

(2003) 07 AHC CK 0155

In the Allahabad High Court

Case No : C.M.W.P. No's. 27899 and 31710 of 1998

Jagat Narain Singh

APPELLANT

Vs

Director of Education (Secondary) and Others

RESPONDENT

Date of Decision : 03-07-2003

Acts Referred:

Services Commission Rules, 1983 — Rule 9

Citation : (2003) 4 AWC 2882 : (2003) 2 UPLBEC 1684

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : A.S. Diwekar, for the Appellant; S.C. Mishra, S.K. Pal, K.R. Singh, Manju Chauhan and S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.U. Khan, J.—J. N. Singh, petitioner in the first writ petition and B.P. Singh petitioner in the second writ petition are rival claimants for one post of teacher in Sri Laxmi Narain Uchchar Madhyamik Vidyalay, Meja, Allahabad (hereinafter referred to as the college). Director of Education by order dated 22.4.1998 has negated the claim of both. The Director passed the order on appeal of J.N. Singh which was filed in pursuance of judgment dated 11.11.1997 given in special appeal by this Court, which was filed by J.N. Singh. Judgment of the Special Appeal No. 270 of 1995 is Annexure-7 and consequent order of the Director is Annexure-8 to the first of the aforesaid writ petitions filed by J.N. Singh.

2. In the judgment of the aforesaid special appeal, it was directed that the Director of Education shall decide the appeal after providing opportunity of hearing to the parties. It was observed that "matter should be considered by the Director of Education, who will consider the validity or otherwise of the appointments of the appellant (i.e., J.N. Singh) and respondent No. 3 (i.e., B.P. Singh). It has been argued on behalf of J.N. Singh that an earlier order of D.I.O.S. against B.P. Singh was not challenged hence, it became final. His

argument is not entertainable as in view of the observations in the judgment of special appeal, the Director was required to decide the entire matter afresh.

3. The brief facts of the case are that late Sri R.N. Singh, a teacher in L. T. grade died in harness on 10.4.1985. Committee of Management proposed promotion of Ram Raj Singh, a C. T. grade teacher and the proposal was sent to D.I.O.S. on 19.10.1985. This proposal/recommendation was accepted/approved on 16.3.1988 by the U. P. Secondary Education Services Commission and in pursuance thereof Ram Raj Singh joined on 25.4.1988. Petitioner R.N. Singh claims to have been appointed on 11.2.1989 on the post of C. T. grade teacher falling vacant due to promotion of Ram Raj Singh of L. T. grade. In the writ petition of J. N. Singh, it has been stated in paras 16 to 19 that Ram Raj Singh was promoted on substantive vacancy under First Removal of Difficulties Order, 1981, framed under the U. P. Secondary Education Service Commission Ordinance/Act. Meaning thereby that the promotion of Ram Raj Singh was ad hoc and to remain in operation until regularly selected candidate selected by the Commission joined. It has further been asserted in the said writ petition that in this manner a short term vacancy came into existence in C. T. grade against which petitioner J. N. Singh was appointed on 11.2.1989. In the counter-affidavit on behalf of the Director and Deputy Director of Education, it has been stated in para 4 that on 16.3.1988 approval of promotion of Ram Raj Singh was granted by the Commission, under Rule 9 of 1983 rules framed under the Act (as existed at the relevant time). Approval of Commission was, required only if the promotion was on the post of to be filled by promotion under promotion quota of 40% (as applicable at the relevant time) under Chapter 2 Regulations 5 and 6 of the Regulations framed under U. P. Intermediate Education Act. It is, therefore, abundantly clear that promotion of Ram Raj Singh approved by the Commission was substantive and final in nature and not ad hoc until candidate selected by the Commission joined. Consequently the vacancy, which occurred in C. T. grade due to promotion of Ram Raj Singh under promotion quota and its approval by Commission was the substantive vacancy and not a short-term vacancy. In the rejoinder-affidavit of J. N. Singh in para 3 this fact has not been denied that approval dated 16.3.1988 was granted by the Commission. However, it has been stated therein that, it was wrongly granted by the Commission and it ought to have been granted by the D.I.O.S. By way of elaboration, it has been stated that if it had been an appointment under promotion quota names of three persons would have been forwarded. Under Chapter 2 Regulations 5 and 6 and Rule 9 of 1983 rules framed under the Commission Act only those teachers, who possess minimum qualification for teaching subject concerned and five years experience shall be considered of promotion. It is quite possible that apart from Ram Raj Singh no other teacher was available for promotion hence no other name was forwarded by the committee of management. In any case approval dated 16.3.1988 granted by the Commission was neither challenged in any of the earlier writ petition nor in the instant writ petition, hence its validity cannot be questioned by the petitioner J.N. Singh.

4. In my opinion, Director has rightly decided that vacancy was not a short-term vacancy. Director has also rightly held that appointment of the petitioner on ad hoc basis on the substantive vacancy created by promotion of Ram Raj Singh was illegal as procedure prescribed under First Removal of Difficulties Order under the Ordinance/Act was not followed as held by the Full Bench of this Court in Radha Raizada. 1994 (3) UPLBEC 1551. In view of this writ petition filed by J.N. Singh is devoid of any merit and is dismissed.

5. As far as the second writ petition of B.P. Singh is concerned, it is liable to be dismissed only on the ground that according to the said petition he was appointed on 1.9.1986, when there was no vacancy. Ram Raj Singh was selected for appointment by promotion by the Commission on 16.3.1988 and joined the post on 25.4.1988 hence there cannot be said to be any vacancy before 25.4.1988. Even though under Regulation 6 (6) of Chapter 2 of the Regulation framed under U. P. Intermediate Education Act there was provision that if the D.I.O.S. within three weeks did not communicate the decision on the proposal of the promotion sent by Committee of Management. It would be deemed that D.I.O.S. had given his concurrence to the resolution. However, under Rule 9 of 1983 Rules framed under the Commission Act, there was no provision for such deemed approval if Commission did not communicate its decision within a certain time. By virtue of Section 32 of the Commission Act only those provisions of U. P. Intermediate Education Act and the Regulations made thereunder in so far as they are not inconsistent with the provisions of the Commission Act or the Rules made thereunder shall continue to be in force for the purposes of selection, appointment, promotion, etc. of a teacher. Regulation 6 of Chapter 2 having been virtually replaced by Rule 9 of 1983 Rules framed under the Commission Act ceased to be in force and it was Rule 9 of 1983 Rules (as it stood at the relevant time) which covered the situation. Consequently writ petition filed by B.P. Singh is also liable to be dismissed.

6. Learned counsel for the petitioner B.P. Singh has cited the following authorities :

(1) 1989(2) UPLBEC 98,

(2) 2002 (4) ESC 412,

(3) 1998 (3) UPLBEC 1722,

(4) 2000 (3) ESC 1670,

(5) 2000 (3) ESC 1990,

(6) 1999 (2) UPLBEC 1420,

(7) 1992 (2) UPLBEC 1483,

(8) 2002 (1) SAC 791, and

(9) Praveen Pratap Singh Bhadauria Vs. District Inspector of Schools, Varanasi

and another,

7. The first authority deals with promotion under First Removal of Difficulties Order, In the instant case, promotion of Ram Raj Singh was under Chapter 2 Regulations 5 and 6 and Rule 9 of 1983 Rules, hence the said authority is not applicable to the facts of the case. The second authority also deals with ad hoc promotion over and above the 40% quota. The 3rd, 4th, 5th, 6th, 8th and 9th authorities deal with the appointment on short term vacancies, which are not applicable to the facts of the case. Sri Ram Raj Singh was promoted on permanent basis in 1988, giving rise to a substantive vacancy. Until acceptance/ approval of promotion of Ram Raj Singh under 40% quota by the Commission, no vacancy either substantive or short term came into existence, hence alleged appointment of B.P. Singh in 1986 was against no vacancy.

8. As far as 7th authority, in 1992 (2) UPLBEC 1483, is concerned it is also not applicable to the facts of the case as in that authority the matter pertained to the valid appointment of teacher in C. T. grade before 20.6.1989. In the said authority the only question considered was that of applicability of Circular dated 20.6.1989.

9. The Director in his order dated 22.4.1998, has rightly directed Committee of Management, D.I.O.S., Regional Deputy Director of Education, Joint Director of Education to take immediate steps to make the appointment against the post in dispute. The said directions must be complied with by the concerned authorities forthwith.