
(2003) 09 AHC CK 0142
In the Allahabad High Court
Case No : Special Appeal No. 846 of 2003

Dr. Ram Bilas Singh	Vs	APPELLANT
Ramakant Shukla and Others		RESPONDENT

Date of Decision : 09-09-2003

Acts Referred:

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

Citation : (2003) 4 AWC 3111

Hon'ble Judges : D.P. Gupta, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : Indra Raj Singh, for the Appellant; R.P. Dubey and A.N. Pandey and S.C., for the Respondent

Judgement

B. S. Chauhan, J.—This special appeal has been filed against, the Impugned order dated 26.8.2003, by which the learned single Judge has directed to maintain status quo as regard the post held by the respondent-petitioner.

2. Facts and circumstances giving rise to this case that the Principal of Saltanat Bahadur Intermediate College, Badlapur, district Janpur retired long back and an Advertisement No. 1/1999-2000 was published by the U. P. Secondary Education Services Selection Board, Allahabad on 24.12.1999. In response to the same, the appellant-respondent applied for the said post and interview was held on 24.4.2001 by the said Board and the result had been declared on 13.8.2003. Appellant-respondent had been selected as a regular Principal of the said college. Being aggrieved and dissatisfied, the respondent No. 1 petitioner filed Writ Petition No. 36883 of 2003, challenging the appointment of the appellant-respondent on the ground that he was officiating Principal for the last four years and the entire selection in pursuance of the Advertisement No. 1/1999-2000 was already under challenge before this Court in some other writ petitions. The learned single Judge had directed the parties to maintain status quo as regard the post held by respondent No. 1 petitioner. Hence, this special appeal.

3. Shri Indra Raj Singh, learned counsel for the appellant respondent submits that the provisions of Section 18 (3) of the Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982, hereinafter called the "Act 1982", clearly provides that the appointment of the ad hoc Principal or teacher shall cease to be effective once the regular selected candidate by the Hoard is made available. More so, the ad hoc appointee cannot claim to continue in office and once the post is filled up by regular selection, he must vacate the office for regular selected candidate. Thus, the appeal deserves to be allowed.

4. On the contrary, learned counsel appearing for the Board as well as learned standing counsel appearing for the other parties, have supported the cause of the appellant. However, learned counsel appearing for respondent No. 1 petitioner has opposed the submissions made by Shri Indra Raj Singh and submitted that the entire selection is subject to the decision of the writ petitions, already pending in this Court and the appellant-respondent cannot be permitted to take the charge hence the appeal is liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

6. Firstly, respondent No. 1 -petitioner is merely an ad hoc appointee ; he does not have any vested right to hold the post ; he had been appointed as ad hoc Principal merely being a senior-most teacher in the school. He cannot submit that in view of the pendency of some writ petitions challenging the selection in pursuance of Advertisement No. 1/ 1999-2000, the appellant-respondent cannot be appointed and he has a right to hold the post for the reason that in those writ petitions, this Court restrained the Board to hold the selection or allow the applicants to be appointed. Only their selections have been made subject to the decision of the writ petitions, therefore, the submission is without any substance.

7. It is settled legal proposition that an ad hoc appointee must vacate the office to give way to the regularly selected candidate. The provisions of Act, 1982 itself provides that the appointment of ad hoc teachers/principals ceases to be effective once the regularly selected candidate is made available by the Board and in view thereof, the appointment of the regularly selected candidate may be subject to the decision of the writ petitions pending in this Court and that will be determined in view of the doctrine of lis pendens but the respondent No. 1-petitioner cannot claim that he has a right to continue in office on ad hoc basis and he cannot be asked to vacate the office for regularly selected candidate.

8. Ad hoc appointee/promotee like respondent petitioner does not have any vested right in the office.

9. The concept of vested right has been explained by the Apex Court in Masammatt Bibi Sayeeda and Others etc. Vs. State of Bihar and Others, "wherein it has been described as under :

"The word "vested" is defined in Black's Law Dictionary (6th Edition) at page

1563, as Vested, fixed ; accrued ; settled ; absolute ; complete. Having the character or given in the rights of absolute ownership ; not contingent ; not subject to be defeated by a condition precedent," Rights are vested when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest ; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In Webster's Comprehensive Dictionary (International Edition) at page 1397, "vested" is defined as (Law held by a tenure subject to no contingency ; complete ; established by law as a permanent right ; vested interest."

10. Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law.

11. Ad hoc appointment is required to be made in public Interest and that too for a very short and reasonable period for a particular purpose. Such a promotee does not have right to the post because by its very nature, it is a stop gap arrangement until a regular appointment/promotion is made. Therefore, in the sense, ad hoc appointee/promotee holds a very precarious tenure and, therefore, becomes liable to be reverted to the post he substantively holds to make room for a regular appointee/ promotee, pending which ad hoc appointment/promotion was resorted to. Vide Manotosh Behara v. State of Orissa and Ors. 1970 Lab IC 1478 ; M. Venkat Swami v. Government of A. P. and Ors. 1972 SLR 249 ; Mrs. N. Devamalar Vanaja Kumari v. State of Kerala and Ors. (1989) 4 SLR 645 and Navdeep Singh v. State of Punjab and Anr. 1990 (5) SLR 513.

12. The phrase "ad hoc" is also loosely used to mean a temporary for the reason that appointment/ promotion is made for a special or particular purpose and it continues till that purpose is over. The incumbent in such a situation cannot be heard raising the grievance that he has been reverted from the higher post as a measure of punishment, as the order does not cast any stigma on him. He is liable to be reverted on the availability of a person holding a lien on the post, a election of a regular incumbent or other exigencies of public service. Such an incumbent carries only a limited right and cannot stake any claim to the post. Vide S.P. Vasudeva Vs. State of Haryana and Others, and Kuldeep Chand Sharma and Anr. v. Delhi Administration and Anr. 1978 (2) SLR 379.

13. A Full Bench of Punjab and Haryana High Court in S.K. Verma and Others Vs. State of Punjab and Others, examined the similar issue and held that an ad hoc appointee does not have any right to the post, he is liable to vacate the post whenever regular selected candidate is made available. The Court explained the concept of ad hoc appointment as under :

"..... To our mind, the term "ad hoc employee" is conveniently used for a wholly temporary employee engaged either for a particular period or for a particular purpose and one whose services can be terminated with the maximum

of ease. The dictionary meaning of ad hoc in Webster's New International Dictionary has been given as "pertaining to or for the sake of this case alone". In the Random House Dictionary its meaning has been given as "for this special purpose, with respect to this subject or thing".

Therefore, having regard to the ordinary meaning of the term, no distinction can reasonably be drawn betwixt a temporary employee whose services are terminable without notice or otherwise and an employee characterised as ad hoc and employed on similar terms. Indeed, it appears to us that in the gamut of service law an ad hoc employee virtually stands at the lowest rung; As against the permanent, quasi-permanent, and temporary employee, the ad hoc one appears at the lowest level Implying that he had been engaged casually, or for a stopgap arrangement for a short duration or fleeting purposes."

14. Therefore, it becomes clear that such appointment is only of a transitory nature without creating any vested right in favour of the incumbent and it comes to an end whenever the person having a lien on the post comes back to join or regular selected candidate is made available or the purpose for which the ad hoc appointment/promotion was made; is achieved/over.

15. In Ramakant Shripad Sinai Advalpalkar Vs. Union of India and others, the Hon"ble Apex Court, explaining the concept of ad hocism, observed as under :

"The person continues to hold his substantive lower post and discharges the duty of a higher post, essentially is a stop-gap arrangement."

16. Similar view has been reiterated In Selvaraj Vs. Lt. Governor of Island, Port Blair and Others, and A.K. Sarma and Another Vs. Union of India Another, observing that such an incumbent can claim, at the most, the salary of the higher post and nothing beyond it.

17. The Hon"ble Apex Court has consistently been depreciating the practice of not filling up the vacancies regularly and adopting ad-hocism for a long period for the reason that stopgap arrangement is to be made for a, short purpose, which has to be fulfilled as early as possible. Vide Chandgi Ram Vs. University of Rajasthan,

18. In Sreedam Chandra Ghosh v. State of Assam and Ors. 1997 SCC (L&S) 332, the Hon"ble Apex Court held that any employee officiating on a higher post as a stop gap arrangement cannot claim to continue on the said post as a matter of right. In the said case, the Head Master of the school has retired. Petitioner therein being senior-most Assistant Graduate Teacher, was asked to act as an ad hoc Principal, There was no order of his regular promotion as a Head Master. When the regular Head Master came by way of transfer, the petitioner therein ceased to have any right on the post. The Hon"ble Supreme Court held that in such a fact situation, he has no legal right which can be enforced through the writ jurisdiction.

19. This case is squarely covered by the judgment of the Hon"ble Apex Court in

Sreedam Chandra Ghosh (*supra*) and the appeal deserves to be allowed.

20. The appeal succeeds and is allowed. The order dated 26.8.2003 passed by learned single Judge is hereby set aside.