

(2006) 04 AHC CK 0061
In the Allahabad High Court
Case No : Special Appeal No. 332 of 2006

Kailash Pati Pathak

APPELLANT

Vs

The District Inspector of Schools and Others

RESPONDENT

Date of Decision : 17-04-2006

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16(E), 18
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 10, 10(1), 18, 18(1), 18(2)
Uttar Pradesh Intermediate Education Act, 1921 — Section 16(E), 18
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 10, 10(1), 18, 18(1), 18(2)
Uttar Pradesh Intermediate Education Act, 1921 — Section 16(E), 18
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 10, 10(1), 18, 18(1), 18(2)

Citation : (2006) 7 AWC 6815 : (2006) 3 UPLBEC 3017

Hon'ble Judges : Ajoy Nath Ray, C.J.; Ashok Bhushan, J

Bench : Division Bench

Advocate : Rakesh Kumar Pathak and Indra Raj Singh, for the Appellant;
Pramod Kumar Srivastava and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Ajoy Nath Ray and Ashok Bhushan, JJ.—Heard counsel for the appellant.

2. This is an appeal against/judgment and order dated 7.3.2006 of Hon'ble D.P. Singh, J dismissing the writ petition filed by the appellant.

3. The writ petition was filed by the appellant praying for a writ of mandamus commanding the respondents to accord financial approval to the appointment of the petitioner and to pay him salary together with arrears from 1997.

4. A substantive vacancy on the post of Assistant Teacher in L.T. grade came into existence on retirement of one Srinivas Pathak on 30.6.1996 The Committee of Management initiated process for making ad-hoc appointment on the said post after advertising the vacancy in two newspapers. The petitioner claims ad hoc

appointment by the Committee of Management through the order dated 7.7.1997. As no action was taken, the writ petition was filed. The learned Single Judge relying on the full Bench judgment of this Court reported in 1994 (3) U.P.L.B.E.C. 1551 Radha Raizada v. Committee of Management took the view that the management had no power or authority to make any ad-hoc appointment on a substantive vacancy, hence the writ petition was dismissed.

5. The learned Counsel for the petitioner submitted that the Committee of management had power and jurisdiction to make ad hoc appointment. He has referred to Section 16(E) of the U.P. Intermediate Education Act 1921 read with Section 32 of the UP Secondary Services Commission and Selection Boards Act, 1982. The learned Counsel for the petitioner has also placed reliance on a judgment of a learned Single Judge reported in Rakesh Chandra Misra Vs. State of U.P. and Others, .

6. We have considered the submissions of the counsel for the appellant and perused the record. The question which has arisen in this appeal is as to whether the Committee of Management was empowered to make ad hoc appointment on a substantive vacancy on 7.7.1997, when the appellant claims his appointment. The provisions of Section 18 of the U.P. Act 5 of 1982 was amended vide U.P. Act No. 24 of 1992 with effect from 14.7.1992. The power to make ad hoc appointment on substantive vacancy with effect from 14.7.1992 was vested with a Selection Committee contemplated u/s 18(8) headed by Regional Joint Director of Education. The relevant provisions of Section 18 as it existed in July 1997 is extracted below:

18. Ad hoc Teachers.-(1) Where the Management has notified a vacancy to the (Board) in accordance with Sub-section (1) of Section 10 and the post of a teacher actually remained vacant for more than two months, the Management may appoint by direct recruitment or promotion a teacher on purely ad hoc basis, in the manner hereinafter provided in this section.

(2) A teacher other than a Principal or Headmaster, who is to be appointed by direct recruitment may be appointed on the recommendation of the Selection Committee referred to in Sub-section (8).

(3) A teacher other than a Principal or Headmaster, who is to be appointed by promotion, may in the prescribed manner be appointed by promoting the senior most teacher, possessing prescribed qualifications:

(a) in the trained graduate's grade, as a lecturer, in the case of a vacancy in the lecturer's grade;

(b) in the Certificate of Teaching grade, as teacher in the trained graduate's Grade, in the case of a vacancy in the Trained graduate's grade.

(4) A vacancy in the post of a Principal may be filled by promoting the senior most teacher in the lecturer's grade.

(5) A vacancy in the post of a Headmaster may be filled by promoting the senior most teacher in the trained graduate's grade.

(6) For the purposes of making appointments under Sub-sections (2) and (3), the Management shall determine the number of vacancies, as also the number of vacancies to be reserved for the candidates belonging to the Scheduled Castes, the Scheduled Tribes and other Backward Classes of citizen in accordance with the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 and, as soon as may be thereafter, intimate the vacancies to be filled by direct recruitment to the District Inspector of Schools and if the Management fails to intimate the vacancies and the post of a teacher has actually remained vacant for more than three months, the District Inspector of Schools may, subject to such directions as may be issued by the Director and after verification from such institution or from his own record, determine such vacancies himself.

(7) The District Inspector of Schools shall on receipt of intimation of vacancies or as the case may be, after determining the vacancies under Sub-section (6), forward the same to the Deputy Director of Education incharge of the Region, who shall invite applications from the persons possessing qualifications prescribed under the Intermediate Education Act, 1921 or the regulations made thereunder, for ad hoc appointment to the post of teachers other than Principal or Head Master in such manner as may be prescribed.

(8)(a) For such region there shall be a Selection Committee for selection of candidates for ad hoc appointment by direct recruitment comprising--

(i) Regional Joint Director of Education;

(ii) Regional Deputy Director of Education (Secondary);

(iii) Regional Assistant Director of Education (Basic).

The Regional Joint Director of Education shall be the Chairman,

(b) The Selection Committee constituted under Clause (a) shall make selection of the candidates, prepare a list of the selected candidates, allocate them to the Institutions and recommended their names to the management for appointment under Sub-section (2).

(c) The criteria and procedure for selection of candidates and the manner of preparation of list of selected candidates and their allocation to the Institution shall be such as may be prescribed.

(9) Every appointment of an ad hoc teacher under Sub-section (1) shall cease to have effect from the date when the candidate recommended by the (Board) joins the post.

(10) The provisions of Section 21-D shall mutatis mutandis apply to the teachers who are to be appointed under the provisions of this section.

7. The provisions of Section 18 as it existed after 14.7.1992 till the appointment of the appellant is claimed, clearly contemplated that no ad-hoc appointment can be made by the Committee of Management on substantive vacancy. The Full Bench decision of this Court in Radha Raizada's case also took this view that after 14.7.1992, the Committee of Management was not empowered to make ad-hoc appointment on substantive vacancy. The reliance placed by counsel for the appellant in Rakesh Chandra Mishra's case is misplaced. In Rakesh Chandra Mishra's case, the learned Single Judge of this Court considered the situation after 25.1.1999 i.e. after rescissions of Removal of Difficulties Orders. The question which was answered by learned Single Judge was that even though Removal of Difficulties Orders has been rescinded with effect from 25.1.1999, the provisions of UP Intermediate Education Act including Section 16(E) has to be looked into. In the present case, there was clear provisions for making ad hoc appointment on substantive vacancy u/s 18 of the Act, hence the provision of Section 16(E) of the UP Intermediate Education Act 1921 read with Section 32 of the U.P Secondary Services Commission and Selection Boards Act, 1982 were not attracted. In the present case, the Learned Single Judge has rightly come to the conclusion that the Committee of Management had no jurisdiction to make ad-hoc appointment on 7.7.1997 on a substantive vacancy.

8. We fully approve the view taken by the learned Single Judge and dismiss this appeal accordingly.