
(1985) 04 AHC CK 0060

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16163 of 1984

Committee of Management of Sanatan Dharm Intermediate
College

APPELLANT

Vs

District Inspector of Schools and Another

RESPONDENT

Date of Decision : 09-04-1985

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 11(4), 18, 18(1), 18(2), 18(3)

Citation : (1985) 04 AHC CK 0060

Hon'ble Judges : R.M. Sahai, J;Om Prakash, J

Bench : Division Bench

Advocate : R.P. Singh, for the Appellant;

Final Decision : Allowed

Judgement

R.M. Sahai, J.—Facts giving rise to this writ petition for a direction in the nature of mandamus to opposite party No. 1 District Inspector of Sphools Mainpuri to pay salary of Tulsi Ram Yadav and Suraj Pal Singh from 1st July 1984 onwards, are that on death of one Mahesh Singh Yadav on 18.8.1982, who was a teacher in L.T. grade in the college, the Management intimated the District Inspector of Schools on 9.9.1982 that a vacancy has arisen in L.T. grade which may be permitted to be filled by ad hoc appointment of the teacher mentioned in the letter sent by the Management. Consequently Tulsi Ram Yadav, who was already working in C.T. grade, was promoted in L.T. grade in place of Mahesh Singh Yadav and on falling a vacancy due to promotion of Tulsi Ram Yadav, Suraj Pal Singh was appointed in C.T. grade. The promotion and appointment thus made were approved by the Inspector of Schools. In the appointment letters issued both to Sri Yadav and Sri Singh, it was mentioned that their appointments were being made under Removal of Difficulties Order and that it shall come to an end immediately when a regular candidate, selected by the Commission, takes over. Since the date of appointment Sri Yadav and Sri Singh have been continuing and were being paid salary till July 1984, when payment of salary was stopped. As

the efforts of the teachers did not succeed and the Uistrist Inspector of Schools was not willing to release the grant in respect of these teachers, the Committee of Management filed this writ petition in November 1984. In the counter affidavit filed on behalf of the District Inspector of Schools the reason for non-payment of salary has been disclosed. In paragraph 6 it is stated: "Since the promotion as well as the appointment of these persons is after 1.11.1982 hence they are governed u/s 18 of the Act and will automatically cease the effect after 30.6.1984. The Committee of Management has made no proposal after July, 1984. Hence the payment of salary to Sri Tulsi Ram in L.T. grade and Sri Suraj Pal Singh in C.T. grade is not possible.

2. From what has been narrated above, it is apparent that no appointment has yet been made by the Commission. It is further not disputed that the Committee of Management is not against either of these teachers; rather it has come to this Court seeking redress on behalf of the teachers. The only reason for not paying the salary by the Inspector of Schools is that the appointment of these teachers could not be continued after 30th July. Prima facie, the reason disclosed in the counter affidavit appears to be in line with Section 18 of the U.P. Secondary Education Services Commission and Selection Board Act, 1982 (U.P. Act No. 5 of 1982). The Section so far as is relevant is quoted as under:

18. Ad hoc Teachers-(1) Where the management has notified a vacancy to the Commission in accordance with the provisions of this Act, and

(a) the Commission has failed to recommend the name of any suitable candidate for being appointed as a teacher specified in the Schedule within one year from the date of such notification ; or

(b) 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 adhocracies from amongst the persons possessing qualifications prescribed under the Intermediate Education Act, 1921 or the regulations made there under.

(2) The provisions of Sub-section (1) shall also apply to the appointment of a teacher (other than a teacher specified in the Schedule) on ad hoc basis with the substitution of the expression "Board" for the expression "Commission".

(3) Every appointment of an ad hoc tea her under Sub-section (1) or Sub-section (2) shall cease to have effect from the earliest of the following dates, namely

(a) When the candidate recommended by the Commission or the Board, as the case may be, joins the post ;

(b) when the period of one month referred to in Sub-section (4) of Section 11 expires ;

(c) thirtieth day of June following the date of such ad hoc appointment. " Before construing Sub-clause (c), in the manner it has been construed by the Inspector

of Schools or by the Education Department, it is necessary to mention that before enactment of this Act U.P. Ordinance No. 8 of 1981 was issued, but as the constitution of the Board for selection of teachers was likely to take some time for the Governor issued The U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981 on July 31, 1981, known as First Removal of Difficulties Order. The preamble of this Order reads as under:

And whereas the establishment of the Commission and the Selection Board is likely to take some time and even after the establishment of the said Commission and Board, it is not possible to make selection of the teachers for the first few months,

And whereas a number of vacancies in the posts of teachers in various institutions recognised under the Intermediate Education Act, 1921, exist and the failure or delay in filling up of such vacancies is likely to create difficulties ;

Now, therefore, in exercise of the powers u/s 33 of the Uttar Pradesh Secondary Education Services Commission and Selection Boards Ordinance, 1981 (U.P. Ordinance No. 8 of 1981), the Governor is pleased to direct that the provisions of the said Ordinance shall have effect subject to the provisions of the following order.

Para 2 of this order permits the management of the institution to appoint, by promotion or by direct recruitment a teacher purely on ad hoc basis. The duration of such ad hoc appointment was provided by paragraph 3 to be as under:

Every appointment of an ad hoc teacher under paragraph 2 shall cease to have effect from the earliest of the dates, namely,

- (a) when the candidate recommended by the Commission or the Board joins the post ; or
- (b) when the period of six months from the date of such ad hoc appointment expires.

In April 1982 Clause (3) of the First Order was substituted by what is known as Removal of Difficulties (Third) Order, 1982. It provided that para 3 shall be substituted by the following:

3. Every appointment of an ad hoc teacher under paragraph 2 shall cease to have effect when a candidate recommended by the Commission or the Board, as the case may be, joins the post.

Therefore, from April 1982 Clause (b) of the First Order which provided that ad hoc appointment shall come to an end automatically after the expiry of six months, stood deleted. In other words, the intention was that a teacher once appointed on ad hoc basis should continue in the post so long a regular incumbent is not selected by the Commission.

3. It has been argued by the learned Standing Counsel that no benefit can be given to the Petitioners of these Orders as they were to operate so long the Board was not constituted and the appointment as contemplated in the Act was not made. According to him once the management notified the vacancy, as contemplated in Section 18 of the Act, then the procedure contemplated in that Section applies and not the provisions of the Removal of Difficulties Order. Similar argument was repelled in *Syed Ali Adil Jafri v. State* 1984 Ed. Cas 131 : 1984 U.P. L B E C 489. Even otherwise the argument is fraught with great danger. If it is accepted it is capable of causing untold misery and hardship to the teachers and can give rise to a piquant situation as in this case, that a person who has been duly appointed by the management, whose appointment has been approved and against whom there is no charge, yet he may not be paid his salary because 30th of June has intervened. Such could not have been the legislative intention and in case the Court comes to the conclusion that construing the provisions literally results in an anomalous situation, then the Court can certainly read down the provision in such a manner that it may not only carry out the intention of the legislature but it may not result in hardship to the teachers as well. There is no provision in the Act that in case 30th June, 1982 falls and no regular appointment has been made, then what would be the consequence. Will the Committee of Management be required to undertake the exercise afresh, recommend the same names and undergo the entire procedure of getting the approval of the Inspector of Schools. In absence of such a provision and considering the intentions of these Orders and the Act, this provision can be read to this manner that if the regular appointee from the Commission takes over before 30th June the appointment shall cease automatically otherwise it shall continue till 30th June. What shall happen thereafter does it case as provided. For this it is necessary to advert to Removal of Difficulties Order. Although these were subordinate legislation, but when first such order was issued, it was issued not only in exercise of powers conferred u/s 33 of the Act, but it was further provided that the provisions of the Ordinance No. 8 of 1981 shall have effect subject to the provisions of the following Order. In other words, Removal of Difficulties Order was given primacy over the Ordinance itself. Validity of this Order has not been challenged by any one. Therefore, in view of the expression used in the First Removal of Difficulties Order it has to be construed in favour of the teachers so as not only to do justice but also to give harmonious construction to the various Orders issued from time to time read with Section 18 of the Act. Although it appears unusual that Removal of Difficulties Order has been given primacy but that probably was necessary for smooth functioning of the institutions. And in September 1982 it was Clause 3 of the First Order which was substituted and the provision of six months was deleted. Therefore by virtue of First Removal of Difficulties Order read with third a teacher appointed against a vacancy which had been notified u/s 18 could continue till new incumbent did not take over. In fact, after Third Order was issued Clause (c) lost its efficacy. The provision was repealed in the Act as it was in the Ordinance. When Act replaced the Ordinance it prescribed time limit as

was in the Ordinance. Even the Removal of Difficulties Order provided for time limit. In the Order it was six months from date of appointment. In the Act it is 30th June. But when Third Order was - issued in April, 1982 after replacement of Ordinance the caesura of appointment by expiry of time was deleted. And as this Order substituted the First Order subject to which the Ordinance was to apply, the same position should be deemed to continue even after the Act replaced the Ordinance.

4. Apart from this Sub-section (1) and (2) of Section 18 are powers of Management to appoint a teacher if the commission does not appoint within one year or post has remained vacant for two months. But the Legislature in its wisdom curbed this power by Sub-section (3). If, however, an appointment is made not under this Section but under Removal of Difficulties Order then Sub-clause (c) obviously shall not apply. In any case, even if appointment is made u/s 18 and it is provided therein that it shall cease only when regular incumbent joins then other clauses do not apply. Clause (c) and (a) of Sub-section (3) may apply. Clause (c) and (a) of Sub-section (3) may apply where ad hoc appointment is made simpliciter. In absence of any mention of duration in the order the various Sub-clauses may apply. Therefore, from whatever aspect it is considered the order of Inspector of Schools stopping payment of salary as no fresh proposal was made cannot be sustained.

5. Before parting with this case it would not be out of place to mention that Clause (c) of Section 18 of the Act v. of 1982 having lost its efficacy should be deleted to avoid confusion. It is apt to create anomalous situation which may neither be beneficial to teachers nor the institution. For instance suppose an appointment after formalities that is advertisement and selection is made, as the Section 18 permits even direct appointment in January it shall come to an end on 30th June automatically if no candidate from Commission is recommended. In July advertise afresh and make appointments. This could not have been the intention nor it is conducive to the system.

6. In the result, this petition succeeds and is allowed. A direction is issued to the opposite parties to pay the salary of Tulsi Ram Yadav and Suraj Pal Singh from July 1984 till March 1985 within a period of three months from the date of production of a copy of this order. Payment of the salary for the month of April 1985 and onwards shall be made as and when due.