

(2010) 12 AHC CK 0205
In the Allahabad High Court
Case No : Special Appeal No. 383 of 2006

Chandra Bahadur Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:

Uttar Pradesh Secondary Education (Removal of Difficulties) Order, 1981 — Order 5
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 10, 16, 18

Citation : (2011) 2 ADJ 291

Hon'ble Judges : Ran Vijai Singh, J; Rakesh Tiwari, J

Bench : Division Bench

Judgement

1. Heard learned Counsel for the parties and perused the record.
2. This appeal has been filed against the judgment and order dated 11.3.2005 passed in Civil Misc. Writ Petition No. 54539 of 2003, Chandra Bahadur Singh v. State of U.P. and Ors. by which the writ petition was dismissed on the ground of latches holding that the impugned order was passed in the year 1998 and the writ petition has been filed in the year 2003, almost after five years of the passing of impugned order without there being any explanation with regard to the latches.
3. Sri P.N. Tripathi, learned Counsel appearing for the Appellant has submitted that the Court while deciding the writ petition has not taken correct view as the Petitioner Appellant has been making representations for redressal of his grievance during these years. Therefore, the latches should have been condoned and the petition should have been heard on merit. This Court has made a specific query from Sri P.N. Tripathi, learned Counsel for the Appellant to point out those averments in the writ petition where the latches have been explained but Sri Tripathi has not been able to show any averment made in the writ petition to that effect.
4. From the perusal of record it transpires that admittedly the Appellant's

appointment was made against substantive vacancy on ad hoc basis. The procedure for appointment on ad hoc basis against substantive vacancy prior to commencement of U.P. Secondary Education Services Selection Board Act, 1982 has been given in U.P. Secondary Education (Removal of Difficulties) Order, 1981. Paragraph 5 of the aforesaid order deals with the provision with regard to ad hoc appointment by direct recruitment. For better appreciation paragraph 5 of the aforesaid order is as under:

5. Ad hoc appointment by direct recruitment: (1) Where any vacancy cannot be filled by promotion under Paragraph 4, the same may be filled by direct recruitment in accordance with Clauses (2) to (5).

2. The management shall, as soon as may be, inform the District Inspector of Schools about the details of the vacancy and such Inspector shall invite applications from the local Employment Exchange and also through public advertisement in at least two newspapers having adequate circulation in Uttar Pradesh.

3. Every application referred to in Clause (2) shall be addressed to the District Inspector of Schools and shall be accompanied:

(a) by a crossed postal order worth ten rupees payable to such Inspector;

(b) by a self addressed envelope bearing postal stamp for purposes of registration.

4. The District Inspector of Schools shall cause the best candidates selected on the basis of quality specified in Appendix. The compilation of quality points may be done on remunerative basis by the retired Gazetted Government servants under the personal supervision of such Inspector.

5. If more than one teacher of the same subject or category is to be recruited for more than one institution, the names of the selected teachers and the names of the institutions shall be arranged in Hindi alphabetical order. The candidate whose name appears on the top of the list shall be allotted to the institution the name whereof appears on the top of the list of the institution. This process shall be repeated till both the lists are exhausted.

5. From perusal of the above paragraph it is apparent that as soon as the information about the availability of vacancy comes to the notice of District Inspector of Schools, the District Inspector of Schools is under an obligation to invite applications to fill up the post from the local Employment Exchange and also by advertising the vacancy in two newspapers having wide circulation in Uttar Pradesh but after commencement of the U.P. Secondary Education (Services Selection Boards) Act, 1982, the appointment against substantive vacancy has to be made as per Section 18 of the aforesaid Act and the rules framed thereunder. The procedure of selection by direct recruitment has been given in Section 10 of the Act, 1982. Section 16 of the aforesaid Act provides that the appointment has to be made only on the recommendation of the Board

and for that requisition has to be sent by the Committee of Management after determining the vacancy. So far as the ad hoc appointments are concerned, the provisions have been detailed in Section 18 of the Act, in case the Commission fails to select the candidate within two months from the date of receipt of requisition. The management can fill up the vacancies on ad hoc basis.

6. It appears that no other provisions with regard to procedure of selection regarding invitation of the applications etc. was given under the Commission Act and the Rules framed thereunder. The matter came up before the full Bench in the case of *Radha Raizada v. Committee of Management* 1994(2) ESC 345 (All), where the Court has opined that the procedure given in para 5 of U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981 has to be followed, in the case, where the appointment is to be made on ad hoc basis against substantive vacancy meaning thereby the management has to advertise the vacancy at least in two newspapers having wide circulation. Here in the present case, admittedly the vacancy has been advertised only in one newspaper "Tarun Mitra" that too of not of wide circulation. Further the vacancy was not notified only on the Notice board of the Institution and it was not informed to the Employment exchange. The District Inspector of Schools while passing the impugned order in the writ petition has found that the requisition was also not sent to the Commission and further the vacancy was not advertised in two newspapers having wide circulation in Uttar Pradesh, therefore, he has refused to accord approval to the Appellant's appointment.

7. Sri P.N. Tripathi, learned Counsel appearing for the Appellant has submitted that in the case of *Ashika Prasad Shukla v. District Inspector of Schools, Allahabad and Anr.* 1998 (3) ESC 2006 (All), this Court has held that the appointment made prior to the full Bench decision in the case of *Radha Raizada* the advertisement even in one newspaper is valid. We have gone through the judgment cited by the learned Counsel for the Appellant and we find that in the case of *Ashika Prasad Shukla* (supra) the appointment under the U.P. Secondary Education Services Commission (Second Removal of Difficulties) Order, 1981 was under consideration, where the Court has taken the view that in view of *K.N. Dwivedi's* case, (where the Hon'ble Single Judge of this Court has taken a view that even the appointment against the short term vacancy has to be made only after advertising the vacancy in two newspapers having wide circulation), as there was no provision for advertising the vacancy in two newspapers of wide circulation under the relevant statute for making appointment against short term vacancy under the U.P. Secondary Education Services Commission (Second Removal of Difficulties) Order, 1981, the decision rendered in *K.N. Dwivedi's* case will have prospective effect and not retrospective. However, after the date of decision in the case of *K. N. Dwivedi's* case, the vacancy has to be advertised in two newspapers having wide circulation and not prior to that. In case the appointment has been made against the short term vacancy prior to 1994, those appointments may be considered in view of the provisions contained in U.P. Secondary Education Services Commission (Second Removal of Difficulties)

Order, 1981.

8. Here, we find that the Appellant's case is entirely on different footing, according to the Appellant, his appointment was made on ad hoc basis against a substantive vacancy where the law is very clear that the vacancies ought to have been advertised in two newspapers having wide circulation which is lacking in the present case. As admittedly, the vacancy was advertised only in one newspaper in "Tarun Mitra" which had not wide circulation. The procedure for appointment contained in Order 5 of U.P. Secondary Education Services Commission (Second Removal of Difficulties) Order, 1981 has also not been followed. It is settled law that if statute provides that a thing is to be done in a particular manner and the same has not been done in that manner then its out-come would be void ab initio.

9. We in view of this do not find any illegality or infirmity in the order impugned in the writ petition passed by the District Inspector of Schools where he has held that the provisions contained in Order 5 of U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981 in the appointment of the Appellant has not been followed i.e. neither information with regard to vacancy was given to the Employment Exchange, nor the vacancy was published in two newspapers having wide circulation. The quality point marks have also not been given as per provisions contained in Order 5 of U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981. According to the Petitioner's own case, his appointment is not within the four corner of law and has been made contrary to the provisions applicable for appointment on ad hoc basis against substantive vacancy.

10. So far as the submission of Sri Tripathi with regard to the condonation of latches is concerned, as we have noticed that the latches have not been explained before Writ Court and it is well settled that the appellate Court always proceeds on the assumption that whatever is on record in clear terms is the correct factual position, and not what can be inferred by interpreting stray observations. The view taken by us finds support from the decision of the Apex Court State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, Abdul Sathar Ibrahim Manik Vs. Union of India and others, and Osmania University v. K. Jyoti Lakshmi (2009) 9 SCC 177. However, under the facts and circumstances of this case, even if we ignore the latches and request the Hon'ble Single Judge to decide the matter on merit, no useful purpose would be served as the Appellant/ Petitioner has no case on merit.

11. For the reasons stated above, the special appeal is dismissed. No order as to costs.