

(1986) 03 AHC CK 0010

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 4508 of 1986

Chandrika Prasad Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-03-1986

Acts Referred:

Constitution of India, 1950 — Article 14
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 33A, 33A(1), 33A(3)

Citation : (1986) 03 AHC CK 0010

Hon'ble Judges : S.K. Dhaon, J; A.N. Varma, J

Bench : Division Bench

Advocate : A.N. Tripathi, for the Appellant;

Judgement

1. Having heard learned Counsel for the Petitioner, we find no merit in this petition.

2. The Petitioner was promoted to the post of Principal on an ad hoc basis under the U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981 on October 13, 1981. He has prayed for a writ of Mandamus commanding the Respondents to treat him as a principal appointed in substantive capacity with effect from June 12, 1985. Learned Counsel placed reliance on Section 33A of U.P. Secondary Education Services Commission and Selection Boards Act, 1982 (U.P. Act No. 5 of 1982) which, insofar as is relevant for our purposes, provides ;

33A. (1) Every teacher directly appointed, before the commencement of the Uttar Pradesh Secondary Education Services Commission and Selection Boards (Amendment) Ordinance, 1985, on ad hoc basis against a substantive vacancy in accordance with paragraph 2 of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981, as amended from time to time, who possesses the qualifications prescribed under, or is exempted from such qualifications in accordance with, the provisions of the Intermediate

Education Act, 1921, shall, with effect from the date of such commencement be deemed to have been appointed in a substantive capacity provided such teacher has been continuously serving the institution from the date of such appointment up to the date of such commencement.

Every teacher deemed to have been appointed in a substantive capacity Under Sub-section (1), shall be deemed to be on probation from the date of such commencement.

Nothing in this Section shall be construed to entitle any teacher to substantive appointment if on the date of such commencement, such post had already been filled or selection for such post had already been made in accordance with this Act, or if such teacher was related to any member of the Committee of Management or the Principal, or Head Master of the institution concerned.

It was urged that the Petitioner having been appointed on ad hoc basis before the Uttar Pradesh Secondary Education Services Commission and Selection Boards (Amendment) Ordinance, 1985 was promulgated, he became entitled to be deemed to have been appointed in a substantive capacity as he was serving continuously in the institution from the date of such appointment up to the date of the commencement of the said Ordinance.

3. We find no merit in the above contention. In the first place, the benefit of Section 33A is available only to those teachers who were appointed on ad hoc basis directly and not to the teachers who were appointed on ad hoc basis Under the Removal of Difficulties Order of 1981 by way of promotion. Secondly, Sub-section (3) of Section 33A clearly takes the case of the Petitioner out of the purview of Sub-section (1) inasmuch as admittedly selection for the post had already been made in accordance with the said Act on the date of the commencement of the Ordinance.

4. Learned Counsel for the Petitioner, however, submitted that Sub-section (1) of Section 33A is hit by Article 14 of the constitution of India in that it confers the benefit of regularization only on the teachers who were directly appointed on ad hoc basis. It was argued that there does not exist any valid ground for depriving the ad hoc promotes of the benefit available under Sub-section (1) of Section 33A.

5. In our opinion, the submission is devoid of any merit. Ad hoc teachers who were appointed directly under the Removal of Difficulties Order of 1981 issued under U.P. Act No. 5 of 1982 and the Ordinance which was replaced by the said Act constitute a class by themselves and cannot be legitimately equated with the ad hoc promotes. In the case of Chandra Datt Patni v. State of Uttar Pradesh 1985 UP LB EC 212 a Division Bench had occasion to consider the nature of ad hoc appointments made under the aforesaid Removal of Difficulties Order. In that connection several Government Orders issued by the State Government providing for regularization of ad hoc appointments made under various services of the State were examined. Each of those Government Orders which provided

for regularization of ad hoc employees was made applicable only to those who were directly appointed. The benefit of regularization was not extended to ad hoc promoters. In doing this what had weighed with the Government was that persons who were directly appointed on ad hoc basis to various services, if not retained in service after having worked continuously for several years, would find it hard to secure jobs else where as with the passage of time most of them must have become overage for other services. They would hence immediately face unemployment and all the concomitants flowing there from. The ad hoc promotes, on the other hand, would on their ad hoc employment ceasing continue to belong to the service. Only they would revert to their substantive lower post-a situation which is materially different and distinct from that implied in the total loss of employment.

6. In this background the classification seems perfectly legitimate and the same is reasonably related to the object sought to be achieved by confining the benefit of Sub-section (1) of Section 33A to direct recruits.

7. The next submission of the learned Counsel was that the Petitioner became entitled to be treated as a substantively appointed principal in any case under Regulation 2 of Chapter II of the Regulations framed under the Intermediate Education Act inasmuch as he was working as a Head Master when the institution was upgraded to the level of an Intermediate College on March 20, 1980.

8. The submission is devoid of any merit. The Petitioner was at no time appointed as a Head Master on a substantive basis. He was not a substantively appointed Head Master on the date on which the institution was raised to the level of an Intermediate College. On his own showing the approval accorded by the District Inspector of Schools to the petit order's appointment as a Head Master was temporary and provisional and there is nothing to indicate that the Petitioner became a substantively appointed Head Master on the relevant date. It is significant to mention that this point which the learned Counsel canvassed during arguments has not even been mentioned as one of the grounds on which the Petitioner has claimed regularization of his appointment. Indeed the very fact that the Petitioner was appointed on ad hoc basis on October 13, 1981 under the aforesaid Removal of Difficulties Order of 1981 negatives the claim of Petitioner that he had already become a Principal on substantive basis on the up gradation of the institution to the level of an Intermediate College.

9. Thus neither of the two points submitted by the learned Counsel in support of the petition has any substance. The petition is accordingly dismissed.