

Rajesh Kumar Vs. Committee of Management, Rashtriya Higher Secondary School and ors.

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Court : Allahabad

Decided On : Apr-23-2004

Reported in : 2004(3)AWC2396; (2004)3UPLBEC2502

Judge : Dilip Gupta, J.

Acts : Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 - Sections 18; Uttar Pradesh Secondary Education Services Commission and Selection Boards (Amendment) Act, 1995

Appeal No. : C.M.W.P No. 34610 of 1997

Appellant : Rajesh Kumar

Respondent : Committee of Management, Rashtriya Higher Secondary School and ors.

Advocate for Def. : S.S. Chauhan, S.C.

Advocate for Pet/Ap. : Daya Shanker and ;P.K. Jain, Advs.

Disposition : Writ petition dismissed

Judgement :

Dilip Gupta, J.

1. This petition has been filed by a teacher claiming to have been appointed in the L.T. grade on ad hoc basis under Section 18 of the Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 (hereinafter referred to as the 'Act') for a direction not to interfere in the performance of his duties and for payment of salary including the arrears of salary w.e.f. 28.2.1996.

2. Heard the learned counsel for the petitioner and the learned standing counsel appearing for respondent No. 3.

3. Briefly the facts as stated in the petition are that on 30.6.1994 a substantive vacancy in the L.T. grade in the Rashtriya Higher Secondary School, Jinehra, Mirahchi district Etah (hereinafter referred as the 'College') fell vacant on account of the retirement of Sri Ramesh Dutta Sharma. The Committee of Management notified the vacancy to the Commission through the District Inspector of Schools on 9.8.1995 but since the post actually remained vacant for more than two months, the management proceeded to make appointment on ad hoc basis under Section 18 of the Act. It advertised the said vacant post in 'Jai Yuwa Shakti' a Hindi daily on 7.2.1996 and it has been stated that the advertisement was also issued in another newspaper on the same date. The Selection Committee interviewed the candidates on 25.2.1996 and made a recommendation of the name of the petitioner for appointment on ad hoc basis against the aforesaid substantive vacancy of L.T. grade teacher. The recommendation was approved by the Committee of Management and an appointment letter dated 27.2.1996 was issued in favour of the petitioner. The petitioner submitted his joining report on 28.2.1996 and started teaching. The District Inspector of Schools granted approval to the appointment of the petitioner by his letter dated 6.3.1996. It has further been stated that when the College reopened on 8.3.1996 after the holidays the new Principal of the College did not permit the petitioner to sign the attendance register nor did the Principal forward the salary bill of the petitioner since 28.2.1996 to the District Inspector of Schools for making payment of the salary. It is in these circumstances that the present petition was filed.

4. Learned counsel for the petitioner submitted that the petitioner had been appointed on ad hoc basis under Section 18 of the Act and once the District Inspector of Schools had granted approval to his appointment it was the duty of the Principal of the College to forward the salary bills and not to interfere in his working as a L.T. grade teacher in the College.

5. Section 18 of the Act has been amended time and again and in order to appreciate the contention of the learned counsel for the petitioner it may be pertinent to refer to the provisions of Section 18 of the Act and to the provisions of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981 which is more popularly known as the First Removal of Difficulties Order, 1981. Section 18 of the Act as amended by U. P. Act No. 24 of 1992 provided that where the management notified a vacancy to the Commission in accordance with the provisions of the Act, and the post of such teacher actually remained vacant for more than two months, the management could appoint by direct recruitment or promotion a teacher, on purely ad hoc basis, in the manner provided for in the section. Subsequently amendments were made in the Act by U. P. Act No. 1 of 1993 but it was provided that the Amendment Act shall come into force on such date as the State Government may by notification appoint and different dates could be appointed for different provisions. Under Section 11 of the U. P. Act No. 1 of 1993 a new Section 16 was substituted for Section 16 of the Act and it was stated that notwithstanding anything to the contrary contained in the Intermediate Education Act, 1921 or the Regulations made thereunder but subject to the provisions of Sections 21B, 21C, 21D, 33, 33A, 33B, every appointment of a teacher shall, on or after the date of commencement of the Amendment Act, be made by the management only on the recommendation of the Board. What is important to be noted under the amended Section 16 is that reference to Section 18 was omitted with the result that Section 16 was no longer subject to Section 18 of the Act. It may also be pertinent to state that under Section 13 of U. P. Act No. 1 of 1993, Section 18 of the act was omitted. Under the notification dated 7.8.1993, it was provided that 7th of August, 1993 would be the date on which the U. P. Act No. 1 of 1993 shall come into force except Section 13. Thus, Section 16 of the Act came into force w.e.f. 7.8.1993 but Section 18 still continued since Section 13 of U. P. Act No. 1 of 1993 did not come into force. Thus, a situation had arisen where

Section 16 of the Act was no longer subject to Section 18 of the Act meaning thereby that no appointment on ad hoc basis could be made under Section 18 of the Act. This matter came up for decision before a Full Bench of this Court in the case of Radha Raizada and Ors. v. Committee of Management, Vidyawati Darbari Girls Inter College and Ors., 1994 (3) UPLBEC 1551 and the Court clearly held as follows :

'Thus, after omission of Section 18 from Section 16 no ad hoc appointment is permissible under Section 18 and if made, would be void under sub-section (2) of Section 16 of the Act.'

6. The Full Bench, however, examined the problem that if no ad hoc appointment of a teacher could be made under Section 18 of the Act, then whether it was permissible to appoint a teacher on ad hoc basis under the First Removal of Difficulties Order, since the Removal of Difficulties Order still continued. The Court noticed that a perusal of Section 16 would show that it was still subject to Section 33 of the Act, which empowers the Government to issue Removal of Difficulties Order. The Court, therefore, held that since the Removal of Difficulties Order had been issued under Section 33 of the Act, an ad hoc appointment, either by direct or by promotion under the Removal of Difficulties Order would be a valid appointment. It was also observed that if the management has made an ad hoc appointment without following the procedure laid down in paragraph 5, the District Inspector of Schools can stop payment of salary to such a teacher.

7. The Court held as follows :

'Omission of Section 18 has not yet been enforced with a result the conditions precedent namely notification of substantive vacancy to the Commission and further the post has remained vacant for more than two months are still there and if these two conditions are fulfilled, it is only then the management can appoint ad hoc teacher either by(tm) promotion or by direct recruitment in accordance with the procedure laid down in the First Removal of Difficulties Order.'

8. The Supreme Court had an occasion to examine the validity of the ad hoc appointments which were not made in accordance with the procedure provided for

under paragraph 5 of the First Removal of Difficulties Order in the case of Prabhat Kumar Sharma and Ors. v. State of U. P. and Ors., (1996) 10 SCC 62, and it was clearly held that any ad hoc appointment not made in accordance with paragraph 5 of the First Removal of Difficulties Order is an illegal appointment and is void and confers no right on the appointees. It may be useful to reproduce a passage from the judgment made in the context of paragraph 5 of the First Removal of Difficulties Order and it is as follows :

'It is an inbuilt procedure to avoid manipulation and nepotism in selection and appointment of the teachers by the management to any post in an aided institution, It is obvious that when the salary is paid by the State to the Government aided private educational institutions, public interest demands that the teachers' selection must be in accordance with the procedure prescribed under the Act read with the First 1981, Order.'

9. The Act was further amended by the Uttar Pradesh Secondary Education Services Selection Boards (Amendment) Act, 1995 (U.P. Act No. 15 of 1995). The Amendment Act came into force w.e.f. 28.12.1994. The relevant amendments caused by U. P. Act. No. 15 of 1995 which are relevant for the purposes of the controversy involved in the present petition are the amendments made in Sections 16 and 18 of the Act. Section 16 of the Act was again made subject to Section 18 of the Act. The relevant portions of Section 18 of the Act are reproduced below :

'18. Ad hoc teachers.--(1) Where the Management has notified a vacancy to the Commission in accordance with Sub-section (1) of Section 10 and the post of a teacher actually remained vacant for more than two months, the Management may appoint by direct recruitment or promotion a teacher on purely ad hoc basis, in the manner hereinafter provided in this section.

(2) A teacher other than a Principal or Headmaster, who is to be appointed by direct recruitment may be appointed on the recommendation of the Selection Committee referred to in Sub-section (8).

(3) A teacher other than a Principal or Headmaster, who is to be appointed by promotion, may in the prescribed manner be appointed by promoting the senior

most teacher, possessing prescribed qualifications ;

(a) in the trained graduate's grade, as a lecturer, in the case of a vacancy in the lecturer's grade ;

(b) in the Certificate of Teaching grade, as teacher in the trained graduate's grade, in the case of a vacancy in the Trained graduate's grade.

(6) For the purposes of making appointments under Sub-sections (2) and (3), the Management shall determine the number of vacancies, as also the number of vacancies to be reserved for the candidates belonging to the Scheduled Castes, the Scheduled Tribes and other Backward Classes of citizen in accordance with the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 and, as soon as may be thereafter, intimate the vacancies to be filled by direct recruitment to the District Inspector of Schools and if the Management fails to intimate the vacancies and the post of a teacher has actually remained vacant for more than three months, the District Inspector of Schools may subject to such directions as may be issued by the Director and after verification from such institution or from his own record, determine such vacancies himself.

(7) The District Inspector of Schools shall, on receipt of intimation of vacancies or as the case may be, after determining the vacancies under Sub-section (6), forward the same to the Deputy Director of Education in charge of the Region, who shall invite applications from the persons possessing qualifications prescribed under the Intermediate Education Act, 1921 or the regulations made thereunder, for ad hoc appointment to the post of teachers other than Principal or Head Master in such manner as may be prescribed.

(8)

(a) For each region there shall be a Selection Committee for selection of candidates for ad hoc appointment by direct recruitment comprising :

(i) Regional Deputy Director of Education ;

(ii) Regional Deputy Director of Education (Second) ;

(iii) Regional Assistant Director of Education (Basic).

The Regional Deputy Director of Education who is senior shall be the Chairman.

(b) The Selection Committee constituted under Clause (a) shall make selection of the candidates, prepare a list of the selected candidates, allocate them to the Institutions and recommend their names to the Management for appointment under Sub-section (2).

(c) The criteria and produce for selection of candidates and the manner of preparation of list of selected candidates and their allocation to the Institution shall be such as may be prescribed.

(9) Every appointment of an ad hoc teacher under Sub-section (1) shall cease to have effect from the date when the candidate recommended by the Commission joins the post.'

10. Once Section 16 of the Act was made subject to the provisions of Section 18 of the Act by U. P. Act No. 15 of 1995 and Section 18 of the Act also provided for a detailed procedure to be followed while making appointments on ad hoc basis it became imperative that the ad hoc appointment in the present case caused on account of a substantive vacancy should have been made in accordance with the provisions of Section 18 of the Act. Admittedly, the procedure provided for in Section 18 of the Act was not followed by the Committee of Management. The Committee of Management itself had advertised the post and the Selection Committee constituted by it had made the recommendation. The appointment of the petitioner as an ad hoc teacher is, therefore, void and cannot confer any right upon him.

11. What is however distressing to note is that the District Inspector of Schools by his letter dated 6.3.1996 approved the appointment of the petitioner though a bare perusal of the letter does give an impression that the District Inspector of Schools was conscious of the fact that the ad hoc appointment had not been made in accordance with law. The District Inspector of Schools after referring to the

proposal of the Committee of Management observed that temporary approval was being given looking to the interest of the students. Such an approval is neither contemplated nor it can be given. In the counter-affidavit filed by the District Inspector of Schools it has been stated that the District Inspector of Schools who had granted approval to the appointment of the petitioner was only an officiating District Inspector of Schools and had wrongly granted approval without examining the relevant records with regard to the validity of the appointment of the petitioner. It has further been stated that since the appointment was illegal and void, the petitioner was not entitled to payment of salary.

12. The contention sought to be raised by the learned counsel for the petitioner that once the District inspector of Schools had granted approval to his ad hoc appointment, the petitioner cannot be restrained from discharging his duties as a L.T. grade teacher and he also is entitled to payment of salary cannot be accepted. This Court exercising jurisdiction under Article 226 of the Constitution of India has to examine the validity of the ad hoc appointment made and it is only when the ad hoc appointment has been made in accordance with the procedure prescribed that a direction for payment of salary can be issued. This is what has been clearly observed by the Full Bench of this Court in the case of Radha Raizada (supra) and Prabhat Kumar Sharma (supra) and any appointment made in transgression thereof is an illegal appointment and is void and confers no right on the appointee. Though these observations have been made in the context of the ad hoc appointment made under the First Removal of Difficulties Order, 1981, they apply with equal force, if not greater, to ad hoc appointments made under the amended Section 18 of the Act. It has, therefore, to be held that the petitioner is not entitled to any relief.

13. The writ petition, therefore, fails and is, accordingly, dismissed. There shall be no order as to costs.