

(1997) 09 AHC CK 0192
In the Allahabad High Court
Case No : C.M.W.P. No. 21475 of 1996

Akhilesh Kumar Singh

APPELLANT

Vs

District Inspector of Schools and Another

RESPONDENT

Date of Decision : 02-09-1997

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 18
Uttar Pradesh Secondary Education Services Commission Rules, 1995 — Rule 12, 14,
15, 2

Citation : (1997) AWC 413 Supp

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Siddhartha Varma, for the Appellant;

Final Decision : Allowed

Judgement

Sudhir Narain, J.—The Petitioner seeks writ of certiorari quashing the order dated 10.6.1996 refusing to accord financial sanction of the appointment of the Petitioner as L.T. Grade teacher in Gahmar Inter College, Gahmar, District Ghazipur (hereinafter referred to as the institution).

2. The version of the Petitioner is that one Shyam Bihari was working as Assistant Teacher in L.T. Grade in the institution. He went on leave without pay. The Committee of Management had sanctioned his leave. The students of Biology were suffering on account of leave taken by Shri Shyam Bihari. The Committee of Management of the institution took steps to fill up the short term vacancy. It advertised the post in two daily newspapers, namely, Pioneer on 29.1.1996 and Swatantra Bharat on 30.1.1996. The Petitioner applied for appointment. The Selection Committee interviewed the candidates on 18.2.1996. The Petitioner was selected by the Selection Committee. The Committee of Management passed resolution on 19.2.1996 approving the selection of the Petitioner. The Petitioner was given appointment letter on 8.3.1996. He joined the institution on the same

day.

3. The papers were forwarded to the District Inspector of Schools, Ghazipur, Respondent No. 1, for according financial sanction of the appointment. As Respondent No. 1 failed to pass any order, the writ petition was filed for a mandamus commanding Respondents to pay the salary.

4. Respondent No. 1 filed counter-affidavit and it was stated that financial sanction was refused on 10th June, 1996. A copy of the said order has been annexed as Annexure C.A. 1 to the counter-affidavit. It was refused on the ground that the Committee of Management of the institution had no right to make any appointment in view of the provisions of Uttar Pradesh Secondary Education Services Commission Rules, 1995 (hereinafter referred to as the Rules, 1995) which prohibits the Committee of Management to make any direct recruitment.

5. The Petitioner filed application to amend the writ petition and has sought to quash the said order in this writ petition.

6. The core question is whether the appointment of the Petitioner was in violation of the provisions of the Rules, 1995. Rule 12 prescribes the procedure for making direct recruitment by the Uttar Pradesh Secondary Education Services Commission. Rule 14 prescribes the procedure for recruitment by promotion. Rule 15 provides the procedure for ad hoc appointment by direct recruitment. It provides that where ad hoc appointments of the teachers, in respect of vacancies to be filled by direct recruitment, are to be made u/s 18 of the Act, the Deputy Director shall advertise the vacancies subject-wise for Lecturers' Grade and group-wise for trained graduates L.T. Grade in two newspapers having wide circulation in the district and the other in the State and invite applications for ad hoc appointments in the proforma given in Appendix F. The candidates shall send the applications by registered post to the Deputy Director within 15 days from the date of publication of advertisement in the newspapers along with the papers and fee as prescribed therein. The Deputy Director shall scrutinise the applications and shall get the list of candidates prepared on the basis of quality point. The Selection Committee shall, after considering the cases of the candidates, prepare a list provided in the manner referred to in Rule 15 of the Rules.

7. The word "vacancy" has been defined under Rule 2 (d) as follows:

"Vacancy" means a vacancy arising out as a result of death, retirement, resignation, termination, dismissal or removal of a teacher or creation of new post or appointment or promotion of the incumbent to any higher post in a substantive capacity.

8. The definition of "vacancy" does not contemplate a short term vacancy. The short-term vacancy has been specified under Para 2 of U.P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981. The short-

term vacancy may arise on the post of a teacher caused by grant of leave or on account of his suspension duly approved by the District Inspector of Schools or otherwise. The Committee of Management can make appointment by promoting the permanent seniormost teacher of the institution in the next lower grade and where the vacancy cannot be filled by promotion due to nonavailability of a teacher in the next lower grade in the institution, possessing the prescribed minimum qualifications, It shall be filled by direct recruitment. The procedure for making appointment has been provided under Para 2 (3) of the aforesaid Order. The management is to intimate the vacancy to the District Inspector of Schools and shall get notified the same requiring the candidates to apply to the Manager of the institution. The selection is to be made on the basis of quality point marks specified in the Appendix. The Manager of the institution shall forward it to the District Inspector of Schools for his approval and the District Inspector of Schools shall communicate its decision on the receipt of papers by him.

9. In *Radha Raizada and Ors. v. Committee of Management of Vidyawati Girls Inter College and Ors.* 1994 (3) UPLBEC 1551, the Full Bench has held that the Committee of Management is entitled to make appointment on short term vacancy in accordance with the procedure laid down under Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981, Uttar Pradesh Secondary Education Services Commission Rules, 1995 do not provide for making ad hoc appointment on short term vacancy. The appointment to such short term vacancy is to be made as provided under U.P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981.

10. In the counter-affidavit, Respondent No. 1 has not pointed out any other irregularity in the procedure adopted by the Committee of Management of the institution.

11. In view of the above, the writ petition is allowed. The order dated 10.6.1996 is hereby quashed. The Respondents are directed to pay salary to the Petitioner of his appointment to short term vacancy. It will be, however, open to the Respondent No. 1 to ascertain the period of leave of Shyam Bihari. The parties shall bear their own costs.