Advs.

Judgement :

J.C. Gupta, J.

1. By means of this writ petition filed under Article 226 of the [Constitution of India](#), the petitioners have prayed for quashing of the order of the District Inspector of

Schools, Jaunpur dated 20.7.1981, copy of which has been annexed as Annexure-XIII to the writ petition. They have further prayed for a writ of mandamus directing the respondents not to interfere with the functions of the petitioners as Lecturer in Economics. English and Sanskrit and to make payment of their salaries.

2. The case of the petitioners in brief is that by the letter dated 27.9.1980, the District Inspector of Schools, Jaunpur (hereinafter to be referred in short as D.I.O.S.) approved the request of the Committee of Management to fill up four posts of Lecturers in the Intermediate Section in Dr. Bhagwan Dass Intermediate College. Hindi Baghela district Jaunpur (hereinafter to be referred as the Institution). Out of four posts of Lecturers, one post in History was filled by promotion and the remaining three posts were advertised for being filled in by direct recruitment. The advertisements were made in two News Papers, i.e., 'Aaj' and 'National Herald'. In pursuance of the said advertisements petitioner Nos. 1 to 3 who were fully qualified to be appointed on the posts of Lecturer applied for appointment. They were called for interview before the Selection Committee on 8.4.1981. Selection Committees were constituted in accordance with the provisions of Section 16F (2) of the U. P. Intermediate Education Act. In addition to the petitioners, several other candidates were also called for interview. For the post of Lecturer in Economics, the Selection Committee found petitioner No. 1 as most suitable and his name was placed at Serial No. 1. Similarly, on the posts of lecturer in English and Sanskrit. Selection Committee recommended the names of petitioner Nos. 2 and 3 respectively for appointment as Lecturers on the said posts. The Committee of Management in its meeting held on 11.4.1981 accepted the recommendation of the Selection Committee and accordingly appointment letters were issued to petitioner Nos. 1 to 3. The petitioners then joined their duties on the respective posts on 12.4.1981. On 13.4.1981, the Manager of the Institution sent all the records relating to the appointment of the petitioners on the posts of Lecturer in Economics. Lecturer in English and Lecturer in Sanskrit. Petitioners are still working on their respective posts. When the bill of salary of/ petitioners for the months of May and June, 1981 was sent to D.I.O.S. for* payment, he refused to make any payment tilde its letter dated 20.7.1981 and has further informed that the proceedings of their selection would not be accepted by him because of the order of Deputy Director of Education, Varanasi Region, Varanasi, dated

27.4.1981 which says that the appointment of teachers stood stopped from 7.4.1981. According to the petitioners' case, this action of the D.I.O.S. is absolutely illegal and arbitrary. The petitioners have been appointed on the respective posts of Lecturers in accordance with the provisions of Sections 16E and 16F of the U. P. Intermediate Education Act and the Regulations framed thereunder. Their appointments could not be cancelled or effected by any Radiogram or executive orders of the D.I.O.S. or the State Government. The U. P. Secondary Education Services Commission and Selection Board Ordinance, 1981 is not applicable as far as the case of the petitioners is concerned, since the Ordinance is prospective and not retrospective. Vires of the Ordinance have also been challenged in the writ petition. In the counter-affidavit filed on behalf of the D.I.O.S. no serious challenge has been made regarding the procedure adopted by the authorities of the Institution in making appointments of the petitioners. However the case of the respondent, D.I.O.S. is that the State Government issued an Ordinance, dated 7.4.1981 and stopped all appointments in all High School and Intermediate Colleges run by the private Management. A copy of Radiogram which was received by the D.I.O.S. has been annexed as Annexure C.A.-1. This Radiogram purports to have been Issued and sent by Secretary to Government, U. P. Education Department to the District Inspector of Schools. It reads as follows :

'Stop all fresh selections and appointment of Principals, Head Masters and Teachers including recruitment by promotion, in all non-government aided secondary schools except minority institutions pending further orders. District Inspector to ensure non-drawal of pay of teachers appointed after this day. Detailed instructions to follow.'

3. By means of an interim order of this Court dated 11.9.1981. the operation of the order of D.I.O.S., dated 20.7.1981 relating to the petitioners was stayed and the D.I.O.S. was ordered to pay by 15.10.1981 entire salaries of the petitioners due since the date of their joining, and he was further ordered to go on paying the monthly salaries of the petitioners as and when the same fall due. It is not disputed that since the beginning, the petitioners have been working on the posts on which they were appointed by the Committee of Management.

4. Heard petitioners' counsel and the learned standing counsel.

5. There is no dispute that the D.I.O.S. had accorded approval to the Management Committee to fill the vacancies on the four posts of Lecturers in the Institution. One was filled by promotion and the other three were advertised in local daily news papers. The selection of the petitioners was made in accordance with the procedure laid down under the provisions of the U. P. Intermediate Education Act and the Regulations. It is also not disputed that the papers relating to the appointments of the petitioners were sent to the D.I.O.S. for the purposes of payment of their salary. The D.I.O.S., however, refused to make payment of salary on the ground that he has been informed by the letter dated 27.4.81 of the Deputy Director of Education that through a Radiogram, dated 7.4.1981, the Government has imposed a ban on all future appointments of Teachers. The case of the respondents, therefore, is that no appointment could be made after 7.4.81 and since the petitioners' appointments were made after that date on 11.4.81, they were not valid and no salary therefore, could be paid to them. Though in the counter-affidavit, it is alleged that the Ordinance had come into force on 7.4.1981 but no Ordinance of that date could be produced from the side of the State. On the other hand, from the petitioners' side a photostat copy of the Ordinance known as English translation of the Uttar Pradesh Madhyamik Shikshak Seva Ayog Aur Chayan Board Adhyadesh, 1981 has been produced before the Court. This Ordinance is titled as, 'The Uttar Pradesh Secondary Education Services Commission and Selection Boards Ordinances, 1981'. It is dated July 10, 1981. Sub-section (2) of Section 1 of the Ordinance states that the Ordinance shall come into force on such date as the State Government may by notification appoint in this behalf, and different dates may be appointed for different provisions of this Ordinance. Section 3 then lays down that with effect from such date as the State Government may by notification appoint in this behalf, there shall be established a Commission to be called the 'Uttar Pradesh Secondary Education Service Commission.' Under the other provisions of the Ordinance the power of appointment of Teachers could be exercised, by the Management on the recommendation of the Commission or the Board, as the case may be. Section 16 (1) of the Ordinance states that notwithstanding anything to the contrary containing in the Intermediate Education Act, 1921 or the Regulations made thereunder :

(a) Every appointment of a teacher specified in the Schedule shall, after the date of promulgation of this Ordinance, be made by the Management only on the recommendation of the Commission.

(b) Every appointment of a teacher (other than a teacher specified in the schedule) shall, after the date of such promulgation, be made by the Management only on the recommendation of the Board.

6. It would thus appear that the Ordinance is prospective in nature and the ban on the appointment of teachers specified in the Schedule has been Imposed only after the date of promulgation of the Ordinance. There is nothing on record to indicate that this Ordinance had been promulgated before 11.4.1981, i.e., the date of appointments of the petitioners.

7. Learned standing counsel, however, argued that it is on record that the Government through a Radiogram had imposed a ban on all future appointments and it is always open to the Government to take a decision not to fill in vacancies and keep them in abeyance. There can be no dispute that the Government possesses such a power and for the exercise of that power, no statutory provision is essential. However, the question that requires consideration in the present case is whether in the circumstances of the case, will it be Just and proper to cancel the petitioners' appointments dated 11.4.1981 after a long gap when they have put in more than 16 years of service. There are more than one reasons which compel this Court for not upholding the impugned order of the D.I.O.S. dated 20.7.1981. Firstly, it may be mentioned here that there is nothing on record to indicate that the ban imposed on the appointment of Teachers through Radiogram, dated 7.4.1981 had been brought to the notice of the Management Committee prior to the date of appointment of the petitioners. It is noteworthy that even the D.I.O.S. in the impugned order has stated that the Deputy Director of Education has informed through his communication dated 27.4.1981 that the State Government has stopped all future appointments after 7.4.1981. It be stated for repetition sake that the Selection Committee completed the process of Selection on 8.4.1981 and the Management appointed the petitioners on 11.4.1981, i.e., much before the date when the decision of the State Government was even

conveyed to the D.I.O.S. by the Deputy Director. Secondly, even on equitable grounds, it would be most unjust and harsh to throw out the petitioners from service after when they have put in continuous service for more than 16 years and have been getting salary. And thirdly, for the reason that the selection and appointments of the petitioners were otherwise in accordance with the procedure laid down in the provisions of the U. P. Intermediate Education Act.

8. For the above reasons, this writ petition is allowed. The order of the D.I.O.S. dated 20.7.1981 contained in Annexure-XIII to the writ petition is set aside. The D.I.O.S. is directed to treat the petitioners as regularly appointed Lecturers and to pay to them their due salaries as and when the same become due. In the circumstances, no order as to costs is made.

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