
(1989) 12 AHC CK 0010
In the Allahabad High Court
Case No : Writ Petition No. 1385 of 1989

Charu Chandra Tiwari

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 22-12-1989

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 22
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 5, 6

Citation : (1990) 1 AWC 310

Hon'ble Judges : R.M. Sahai, J; R.A. Sharma, J

Bench : Division Bench

Advocate : G.K. Singh and R.N. Singh, for the Appellant;

Final Decision : Allowed

Judgement

R.M. Sahai, J.—The short question that arises for consideration in this petition is if ad-hoc appointment u/s 18 of U.P. Act No. v. of 1982 can be made by the management from outside, that is, by direct recruitment even if teachers are available to be promoted to the post of Lecturer.

2. Factually there appears no dispute as admittedly after retirement of a lecturer in Geography the management appointed a teacher by direct recruitment, whereas claim of the Petitioner was that he being the senior-most teacher in L.T. grade was entitled to be promoted both because the post fell vacant in 40 per cent quota and in the alternative no appointment could be made by direct recruitment when a teacher qualified was available to be promoted. Since there is a dispute if the post fell in 40 per cent quota or not, it is not necessary to advert to it as in case Petitioner's alternative contention, namely, the post could have been filled by ad-hoc promotion only u/s 18 by promotion of senior-most teacher is well founded, then the dispute about quota may not be relevant.

3. Section 18(i)(b) of U.P. Act No. v. of 1982 is extracted below:

The post of such teacher has actually remained vacant for more than Two

months, then, the management may appoint, by direct recruitment or promotion, a teacher on purely ad-hoc basis from amongst the persons possessing qualifications prescribed under the Intermediate Education Act, 1921 or the regulations made thereunder.

4. The clause empowers the management to make ad-hoc appointment in case the vacancy is not filled for more than two months by the Commission. Nature of appointment is apparent from use of expression, "purely ad-hoc basis". That is it does not create any right in the appointee except to continue till regular selection is made.

5. Method of appointment could be by direct or promotion. But manner is not provided. Nor it provides if the two methods are exclusive of each other or in alternative. In other words, is it open to management to fill ad hoc vacancy either by direct appointment or promotion. A superficial reading of the provision may create that impression. But a close scrutiny in the light of purpose and objective of the appointment and legislative background of ad-hoc appointments in educational institutions, dispels this doubt. Purpose, obviously, is the interest of the institution and students. Delay in appointment by Commission may not cause dislocation in teaching. To avoid it the senior-most teacher available in the subject, who, in fact normally must be taking classes, should be promoted. It is conducive to the institution, is encouraging for the teacher and avoids any disturbance. But more than this is the construction of the clause both in the language and legislative back- ground. In U.P. Intermediate Education Act, 1921, there was no concept of ad-hoc appointments. By Act No. XXVI of 1975 the Act was amended. Procedure for appointment of teachers by the Management on recommendation of Selection Committee was provided. The transitory provision empowered the Government to make regulations in respect of matters contained in Chapter jI and rules in respect of Chapter III. And Section 22 authorised the Government to remove difficulties by issuing orders to give effect to provisions of the Act. In pursuance of it, the U.P. Secondary Education (Removal of Difficulties) Order, 1975 was issued on 18th August, 1975. Clause 2 (a), (c) and (d) of the order are extracted below:

(a) Notwithstanding anything contained in Section 14 of the aforesaid Act, any substantive or leave vacancy or any vacancy existing or occurring during the current academic session of the Head of the institution or, a teacher of an institution may be filled in by the committee of management, on ad-hoc basis in the manner provided hereunder till such period.

(c) The vacancy of, a teacher in the lecturers grade or L.T. grade or C.T. grade can be filled in by the senior most teacher of the institution in the L.T. grade, C.T. grade, and J.T. C./B. T.C. grade respectively.

(d) Where any vacancy cannot be filled in the manner laid down in the preceding clauses the same may be filled in on ad-hoc basis for the same maximum period, as laid down in Clause (a) by appointment of outsiders after selection by a

selection committee consisting of three members, which may be constituted for the purposes on an ad-hoc basis by the Committee of Management.

6. Since the Government was empowered to frame regulations notwithstanding anything contained in Chapter II and III of Regulations and the Removal of Difficulties Order provided for filling up vacancy of teacher in Lecturer or L.T. grade or even C.T. by promotion of senior most teacher and the power to appoint by direct recruitment was available if the vacancy could not be filled ; in the manner laid down in preceding clause that is by promotion it is obvious that the rule of 40 % and 60% was not adhered to for ad-hoc appointments. To that extent paragraph 5 of Chapter II of Regulations stood modified same scheme was continued in Clause (4) and (5) of the Removal of Difficulties Order issued under Act V of 1982. It was clearly visualised that all posts in the institution on ad-hoc basis were primarily to be filled by promoting senior most teacher and the method of direct recruitment for such appointment could be resorted to only if such teachers were not available or they were not qualified. Regulations 5 and 6 of Chapter II framed under U.P. Intermediate Education Act providing for every appointment by direct recruitment except to the extent of 40% by promotion has to be deemed to be modified so far ad-hoc appointments are concerned. The word "every vacancy" used in Sub-clauses (1) to (4) of clauses 4 of First Removal of Difficulties Order of 1981 are significant. They are emphatic and explicit. They leave no room for doubt that 60% and 40% proportion of direct and promotional appointment has been given up for ad-hoc appointments. And for very good reason- Ad-hoc appointments are short term appointments. The appointee has no right except to continue till regular selection is made or the short term vacancy comes to an end. Why should the senior most teacher otherwise fully qualified be deprived of that benefit. If construction as suggested by the opposite party is accepted it shall destroy the very purpose of Act No. v. of 1982 of protecting the interest of teachers of the institution and giving them some security and benefit of their being qualified and senior. The scheme of 40% and 60% has not been adhered to in ad-hoc promotions obviously because they being temporary promotions they should normally be given to the teachers of the institution who are qualified. Section 18 of the U.P- Act No. v. of 1982 is silent in this regard, but it has to be construed reasonably and keeping in view the method of ad-hoc appointment before and after enforcement of the Act. From what has been stated above, it is clear that any vacancy whether substantive or temporary which is to be filled by ad-hoc selection has first to be filled by promotion and in absence of availability of a candidate by direct recruitment. There appears no rationale to exclude this method from Section 18 of the Act empowering the Committee of Management to make direct recruitment even though senior most teacher in the institution was available. Section 18 only empowers the management to make ad-hoc appointments. It is silent in respect of procedure. In absence of any rationale it cannot be construed as contrary to the scheme visualised by Removal of Difficulties Order and in vogue from 1975. Any other construction or conceding power to the management to fill ad-hoc

vacancy u/s 18 by direct recruitment even though senior most teacher was available shall result in arbitrariness and would be against the interest of teachers to protect whose interest the Legislature has intervened from time to time since 1975 and State Government has issued Removal of Difficulties Order. Therefore, whether from the language of the Section or from the Scheme the irresistible conclusion is that ad-hoc vacancy u/s 18 should be filled by promotion and the method of direct recruitment should be adopted only if the teachers for promotions are not available, liven the argument of equity is not available as the Petitioner not only being senior most teacher but being qualified in the subject in which the vacancy arose, the committee of management was not justified in by-passing his claim and appointing a candidate from outside.

7. In result, the petition succeeds and is allowed. The order dated 10th January, 1989 appointing the opposite parly as ad-hoc lecturer by direct recruitment is quashed. The Petitioner shall be entitled to costs which shall be recoverable from the committee of management.