
(1987) 08 AHC CK 0051

In the Allahabad High Court

Case No : Writ Petition No's. 4648, 4852, 4878 and 4879 of 1985 and 4396, 4398 and 4465 of 1986

Lalta Prasad Yadava

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 20-08-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 16(2), 16(5)
Uttar Pradesh Secondary Education Services Commission and Selection Boards (Amendment) Act, 1985 — Section 18
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 18, 21B, 21B(3), 21B(6), 26
Uttar Pradesh Secondary Education Services Commission and Selection Boards Ordinance, 1981 — Section 18, 33

Citation : (1988) 1 AWC 307

Hon'ble Judges : K. Nath, J; B.L. Loomba, J

Bench : Division Bench

Advocate : A. Mannan, for the Appellant;

Final Decision : Dismissed

Judgement

B.L. Loomba, J.—Fate of these seven writ petitions is dependent on the decision on the following questions of law:

2. Whether teachers appointed on ad-hoc basis by way of promotion under the Uttar Pradesh Secondary Education Services Commission Removal of Difficulties Order, 1981 (hereinafter referred to as the First Removal of Difficulties Order) or u/s 18 of the U.P. Secondary Education Services Commission and Selection Boards Ordinance, 1981 (U. P. Ordinance No. 8 of 81), replaced by U.P. Act No. 5 of 1982 (hereinafter referred to as "1982 Act") are entitled to the benefit of regularisation u/s 33-A of the 1982 Act as inserted by the U.P. Secondary Education Services Commission and Selection Boards (Amendment) Ordinance, 1985 (U. P. Ordinance No. 12 of 1985) ?

3. Whether Section 21-B of the 1982 Act as inserted by U.P. Ordinance No. 12 of

1985 is hit by Article 14 of the Constitution of India ?

4. Whether the said Section 21-B is not applicable in so far as it concerns the teachers who were appointed on ad-hoc basis under the Removal of Difficulties Order or under the said Section 18 prior to the commencement of U.P. Ordinance No. 12 of 1985 and who continued to work on the post on which they were so appointed till such commencement ?

Point No. 1

2. The appointments of teachers in secondary institutions recognised by the Board of High School and Intermediate Education was governed by the Intermediate Education Act, 1921 and the regulations made thereunder.

3. U.P. Ordinance No. 8 of 81 was promulgated on 10-7-81 for the purpose of establishment of the U.P. Secondary Education Services Commission and the Secondary Education Selection Boards with the object that the selection of teachers for appointment in the said institutions may be done through the Commission/Boards so that better quality teachers from larger field of selection may be selected and appointed. u/s 33 of this Ordinance power was reserved to issue Removal of Difficulties Orders so as to provide transitional provisions for the period until the constitution of the said Commission and the Boards. First Removal of Difficulties Order was issued on 31-7-81 in exercise of these powers and some more Removal of Difficulties Orders were also subsequently issued. The First Removal of Difficulties Order provided for ad-hoc appointments of teachers both by direct appointment, as also by way of promotion. It was expected that the Commission/Boards would start functioning and make selections within six months from the date of the Removal of Difficulties Order and as such the duration of ad-hoc appointments was stated to be six months or when the candidate recommended by the Commission or Boards joins the post, whichever date be earlier. Since selection could not be ensured within six months the Third Removal of Difficulties Order provided that every appointment of ad-hoc teacher under paragraph 2 of the Order shall cease to have effect when a candidate recommended by the Commission or the Board, as the case may be, joins the post. Accordingly, the ad-hoc teachers appointed under the Removal of Difficulties Order could continue until replaced by a candidate selected by the Commission or the Board, joins the post.

4. Section 33-A was inserted through U.P. Ordinance No. 12 of 1985 with the object of regularising the services of such ad-hoc teachers who possess prescribed qualifications and were directly appointed against substantive vacancies in accordance with para 2 of the Removal of Difficulties Order, 1981, as amended from time to time and in respect of which fresh selection had not already been made by the Commission. Learned Counsel for the petitioners have argued that all the ad-hoc appointees whether the appointment was made directly or by way of promotion, under the Removal of Difficulties Order or u/s 18 of 1982 Act were broadly speaking standing on equal footings and could not be

discriminated against in the matter of regularisation of their services. It is submitted that the provision in so far as it provides for regularisation only of the teachers appointed directly is arbitrary and violative of Articles 14 and 16 of the Constitution. We have carefully considered this question and are of the view that this submission has no force. In so far as the teachers appointed by way of promotion, the only basis of selection was the seniority of the teacher, the senior most was required to be appointed. He was not required to face any selection involving consideration of his merits including academic record for this purpose. The appointments u/s 18 of 1982 Act were also not made after any selection on merit. The same were in the nature of short duration appointments which could be made only after the vacancies had been notified to the Commission. After the notification of the vacancies it was expected that the Commission/Board would make selection and provide the candidates within a short time. No procedure for selection for purposes of such ad-hoc appointments was prescribed and as such the candidates to be appointed u/s 18 were not to face any selection on any objective considerations on merit. As against these two categories, the appointments by direct recruitment under paragraph 2 of the Removal of Difficulties Order were required to be made through the District Inspector of Schools on the basis of quality point marks as provided in paragraph S of the Removal of Difficulties Order, read with the schedule of quality point marks as set out in the appendix to the Removal of Difficulties Order. The category of direct appointees under para 2 of the Removal of Difficulties Order was, as such, distinct and qualitatively different from the categories of appointees by way of promotion or u/s 18 of 1982 Act. This question came up for consideration in *Chandrika Prasad Yadav v. State of U.P.* 1986 EC 223 wherein it was held that the benefit of Section 33-A is available only to those teachers who were appointed on ad-hoc basis directly and not to the teachers who were appointed on ad hoc basis under the Removal of Difficulties Order of 1981 by way of promotion. It was also held that there is no merit in the submission that Section 33-A is bit by Article 14 of the Constitution of India in that it concerns the benefit of regularisation only of the teachers who were directly appointed on ad-hoc basis. The language of Section 33-A is clear and explicit providing that the protection of regularisation was available to those teachers who were directly appointed under paragraph 2 of Removal of Difficulties Order and not to the other two categories of ad-hoc appointees, namely, those appointed by way of promotion or u/s 18 of 1982 Act.

Point No. 2

5. Section 21 -B was enacted in order to give effect to the judgment of the Supreme Court in *Prabodh Verma v. State of U.P.* 1984 ALJ 931. It would be useful to reproduce the relevant para of the statement of objects and reasons of the U.P. Secondary Education Services Commission and Selection Board (Amendment) Act, 1985 which replaced U.P. Ordinance No. 12 of 85:

The services of such Higher Secondary Schools and Intermediate Colleges

teachers, who had gone on strike in December, 1977 and January, 1978 and had not resumed their duties by the specified date, were terminated under the provisions of the Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 and new teachers were appointed! during the period January 9 or January 19, 1978 for resumption of teaching work in the said institutions. Later on the termination orders of the striking teachers were recalled on compassionate grounds and the services of the newly appointed teachers were dispensed with. The State Government, thereafter, decided to absorb all the newly appointed temporary teachers who had joined their duties between January 9 and January 19, 1978 (both days inclusive) against the substantive vacancies of secondary teachers to be filled by direct recruitment. In order to achieve this object, the Uttar Pradesh High School and Intermediate Colleges (Reserve Pool Teachers) Ordinance, 1978 (U. P. Ordinance No. 10 of 1978) was promulgated on June 24, 1978 which was subsequently replaced by U.P. Ordinance No. 22 of 1978 and certain appointments were made thereunder. In a Writ Petition filed by the Madhyamik Shikshak Sangh, the Allahabad High Court held the said U.P. Ordinance No. 22 of 1978 to be void. The newly appointed teachers, referred to as the reserve pool teachers, preferred an appeal in the Supreme Court against the judgment of Allahabad High Court. The Supreme Court allowed the appeal of the reserve pool teachers and decided that the reserve pool teachers, are entitled to be appointed in accordance with the provisions of U.P. Ordinance No. 22 of 1978, and should be appointed in future substantive vacancies. In order to comply with the judgment of the Supreme Court it was considered expedient to amend the Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 (U. P. Act No. 5 of 1982).

6. It would be also useful to reproduce the relevant (conclusion of the decision of their Lordships of the Supreme Court as contained in para 50 of the judgment at page 954 of Prabodh Verma v. State of U.P. 1984 ALJ 931:

(9) Neither the Uttar Pradesh High Schools and Intermediate Colleges (Reserve Pool Teachers) Ordinance, 1978 (U. P. Ordinance No. 10 of 1978) nor the Uttar Pradesh High Schools and Intermediate Colleges (Reserve Pool Teachers) (Second) Ordinance, 1978 (U. P. Ordinance No. 22 of 1978), infringed Article 14 or Article 16(1) of the Constitution or was unconstitutional or void.

(10) The reserve pool teachers formed a separate and distinct class from other applicants for the posts of teachers in recognized institutions.

(11) The differentia which distinguished the class of reserve pool teachers from the class of other applicants for the post of teachers in recognized institutions was the service rendered by the reserve pool teachers to the State and its educational system in a time of crisis.

(12) The above differentia bore a reasonable and rational nexus or relation to the object sought to be achieved by U.P. Ordinance Nos. 10 and 22 of 1978, read

with the Intermediate Education Act, 1921 namely, to keep the system of High School and Intermediate Education in the State of Uttar Pradesh functioning smoothly without interruption so that the students may not suffer a detriment.

(13) The preferential treatment in the matter of recruitment to the post of teachers in the recognized institutions was, therefore, not discriminatory and did not offend Article 14 of the Constitution

(14) As the above two classes were not similarly circumstanced, there could be no question of these classes of person being entitled to equality of opportunity in matters relating to employment guaranteed by Article 16(1) of the Constitution and the preferential treatment given to the reserve pool teachers was, therefore, not violative of Article 16(1) of the Constitution.

Section 21-B in material terms is on the same lines as Clause (iv) of U.P. Ordinance No. 10 of 1978. The validity of the provision having been upheld by their Lordships of the Supreme Court and Section 21-B having been enacted in order to give effect to the decision of the Supreme Court, the plea raising challenge to its validity has no force and has to be rejected.

Point No. 3

7. It is true that the duration of ad-hoc appointees as per the provisions of the Third Removal of Difficulties Order was extended to continue till the candidates selected by the Commission/Board joins the posts but this duration is applicable vis-a-vis the candidates selected by the Commission/Board only. This provision fails to provide any protection against the reserve pool teachers who, as is submitted by the learned Standing Counsel appearing for the opposite parties, are entitled to the preferential claim as against the ad-hoc appointees.

8. The substance of the argument of the learned Counsel for the petitioners is that substantive vacancies referred to in Sub-section (3) of Section 21-B would be such which would become available after that date of commencement of U.P. Ordinance No. 12 of 85 i.e. 12-6-85 and that this provision being not made to take effect retrospectively could not affect the vacancies which had already been filled by Way of ad-hoc appointments. This submission clearly appears to be misconceived, inasmuch as the substantive vacancies continue to exist and the ad-hoc appointments are not regular appointments and were to last for short specified duration. Such an appointment was only in the nature of stop gap arrangement and it was expected, rather required of the management of the institution concerned to notify the vacancy to the commission for purposes of obtaining panel of candidates selected by- the commission. Accordingly, substantive vacancies against which ad-hoc appointments were made are such which are required to be filled by direct recruitment. As such Sub-section (3) of Section 21-B would cover all such substantive vacancies.

9. That the reserve pool teachers have a preferential claim even against those candidates who are to be selected by the Commission/Board is clear from what is

provided by Sub-section (6) of Section 21-B. This Sub-section provides that no appointment of any teacher to any institution shall be made u/s 26 until the list of reserve pool teachers of that district in the subject concerned is exhausted in accordance with Sub-section (5). Section 16 refers to appointments to be made on the basis of recommendation of the Commission/Board. Sub-section (2) of Section 16 provides that every appointment of a teacher in contravention of the provision of Sub-section (1) shall be void. Accordingly, the reserve pool teachers have preferential right in the matter of appointment against substantive vacancies as against the ad-hoc appointees.

10. Learned Counsel for the petitioner argues that in process of its working and implementation Section 21 -B brings about harsh and discriminatory results, it is submitted that in the same institution a teacher with much longer duration on ad-hoc appointment may be disturbed by a reserve pool teachers in the subject while the ad-hoc appointee of much lesser duration may remain untouched. It is also argued that the management of an institution may not notify the vacancy at all and thereby avoid regular selection/appointment of a reserve pool teacher. The argument raises mainly a hypothetical question. Even if the argument is accepted that cannot affect the validity of the provision. This has also to be kept in view that the petitioners having been appointed by way of promotion on ad-hoc basis have no legal right to hold the post substantively and in fact their very promotion is dependent on exigencies not having been contemplated by them and not relatable to any legal rights. In *Udai Bhan Singh v. District Inspector of Schools, Azamgarh* 1986 UPLBEC 125, it was clearly held by a Division Bench of this Court that an appointment made u/s 18 of the U.P. Act 1982 will come to an end on the appointment made in accordance with Section 21-B. The proposition of law settled in this case will equally apply to ad-hoc appointments made by way of promotion under the Removal of Difficulties Order. We respectfully agree with this view. The submission to the contrary is clearly untenable.

11. We have given our findings on the points of law formulated as above. We may now briefly refer to the facts of the cases under decision.

12. In W.P. No. 4648 of 85 *Lalta Prasad Yadav v. State of U.P.* the petitioner was promoted from C. T. Grade to L. T. Grade. He has claimed regularisation u/s 33-A, to which as per our finding he is not entitled. In para 15 of the writ petition it is mentioned that he has been informed that the reserve pool teacher is to be appointed in place of the petitioner. If he is sought to be reverted in order to accommodate a reserve pool teacher he has no light to maintain the writ petition so as to have the impugned order of reversion quashed.

13. In W.P. No. 4852 of 85 *Indra Bahadur Singh and two others*, the petitioners are ad-hoc appointees by way of promotion. They have claimed regularisation u/s 33-A. Reserve pool teachers are sought to be appointed against these vacancies under the impugned Annexures 2, 3 and 4.

14. In W.P. No. 4878 of 85 *Udai Narain Misra* is an ad-hoc appointee by way of

promotion. He seeks regularisation u/s 33-A and mandamus to have the impugned order of reversion quashed which has been passed in order to accommodate a reserve pool teacher.

15. In W.P. No. 4879/85 Ramesh Chandra Singh and another, the petitioners were appointed under the said Section 18. They have claimed regularisation u/s 33-A and seek to have the orders of the District Inspector of Schools to be accommodated. Copies of the impugned orders have not been filed.

16. In W.P. No. 4398 of 86 of Kaushal Behari Tewari, the petitioner is an ad-hoc appointee by way of promotion and has sought mandamus against the opposite parties to not to allow any pool candidate to join against the post on which he is working.

17. In W.P. No. 4396 of 86 Shiv Prasad Misra and others, the petitioners have sought a writ of certiorari to have the orders of termination quashed as also to obtain a writ of mandamus restraining the opposite parties from directing any reserve pool teacher to join on the post. The petitioner have not filed copies of the appointment orders. It has not been asserted that the appointments of petitioners were made directly under paragraph 2 of the Removal of Difficulties Order and that they satisfy the conditions for regularisation laid down in Section 33-A of the Act.

18. In W.P. No. 4465 of 86 Beni Madho and another petitioner Beni Madho was promoted on ad-hoc basis from C. T. Grade to L. T. Grade. As a result of vacancy occurred in C. T. Grade petitioner No. 2 was appointed on purely ad-hoc basis against this vacancy in C. T. grade. A reserve pool teacher is sought to be appointed against L. T. grade vacancy. Annexure 3 is the order relating to appointment of reserve pool teacher and this order is sought to be quashed. Reserve pool teacher having preferential claim petitioner No. 1 cannot maintain writ petition against the reserve pool teachers and his reversion would thus be legally valid. His reversion to the C. T. grade would entail termination of the ad-hoc appointment of petitioner No. 2 which would be a normal legal consequence without entitling petitioner No. 2 to maintain the writ petition.

19. For the reasons set out above, all these writ petitions are liable to be dismissed. The writ petitions are accordingly dismissed without any order as to costs. Interim order, if any, shall stand discharged.

20. Immediately after the above judgment was pronounced Shri A. K. Chaturvedi holding brief for Shri A. Mannan prayed for issue of certificate of fitness to leave to appeal to Supreme Court, in W.P. Nos. 4648 of 85, 4852 of 85, 4878 of 85 and 4879 of 85. We do not find any substantial question of law of general importance involved in these cases, which may require the decision by the Supreme Court. The certificate prayed for is refused.