

(2000) 02 AHC CK 0029

In the Allahabad High Court

Case No : C.M.W.P. No's. 19146 with 21705 of 1995

Gyan Prakash

APPELLANT

Vs

District Inspector of Schools, Azamgarh and others

RESPONDENT

Date of Decision : 22-02-2000

Acts Referred:

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 4(4)
Uttar Pradesh Intermediate Education Act, 1921 — Regulation 5, 55
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 18, 21B, 33B

Citation : (2000) 2 AWC 1371(2) : (2000) 2 UPLBEC 1082

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

**Advocate : Amrendra Singh, R.G. Padia and P. Padia, for the Appellant;
Mahendra Pratap, Raj Mani Singh, Indal Singh and S.K. Srivastava, for the Respondent**

Judgement

Sudhir Narain, J.—These two writ petitions are decided together as the interest of the parties in these petitions are inter-related.

2. Hira Lal Smarak Inter College, Bharauli, Azamgarh and Udyog Vidyalaya Inter College, Koilasa, Azamgarh, both are recognised institutions under the U. P. Intermediate Education Act, 1921.

3. In Hira Lal Smarak Inter College, one Vidya Sagar Lal was Lecturer in Economics. He retired on 30.6.1984. On his retirement, the Committee of Management intimated the vacancy to the U. P. Secondary Education Services Commission u/s 18 of U. P. Secondary Education Services Commission and Selection Board Act, 1982 (U. P. Act No. 5 of 1982). As the Commission failed to intimate the name of any selected candidate within the prescribed time, the Committee of Management proceeded to make ad hoc appointment. The post was advertised. Shailendra Kumar Yadav applied for appointment for the said post. The Committee of Management passed resolution on 23.9.1984 resolving

to appoint him as Lecturer in Economics on ad hoc basis in this Institution. The Manager, in pursuance of the resolution of the Committee of Management, issued appointment letter to him on 15.10.1984. He thereafter joined the post as Lecturer in the institution. The papers were forwarded to the District Inspector of Schools, Azamgarh, for financial approval. The District Inspector of Schools did not pass any order granting financial approval to his appointment. He filed Writ Petition No. 8468 of 1986, Shailendra Kumar Yadav v. District Inspector of Schools and others. The said writ petition was disposed of on 7.9.1994 with the observation that the petitioner, Shailendra Kumar Yadav, shall make representation to the District Inspector of Schools who shall pass appropriate order regarding financial approval of his appointment and for payment of salary.

4. During the pendency of the said writ petition, one Gyan Prakash claimed that as he is a reserve pool teacher, be given appointment in Hira Lal Smarak Inter College u/s 21B of U. P. Act No. 5 of 1982. The District Inspector of Schools issued a letter on 13.1.1987 to the Manager, Hira Lal Smarak Inter College asking him to appoint him on the vacant post of Lecturer in Economics. The Manager, in pursuance of the order of the District Inspector of Schools, appointed him on the post of Lecturer in Economics on 19.1.1987 on the same post on which Sri Shailendra Kumar Yadav was working. Gyan Prakash, on receiving the said letter of appointment, is alleged to have joined the said Institution. Shailendra Kumar Yadav had already filed Writ Petition No. 8468 of 1986. This writ petition was disposed of on 7.9.1994 but in the said writ petition, Gyan Prakash was not impleaded as a party. The writ petition was disposed of with the observation that Shailendra Kumar Yadav can make representation to the District Inspector of Schools and he will pass an appropriate order in accordance with law. Shailendra Kumar Yadav submitted representation to the District Inspector of Schools. He passed the order on 13.6.1995 absorbing Gyan Prakash in another institution, namely, Udyog Vidyalaya inter College in the same district. Gyan Prakash has filed Writ Petition No. 19146 of 1995 challenging the order of the District Inspector of Schools wherein he has been directed to be absorbed in another institution.

5. In Udyog Vidyalaya Inter College, Raghvendra Pratap Singh was working as lecturer. He has filed Writ Petition No. 21705 of 1995 challenging the same order of District Inspector of Schools dated 13.6.1995. His version is that he was appointed as L.T. grade teacher in the institution on 1.11.1970. One Grijja Shanker Pandey, lecturer in Economics in this institution, was appointed as principal on 1.7.1993 and on his appointment as Principal, the post of lecturer in Economics fell vacant on ad hoc basis. He was entitled to be promoted on the post of lecturer on the basis of 40% of the total number of sanctioned posts in the lecturers grade. The District Inspector of Schools, Azamgarh, was informed about it by the Manager on 10.8.1993. It was recommended that Raghvendra Pratap Singh be promoted to the post of lecturer on ad hoc basis. The Committee of Management passed resolution on 1.7.1994 for his promotion as lecturer in Economics. The Manager sent a letter asking for financial approval of the

promotion of the petitioner on 23.9.1994 but he did not pass any order. On 13.6.1995 he has appointed Gyan Prakash Srivastava, lecturer of Hira Lal Smarak Inter College as lecturer in Economics. There is one post of lecturer in Economics in Hira Lal Smarak Inter College, Bharauli, Azamgarh, where Shailendra Kumar Yadav is alleged to be working as lecturer on the said post and in Udyog Vidyalaya Inter College, Koilasa. Azamgarh, Raghvendra Pratap Singh is claiming to have been promoted as lecturer in Economics. Sri Gyan Prakash claims that he is entitled to be absorbed as Lecturer In Economics on the strength that he is listed as reserved pool teacher u/s 21B of U. P. Act No. 5 of 1982.

6. The contention of Raghvendra Pratap Singh in Writ Petition No. 21705 of 1995 is that he is entitled to be promoted to the post of lecturer in Hira Lal Smarak Inter College under Regulation 5 of Chapter 111 of U. P. Intermediate Education Act, Gyan Prakash is claiming his appointment on the basis that he was a reserve pool teacher and was liable to be absorbed in the institution as reserve pool teacher u/s 21B of the U. P. Secondary Education Services Commission and Selection Board Act. 1982 (Act No. 5 of 1982) which reads as under:

"21B. Absorption of reserved pool teachers.--(1) The Inspector shall maintain in the prescribed manner, a register of "reserve pool teachers" consisting of subjectwise lists of persons who were appointed as teachers in any institution situated in the district, either by the management or by the Inspector under subsection (4) of Section 4 of the Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teacher and other Employees) Act. 1971, while the Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees), Amendment Ordinance, 1977, was in force, and who had actually joined their duties in pursuance of the said provision between January 9, 1978 and January 19, 1978 (both days inclusive).

(2) Every reserve pool teacher, who having been appointed to the post of a teacher in any institution in accordance with the provisions of the Uttar Pradesh High Schools and Intermediate Colleges (Reserve Pool Teachers) Ordinance, 1978 (U. P. Ordinance No. 10 of 1978) or the Uttar Pradesh High Schools and Intermediate Colleges (Reserve Pool Teachers) (Second) Ordinance, 1978 (U. P. Ordinance No. 22 of 1978), continues to be in service by reason of any order of any Court or by any other reason, shall be deemed to have been regularly appointed to such post and shall be entitled to be confirmed in such post with effect from the date on which he would have been confirmed in the normal course.

(3) Where any substantive vacancy in the post of a teacher in an institution is to be filled by direct recruitment such post shall, at the instance of the Inspector, be offered by the management to the teacher other than a teacher referred to in subsection (2) whose name is entered in the register referred to in subsection (1).

(4) If any teacher is offered appointment in accordance with the provisions of sub-section (3) and he fails to join the post within the time allowed therefore, which shall not be less than seven days, his name shall be removed from the register, referred to in sub-section (1), and the appointment shall be offered to the next reserve pool teacher of the same district in the subject.

(5) If such other teacher to whom offer of appointment is made also falls to join, then the same process shall be repeated until the list of reserve pool teacher of that district in the subject is exhausted.

(6) No appointment of any teacher to an institution shall be made u/s 16 until the list of reserve pool teachers of that district in the subject concerned is exhausted in accordance with sub-section (5)."

7. The District Inspector of Schools is alleged to have issued a letter to the Manager of Heera Lal Smarak Inter College on 13.1.1987 to appoint Gyan Prakash as lecturer on the ground that he is a reserve pool teacher. The Manager issued appointment letter to him on 19.1.1987 in pursuance of the said letter and he is alleged to have joined on 20.1.1987. He having been appointed in the said institution, cannot be transferred to another Institution unless the transfer is made following the procedure prescribed by Regulation 55 of Chapter III of the Regulations framed under the U. P. Intermediate Education Act, 1921. A teacher who wants his transfer to another Institution, is to submit the application to the Manager of the College concerned and on receiving such application, he will obtain the consent of such other institution where he wants to be transferred and after the consent is received, the papers are to be forwarded to the District Inspector of Schools. Admittedly, this procedure has not been followed. Gyan Prakash, the petitioner cannot be transferred from Heera Lal Smarak Inter College to Udyog Vidyalaya Inter College, Azamgarh.

8. The contention of the contesting respondent is that Gyan Prakash has not been transferred but, in fact, he has been absorbed in Udyog Vidyalaya Inter College, Azamgarh. There is a difference between transfer and absorption. It is, however, to be seen whether the order passed by the District Inspector of Schools, Azamgarh, amounts to absorption or transfer. The mere use of the word "samayojan" (absorption) is not decisive but it has to be examined on the facts of each case. Gyan Prakash, the petitioner, claimed that he was already appointed in Heera Lal Smarak Inter College on 19.1.1987 and thereafter he joined on 20.1.1987. Once he was appointed in the said institution, it will be taken that he was absorbed in the said institution. Section 21B of Act No. 5 of 1982 uses the word "absorption" and not appointment. Gyan Prakash having been appointed in Heera Lal Smarak Inter College shall be taken to have been absorbed in the said institution. Once he had been absorbed in the said institution, he cannot be absorbed again in another institution. He can only be transferred after he was absorbed in one institution. The letter of the District Inspector of Schools dated 13.6.1995 in fact amounts to order of transfer of Gyan Prakash from Heera Lal Smarak Inter College to Udyog Vidyalaya Inter

College, Azamgarh.

9. On behalf of Shailendra Kumar Yadav, it is contended that he having been appointed as ad hoc lecturer in Economics in the same institution, no absorption of any reserve pool teacher can be made u/s 21B of Act No. 5 of 1982. This controversy has been decided by a Division Bench of this Court in Udai Bhan Singh v. District Inspector of Schools, Azamgarh and others 1986 UPLBEC 125, wherein it has been held that a teacher appointed u/s 18 on ad hoc basis is not entitled to continue when an appointment to that post is made from the list of reserve pool teachers in accordance with the provision of Section 21B of U. P. Act No. 5 of 1982. Shailendra Kumar Yadav cannot claim any right to continue on the post as ad hoc teacher in Economics after the appointment of Gyan Prakash to the said post.

10. It is next contended that he was appointed as lecturer on ad hoc basis on a substantive vacancy on 23.2.1984 when Vidya Sagar Lal, a lecturer in Economics retired from Heera Lal Smarak Inter College. Azamgarh on 30.6.1984. The Committee of Management passed a resolution on 20.9.1984 for his appointment to the post of lecturer in Economics on ad hoc basis. In pursuance of the said letter he was issued an appointment letter on 15.10.1984 by the Manager of the institution. He joined the post in pursuance of the said appointment letter. The papers were forwarded to the District Inspector of Schools for financial approval but he did not pass any order granting approval and, therefore, he filed Writ Petition No. 8468 of 1986 seeking mandamus against the District Inspector of Schools, Azamgarh to accord financial approval for his appointment. It is contended that he having been appointed on ad hoc basis prior to the coming into force of U. P. Act No. 19 of 1985 is entitled for regularisation u/s 33B of U. P. Act No. 5 of 1982.

11. The petitioner before claiming any regularisation under the said provision has to establish that his appointment was made in accordance with para 2 of Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order. 1981. The procedure for making ad hoc appointment is given in para 5 of the said Order. Under clause (2) of para 5 the Management is to inform the District Inspector of Schools about the details of the vacancies and such Inspector shall invite applications from the local Employment Exchange and also through Public advertisement in at least two newspapers having adequate circulation in Uttar Pradesh. Clause (3) provides that the application shall be addressed to District Inspector of Schools. The District Inspector of Schools shall call the best candidates and select on the basis of the quality points specified in Appendix. Shailendra Kumar Yadav has not stated in the writ petition that the selection was made by the District Inspector of Schools in accordance with para 5 of Order, 1981. In Rodha Raizada v. Committee of Management Vidyawati Darbari Girls Inter College. Allahabad and others 1994 (3) UPLBEC 1551, it has been held that for a valid appointment on ad hoc basis, the appointment must proceed the procedure prescribed by para 5 of Removal of Difficulties Order,

1981. In paragraph 5 of the counter-affidavit Shailendra Kumar Yadav has stated that the Committee of Management proceeded to make ad hoc appointment. The post was advertised by the Manager of the institution and he applied for appointment on the post. The Committee of Management passed resolution on 22.9.1984 resolving to appoint him as lecturer in Economics on ad hoc basis. It is clear that the selection was not made by the District Inspector of Schools as provided in para 5 of the Order. In these circumstances, he cannot claim regularisation of his appointment.

12. In view of the above, both the writ petitions are allowed and the order of the District Inspector of Schools dated 13.6.1995 is hereby quashed. Raghvendra Pratap Singh, (the petitioner is Writ Petition No. 21705 of 1995) has further sought mandamus commanding the District Inspector of Schools, Azamgarh to pay him salary. He can submit representation to him who shall examine on facts as to whether he was entitled to promotion as he claims and will pass a reasoned order within two months after affording opportunity to all the parties concerned.

13. The parties shall bear their own costs.