

**(1994) 01 AHC CK 0112**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 5310 of 1989

Ambarish Kumar Tiwari

APPELLANT

Vs

Committee of Management Chacha Nehru Higher Secondary  
School and Another

RESPONDENT

---

**Date of Decision :** 07-01-1994

**Acts Referred:**

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,  
1982 — Section 15, 16, 16(2), 18, 33B  
Uttar Pradesh Secondary Education Services Commission and Selection Boards Rules,  
1983 — Rule 4, 4(2), 9

**Citation :** (1994) 2 AWC 808

**Hon'ble Judges :** K. Narayan, J

**Bench :** Single Bench

**Advocate :** Rajendra Kumar, for the Appellant;

**Final Decision :** Dismissed

---

## **Judgement**

K. Narayan, J.—The Petitioner has desired this Court to quash the letter dated 14-2-1989, of the District Inspector of Schools, Kanpur Nagar, whereby the said officer has declined to accord his approval and financial sanction to the appointment of the Petitioner as teacher in the C.T. grade in Chacha Nehru Higher Secondary School, Majhawan, (hereinafter called as the School).

2. Learned Counsel for the Petitioner referred to the decision in Civil Misc. Writ Petition No. 17595 of 1950, Ajai Prakash Mishra v. The District Inspector of Schools decided on 10 12-1991 and desired that on parity basis, this petition should also succeed. The matter was, however, heard on merits at length and finding myself unable to persuade myself to agree. I am proceeding to give a detailed judgment. I am afraid that parity cannot be extended in cases where one party or his counsel at an early stage failed to bring correct law to the notice of the court.

3. According to the Petitioners' version the management of the school had sent

an intimation of vacancy in respect of four posts (two in L.T. and two in C.T. grade) on 11-7-1986 (Annexure-3 to the writ petition). On the other hand the management in its counter affidavit has blown at most hot and cold together by admitting in one breath this contention and in the next breath contending that the intimation of vacancy was sent on 12-5-86 (Annexure-CA-II) by post under certificate of posting. The two annexures are photo copies of two different documents with just the same contents. The effect shall be considered later. By these so called letters the management purports to have informed the District Inspector of Schools that there were five vacancies three in the L.T. grade and two in C.T. grade in the institution out of which one was to be filled by promotion for which proposal had already been sent and there was a likelihood of the filling in by ad hoc promotion. For the rest there were no hopes and consequently it was requested two asstt. teachers each in L.T. and C.T. grade be appointed or in the alternative the management be permitted to appoint the same.

4. Receipt of any of the above letters has been denied by the District Inspector of Schools, Respondent No. 2, in his counter affidavit.

5. The contention of the Petitioner is that after the latter dated 11-7-1986, the management proceeded to select the appointees and on 12-8-87, his selection was approved by the management (Annexure-4 to the writ petition) on 14-8-87 he was given appointment letter and he joined the school as an Assistant Teacher. The management sent letter dated 18-9-87 (Annexure-5 to the writ petition) to the District Inspector of Schools for approval and financial sanction which has been turned by the District Inspector of Schools by the impugned letter dated 14-2-89. The Petitioner has, however, been working in the school and paid salary under the cover of order dated 16-3-89 of this court.

6. Although, generally disputed questions of fact are not gone into in the writ jurisdiction but sometimes it becomes necessary to do it. The petition can neither be allowed nor dismissed ignoring the assertions of either party in the matter of intimation of vacancy as a fact and once the petition has been entertained, ignoring the alternative remedy under the Act, it has to be gone into in order to ascertain true facts and arrive at the correct conclusion

7. It need hardly be said that there is no dispute between the management and the Petitioner and in fact the real controversy is between the Respondents as in all probability the authorities are not in favour of the exercise of the authority of appointment by the management. The Petitioner could not have had access to the letters unless they were supplied to him by the management and thus obviously both annexures-3 and CA-2 are obviously coming from the management. If it could be assumed that the later one (Annexure 3) was an own creation of the Petitioner, the position will be still worse, production of two letters of similar contents of two different dates and admitting both, smacks of a foul play. This is further indicated by the fact that according to managements, the one dated 12-5-86 was sent under certificate of posting. A copy of the certificate has been produced as also a copy of the register of postage for that purpose but

obviously there should have been a postage stamp on the envelope also but that entry is absolutely wanting, at least that extract of the registrar has not been produced. Then if this letter of 12-5-86 had been really sent the next one dated 11-7-86 would be a reminder which it does not even smell.

8. The court will next proceed to examine the value of the letters as if they were sent. There can be no doubt about the law that where the management has notified the vacancy to the commission through the D.I.O.S. and there has been a failure on the part of the commission to make a recommendation, the management may get a right to appoint on ad-hoc basis (Section 18 of the U.P. Secondary Education Services Commission and Selection Board Act, 1982 as it then was. This legal position has also been clarified in the case of Ravindra Singh Niraujan v. the District Inspector of Schools 1988 UP LB EC 223, but before the application of Section 18 and the law laid down in this decision, an honest compliance of the provisions of Section 15 and other provisions of the Act is a must as this authority under Section 18 of the Act is not the basic authority of the management but flows from the inactivity or omissions on the part of the commission or the Board as the case may be. In order to get that authority, there should be real intimation by the management and failure on the part of the commission or D.I.O.S. a fraud on law should not be permitted.

9. The so called appointment of the Petitioner as well as the earlier-intimations are all of the year 1986 and the law as it then was has to be seen. The U.P. Secondary Education Services Commission and Selection Board, 1982 established the bodies namely a Commission and a Board. In order to make the purpose of these bodies effective and fruitful, a bar was created u/s 16 of the said Act, requiring that every appointment of a teacher after 10th July, 1981 shall be made by the management only on the recommendations of the Commission or of the Board as the case may be. Sub-section 2 of this section clearly laid down that every appointment of a teacher, in contravention of the provisions of Sub-Section (i) shall be void. It did provide for appointment of ad-hoc teachers u/s 18 but that was subject to certain conditions. Section 18 laid down that where the management had notified a vacancy to the Commission in accordance with the Provisions of the Act and the Commission had failed to recommend the name of suitable candidate for appointment of a teacher within one year from the date of such notifications, or the post of such teachers had actually remained vacant for more than two months, the management could make an ad-hoc appointment by direct recruitment or promotion from amongst the persons possessing qualifications prescribed under the Intermediate Education Act. This section has no doubt been subsequently amended in 1988 but those amendments would not obtain on the date of the appointment nor in fact they have any bearing upon the facts of this case as they did not improve upon the requirement on the part of the management. The only difference that has been come up is that the requirement of intimation was earlier contained in the rules, alone which shall be referred to below while now they have been added in the Act itself. This intimation required by Section 18, was not unknown to the

management and they purported to have intimated the matter of vacancy and the issue is whether it was a real notification of vacancy in accordance with the provisions of this Act as required by action 18 itself Rule 4 and 9 of the Rules framed under the said Act and named as U.P. Secondary Education Services Commission and Selection Rules 1982. Had two Rules 4 and 9 relating to intimation of vacancies. Rule 9 related to the matter of promotion which are not invited in their application in the present case Rule 4 directed that the management shall determine and inform to the Commission, in a proforma given in Appendix "A" and in the manner hereinafter specified, the number of vacancies existing or likely to fall vacant during the year of recruitment and, in the case of any post, other than the post of the head of an institution also the number of vacancies to be reserved for the candidates belonging to the scheduled caste, schedule tribe and other category of persons in accordance with the rules or orders issued by the government in this behalf in regard to educational institutions. The other part of the rule relates to matters of the heads of the institution, the raising of the institution itself and so on. Sub-rule 2 again directs that the statement of vacancies shall be sent, by the management to the Inspector in quadruplicate by 15th September of the year of recruitment and the Inspector shall, after verification forward two copies of the same to the Deputy Director by October 15th, with a copy to the Commission. The material part of the Sub-rule 2 is the date itself, i.e. 15th September in the matters of educational institutions year is from 1st July to 30th June. The use of the word vacancies existing or likely to fall vacant during the year of recruitment simply means that these vacancies had to be calculated for future purposes. Except in the case of death they can mostly be calculated. In the instant case, according to the Management the first intimation was sent in the month of May, 1986 which will mean that it related to the year 1985-86. Obviously it was no intimation in time. According to the other allegation it was sent in July 1986, when the vacancies had already taken place and obviously the intimation was not in time. This simply hints towards the mind of the management. Keep the intimation of vacancy a closely guarded secret till it becomes too late in order to get a justification for making ad-hoc appointment. Not only this, even after the due date, the intimation has not been sent in the prescribed form that is Appendix-"A" but is more, if it was at all sent, in a manner that it may be called an intimation but the District Inspector of Schools may not be in a position to work upon it. The management should not think that the District Inspector of Schools is an advisor and will keep on running after him as and when he comes to know anything about the institution. If the management has a little fondness for running of institution, they should also have a knowledge about the laws relating to it. At least they have a principle to advise them in that behalf who is supposed to know the rules of the Education Department.

10. In the circumstances, it is difficult to accept that the provisions of the Act were duly complied with and the Management got an authority to make an appointment u/s 18 of the Act by the default of the Commission or any authority

of the Education Department. Thus, it appears that in all probability, no intimation of vacancy was sent to the District Inspector of Schools and any case, even if the letters were sent, they were far below the compliance of Rule 4 mentioned above and was it no notification of vacancy. There was, therefore, no authority for any ad hoc appointment with the management and the appointments made by them should be their personal burden only.

11. Learned Counsel for the Petitioner had also relied upon the U.P. Secondary Education Services Commission and Selection Board as amended by amending Act of the same name in 1982. It was attempted to make out that the services of the Petitioner shall be stand regularised in view of Section 33-B added by Section 34 of the said amending Act. No part of the section unfortunately is applicable to the Petitioner Clause Kha (1)(ka)(Ek) relates to the teachers who were appointed directly or by promotion in any short term vacancy and (he said short terms vacancy was later on converted into a permanent one. The Petitioner was never appointed in a short term vacancy and the vacancy as already said about did exist and was in probability a permanent one much before his appointment itself. Under Clause (d) the teacher who were appointed between 14-7-81 and 12-6-85 in C.T. grade directly and also approved by the District Inspector of Schools alone would be covered. The name of the Petitioner has never been approved by District Inspector of Schools and in any case, he was appointed much after the cut out date i.e. 12 June, 1985 Under Clause (Teen) the teachers appointed u/s 18 of the Principal Act as it existed before the amending Act would be covered and that as already said about is not the case with the Petitioner.

12. Just after the enforcement of the Act in the Year 1981, a notification dated 31-7-81, Notification No. Ma/4993/xv-7-I (79)-81 dated 31-7-81 was issued and the Inspector relied upon it. This was obviously for a transitory period when the Commission was still to be established. Despite that, it did not in any manner do away with the requirement of notification of vacancies and had laid down under Clause 5 that the management shall as soon as may be inform the District Inspector of Schools about the details of the vacancy and upon such intimation inspectors shall invite applications from the local Employment Exchange and also through Public advertisement. The duty of selection under Sub-clause (iv) of Clause (v) was laid with District Inspector of Schools directing that he shall cause the best candidate selected on the basis of quality point. specified in Appendix "A" and this quality point could be complied by on regulatory basis by a retired gazetted government servant under the supervision of such Inspector, and again in the instant case, the management had taken all this burden for himself and naturally, that too when the vacancy was not notified properly.

13 In the circumstances, the District Inspector of Schools cannot be said to be unjustified, in declining to accord his approval or the financial sanction.

14. In result, the petition is liable to be and is dismissed but with no orders as the cost. The order 16-3-89 is hereby vacated.