
(1995) 10 AHC CK 0029

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 3276 of 1986

Krishna Pratap Pandey

APPELLANT

Vs

D.I.O.S., Deoria and Others

RESPONDENT

Date of Decision : 31-10-1995

Acts Referred:

Secondary Education Services Commission (Removal of Difficulties) Order, 1980 — Para 2
Uttar Pradesh Intermediate Education Act, 1921 — Section 16E
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 21C, 33A

Citation : (1995) 10 AHC CK 0029

Hon'ble Judges : Jagdish Bhalla, J

Final Decision : Dismissed

Judgement

Jagdish Bhalla, J.—Petitioner has filed this petition against the order dated 2011986 which relates to the appointment of reserved pool teacher and ha < prayed issuance of writ in the nature of mandamus commanding the respondents to pay salary of the petitioner from 171985 till date and go on paying the salary of the petitioner month to month as and when it falls due on the post of Lecturer in Sociology in the institution.

2. According to the petitioner he is M. A. in Sociology and B. Ed. and is working as a duly approved L. T. Grade teacher since 1976 and was regularised under Section 16GG, as such he has more than five years substantive service as L. T. Grade teacher. Therefore, he is entitled to be promoted as Lecturer. In the circumstances, the case of the petitioner was considered by the Committee of Management and was unanimously resolved to promote the petitioner from his L. T. Grade post to the post of Lecturer in Sociology. By order dated 121985 the said promotion of the petitioner was duly approved by the District Inspector of Schools only on ad HOC basis.

3. According to the petitioner, the District Inspector of Schools should have treated the case of the petitioner as a. regularly promoted and should have

forwarded to the Service Commission, but on a wrong action of law, the District Inspector of Schools, purportedly issued an order of approval only on ad hoc basis but the facts remain that the petitioner having been duly promoted on the said post of Lecturer in Sociology.

4. It has been argued on behalf of the petitioner that by amendment in U. P. Secondary Education Service Commission and Selection Boards Act, 1982 (hereinafter referred to as the Act) with regard to reserved pool, teacher, the District Inspector of Schools has been conferred power for absorption of reserved pool teacher only when the said reserved pool teacher, if any, has worked during the stipulated strike period in the institution. In such circumstances, the reserved pool teacher can only be appointed by the District Inspector of Schools in the same District. According to the petitioner, the person appointed from the list of reserved pool teacher were from Gorakhpur and not from Deoria.

5. Learned Counsel for the petitioner further submits that it appears that some list of reserved pool teacher has been prepared by Deputy Director of Education, VII Region, Gorakhpur who has no right to prepare any such list. He further pointed out that it has not been indicated in the impugned order in which institution respondent No 3 has worked and paid salary during the strike period.

6. Learned counsel for the petitioner in support of his argument also relied upon Section 21C and 33 of the Act.

7. According to respondents four posts of Lecturers were sanctioned by the Deputy Director of Education and two posts were reserved for direct recruitment under Section 16E (5) of the Intermediate Education Act amended upto date and two posts were reserved for 40% for promotion. Accordingly two posts of Lecturers in Hindi and Geography were filled by promotion according to seniority. The post of teacher in sociology was reserved for direct recruitment. Though the petitioner is possessing the requisite qualification for promotion but the 40% quote for promotion has already been completed as such the said post was to be filled by direct appointment according to U. P. Act No. 19 of 1985. As two teachers were already promoted on the post of Lecturer in Hindi and Geography under 40% quota, hence the petitioner is no entitled for further promotion and the post is now to be offered to a reserved pool teacher.

8. As far as reliance of Section 33A of the Act by the learned counsel for the petitioner¹¹ am of the view that the same is not applicable in the present case because the petitioner was not appointed against a substantive vacancy in accordance with paragraph 2 of the Uttar Pradesh Secondary Education Service Commission (Removal of Difficulties) Order, 1981 as amended from time to time. The petitioner has not claimed regularisation by mentioning a single word in his writ petition. The petitioner was appointed for a particular time on purely temporary ad hoc basis from 191984 to 3061985 and as such he is not entitled for regularisation in pursuance of section 33A. Further more, respondent No. 3 being a reserved pool teacher was entitled to the benefit granted by the Hon''ble

Supreme Court vide judgment delivered in the case of Prabodh Verma v State of U. P. reported in 1984 UPLBEC 771.

9. In regard to reliance of Section 21C of the Act by the learned counsel for the petitioner which speaks about power of Director regarding transfer of the reserved pool teacher from one District to another District. I am of the view that under this section the Deputy Director of Education has rightly exercised its power in transferring the respondent No. 3 in the District Deoria from Gorakhpur and there is no infirmity in the order passed by the Deputy Director of Education.

10. In view of above, this writ petition fails and is accordingly dismissed. The interim order dated 1651986 is hereby discharged.