

(1991) 08 AHC CK 0032

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10217 of 1991

Mukti Nath Rai

APPELLANT

Vs

District Inspector of Schools, Gorakhpur & Others

RESPONDENT

Date of Decision : 30-08-1991

Acts Referred:

Uttar Pradesh Secondary Education Service Commission (Removal of Difficulties)
Order, 1981 — Para 6(c)

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 18

Citation : (1991) 08 AHC CK 0032

Hon'ble Judges : S.R.Singh, J

Final Decision : Allowed

Judgement

1. Sarvodaya Kisan Intermediate College, Gorakhpur (hereinafter referred to as "college") is a recognised and aided Intermediate college, the affairs of which are being managed by a Committee of Management constituted in accordance with the Scheme of Administration as approved under Section 16A of the U.P. Intermediate Education Act (hereinafter referred to in short as "Act"). With the promulgation of U.P. Secondary Education Services Commission and Selection Boards Ordinance, 1981 followed by the U.P. Act No. 8 of 1982 the appointment of teachers in the college stands governed by the provisions contained in the said Act which visualised constitution of Selection Board for appointment of teachers in C.T. Grade and constitution of a Commission for appointment of the Scheduled teachers, namely teachers in L.T. Grade, Lecturer and Principal. Admittedly, the selection Board contemplated by the Act, never came into being whereas the Commission for purpose of selection of the scheduled teachers was constituted and the same is functioning.

2. Upon the occurrence of a substantive vacancy in C.T. grade, the Committee of Management of the college, as is borne out from the facts on record, advertised the post on its notice board and invited applications for selection and appointment as such on adhoc basis. The petitioner was selected for

appointment on ad hoc basis by the Committee of Management and the papers were forwarded to the District Inspector of Schools for approval. On receipt of papers, the District Inspector of Schools accorded approval vide letter dated 6101981, but subsequently, he recalled approval accorded to the selection of the petitioner by means of the order dated 22101981. Aggrieved by the said order recalling approval, the Management Committee took up the matter with the Deputy Director of Education under clause (7) of U.P. Secondary Education Services Commission (Removal of Difficulties) order, 1981. The appeal was allowed by the Deputy Director, Education 7th Region, Gorakhpur vide order dated 2381982 and the order passed by the District Inspector of Schools dated 221081, was set aside. In substance, the petitioner's ad hoc appointment as approved by the District Inspector of Schools by letter dated 61081, was upheld and affirmed by the Deputy Director of Education. This appointment was not strictly in conformity with the provisions of U.P. Secondary Education Services Commission (Removal of Difficulties) order, 1981 in that the procedure contemplated by clause (5), of the said Removal of Difficulties order was not followed and the selection of the petitioner was not made by the District Inspector of Schools but it was made by the Committee of management itself, nevertheless, the ad hoc appointment was referable to no provision of law except the provisions contained in U.P. Secondary Education Services Commission (Removal of Difficulties) order, 1981 and the adhoc appointment of the petitioner shall be deemed to be an appointment under clause 5 of the said Removal of Difficulties order.

3. Learned counsel for the respondent pressed before me a Division Bench authority of this Court reported in UPLBEC 1990(2) page 1215, Brijesh Chand Yadav v. DIOS & contended on that basis that since the appointment of the petitioner was not made by the District Inspector of Schools under clause 5 of the Removal of Difficulties Order, 1981 which visualises selection on the basis of quality point marks, it would not be deemed to be an appointment under the provisions of U.P. Secondary Education Services Commission (Removal of Difficulties) order, 1981 for purposes of section 33A of U.P. Act No 8 of 1982, which provides for regularisation of ad hoc appointment made directly before the commencement of U.P. Secondary Education Services Commission and Selection Boards (Amendment) Ordinance, 1985 against a substantive vacancy in accordance with paragraph 2 of U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981 as amended from time to time, who possesses the qualifications prescribed under, or is exempted from such qualifications in accordance with the provisions of the Intermediate Education Act, 1921, with effect from the date of commencement, namely, 1261985.

4. In the case of Brijesh Chand Yadav (Supra), the Division Bench of this Court held, on the facts of that case, that the vacancy in that case was advertised by the District Inspector of Schools in Newspaper on 2781983 for purposes of making adhoc appointment in accordance with the provisions of the aforesaid Removal of Difficulties Order, but the Committee of Management had already

passed a resolution for the appointment of "Brijesh Chand Yadav" vide resolution dated 25/1/1983 and the appointment as a result of the said resolution was also approved by the District Inspector of Schools. Approval purports to have been given under Regulation 9(3) of Chapter II of the Regulations made under U.P. Intermediate Education Act which obviously was not attracted for applicability of the said provision, stands excluded after the enforcement of U.P. Secondary Education Services Commission and Selection Board Act, 1982 in view of Sections 16 and 32 of the said Act read with the provisions of U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981. The attention of the Bench was not invited towards sections 16 and 32. The decision therein is per incurram. Further the Division Bench was not concerned with a case where adhoc appointment was approved by the District Inspector of Schools and affirmed by the Regional Director of Education in appeal under paragraph 7 of the said Removal of Difficulties Order, 1981. In the above perspective, the law laid down by the Division Bench, would not operate as binding precedent. The contention of the learned counsel for the respondent on this question has, therefore, no merit.

5. The next question for consideration pressed before me is whether the petitioner was entitled to be regularised with effect from 12th June, 1985, by virtue of section 33A of U.P. Act No. 8 of 1982. As held above, the petitioner was appointed prior to the said date on ad hoc basis and his appointment was approved by the District Inspector of Schools in 1981 and the approval was upheld by the Regional Deputy Director of Education as stated herein before. The appointment of the petitioner, though not strictly in conformity of paragraph 5 of the Removal of Difficulties Order, 1981, would be deemed to be an appointment under the said provision for purposes of section 33A of the Act qua the order passed by the Deputy Director of Education referred to hereinbefore. Thus, I am of the considered view that the petitioner would, therefore, be entitled to the benefits of section 33A of U.P. Act No. 8 of 1982 and his services in C.T. grade would be deemed to have been regularised in substantive capacity with effect from 12th June, 1985.

6. The controversy in the instant case, however, pertains to appointment in L.T. grade on ad hoc basis. The petitioner claims entitlement for appointment in L.T. grade on ad hoc basis by virtue of Section 18 of U.P. Act No. 8 of 1982 read with clause 4 of U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981 as held by Division Bench of this Court in Charu Chand Tiwari v. District Inspector of Schools, reported in 1990 UPLBEC 160. As to the qualification, the petitioner passed his M.A. (English) & B.Ed. He held the post in C.T. grade in substantive capacity, as held above, on the date of occurrence of the vacancy in L.T. grade i.e. in the year 1989. The petitioner was, thus, qualified for ad hoc promotion to L.T. grade by virtue of Clause 4 of the Removal of Difficulties Order, 1981, which is applicable, as held by the Division Bench in Charuchand Tiwari's case (Supra) even in the case of appointment under Section 18 of the Act. In view of this, the petitioner's claim for ad hoc promotion to one

of the posts in question, is justifiable and the appointment of one of the respondents as a corollary thereof, requires to be reversed being contrary to the provisions of law as declared by the Division Bench of this Court in Charu Chand Tiwari's case.

7. The learned counsel for the respondent then contended before me that the petitioner having been regularised and confirmed in C.T. grade in 1985 by virtue of Section 33A of the Act, was not eligible for ad hoc promotion, for he had not completed five years substantive service in C.T. grade on the date of the occurrence of vacancy in L.T. grade. This contention in my considered view carries no substance in view of clause 6 of the Removal of Difficulties Order, 1981, which unlike provision of Rule 9 of U.P. Secondary Education Services Commission Rules, 1983, does not require minimum of five years substantive service in the lower grade. All that clause (c) of paragraph 6 contemplates is that the candidate sought to be appointed by promotion under Paragraph 4 must have been serving the institution in substantive capacity. Since it is the settled view of this Court that the provisions of the Removal of Difficulties Order, 1981 continue to apply even after the constitution of the Commission and further that the principle therein are also applicable to appointments under Section 18 of the Act, the expression "from before the commencement of this order" occurring in para 6 of the Removal of Difficulties order has to be relaxed to mean "from before the occurrence of the vacancy" as otherwise the provisions therein cannot be utilised for making adhoc appointments by promotion against vacancies occurring subsequent to 31789, the date of enforcement of the Removal of Difficulties Order 1981. In view of the above the contention of the learned counsel for the respondents that the petitioner having not completed five years" substantive service in C.T. grade was not eligible for ad hoc promotion, cannot be accepted and is liable to be rejected as devoid of merit.

8. Having regards to the above discussions, the petition succeeds and is allowed. The respondents are directed to consider the petitioner's claim for promotion under paragraph 4 of the U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981 in accordance with law and in the light of the observations made in this judgment. The petitioner's claim is to be considered as against one of the four existing Vacancies in L.T. grade presently occupied by respondents 4 to 7 on adhoc basis. The junior most of them has to be replaced by the petitioner by an order to be passed by the District Inspector of Schools within six weeks from the date of presentation of a certified copy of this order before him. It may be clarified that the court has not dwelt upon decision as to the parties claim, if any, regarding regular promotion under Rule 9 of U.P. Secondary Education Services Commission Rules 5 1983.

Parties to bear their own costs.