
(2009) 12 AHC CK 0338
In the Allahabad High Court

Jagmohan Shukla

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-12-2009

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16E(10)

Citation : (2010) 2 AWC 1202

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Sahi, J.—The dispute relates to the regularisation of the petitioner as a Lecturer in Mathematics and his seniority in that cadre as against the respondent Nos. 5 and 6. The provisions governing the dispute are contained in the U.P. Secondary Education Services Selection Board Act, 1982 and the U.P. Intermediate Education Act, 1921.

2. This writ petition has been filed questioning the order dated 24.9.2009 whereby the Regional Joint Director of Education has annulled the regularisation of the petitioner, which was granted on 21.12.1994. The other order under challenge is dated 6.10.2009, whereby the seniority has been determined between the petitioner and the respondent Nos. 5 and 6.

3. Shri Ramesh Upadhyaya, learned Counsel for the petitioner contends that the order dated 24.9.2009 has been passed without there being any occasion to do so and further the same is without jurisdiction as the regularisation order dated 21.12.1994 could not have been annulled by way of a review by the Regional Joint Director of Education nor the Joint Director of Education could have cancelled the appointment as such power, according to the petitioner, is possessed with the Director of Education u/s 16E(10) of the U.P. Intermediate Education Act, 1921. Shri Upadhyaya contends that the petitioner once having been regularised under the provisions of the statutes is an employee in a

substantive capacity and therefore cancellation of his appointment does not fall within the jurisdiction of the Regional Joint Director of Education.

4. So far as, the question of seniority is concerned, Shri Upadhyaya contends that the petitioner was appointed on 1.10.1989 in an ad hoc capacity and his appointment was also approved by the District Inspector of Schools, as such he will be deemed to be senior than the respondent Nos. 5 and 6.

5. Counter-affidavits have been filed on behalf of the respondent Nos. 4 and 5 and the learned standing counsel for the respondent Nos. 1, 2 and 3.

6. The impugned order dated 24.9.2009 has been supported by the learned Counsel for the respondents contending that the petitioner's regularisation could not have been granted in view of the fact that Section 33B of the U.P. Secondary Education Selection Board, 1982 was not attracted.

7. Shri B.P. Singh, learned senior counsel and Shri Pradeep Kumar for the respondent-Committee of Management contend that Section 33B was introduced w.e.f. 7.8.1993 and in view of the provisions of the said Section, the petitioner could not have claimed either regularisation in service or any claim of substantive appointment prior to his actual regularisation under the said section. They urge that the procedure provided therein is that the selection has to be processed u/s 33B where after the Management has to appoint the concerned candidate and it is from the date of such appointment that the candidate will be presumed to have been appointed in substantive capacity. Shri Singh contends that the petitioner was admittedly considered for such appointment under the order of the Competent Authority dated 21.12.1994 and therefore there is no occasion for the petitioner to claim his substantive appointment prior to that date.

8. Learned standing counsel and Shri Uma Nath Pandey, learned Counsel for the respondent No. 5 also adopted the same argument and urged that the claim of the petitioner has to be assessed on the strength of the provisions of Section 33B which clearly lay down that the date of appointment of the petitioner would be the date as noticed hereinabove.

9. Having heard learned Counsel for the parties, the question that arises for determination is as to whether the petitioner could have been regularised or not. The petitioner was appointed in an ad hoc capacity and his regularisation could have been considered only in terms of U.P. Act No. 1 of 1993, which was enforced w.e.f. 7.8.1993. The date of enforcement of the Act is therefore clear and the claim of the petitioner cannot precede the said date. Apart from this, the procedure provided u/s 33B is amply clear, which narrates that each region there shall be a Selection Committee and the claim for a person for regularisation shall be processed by the said Selection Committee where after the appointment will be offered in a substantive capacity.

10. In the instant case, it is undisputed that the petitioner was considered by the Selection Committee and the said consideration crystallized into the order dated

21.12.1994. Accordingly, the petitioner cannot claim any substantive appointment prior to 21.12.1994. This Court is therefore of the opinion that the petitioner stood regularised under the order dated 21.12.1994.

11. The impugned order dated 24.9.2009 proceeds on the presumption that the petitioner could not have been regularised as the post against which he had been appointed on ad hoc basis became substantively vacant on 16.8.1994 upon the regularisation of Shri Man Mohan Singh Chaturvedi. The aforesaid reasoning does not appear to be correct in law, inasmuch as, Shri Man Mohan Singh was appointed on ad hoc basis as a Principal on 1.7.1985. He was regularised in his services as a Principal and such regularisation is permissible in terms of Section 33A(1C). However, this Court need not go into that, inasmuch as, treating the post to have become vacant in the substantive capacity, the services of the petitioner have been regularised by the Authority on 21.12.1994 itself.

12. There was no fraud or misrepresentation relating to the fact of claim of regularisation of the petitioner.

13. In this view of the matter, the Regional Joint Director of Education was not empowered to review the same, inasmuch as, it is only on the limited ground of fraud or misrepresentation that such review was permissible. The Court is supported in its view by two Division Bench decisions in the case of Havaladar Singh Vs. U.P. Shiksha Nideshak, VII Mandal and Others, and in the case of Radhey Shyam Chaube and Others Vs. The District Inspector of Schools and Others, .

14. In the absence of any such jurisdiction to review the regularisation order of the petitioner, in my opinion, the impugned order is in excess of jurisdiction to that extent. The order dated 24.9.2009, insofar as, it annuls the regularisation of the petitioner cannot be sustained and is accordingly quashed. The resolution of the Committee of Management to that effect is also set aside as the same Management itself had proposed the promotion of the petitioner and it therefore was estopped from reviewing its earlier decision. Even otherwise the Committee had no power to sit in appeal over the regularisation order passed by the authorities.

15. Apart from this, once the petitioner was continuing, having been substantively appointed u/s 33B of the 1982 Act, he could not have been removed by the Committee except on an approval by the Selection Board u/s 21 of the 1982 Act or by an order of the Director of Education u/s 16E(10) of the 1921 Act. In this view of the matter also, the Joint Director has travelled beyond the powers prescribed under the statute as such the action is unsustainable on that score as well.

16. The dispute relating to seniority between the petitioner and the respondent Nos: 5 and 6 was sought to be agitated by the petitioner by questioning the regularisation of the said respondent Nos. 5 and 6 as being against law. As a matter of fact, the petitioner who was sailing in the same boat, sought to

dislodge the seniority by questioning the regularisation of the respondent Nos. 5 and 6 and for this the petitioner filed a Civil Misc. Writ Petition No. 37282 of 2009, which was disposed of on 28.7.2009. A copy of the said judgment has been filed as Annexure-15 to the writ petition. The petitioner was given the liberty to ventilate his grievances through a representation before the Regional Joint Director of Education whereupon the said authority proceeded to examine the claim of the petitioner as well.

17. Shri Ramesh Upadhyaya, learned Counsel for the petitioner contends that the dispute of seniority required determination in the light of the fact that the regularisation of the respondent Nos. 5 and 6 was illegal and consequently if their regularisation is found to be against law their claim to substantive appointment will fall through and the petitioner would automatically become senior. The said dispute relating to seniority has been decided by the authority under the order dated 6.10.2009, which has been challenged in the present petition through an amendment application, which was allowed on 21.10.2009.

18. Learned Counsel for the Committee of Management and the learned Counsel for the respondent No. 5 have urged that it was not open to the petitioner to question the regularisation of the respondent Nos. 5 and 6, inasmuch as, the Regional Joint Director of Education has no power to review the same as there was no fraud or misrepresentation and secondly even if the regularisation order was infirm on any count, then the same could have set aside only by the Director of Education u/s 16E(10) or their removal could have been given effect to through an approval by the U.P. Secondary Education Services Selection Board. This argument need not detain this Court, inasmuch as, while considering the case of the petitioner on the question of regularisation hereinabove, it has been held that the Regional Joint Director of Education has no power to review the regularisation order of the petitioner, and as such, similarly on the same reasoning the said authority had no power to review the claim of regularisation of the respondent Nos. 5 and 6, which was not obtained by any fraud or misrepresentation.

19. The respondent No. 5 was appointed as a Lecturer of Commerce on ad hoc basis, which was approved on 30.11.1988. The said approval was cancelled on 2.1.1990. During the pendency of the said writ petition, the claim of the respondent No. 5 was examined for regularisation and the same was extended in his favour vide order dated 27.10.1994. After the said regularisation order had been passed a statement was made on behalf of the said respondent in Writ Petition No. 1157 of 1990 that in view of the order of regularisation passed in his favour the writ petition be consigned to records. Taking notice of the said facts, this Court dismissed the writ petition as infructuous on 28.9.2004. A copy of the said order has been brought on record through the counter-affidavit filed on behalf of the respondent No. 5. It is further evident that the respondent No. 5 stood regularised and the dismissal of the writ petition as infructuous was coupled by noticing the fact that the services had been regularised.

20. In this view of the matter, the question of regularisation of the respondent No. 5 stood foreclosed. Thus, there was no occasion to review the regularisation of the respondent No. 5. However, the order of the Joint Director of Education in relation to the respondent No. 5 that the said regularisation would take effect u/s 33B of the Act appears to be justified as he could not have been given the benefit of regularisation u/s 33A. However, no final opinion is expressed thereon as the regularisation of the respondent No. 5 is still in jeopardy in Special Appeal No. 1603 of 2004, which is stated to be pending at the instance of one Shri R.N. Sharma.

21. So far as, the respondent No. 6 is concerned, it is evident from the records that he was regularised w.e.f. 29.5.1992. In view of this, the regularisation of the respondent also cannot be now reopened after 17 years at the behest of the petitioner, who has been given the benefit of regularisation under the order dated 21.12.1994.

22. The order dated 6.10.2009 however incorrectly records the reason for placing the petitioner to be junior namely that the regularisation order has been cancelled. To that extent the order dated 6.10.2009 is erroneous.

23. Accordingly, the order dated 6.10.2009 is set aside to the aforesaid extent and the Regional Joint Director of Education shall pass orders in the light of the observations made hereinabove within a period of 6 weeks from the date of presentation of a certified copy of this order before the said respondent and after perusing the respective contentions of the parties.

24. The writ petition is allowed subject to the directions contained hereinabove.