
(1993) 08 AHC CK 0003

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 30380 of 1993

Braham Deo

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 31-08-1993

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 18, 32

Citation : (1994) 1 AWC 44 : (1994) 2 UPLBEC 1058

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : Ashok Khare, for the Appellant;

Final Decision : Dismissed

Judgement

R.R.K. Trivedi, J.—Heard learned counsel for Petitioners.

2. The Petitioner is claiming his appointment on the post of Assistant Teacher in L.T. Grade .in an institution run under the name of Shri Swami Krishnanand Inter College, Bilwar, Distt. Jaunpur. The vacancy for the post has occurred on account of death of one Shri Keshav Prasad Tiwari on 24-1-92. It has been stated that the advertisement with regard to the selection and appointment was made in the notice board, and after that the selection committee proceeded and selected the Petitioner for appointment and the appointment order was issued on 17-4-92 in pursuance of which, the Petitioner joined the institution on 20-4-92. It has been stated that all the papers pertaining to the appointment of the Petitioner were forwarded to the office of the District Inspector of Schools. However, no orders have been , passed with regard to the appointment of the Petitioner. Hence, this petition.

3. In my opinion the appointment of the Petitioner can not be said to be legal in view of the fact that the advertisement was made on the notice board. It can not be denied that the vacancy on which the Petitioner was appointed was

substantive one as the permanent incumbent working on that post had died on 24-1-92.

4. The learned counsel for the Petitioner, however, submitted that under the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (2nd) Order, 1981 the vacancy could be advertised on the notice board. In my opinion, the (2nd) Order, of 1981 is confined to the short-term vacancy as is clear from Paragraph 2 of the ,said order. Short-term vacancy was contemplated in the Order are the vacancies caused on grant of leave or on account of suspension, etc. As the vacancy in question was. not a short-term vacancy the provisions of aforesaid order could not be applicable.

5. The learned counsel for the Petitioner has submitted that the appointment of Petitioner could be made and be justified u/s 18 of the U.P. Act No. 5 of 1982, which does not provide any procedure. In absence of any procedure, the advertisement of the vacancy on the notice Board was sufficient and there is no violation of any procedure in appointing Petitioner. In my opinion, the submission is not correct. Section 32 of U.P. Act no. 5 of 1992 provides that the provisions of the U.P. Act 2 of 1921 and the regulations made thereunder in so far as they are not inconsistent with provisions of this Act or the Rules and Regulations made thereunder shall continue to be in force for the purpose of selection, appointment, promotions, dismissal, removal, termination or reduction in rank of a teacher. Since there is no procedure prescribed in Section 18 for selection and appointment on ad-hoc basis, on a substantive vacancy, the provisions contained in Rules and Regulations of U.P. Act No. 2 of 1921 could be applicable. Regulation 10 of Chapter II of Regulations framed under U.P. Act of 1921 provides that the post shall be advertised by the Manager of the Institution in atleast one Hindi and one English newspapers having adequate circulation in the State, giving particulars as to the nature, number of vacancy, description of post, etc. The post should also be published in the Employment News or Rozgar Samachar. Regulation 10 prescribes procedure for direct recruitment on substantive vacancies and this procedure shall apply to appointments contemplated u/s 18 of the Act no. 5 of 1982, as provided u/s 32.

6. The Statement of objects and reasons appended to the relevant Bill reads as under:

The appointment of teachers in secondary institution recognised by the Board of High School and Intermediate Education was governed by the Intermediate Education Act, 1921 and regulations made thereunder. It was felt that the selection of teachers under the provisions of the said Act and the regulations was sometimes not free and fair. Besides, the field of selection was also very much restricted. This adversely affected the availability of suitable teachers and the standard of education. It was, therefore, considered necessary to constitute Secondary Education Service Commission at the , State level, to select Principals, Lecturers, Headmasters and L T. Grade teachers, and Secondary Education Selection Boards at the regional level, to select and make available suitable

candidatures for comparatively lower posts in C.T./J.T.C./B.T.C Grades for such institutions.

7. In my opinion, if the procedure contemplated under Regulations 10 is made applicable, with regard to the appointments u/s 18, also it shall be in consonance with the object sought to be achieved by U.P. Act No. 5 of 1982. The advertisement of posts as provided in Regulation 10, shall atleast ensure fairness to some extent, which in present days atmosphere is of utmost importance. The provisions with regard to advertisement of the post, are mandatory provisions,, and are necessary for free and fair selections The violation of the provisions shall vitiate the entire selection proceedings.

8. In view of the admitted fact that post was not advertised in newspapers, the appointment of Petitioner cannot be said to be legal, and his claim can not be accepted.

9. The petition has thus no merits and is accordingly rejected. No order as to costs.