

Devendra Pratap Singh Vs. State of U.P. and ors.

Devendra Pratap Singh Vs. State of U.P. and ors.

SooperKanoon Citation : sooperkanoon.com/486510

Court : Allahabad

Decided On : Nov-10-2003

Reported in : 2004(1)AWC936

Judge : N.K. Mehrotra, J.

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

Appeal No. : Writ Petition No. 4888 (S/S) of 2002

Appellant : Devendra Pratap Singh

Respondent : State of U.P. and ors.

Advocate for Def. : C.S.C.

Advocate for Pet/Ap. : Pt. S. Chandra and ;Ramesh Pandey, Advs.

Disposition : Petition allowed

Judgement :

N.K. Mehrotra, J.

1. This is a writ petition under Article 226 of the Constitution of India for issuing a writ in the nature of mandamus commanding the opposite parties to pay the salary

to the petitioner for the post of Assistant Teacher L.T. Grade in Shri Vishwanath Inter College, Kalan, Sultanpur and further a mandamus commanding the opposite parties to pay the salary to the petitioner month to month and not to create any obstruction in the functioning of the petitioner and to regularise the services of the petitioner. The petitioner has also prayed for directions to the opposite parties to pay arrears of salary along with interest.

2. According to the petitioner, he was initially appointed on the post of the Assistant Teacher L.T. Grade in the said college on 20.12.1998 on short term ad hoc basis. He joined on the post of Assistant Teacher L.T. Grade on 22.12.1998 and since then he has been working and performing his duties as Assistant Teacher L.T. Grade. Shri Vishwanath Inter College, Sultanpur (hereinafter to be referred as 'College') is a recognised Intermediate College being governed under the provisions of U.P. Intermediate Education Act, 1921, and U.P. Secondary Education Services Selection Board Act, 1982 and U. P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971. The post of Assistant Teacher L.T. grade fell vacant in the College due to ad hoc promotion of Narsingh Bahadur Singh as English Lecturer on 8.8.1998. Later on the promotion of Narsingh Bahadur Singh as Lecturer has been duly approved by the D.I.O.S. The vacancy in question was duly intimated and communicated to the District Inspector of Schools and again after approval of the promotion of Narsingh Bahadur Singh, the requisition was again sent on 21.1.2002. The Committee of Management advertised the post in Daily Newspapers on 2.12.1998 and circulated the vacancy. The information was also sent to the Employment Exchange and the same was circulated in the college. The Selection Committee recommended the name of the petitioner as first candidate and the committee of management approved the appointment of the petitioner by a resolution. The Manager of the college forwarded and submitted all the papers to the District Inspector of Schools on 22.12.1998 but the District Inspector of Schools has not taken any decision till date. A reminder was sent by the Manager of the College but to no effect. The copy of the letter of the management dated 22.12.1998 is Annexure 5 to the writ petition. Again a reminder was sent on 1.5.2002 but no action has been taken by the District Inspector of Schools. The petitioner is working and teaching but he is not getting the salary.

The petitioner is M.Sc. B.Ed. and is duly qualified for the post of Assistant Teacher L.T. grade. Till date no regular selection has been made. It is alleged that the Committee of Management had adequate power to make short term ad hoc appointment in the interest of the college and the students till the regular selection is made and despite of it the petitioner is working against the sanctioned post.

3. The District Inspector of Schools, the opposite party No. 4 has filed the counter-affidavit and admitted that Shri Vishwanath Inter College, Kalan, Sultanpur is a recognised and aided institution and is governed by the provisions of U. P. Intermediate Education Act, 1921, U.P. Secondary Education Services Selection Board Act, 1982 and U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971. It is also admitted that Narsingh Bahadur Singh was promoted in the Lecturer's Grade and consequently a short term vacancy had fallen on 8.8.1998 and it is also admitted that the management had given appointment to the petitioner against short term vacancy on 20.12.1998 and the management had sent all the relevant papers on 27.12.1998 to the District Inspector of Schools.

4. The writ petition has been opposed on the ground that the petitioner was not selected in accordance with the prescribed procedure. It is also contended that the management was not competent to appoint the petitioner and therefore, the appointment of the petitioner was not in accordance with law and therefore, the ad hoc appointment of the petitioner was not given approval by the opposite party No. 4 and for the same reason there is no liability for making the payment of salary to the petitioner. It is submitted that in accordance with Section 18 (8) of U.P. Secondary Education Services Selection Board Act, 1982, the selection can be made by a regional selection committee under the Chairmanship of the Joint Director (Education). The petitioner has filed the rejoinder-affidavit and it has been averred in the rejoinder-affidavit that the vacancy against which the petitioner was appointed has been converted into the substantive vacancy and the petitioner has a right to continue till regular appointment is made on the recommendation of the U.P. Secondary Education Services Selection Board, Allahabad. The order by which Narsingh Bahadur Singh has been given regular appointment on the post of Lecturer in English converting into substantive post of the teacher of L.T. Grade is

Annexure No. 1 to the rejoinder-affidavit.

5. After hearing both the parties and seeing the documents on record, I find that it is admitted that Narsingh Bahadur Singh was given ad hoc promotion on the post of the Lecturer in English and therefore, the post in L.T. Grade had fallen vacant and consequently, it was a short term vacancy. It is later on that Narsingh Bahadur Singh was given regular appointment on 14.1.2002. The legal question to be decided in this case is as to whether on 20.12.1998, the Committee of Management was competent to fill up short term vacancy or not? According to the opposite parties, this vacancy was to be filled up by the Regional Selection Committee as provided under Section 18 (8) of the U.P. Secondary Education Services Selection Board Act, 1982. While according to the petitioner the Committee of Management was competent to appoint the petitioner in accordance with the procedure given under the provisions of U.P. Secondary Education Services Selection Commission (Removal of Difficulties) (Second) Order, 1981. The relevant extract of the U.P. Secondary Education Services Selection Commission (Removal of Difficulties) (Second) Order, 1981 is as follows :

'2. Procedure for filling up short-term vacancies.--(1) If short-term vacancy in the post of a teacher caused by grant of leave to him or not account of his suspension duly approved by the District Inspector of Schools or otherwise, shall be filled by the Management of the Institution, by promotion of the permanent senior most teacher of the institution, in the next lower grade. The Management shall immediately inform the District Inspector of Schools of such promotion alongwith the particulars of the teacher so promoted.

(2) Where any vacancy referred to in Clause (1) cannot be filled by promotion, due to non-availability of a teacher in the next lower grade in the institution, possessing the prescribed minimum qualifications, it shall be filled by direct recruitment in the manner laid down in Clause (3).

(3)

(iii) The District Inspector of Schools shall communicate his decision within seven days of the date of receipt of particulars by him failing which the Inspector will be

deemed to have given his approval.

(iv) On receipt of the approval of the District Inspector of Schools or, as the case may be, on his failure, to communicate his decision within seven days of the receipt of papers by him from the Manager the Management shall appoint the selected candidate and an order of appointment shall be issued under the signature of the Manager.'

6. The U.P. Secondary Education Services Selection Commission (Removal of Difficulties) (Second) Order, 1981 was repealed by Section 33E of the U.P. Secondary Education Services Selection Board Act, 1982 with effect from 25.1.1999. It means that on the date of the short term vacancy and the appointment of the petitioner, the U.P. Secondary Education Services Selection Commission (Removal of Difficulties) (Second) Order, 1981 was in force under which the management was authorised to fill up the short term vacancy. The post was duly advertised in accordance with the procedure as prescribed in the U.P. Secondary Education Services Selection Commission (Removal of Difficulties) (Second) Order, 1981 and the selection was made by the Selection Committee constituted by the management. The averments made in the writ petition regarding advertisement and selection by the duly constituted selection committee had not been denied in the counter-affidavit. It is also not denied that the petitioner has been continuously working and discharging his duty of the post of Assistant Teacher. It is also not denied that Narsingh Bahadur Singh has been given regular appointment on the post of Lecturer on 14.1.2002 and since then the post against which the petitioner is working has been converted into the substantive vacancy.

7. The petitioner's appointment made against the short term vacancy in December, 1998 in accordance with the procedure under the U.P. Secondary Education Services Selection Commission (Removal of Difficulties) (Second) Order, 1981 was perfectly legal and is in accordance with law as has been settled by a Full Bench decision of this Court in *Radha Raizada and Ors. v. Committee of Management, Vidyawati Darbari Girls Inter College and Ors.*, 1994 (3) UPLBEC 1551, in which it has been held that the ad hoc appointments against short-term vacancies are to be made in accordance with the provisions of the U. P.

Secondary Education Services Selection Commission (Removal of Difficulties) (Second) Order, 1981.

8. Further in Smt. Pratima Chauhan and Anr. v. Regional Deputy Director of Education (Madhyamik), Agra and Ors.. 1999 (3) AWC 1234 : (1999) 2 UPLBEC 1621 and Smt. Asha Singh v. State of U.P. and Ors., 1999 (17) LCD 609, it has been held that the ad hoc appointment on the post of teachers against short term vacancies made under the U.P. Secondary Education Services Selection Commission (Removal of Difficulties) (Second) Order, 1981 are lawful and the approval will be deemed in case the District Inspector of Schools does not communicate his decision within the period prescribed under the U.P. Secondary Education Services Selection Commission (Removal of Difficulties) (Second) Order, 1981.

9. A Division Bench of this Court in District Inspector of Schools, Kanpur Nagar and Ors. v. Diwakar Lal and Ors.. 2003 (3) ESC 1670 (All), has held that the incumbents working on ad hoc basis against short term vacancies under the provisions of the U. P. Secondary Education Services Selection Commission (Removal of Difficulties) (Second) Order, 1981 have right to continue on the post after conversion of the vacancy into the substantive vacancy. The Division Bench has held that the incumbents working on ad hoc basis against short term vacancies should not be automatically thrown out of service when short term vacancy became 'substantive vacancy'. It has also been held that the ad hoc appointee should be allowed to continue if, there is no complaint about his working. The petitioner is also entitled to the benefit of that judgment and has a right to continue till regular appointment is made on the recommendations of the U. P. Secondary Education Services Selection Board, Allahabad.

10. The main contention of the opposite parties is that the appointment of the petitioner has not been made on the recommendation of the Selection Committee constituted under Section 18 of the U.P. Secondary Education Services Selection Board Act, 1982 but I agree with the arguments of the learned counsel for the petitioner that the old provisions under Section 18 of the said Act applies in the case of ad hoc appointment against the substantive vacancy. The petitioner was

appointed in December, 1998 against the short term vacancy under the provisions of the U.P. Secondary Education Services Selection Commission (Removal of Difficulties) (Second) Order, 1981. Therefore, at that time there was no substantive vacancy and for this reason the old provision under Section 18 of the U.P. Secondary Education Services Selection Board Act, 1982 was not applicable.

11. I am further of the opinion that even after rescinding of the U.P. Secondary Education Services Selection Commission (Removal of Difficulties) (Second) Order, 1981 by Section 33E of the U.P. Secondary Education Services Selection Board, Act, 1982 with effect from 25.1.1999, the orders passed under the U.P. Secondary Education Services Selection Commission (Removal of Difficulties) (Second) Order, 1981 shall remain valid.

12. In view of the aforesaid legal position, I am of the view that the petitioner's appointment was legal and the Committee of Management was competent to fill up the short term vacancy under the U.P. Secondary Education Services Selection Commission (Removal of Difficulties) (Second) Order, 1981 and therefore, the petitioner is entitled to the salary of the post under the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971. As the District Inspector of Schools has not taken any decision within the statutory period with regard to the approval or rejection of the appointment of the petitioner on the post of the Assistant Teacher L.T. grade, therefore, it will be deemed to be approved for the purpose of payment of salary under the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971.

13. Further I am of the opinion that in view of the aforesaid settled law, the petitioner is also entitled to continue till the regularly selected teacher by the U.P. Secondary Education Services Selection Board joins and he is entitled to get salary of the post in question.

14. In view of the above, the writ petition is allowed with the direction to the opposite parties to pay arrears of salary of the post of the Assistant Teacher L.T. Grade to the petitioner with effect from the date of his appointment in Shri Vishwanath Inter College, Kalan, Sultanpur and to pay the monthly salary of the

post also till the petitioner continues on the post. It is further directed that the petitioner shall continue to work on the post of the Assistant Teacher L.T. Grade in the said college till a new teacher is regularly selected by the U.P. Secondary Education Services Selection Board. It is also directed that the arrears of the salary shall be paid to the petitioner within a period of eight weeks and the monthly salary shall commence to be paid from the 1st of December, 2003 onwards till the regularly selected teacher joins.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com