
(2007) 09 AHC CK 0018
In the Allahabad High Court

Chandresh Nath Singh Baghel	Vs	APPELLANT
Shri Bhagwan Singh Sisodia and Others		RESPONDENT

Date of Decision : 27-09-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2008) 5 AWC 5075 : (2008) 1 UPLBEC 40

Hon'ble Judges : B.S. Chauhan, J;Arun Tandon, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan and Arun Tandon, JJ.—This Special Appeal is directed against the judgment and order of the learned Single Judge dated 04/9/2008 passed in Writ Petition No. 1665 of 1998 (Bhagwan Singh Sisodia v. State of U.P and Ors.).

2. The facts and circumstances giving use to this special appeal are that a vacancy to fill up the post of Principal in D.N. College and A K. School, Tirwa, Kannauj, an institution aided and recognised under the provisions of The U.P. Intermediate Education Act, 1921 and the provisions of the Uttar Pradesh Secondary Education Services Selection Board Act, 1982 (U.P. Ac No. 5 of 1982) (hereinafter called the "Act") and the rules framed thereunder i.e U.P. Secondary Education Service Selection Board Rules, 1998 (hereinafter called the "Rules") are fully applicable in the said institution, was notified. The vacancy requisitioned was advertised by the U.P. Secondary Education Services Commission Allahabad (hereinafter called the "Commission") vide Advertisement dated 1/95-96. After completion of the selection proceedings, a select panel containing names of three candidates was notified in the institution n 03/8/1996 One Mr. Mohd. Nairn was placed at serial No. 1 of the said select panel. He was offered appointment and he joined on 30/11/1996. Shri Mohd. Naim continued to be in the institution till 30/6/1997 when he attained the age of superannuation and retired. As a consequence thereto, vacancy was again caused on the post of Principal of the Institution. The Committee of Management of the institution, in these

circumstances, requested the Commission as to whether the person empanelled at Serial No. 2, namely, Shri Chandresh Nath Singh Baghel, could be offered appointment on the post of Principal on the strength of his name being at serial No. 2 in the select panel. The Commission vide its letter dated 07/4/1997 informed the District Inspector of Schools that such appointments could be offered to the appellant who was serial No. 2 of the select panel. The District Inspector of Schools communicated the decision to the Committee of Management, who, in turn, passed a resolution dated 12th June 1997 offering appointment to the respondent-appellant on the post of Principal of the institution. Appellant claims to be working on the post of Principal since then.

3. Shri Bhagwan Singh Sisodia, who was working in the institution and claim to be the seniormost Lecturer and entitled for appointment on officiating basis on the post of Principal till the regular appointments were made, filed writ petition before this Court being Writ Petition No. 1665 of 1998 whereby he questioned the appointments of the present appellant as regular Principal of the institution. After parties have exchanged their affidavits, the learned Single Judge, by means of judgment order dated 04/9/1998, allowed the writ petition and has held that the appointment of the present appellant subsequent to the retirement of Mohd. Naim on the strength of the select panel prepared earlier is illegal inasmuch as such select panel lost its life after the candidate empanelled at serial No. 1 Mohd. Naim joined the institution as Principal and could work for a period of seven months before his retirement. The judgment and order of the learned Single Judge is being questioned with reference to the Division Bench judgment of the High Court in the case of Kishori Raman Shiksha Samiti Mathura v. Regional Inspector of Girls Schools 1994 (2) UPLBEC 1320.

4. Shri G.K. Singh, learned Counsel for the appellant points out that the Division Bench of this Court has held that if the candidate empanelled at serial No. 1 of the select panel after joining against the vacancy advertised resigns/leaves the post or expires within a valid period of the select panel, which is one year, the candidate empanelled at Serial No. 2 was legally not entitled for appointment against the said vacancy and this judgment of the Division Bench has not been appreciated in its true spirit by the learned Single Judge while holding that the facts of the case were distinguishable vis-a-vis the case of the petitioner-respondent.

5. Shri Ashok Khare, learned Senior Counsel appearing on behalf of the respondents submits that the judgment and order in the case of Kishori Raman (supra) was delivered in the peculiar facts and circumstances of the case where the candidate expired hardly after five days of his joining, therefore, in the aforesaid factual circumstance, the Division Bench or this Court held that the person empanelled at Serial No. 2 could be appointed as the select panel was still Subsisting. He pointed out that it is settled law that once a selected candidate empanelled at Serial No. 1 joins with reference to the only advertised vacancy, the select panel exhausts itself and the same cannot be used as a source for

appointment against a vacancy which may be subsequently caused due to retirement/resignation etc. of the said appointee. He submits that the Hon'ble Supreme Court as well as this Court in series of judgments have repeatedly held that the select panel cannot be used as a perennial source for appointment and that the vacancy which has caused after 11 months of the joining and work of the person who was empanelled at Serial No. 1 necessarily creates a new vacancy which is to be advertised in accordance with the Rules applicable. Any direction contrary to the above would result in an unadvertised vacancy being filled up from the earlier select panel which would result in depriving the candidates who may have become eligible in between for being considered for the same post as Principal. Thus, it would be violative of Article 14 of the Constitution of India, therefore, the judgment and order of the learned Single Judge warrants no interference.

6. We have considered the rival submissions made by learned Counsel for the parties and perused the record.

7. The issues for consideration before this Court in the present Special Appeal are as follows:

(a) Whether the select panel notified under the provisions of the Act exhausts itself with the appointment of the candidate empanelled at serial No. 1.

(b) Whether the candidate empanelled at serial No. 2 of the said panel can be offered appointment in case the person at serial No. 1 after joining, retires/ resigns or expires within the valid period of the select panel which under the Rules is one year.

(c) Whether select panel in respect of an earlier vacancy can be used for filling up of the subsequent vacancy because of death, resignation or retirement of the earlier incumbent or such vacancy is required to be advertised afresh so as to make the process of selection in conformity with Articles 14 and 16 of the Constitution of India.

8. The issues involved herein are no more *res Integra* as the same have been considered by the Courts time and again.

9. In *State of Punjab Vs. Ragbir Chand Sharma and Another*, the Apex Court examined the case where only one post was advertised and the candidate whose name appeared at Serial No. 1 in the select list joined the post, but subsequently resigned. The Court rejected the contention that post can be filled up offering the appointment to the next candidate in the select list observing as under:

With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select list prepared, the panel ceased to exist and has outlived its utility and at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently.

(Emphasis added).

10. Similar view has been reiterated by the Apex Court in *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, where it observed as under:

The Commission may by abundant caution prepare a merit list of 20 or even 30 candidates as per their inter se ranking on merits. But such a merit list will have a maximum life of one year from the date of publication or till all the required appointments are made whichever event happened earlier. It means that if requisition for recruitment is for 11 vacancies and the merit list prepared is for 20 candidates, the moment 11 vacancies are filled in from the merit list the list gets exhausted, or if during the span of one year from the date of publication of such list all the 11 vacancies are not filled in, the moment the year is over the list gets exhausted, in either event, thereafter, if further vacancies are to be filled in or remaining vacancies are to be filled in, after one year, a fresh process of recruitment is to be initiated giving a fresh opportunity to all the open market candidates to compete.

[Emphasis added].

11. In *Ashok Kumar and Others Vs. Chairman, Banking Service Recruitment Board and Others*, the Supreme Court held as under:

5. Article 14 read with Article 16(1) of the Constitution enshrines fundamental right to every citizen to claim consideration for appointment to a post under the State. Therefore, vacant posts arising or expected should be notified inviting applications from all eligible candidates to be considered for their selection in accordance with their merit. The recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution.... Boards should notified existing and expected vacancies and the Recruitment Board should get advertisement published and recruitment should strictly be made by the respective Boards in accordance with the procedure to the notified vacancies but not to any vacancies that may arise during the process of selection.

(Emphasis added)

12. In *Gujarat State Deputy Executive Engineer's Association v. State of Gujarat and Ors.* 1994 Supl. (2) 3CC 591, the Hon"ble Supreme Court quashed the appointments made over and above the vacancies advertised holding that such an action was neither permissible nor desirable for the reason that it would amount to "improper exercise of power" and only in a rare and exceptional circumstance and in emergent situation, this rule can be deviated from and it can be done only after adopting policy decision based on some rational as the authority cannot fill up more posts than advertised as a matter of course.

13. In *Prem Singh and Others Vs. Haryana State Electricity Board and Others*, the Apex court observed as under

...The selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies but not for future vacancies. If the requisition and advertisement are for a certain number of posts only, the State cannot make more appointments than the number of posts advertised.... State can deviate from the advertisement and make appointments on the posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf.

(Emphasis added).

14. The said judgment in Prem Singh was followed with approval by the Hon'ble Supreme Court in Virender S. Hooda and Others Vs. State of Haryana and Another,

15. In Union of India and Ors. v. Ishwar Singh Khatri and Ors. 1992 Su (3) SCC 84, the Court held that selected candidate have right to appointment only against Vacancies notified" and that too during the life of the select list as the panel of selected candidate cannot be valid of indefinite period. Moreover, empanelled candidates "In any event cannot have a right against future vacancies." In State of Bihar and others Vs. The Secretariat Assistant Successful Examinees Union 1986 and others, the Apex court held that "a person who is selected does not, on account of being empanelled alone, acquire any indefeasible right of appointment. Empanelment is at the best a condition of eligibility eligibility for purposes of appointment, and by itself does not amount to selection or create a vested right to be appointed unless relevant service rules say to the contrary." In the said case as the selection process was completed in five years after the publication of the advertisement, the contention was raised that the empanelled candidates deserved to be appointed over and above the vacancies notified. The Hon'ble Supreme Court rejected the contention observing that keeping the selection process pending for long and not issuing any fresh advertisement in between, may not be justified but offering the posts in such a manner would adversely prejudice the cause of those candidates who achieved eligibility in the meantime.

16. In Surinder Singh and Ors. v. State of Punjab and Anr. AIR 1998 SC 18, the Apex Court held as under:

A waiting list, prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the persons from the waiting list may be pushed UP and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice may result in depriving those candidates who became eligible for competing for the vacancies available in future. If the waiting list in

one examination was to operate as infinite stock for appointment, there is danger that the State may resort to the device of not holding the examination for years together and pick up candidates from the waiting list as and when required. The Constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetuating the waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service.... Exercise of such power has to be tested on the touch-stone of reasonableness.... It is not a matter of course that the authority can fill up more posts than advertised."

(Emphasis added).

17. In Kamlesh Kumar Sharma Vs. Yogesh Kumar Gupta and others, , the Apex Court while dealing with provisions of the U.P. Higher Education Services Commission Act, 1980, which contain analogous provisions to the Act/Rules involved in the instant case, observed as under:

As per the scheme of the Act and the aforesaid provisions, for each academic year in question, the management has to intimate the existing vacancies and vacancies likely to be caused by the end of the ensuing academic year in question. Thereafter, the Director shall notify the same to the Commission and the Commission, in turn, will invite applications by giving wide publicity in the State of such vacancies. The vacancies cannot be filled except by following the procedure as contained therein. Sub-section (1) of Section 12 has incorporated in strong words that any appointment made in contravention of the provisions of the Act shall be void. This was to ensure to back-door entry but selection only as provided under the said sections.

(Emphasis added).

18. Similar view has been reiterated by the Supreme Court in Hoshiar Singh v. State of Haryana and Ors. 1993 Su (4) SCC 377 ; State of Bihar and another Vs. Madan Mohan Singh and others, ; Dr Abdul Hameed Fazli and Another Vs. Adam Malik Khan and Others, ; State of Haryana and Others Vs. Miss Ajay Walia, ; Sanjoy Bhattacharjee Vs. Union of India and others, ; Sri Kant Tripathi and Ors. v. State of UP. and Ors. (2001) 10 SCC 237 ; State of Jammu & Kashmir and Others Vs. Sanjeev Kumar and Others, : and Secretary, A.P. Public Service Commission Vs. B. Swapna and Others,

19. It is, therefore, apparent from the aforesaid judgments that once the number of candidates in terms of the number of vacancies are appointed the select panel loses its life and the same cannot be used as a reservoir for appointment against any future vacancy.

20. Once the candidate at serial No. 1 of the select panel had joined against the one vacancy advertised, the said vacancy stands fulfilled and if the incumbent so appointed vacates the post, the same would necessarily create a new vacancy

Any attempt to fill up the subsequent vacancy on strength of the earlier panel would be violative of Articles 14 and 16 of the Constitution of India inasmuch the Hon"ble Supreme Court has clearly held that any appointment made against an unadvertised vacancy would be a nullity.

21. So far as the life of select panel is concerned as provided for under the U.P. Commission Rules, suffice it to point out that the said valid select list is only for the purpose of offering appointment to the candidates in order of merit only if the person higher in merit does not join the post and once the empanelled candidate joins in accordance with his merit, the remaining select panel would exhausts itself automatically and the remaining panel cannot be said to have a life beyond the purpose for which it was prepared, therefore, no shelter can be taken by a person in the select list/waiting list behind the provision which prescribes the life of the select panel as one year.

22. In the instant case, the vacancies occurred long back and the same were to be filled up under the U.P. Secondary Education Services Commission Rules, 1983. Rule 4 thereof reads as under:

4. Determination and intimation of vacancies.- (1)(i) The Management shall determine and intimate to the Commission, in the 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, scheduled tribes and other category of persons in accordance with the rules or orders issued by the Government in this behalf in regard to the educational institutions.

(ii) In regard to the post of head of an institution, the Management shall also forward, mutatis mutandis in the manner hereinafter specified, the names of two senior-most teachers, copies of their service records (including character rolls) and such other record or particulars as the Commission may require from time to time.-----

(2) 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 15th October. with a copy to the Commission.-----

(5) Where a vacancy occurs at any time during the session or after the requisition has already been sent in accordance with Sub-rules (2), (3), (4) or (5) of this rule, the management shall notify the vacancy to the Inspector within 15 days of its occurrence and the Inspector and the Deputy Director shall deal with it in the manner mentioned in Sub-rules (3) and (4) within 10 days of its receipt by them.-----

23. Thus, it is evident from the aforesaid Rules that existing vacancies which were likely to occur during the year of recruitment were to be determined and

Rifled. In case a vacancy occurs at a subsequent stage, the Management was Binder an obligation to notify the same to the Commission.

24. Advertisement No. 1/95-93 was issued taking into consideration the existing Vacancies and the anticipated vacancies in the said year. Eligible candidates submitted their applications and after consideration of their merits, the select panel was prepared. Shri Mohd. Nairn was appointed who retired on 30.06 1997 on attaining the age of superannuation. Shri Mohd. Nairn had never been in picture prior to submitting his application. Thus, nobody could imagine that a person would apply and be appointed who would retire within the life of the select list. Thus, the vacancy which came into existence due to retirement of Mond. Naim the incumbent on the post, even by no stretch of imagination, would fall within the purview of vacancies likely to occur in the year of recruitment. Therefore, the vacancy which came into existence on retirement of Mohd Naim could not have been filled up from the panel prepared in pursuance of Advertisement No. 1/95-96.

25. In view of the aforesaid, we are in respectful agreement that the judgment and order of the learned Single Judge and the Division Bench judgment of the High Court in the case of Kishori Raman Shiksha Samiti (supra) relied upon by the counsel for the appellant was occasioned because of the peculiar facts and circumstances of the case. The appellant has no right to be appointed on the post of Principal on the basis of the select panel which stood exhausted.

26. Even otherwise, the judgment in Kishore Raman Shiksha Samiti (supra) has been decided on the facts of the case and does not lay down the rule of universal application for the reason that the incumbent of the post died only five days of his Joining and, therefore, the facts of this case are quite distinguishable from that of Kishore Raman Shiksha Samiti (supra).

27. In view of the above, the Appeal stands dismissed.

28. However, if the appellant was working as a Teacher in any aided and recognised Intermediate College on substantive basis prior to his appointment as Principal in the institution in dispute, he shall be reverted to his original place and shall be permitted to work and shall also be paid his salary accordingly.