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**Devashish Mukherji and anr. Vs. State of U.P. and ors.**

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**SooperKanoon Citation : [sooperkanoon.com/484803](http://sooperkanoon.com/484803)**

**Court : Allahabad**

**Decided On : Aug-13-2002**

**Reported in : 2002(4)AWC3000; (2002)3UPLBEC2792**

**Judge : A.K. Yog, J.**

**Acts : Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 - Sections 1(2), 16 and 18; Uttar Pradesh Secondary Education Services Commission and Selection Board (Amendment) Act, 1992 - Sections 13**

**Appeal No. : C.M.W.P. No. 10145 of 1999**

**Appellant : Devashish Mukherji and anr.**

**Respondent : State of U.P. and ors.**

**Advocate for Def. : Pradeep Verma, S.C.**

**Advocate for Pet/Ap. : M.D. Singh, ;S.K. Tyagi, ;Vikash Budhwar, ;S.C. Budhwar and ;P.K. Srivastava, Advs.**

**Disposition : Petition allowed**

**Judgement :**

**A.K. Yog, J.**

1. DevashishMukherji and Ajai Kumar Banerji, the two petitioners, have come up before this Court through present writ petition under Article 226, Constitution of India being aggrieved by the impugned order dated 28.11.1998 passed by the District Inspector of Schools, Allahabad (Annexure-16 to the writ petition) whereby he refused to accord approval to their ad hoc appointment (apart from one more - namely, Shiv Kumar Pandey) on the ground that Section 18 of the U. P. Secondary Education Services Commission and Selection Board Act (U. P. Act No. 5 of 1982) being omitted vide Section 13 of the Uttar Pradesh Secondary Education Services Commission and Selection Boards (Amendments) Act, 1992, (U. P. Act No. 1 of 1993): the management had no right to make ad hoc appointment and the power vested in a selection committee contemplated under amended Section 16 of the Principal Act, 1982 (as incorporated by virtue of Section 11 of U. P. Act No. 1 of 1993).

2. According to the District Inspector of Schools, appointment of the petitioners not having been made in accordance with the provisions of Principal Act as amended vide U. P. Act No. 1 of 1993, the appointment of the petitioners was bad and hence no question of considering their regularisation.

3. The impugned order passed by the District Inspector of Schools cannot be sustained inasmuch as the said authority failed to take notice of the following statutory provisions.

4. Section 1 (2) of U. P. Act No. 1 of 1993 reads :

'It 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.'

The above provision clearly indicates that Act itself was not to come in operation of its own. In order to infuse life to it, State Government had to issue notification with an option to choose different dates for different provisions of the said Amending Act.

5. It is not disputed by any of the counsels of respective parties that the required notification was issued in the U. P. Gazette, Extra, Part 4, Section (ka), dated 7th August, 1993 (L.L.T. 1993, Part V. Item (188) p 283) and the same is reproduced :

'In exercise of the powers under Sub-section (2) of Section 1 of the Uttar Pradesh Secondary Education Services Commission and Selection Boards (Amendment) Act, 1992 (U. P. Act No. 1 of 1993), the Governor is pleased to appoint August 7, 1993. as the date on which the said Act except Section 13 thereof, shall come into force.'

A bare reading of the notification shows that the said notification did not enforce Section 13 of U. P. Act No. 1 of 1993.

6. Section 13 of the Amending Act, U. P. Act No. 1 of 1993 reads :

'13. Omission of Section 18.--Section 18 of the Principal Act, shall be omitted.'

7. None of the counsel has placed before this Court any other notification to show that Section 13 of the said Amending Act, 1993, was ever enforced or brought into operation.

8. It is, therefore, clear that Section 13 of the Amending Act, 1993, was never infused with life and commenced at no point of time. As a consequence thereof Section 18 of the Principal Act remained intact at all relevant point of time.

9. In the result, the impugned order dated 28.11.1998 (Annexure-16 to the writ petition) passed by the District Inspector of Schools, Allahabad, cannot be sustained.

10. Consequently, said impugned order is hereby quashed with the direction to the concerned District Inspector of Schools to decide the matter expeditiously preferably within four months of the receipt of the certified copy of this order in accordance with law and the record before it keeping in mind the observations made above.

11. Writ petition stands allowed.

12. No order as to costs.

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