

(2004) 04 AHC CK 0107

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1651 of 1999

Gajanan Pandey

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 02-04-2004

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 33F

Citation : (2004) 5 AWC 4140 : (2004) 2 UPLBEC 1840

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Advocate : A.P. Sahi, G.K. Singh and V.K. Singh, for the Appellant; S.C. Dwivedi, K.K. Mishra and Ashok Khare, for the Respondent

Final Decision : Allowed

Judgement

Dilip Gupta, J.—This petition has been filed for quashing the order dated 30th December 1998 passed by the District Inspector of Schools rejecting the representation dated 15th May 1998 filed by the petitioner claiming promotion on ad hoc basis on the post of Lecturer in Civics in the D.A.V Narang Inter College, Ghughli District Mahrajganj (hereinafter referred to as the "College") and for other consequential reliefs.

2. I have heard Sri G.K. Singh, learned counsel for the petitioner, the learned Standing Counsel appearing for respondent no. 1 and Sri Ashok Khare, learned Senior Counsel appearing for respondent no. 3.

3. The petitioner was appointed as an Assistant Teacher in the L.T. Grade in the College on 28th July 1974. The regular Principal of the College Sri Parshuram Mani Tripathi retired on 30th June 1993 as a result of which the senior most Lecturer in the College Sri T.N. Rai became the Officiating Principal. On 13th April 1997 the Committee of Management passed a resolution promoting respondent no. 3 Sri Janardhan Prasad Gupta on ad hoc basis on the post of Lecturer in Civics on the short term vacancy arising out of the appointment of Sri T.N. Rai as

the ad hoc Principal of the College. The claim of the petitioner who was the senior most teacher in the L.T. Grade was rejected by the Committee of Management on the sole ground that he did not possess the requisite qualification on 30.6.1993 when the post fell vacant. On 29th April 1997, the District Inspector of Schools disapproved the proposal of the Committee of Management promoting respondent no. 3 on ad hoc basis against the short term vacancy. Feeling aggrieved by the said decision respondent no. 3, Sri Janardhan Prasad Gupta filed a writ petition in this Hon"ble Court being writ petition no. 16279 of 1997 which was allowed by means of the judgment dated 15th May 1997. The matter was sent back to the District Inspector of Schools to decide the question of promotion.

4. Pursuant to the aforesaid judgment, the District Inspector of Schools passed an order on 2nd June 1997 directing the College to grant ad hoc promotion to respondent no. 3 as a Lecturer against the short term vacancy. The Officiating Principal Sri T.N. Rai, however retired on 30th June 1997 as a result of which the post of Lecturer in Civics fell vacant on a substantive basis. This prompted the petitioner to file a representation to the Committee of Management for promoting him on ad hoc basis on the post of Lecturer in Civics, since he was the senior most L.T. Grade Teacher and possessed the requisite qualification on the date of occurrence of the vacancy i.e. 30th June 1997. It may be stated that in the meantime the petitioner had acquired the requisite qualification as he obtained his M.A. Degree in Political Science in June 1996. Since the Committee of Management did not accede to his request, the petitioner filed a writ petition in this Court, being writ petition no. 21071 of 1997, which was disposed of by this Hon"ble Court by means of the judgment and order dated 20th April 1998. The Court noticed that pursuant to the direction issued by this Court on 15th May 1997 in writ petition no. 16279 of 1997, the District Inspector of Schools had passed an order on 2nd June 1997 directing the College to grant promotion on ad hoc basis to respondent no. 3 Sri Janardhan Prasad Gupta against the short term vacancy arising out of the promotion of Sri T.N. Rai, as Officiating Principal of the College and then passed an order, the relevant portion of which is quoted below:-

" The version of the petitioner is that Sri T.N. Rai has retired from service on 30th June, 1997 on attaining the age of superannuation. On his retirement, the post of lecturer in Civics has now fallen vacant substantively. The matter of promotion has to be considered in accordance with law keeping in view the seniority of the petitioner and respondent no. 3 inter se. The petitioner claims himself to be senior to respondent no. 3. It is not denied in the counter affidavit that Sri T.N. Rai was retired w.e.f. 30th June, 1997. Therefore, the question regarding the promotion has to be considered now on the said substantive vacancy in accordance with law.

I have heard Sri V.K. Singh, learned counsel for the petitioner and Sri Ashok Khare learned counsel for the respondents.

After hearing the learned counsel for the parties and considering the facts and circumstances of the case, I hereby direct that in case the petitioner submits a representation before the District Inspector of Schools, Mahrajganj, respondent no. 1 alongwith a certified copy of this order and a true copy of the writ petition, he shall decide the same by a reasoned order after affording opportunity of hearing to the petitioner and committee of management as well as the respondent no. 3 within two months from the date of submission of such representation."

5. The District Inspector of Schools by means of the order dated 30th December 1998 has rejected the representation filed by the petitioner. The present petition has been filed for quashing this order dated 30th December 1998 passed by the District Inspector of Schools.

6. A perusal of the order dated 30th December 1998 passed by the District Inspector of Schools reveals that he has rejected the representation the fact holding that on the vacancy arising out of the promotion of Sri T.N. Rai, as Officiating Principal of the College, Sri Janardhan Prasad Gupta, respondent no. 3 had been promoted on ad hoc basis as Lecturer in Civics pursuant to the judgment dated 15th May 1997 of this Court and was receiving salary and on the date of occurrence of the vacancy the petitioner did not possess the minimum requisite qualification.

7. Learned counsel for the petitioner submitted that while passing the order dated 30th December 1998, the District Inspector of Schools completely failed to notice that initially when Sri T.N. Rai was made the Officiating Principal of the College on 1.7.1993 a short term vacancy had arisen on the post of Lecturer and respondent no. 3 was promoted on ad hoc basis against this short term vacancy because at that point of time when the vacancy had arisen the petitioner who was admittedly the senior most teacher in L.T. Grade did not possess the minimum requisite qualification namely M.A Degree in Political Science which he obtained only in June 1996, and when the vacancy became substantive in nature on 30.6.1997, the petitioner being the senior most teacher available in the L.T. Grade became entitled to be promoted. According to him this is precisely what was required to be seen by the District Inspector of Schools as is also clear from the judgment and order dated 20th April 1998 passed by this Court in writ petition no. 21071 of 1997.

8. Learned Senior Counsel Sri Ashok Khare appearing for respondent no. 3 submitted that pursuant to the judgment dated 15th May 1995 respondent no. 3 was granted promotion on the basis of the order dated 2nd June 1997 passed by the D.I.O.S even though the petitioner was senior to respondent no. 3 since the petitioner did not possess a Post Graduate Degree in Political Science on 30.6.1993 when the vacancy had arisen. He further contended that by reason of Section 33-F of the U.P. Secondary Education (Services Selection Board Act) 1982 (hereinafter referred to as the "Act") he was entitled to be regularised against the short term vacancy and in fact he was regularised by an order dated

19th May 1992 passed by the Joint Director of Education.

9. I have carefully considered the submissions advanced by the learned counsel for the parties and have examined the record. Respondent no. 3 had earlier been promoted on ad hoc basis against the resultant short-term vacancy. On 30th June 1997 the short-term vacancy came to an end since the Officiating Principal who was earlier a Lecturer in Civics retired. The Full Bench of this Court in the case of Pramila Misra Vs. Deputy Director of Education, Jhansi Reported in (1997) 2 UPLBEC 1329 clearly held that an ad hoc appointee against a short term vacancy cannot continue once the short term vacancy comes to an end. A clear distinction is maintained between a substantive vacancy and a short-term vacancy. The Full Bench observed as follows:-

"Summing up our conclusions in the light of the discussions in the foregoing paragraphs we hold that a teacher appointed by the management of the institution on ad hoc basis in a short term vacancy (leave vacancy/suspension vacancy), which is subsequently converted into a substantive vacancy in accordance with the provisions of the Act, Rules and Orders, (on death, resignation, dismissal or removal of the permanent incumbent), cannot claim a right to continue. He has, however, right to be considered along with other eligible candidates for ad hoc appointment in the substantive vacancy if he possesses the requisite qualifications."

10. This substantive vacancy is required to be filled up on ad hoc basis from amongst the senior most teacher of the institution as stipulated in paragraph 4 of the First Removal of Difficulties Order. This is what has also been held by the Full Bench of this Court in the case of Km. Radha Raizada Vs Committee of Management & others reported in (1994) 3 UPLBEC 1551.

11. In view of the aforesaid legal position, the Committee of Management was required to consider the promotion of the senior most Teacher in the L.T. Grade on ad hoc basis against the substantive vacancy occurring on 30.6.1997 on the post of Lecturer in Civics. Admittedly the petitioner was the senior most L.T. Grade Teacher. He also possessed the requisite qualification on the date of occurrence of the substantive vacancy since he had obtained his M.A Degree in Political Science in June 1996. This Court while disposing of the writ petition no. 20171 of 1997 filed by the petitioner on 20th April 1998 also clearly directed the D.I.O.S to consider the matter of promotion against the substantive vacancy in accordance with law, keeping in view, the seniority of the petitioner and respondent no. 3 namely Janardhan Prasad Gupta. The District Inspector of Schools in his order dated 30th December 1998 has completely failed to consider this aspect of the matter. In his order he has recorded the position as it existed when the short-term vacancy had arisen and has also noticed the judgment dated 15th May 1997 passed by this Court in respect of the short-term vacancy. The finding recorded by the District Inspector of Schools that the petitioner was not qualified when the vacancy had arisen is also not correct. It cannot be denied that on the date of occurrence of the short-term vacancy the petitioner did not

possess the requisite qualification but he did possess the same when this short-term vacancy was converted into a substantive vacancy. The petitioner had admittedly obtained his M.A. Degree in June 1996 and, therefore, possessed the requisite qualification when the substantive vacancy had arisen on 30.6.1997. A reading of the operative part of the order of the D.I.O.S can only give a feeling that he was absolutely oblivious of the fact that he was called upon to decide the matter of promotion in respect of the substantive vacancy and not the short-term vacancy. The order of the District Inspector of Schools, therefore, cannot be sustained.

12. Sri Ashok Khare, learned Senior Counsel for the respondent No. 3, however placed reliance on Section 33-F of the Act, which came in effect on 30th December 2000. This section is in respect of appointment against the short term vacancy and provides that any teacher who was appointed by promotion or by direct recruitment in the Lecturers Grade on or after 14th May 1991 but not later than 6th August 1993 against a short term vacancy and such vacancy was subsequently converted into a substantive vacancy and has been found suitable for appointment by the Selection Committee shall be given substantive appointment by the Management. The learned counsel for the petitioner however submitted that respondent. No. 3 cannot claim the benefit of Section 33-F of the Act, since it came into effect only on 30th December 2000 whereas the substantive vacancy had arisen on 30th June 1997. He further contended that even otherwise respondent no. 3 cannot be granted the benefit of Section 33-F of the Act, since it was only on 30th April 1997 that the Committee of Management had passed a resolution promoting respondent no. 3 on ad hoc basis as a Lecturer against the aforesaid short term vacancy but even this resolution of the Committee of Management was not approved by the District Inspector of Schools and it was only subsequently on 2nd June 1997 that the District Inspector of Schools passed an order directing the College to grant ad hoc promotion to respondent no. 3 against the short term vacancy.

13. In my opinion the controversy has to be examined in the light of the provisions as existing on 30th June 1997 when the substantive vacancy arose in the College on the post of Lecturer in Civics. In view of the Full Bench decision of this Court given in the case of Pramila Misra (*supra*), the ad hoc appointment made on the short term vacancy automatically came to an end once the short term vacancy came to an end. The District Inspector of Schools, therefore, had to consider as to who could be granted promotion against the resultant substantive vacancy, more particularly in view of the judgment dated 20th April 1998 given in writ petition no. 21071 of 1997 filed by the petitioner. The petitioner undoubtedly was the senior most L.T. Grade teacher and possessed the requisite qualification on the date of occurrence of the vacancy. Thus he was clearly entitled to be promoted as an ad hoc Lecturer in Civics in the substantive vacancy and if the petitioner had been promoted on 1st July 1997, he would have continued as an ad hoc Lecturer.

14. The benefit of Section 33-F of the Act cannot be given to respondent no. 3 for more than one reason. Section 33-F of the Act was introduced only w.e.f. 30th December 2000 and therefore the benefit of this Section could not have been granted to respondent no. 3 on 1st July 1997. Secondly if the petitioner had been granted promotion on 1st July 1997, as he was clearly entitled to in law the question of giving benefit of Section 33-F of the Act to respondent no. 3 would not have arisen at all. It is also pertinent to state here that the benefit of Section 33-F of the Act can be granted to a teacher who was appointed by promotion or by direct recruitment in the Lecturer's grade on or after 14th May 1991 but not later than 6th August 1993 against a short term vacancy. In the case of respondent no. 3, even if the earlier resolution of the Committee of Management is taken into consideration, then too he was promoted as ad hoc lecturer against a short-term vacancy only on 13th April 1997. This resolution merely mentioned that the short term vacancy had arisen on 1st July 1993 and it does not grant retrospective promotion to respondent no. 3 w.e.f 1st July 1993 and nor can it do so. The order dated 2nd June 1997 of the District Inspector of Schools also does not mention that the promotion has to be granted to respondent no. 3 with retrospective effect. Surprisingly, in the order dated 21st June 1997, the District Inspector of Schools has granted approval to the payment of salary as ad hoc lecturer to respondent no. 3 w.e.f. 1st July 1993.

15. In my opinion the District Inspector of Schools could not have granted approval to the payment of salary in favour of respondent no. 3 from 1st July 1993 and even if the resolution of the Committee of Management promoting respondent no. 3 as ad hoc Lecturer is taken into consideration then too the approval could not have been granted from a date earlier than 30th April 1997. Thus, in any view of the matter, respondent no.3 does not satisfy the conditions stipulated u/s 33-F of the Act for being given substantive appointment by the management. The order dated 19.5.1992 issued by the Joint Director of Education is patently illegal and cannot confer any right upon respondent no. 3.

16. Learned Senior Counsel for respondent no. 3 then submitted that in view of the provisions of Section 33-F of the Act conferring entitlement for regularisation against the short term vacancies into substantive vacancies, the view taken by the Full Bench of this Court in the case of Pramila Misra (supra) holding that an ad hoc appointment against a short term vacancy cannot continue upon the conversion of the said vacancy into a substantive vacancy is not correct. This submission must fail because the benefit of Section 33-F of the Act was not available to respondent no.3 when the substantive vacancy came into existence and the petitioner being the senior most teacher possessing the requisite qualification was entitled to be promoted. His promotion would be in accordance with the First Removal of Difficulties Order.

17. In the result the writ petition succeeds and is allowed. The order dated 30.12.1998 passed by the District Inspector of Schools is quashed. The petitioner shall be treated to have been promoted on ad hoc basis as a Lecturer when the

substantive vacancy occurred on 30.6.1997 and a direction is issued to the District Inspector of Schools to grant approval to the payment of salary of the petitioner with effect from the said date. There shall be no order as to costs.