
(2011) 05 AHC CK 0105

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 58617 of 2007

Hari Shankar Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-05-2011

Acts Referred:

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

Citation : (2011) 5 ADJ 770 : (2011) 130 FLR 810

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard learned Counsel for the parties.

2. Under the order impugned, the District Inspector of Schools, Firozabad dated 20.11.2007 has held that Respondent No. 4 was senior to the present Petitioner and, therefore, he should be appointed as Officiating Principal of the institution. For the purposes, it has been recorded that both the aforesaid persons were appointed on ad hoc basis on one and same date i.e. 1.10.1981 and that their date of birth is the same. However, in the order of-appointment, name of Respondent No. 4 was shown above the Petitioner, therefore, he has been declared senior. It has been recorded in the impugned order that the Petitioner and Respondent No. 4 claim to have been regularized as L.T. Grade teacher u/s 33-A of the U.P. Secondary Education Services Selection Board Act, 1982 (herein after referred to as the Act, 1982). Such finding has been recorded with reference to the fact that they have been granted selections grade and promotional pay scale after counting the required period of service from the date of initial appointment.

3. So far as Respondent No. 5 is concerned, it may be recorded that although he has been promoted as L.T. Grade Teacher on substantive basis, he was junior to the aforesaid persons as the services of the Petitioner and Respondent No. 4 are

deemed to be regularized u/s 33-A of the Act, 1982 with effect from an earlier date.

4. In order to keep the record straight it may be noticed that Respondent No. 5 had filed Civil Misc. Writ Petition No. 9245 of 2005 against the same order which was dismissed on the ground that the findings of fact recorded in the order do not warrant any interference. The Special Appeal filed against the order of the Single Judge has also been dismissed on 2.4.2005. This Court cannot go behind the judgment and order of the Division Bench, therefore, no other directions are being issues in respect of Respondent No. 5.

5. However, it may be recorded that the claim of the Petitioner and Respondent No. 4 that they have been regularized u/s 33-A does not appeal to the Court. From the order approving the appointment of Petitioner and Respondent No. 4 enclosed as Annexure-1 to the writ petition, it is apparently clear that they had not been appointed in accordance with the provisions of U.P. Secondary Education Services Selection Board Act (Removal of Difficulties Order, 1981 [First Order]) inasmuch as under the first order, power to make ad hoc appointment against the substantive vacancy was with the District Inspector of Schools and not with the Committee of Management. The legal position in that regard has already been explained by the Full Bench of this Court in the case of Km. Radha Raizada v. Committee of Management, V.D.B.I.C. and Ors., 1994 (2) ESC 345 (FB), therefore, this Court has no hesitation to hold that the impugned order insofar as it holds that the Petitioner and Respondent No. 4 stand regularized u/s 33-A of the Act, 1982 is misconceived.

6. At this stage, counsel for the Petitioner submits that there are other statutory provisions introduced in the Act No. 5 of 1982 which provide for regularization of ad hoc employees appointed by the Committee of Management and their claim for such regularization needs to be examined thereunder.

7. For the reasons noticed above, the order of the District Inspector of Schools impugned in the writ petition cannot be legally sustained. As already noticed above, Section 33-A has no application in the matter of regularization of the Petitioner as well as Respondent No. 5. The order is hereby quashed. Let the District Inspector of Schools re-consider the matter, in light of the observations made herein above, within eight weeks from the date a certified copy of this order is filed before him.

8. Writ petition is allowed subject to the observations made herein above.