

(1998) 05 AHC CK 0023

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 3517 of 1984 Connection with 18183 of 1988

Committee of Management, Sri M.D. Jain Inter College and
Another

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 01-05-1998

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Regulation 24, 25

Citation : (1999) 1 UPLBEC 21

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Ashok Khare, for the Appellant;

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—These two petitioners involve common question of law and fact and are being disposed of together.

2. The facts in brief are that Girdhar Prasad Saxena was Lecturer in English in Shri Mahaveer Digamber Jain Inter College, Sirsaganj, Mainpuri (hereinafter referred to as the Institution). He submitted his resignation to the Committee of Management on 22.2.1977 which was accepted by the Committee of Management of the Institution and acceptance was communicated by the Management of the Institution by its letter dated of 1977 in the Court on Munsif Shikohabad disputing the validity and authenticity of the resignation letter tendered by him. The suit was dismissed by the trial Court on 15,12,1979 He filed Civil Appeal No. 88 of 1080 against the judgment of the trial Court. In the appeal, however, the Court did not grant any interim injunction order. The Committee of Management resolved to fill up the vacancy. On 12.1.1980 it appointed Narendra Pratap Singh, respondent No. 2 as Lecturer for six months, The District Inspector of Schools, Mainpuri by his order dated 30th March, 1980 approved his appointment for the period 15.1.1980 to 25.5.1980. By this order

it was further provided that in case the said vacancy was necessary to be filled up for any period beyond 20.5.1980 then the same shall be filled up after syndicating selection proceedings in accordance with the provisions of U.P. Intermediate Education Act and the Regulation framed thereunder.

3. The Selection Committee took a decision to fill up the post the Lecturer by making selection as directed by the District Inspector of Schools by his order dated 30th March, 1980. In advertised the post. One application was submitted by Sri Subhash Chandra and another by Sri Narendra Pratap Singh, respondent No. 2. The selection was fixed for 10.6.1980. However, the selection could not be held on that" date as the expert was not available. It was adjourned and ultimately the selection took place on 27.6.1980. The Selection Committee recommended the name of respondent No. 2 for appointment. In pursuance of the aforesaid recommendation of the Selection Committee a resolution was passed by the Committee of Management on 3.7,1980 for appointing respondent No. 2 on temporary basis subject to .the decision of the Court. The Manager issued appointment letter on 4.7,1980 in pursuance of the aforesaid resolution indicating that the appointment of the petitioner was temporary. The Committee of Management forwarded he papers to the District Inspector of Schools for according approval. The District Inspector of Schools vide his order dated 23.3.1980 approved the appointment of respondent No. 2 on temporary basis till the decision of the Court.

4. Civil Appeal No. 68 of 1980 filed by Sri Girdhar Prasad Saxena was dismissed on 23.9.1982 by Ild Additional District Judge, Mainpuri. He filed second appeal No. 270 of 1983 in this Court. The Second appeal was dismissed on 1.12.1983.

5. After the expiry of three months from the date of dismissal of the Civil Appeal by the IIrd Additional District Judge, Mainpuri, the Manager of the Institution wrote a letter on 3.1.1983 to the District Inspector of Schools, Mainpuri informing him that the appeal preferred by Sri Saxena has been dismissed with the result the substantive vacancy on the post of English Lecturer in the Institution is to be filled up. On 20.10.1983, the District Inspector of Schools, Mainpuri wrote a letter to the Manager that the approval of the appointment of respondent No. 2 was till the decision of the appeal and after this period the approval will become ineffective. It asked the Manager to intimate as to what steps have been taken in the matter. The Committee of Management, thereafter passed a resolution of 11.12.1983 that a notice of termination of service be given to respondent No. 2 and in his place Dhyan Singh Yadav, petitioner No. 2 be promoted. In pursuance of this resolution a notice of termination of service was given to respondent No. 2 on 16.12.1983, and Dhyan Singh Yadav, petitioner No. 2 was promoted on to hoc basis as Lecturer in English on 19.2.1983. The papers were forwarded to the District Inspector of Schools intimating about the service of respondent No. 2 and promotion of petitioner No. 2 to the post of Lecturer from the post of Assistant Teacher in L.T. grade. The District Inspector of Schools disapproved the order of termination vide his order dated 29.12.1983 on the

ground that the order of termination was ineffective without obtaining prior permission of the U.P. Secondary Education Services Commission. The Management submitted representation to the District Inspector of Schools. The District Inspector of Schools vide order dated 25.2.1984 disapproved the appointment of petitioner No. 2 by way of promotion to the post of Lecturer. The Committee of Management and Dhyan Singh Yadav vide filed writ petitioner No. 3517 of 1984 against these orders. The Committee of Management forwarded the papers for approval of appointment of Dhyan Singh Yadav by way of promotion to the U.P. Secondary Education Services Commission (hereinafter referred to as the Commission). The Commission has disapproved the promotion of Dhyan Singh Yadav his order dated 8.7.1988. Dhyan Singh Yadav has challenged this order by filing writ petition No. 18183 of 1988.

6. The basic question is whether the appointment of Narandra Pratap Singh was for a fixed term or it would be taken as temporary appointment.

7. Sri Ashok Khare, learned Counsel for the petitioner submitted that the District Inspector of Schools under some misapprehension took the view that prior approval of the order of termination was required by U.P. Secondary Education Services Commission u/s 21 of U.P. Secondary Education Services and Selection Board Act, 1982 when this section came into force by Notification on 1.1.1984. The order, of termination was passed prior on 16.12.1983 and this provision was not applicable. This factual aspect has not been disputed by learned Counsel for the respondents. It is, however, urged that prior to the enforcement of Section 21 of Act No. 5 of 1982, prior approval of the District Inspector of Schools was required to be obtained under sub-section (3) of Section 16-G of U.P. Intermediate Education Act, 1921 and in absence of such prior approval, the order of termination was inoperative. This provisions is applicable even in respect of those teachers who were appointed either on probation or temporary basis but did not cover those teacher who were appointed for a fixed term. It is necessary to refer to Regulations 24 and 25 of Chapter III of the Regulations framed under the U.P. Intermediate Education Act which read as under :-

"24. Declaration of result:-(1) The Shikshak Nirvachan Adhikari shall consolidate the statements of counting of votes received under Regulation 23 and shall declare such candidate to be duly elected as has secured the largest number of votes.

(2) In the event of two or more candidates securing an equal number of votes, the Shikshak Nirvachan Adhikari shall, in the presence of the candidates or such of them as desire to be present decide between those candidates by lot and declare to be duly elected by candidate on whom lot falls.

25. Publication of result in the Gazette-As soon as may be after the result of an election has been declared, the Shikshak Nirvachan Adhikari shall report the result to the Mukhya Shikshak Nirvachan Adhikari in the form and manner approved by him and the Mukhya Shikshak Nirvachan Adhikari shall cause to be

published in the Gazette the declaration containing the names of the candidates elected under clauses (c) and (d) of sub-section (i) of Section 3 of the Act."

Regulation 24 contemplates appointment for a definite period or appointment in a leave vacancy or a vacancy occurring for a part of the session. If the appointment is for a fixed term, it automatically ceases on the expiry of the period for which the appointment was made. Regulation 25 provides that the temporary employee (other than a probationer) or of a probation during the term of his probation, can be terminated at any time by giving him one month's notice or one month's pay in lieu thereof. A Division Bench of this Court in *Heera Lal Gaur v. District Inspector of Schools, Azamgarh and Ors.* 1981 U.P.L.B.E.C. 226, held that if service of a temporary employee is terminated, it is necessary to obtain prior approval of the District Inspector of Schools except in those cases where the appointment is for a fixed period as contemplated under Regulation 24.

8. In *Ajab Singh v. Gochar Krishi Intermediate College and Ors.* (1985) 2 UPLBEC 1382, it was held that even in case of a probationer the prior approval of the District Inspector of Schools is required before terminating his services. The core question is whether the appointment of respondent No. 2 was for a fixed term or was it a temporary appointment.

9. Learned Counsel for the petitioner contended that the appointment of respondent No. 2 was made only for the period the litigation was pending and approval of such appointment was also till the decision of the Court. It is not denied that the District Inspector of Schools had passed an order for making a selection for appointment to the post of Lecturer in English in the Institution even if the appointment is to be made temporary. The Committee of Management advertised the post. The Selection Committee recommended the name of respondent No. 2 for appointment. He was issued appointment letter which indicated that the appointment was subject to the decision of the Court. The District Inspector of Schools granted the approval with the condition that it is to last till the decision of the Court. The language- of the- appointment letter and the letter of approval is little different. The intention of the Committee of Management was then clear that in case the appeal filed by Sri Girdhar Prasad Saxena succeeds, he will be liable to be reinstated in the service of the Institution and the service of respondent No. 2 in that event will be liable to be terminated. In case the appeal is dismissed, it did not contemplate to make further appointment on ad hoc basis. A person who has been appointed on ad hoc basis is not to be displaced because another person has to be appointed on ad hoc basis. The vacancy was a substantive vacancy. On the resignation of Girdhar Prasad Saxena, respondent No. 2 was appointed on ad hoc basis. It was open to the U.P. Secondary Education Services Commission to make a regular selection and after he duly selected candidate is recommended, such candidate was to be appointed in the Institution. The letter of the District Inspector of Schools granting approval only till the period of decision of the Court was in the context that in the event the appeal is allowed, he will not permit further the

payment of salary to respondent No. 2. The appointment letter which was issued to respondent No. 2 was subject to the decision of the Court. His services, in these circumstances, could not be termed for a fixed period as contemplated by Regulation 24 of Chapter-III of U.P. Intermediate Education Act, 1921. The termination of the services of respondent No. 2 has rightly not been approved by the District Inspector of Schools.

10. Learned Counsel for the petitioner further submitted that Dhyan Singh Yadav, the petitioner, has been promoted to the post of Lecturer as he was entitled for promotion on ad hoc basis u/s 18 of the Act No. 5 of 1982. If a candidate is available for promotion to a vacant post, he is to be appointed to the vacant post instead of making a direct appointment to the said post. The petitioner was, however, not qualified on the date when respondent No. 2 was selected in the year 1980. He has passed M.A. Examination in English in the year 1981. It is settled law that the eligibility for promotion to a post is to be considered not on the date of filling up of the vacancy but on the date of occurrence of the vacancy vide *Rakesh Kumar Kaushik v. District Inspector of Schools, Muzaffiagar and Ors.* 1993 (2) ESC 450, *Keshao Ram Dargan v. D.I.O.S., Haridwar and Ors.* 1997 (2) ESC 892 and *Kripa Shankar Tripathi Vs. Deputy Director of Education, IVth Region and Others*, ,

11. Learned Counsel for the petitioner contended that the vacancy came into existence after the order of termination of service of respondent No. 2 was passed on 16.12.1983 and on the said date the petitioner was eligible and qualified. This submission could have been accepted provided the order of termination was held to be valid. As it has been found that the order of termination was illegal, there was no vacancy on the post of Lecturer in English. The petitioner could not have been promoted in absence of any vacancy.

12. Learned Counsel for the petitioner contended that it is not necessary for ad hoc promotion that a person should have qualification on the date the vacancy occurs but the qualification should be examined on the date when the appointment is made. It is submitted that the decisions of the Division Bench in *Prem Balika Rai v. Regional Inspsctress of Girls Schools*, 1993 (1) Educational and Services Cases 371 and *Rakesh Kumar Kaushik v. District Inspector of Schools*, 1993 (2) Educational and Services Case 450, required reconsideration in view of the observations made in Full Bench Decision in *Radha Raizada v. Committee of Management, Vidhyawati Darbari Girl's Inter College-and Ors.* (1994) 3 UPLBEC 1551. It is not necessary to consider the correctness of the decisions of the Division Benches inasmuch as termination order of service of respondent No. 4 was invalid and he having continued in service, the petitioner could not have been promoted to the post on which respondent No. 4 was appointed on ad hoc basis.

13. In the last, learned Counsel for the petitioner submitted that the petitioner has worked for about 14 years on the said post and he may be accommodated in this Institution to the post of Lecturer. In case there is any post under the

promotion quota, there is not reason that the candidature of the petitioner shall not be considered by the Authorities concerned. Respondent No. 2, was, however, appointed as Lecturer in English on ad hoc basis. The post has yet not been filled up by regular selection. The District Inspector of Schools shall take appropriate steps within two months from the date of production of a certificate copy of this order before him of filling up the vacancy by regular selection through the U.P. Education services Commission or by promotion, as may be permissible under law.

14. In view of the above, both the writ petitions are dismissed subject to the observations made above.

15. The parties shall, however, bear their own costs.