

Vinod Kumar Rajput Vs. District Inspector of Schools and Another

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Court : Allahabad

Decided On : Mar-30-1999

Reported in : 1999(3)AWC2455

Judge : D.K. Sethi, J.

Acts : Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 - Sections 18 and 33; Uttar Pradesh Secondary Education Service Commission (Removal of Difficulties) Order, 1981

Appeal No. : Civil Misc. Writ Petition No. 1587 of 1992

Appellant : Vinod Kumar Rajput

Respondent : District Inspector of Schools and Another

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Surendra Prasad, Adv.

Judgement :

D.K. Seth, J.

1. The vacancy was alleged to have been notified. But for two months, it was not filled. Thereafter a notice was pasted in the Notice Board on 13th November, 1991, by the Manager inviting applications for filling up the post on ad hoc basis.

Admittedly, the vacancy was substantive in nature. A Selection Committee was constituted by the Management on 24th November, 1991, on which date the petitioner had appeared before the Selection Committee, who had passed a resolution on the same date appointing the petitioner in the post of Assistant Teacher in L.T. Grade and the Manager had issued the appointment letter on 25th November, 1991 pursuant to which the petitioner had joined on 26th November, 1991. The approval was sought for by the letter dated 24th November, 1991, from the District Inspector of Schools, who by his letter dated 28th November, 1991, informed that there was no prior approval and, therefore, the appointment could not be approved. On these grounds, learned counsel for the petitioner Mr. Surendra Prasad contends that the appointment being ad hoc, the petitioner's appointment should have been approved since the appointment was made under Section 18 of the U. P. Secondary Education Service Commission and Selection Boards Act, 1982. According to him, the appointment having been made under Section 18 of the said Act, the provisions of the U. P. Secondary Education Service Commission (Removal of Difficulties) Order, 1981 (hereinafter referred to as the First Order) has no manner of application.

2. I have heard Mr. Surendra Prasad, learned counsel for the petitioner and the learned standing counsel at length.

3. Section 18 recognised the power of the Management to appoint on ad hoc basis. But Section 18 does not prescribe any procedure. Section 16 creates an embargo to the extent that any appointment made except in accordance with the provisions of the Service Commission Act, all such appointments shall be void. Section 33 confers authority on the State Government to pass order for removal of difficulties. Pursuant to Section 33, the First Order has since been issued. Though it was specified that the said order would be of a limited duration, but in fact, no further order having been issued, the said order should be treated to be the procedure for making such appointment to be made under Section 18. Since Section 18 did not specify any procedure and procedure having been laid down in the First Order, the same has to be treated to be a procedure under which such appointment could have been made, since such order has been issued under Section 33 of the said Act. Section 18 and the First Order are supplementing each

other and cannot have separate or distinct or independent existence. This view finds support from the decision in the case of *Radha Raizada v. Committee of Management*, 1994 (3) UPLBEC 1551.

4. In the present case, the advertisement was issued by the Manager and was pasted in the Notice Board and the Selection Committee was constituted on 24th November, 1991, on which date the petitioner had appeared in the interview and was selected and a resolution to appoint was also passed pursuant to which appointment letter was issued on 25th November, 1991 and the petitioner had joined on 26th November, 1991. It has not been pointed out in the writ petition as to how many candidates had appeared and whether the quality point marks were awarded or not. Mr. Surendra Prasad, however, submits that in the supplementary affidavit, he has disclosed the papers, from which it appears that five candidates had appeared in the selection.

5. Be that as it may. the First Order prescribes that the applications are to be invited by the District Inspector of Schools and the appointments have also to be issued by him and the selection has to be made by him. By reason of such procedure, the Manager had no authority either to constitute the Selection Committee or to make the selection. In that view of the matter, in my view, there was no infirmity in the order refusing approval by the District Inspector of Schools to the appointment of the petitioner. Mr. Surendra Prasad further submits that the decision in the case of *Radha Raizada and others v. Committee of Management, Vidyawati Darbari Girls Inter College and others*. 1994 (3)UPLBEC 1551, does not apply retrospectively.

6. My view is not based on the decision in the case of *Radha Raizada (supra)*. On the other hand, it is an interpretation of the existing law as existed on the date when the selection or appointment was made. Whether it is to be published in two newspapers or one newspaper, is not the question to be gone into in this case in absence of any statement that it was ever published in any newspapers. But then the selection was to be made by the District Inspector of Schools and not by the Manager as prescribed in the First Order, which was the law then prevailing. In that view of the matter, I am not inclined to interfere.

7. The writ petition, therefore, fails and is accordingly dismissed. Nocost.

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