

(1996) 08 AHC CK 0028

In the Allahabad High Court

Case No : Special Appeal No's. 70 and 90 of 1991

Nityanand Shukla

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 21-08-1996

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 18, 18(1)

Uttar Pradesh Secondary Education Services Commission Rules, 1983 — Rule 4, 4(2)

Citation : (1996) 08 AHC CK 0028

Hon'ble Judges : D.P. Mohapatra, C.J;Sudhir Narain, J

Bench : Division Bench

Advocate : Radhey Shyam, for the Appellant;

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—Both these appeals arise out of the judgment dated September 9, 1991, passed by the learned single Judge, whereby the order passed by the Deputy Director of Education dated 18th July, 1990 was quashed but the writ petition was dismissed as regards the claim of Kailash Nath Shukla for mandamus commanding the Respondent to pay him salary for the post on which he was appointed by the Committee of Management.

2. Briefly stated, the facts are that Nagrik Inter College, Janghal, district Jaunpur is a recognised institution (hereinafter referred to as the institution) and is governed by the provisions of U.P. Intermediate Education Act, 1921. In the institution, one Chandra Shtkhar Mishra was teacher in L.T. grade. He retired from service on 30.6.1989 and one Sri Rama Kant. L.T. grade teacher was promoted to the lecturer's grade. The two posts fell vacant in the college. One was for teaching Sanskrit and the other was for teaching the general subjects. The Management of the institution advertised the posts in the newspaper on 1.6.1989 inviting applications for two posts of L.T. grade teacher and 25.6.1989 was fixed for interview. On 25.6.1989 separate Interviews were held. Kailash

Nath Shukla, the writ Petitioner-Appellants and one R.K. Pandey were issued appointment letters, one for teaching general subjects and another for teaching Sanskrit subject. The papers were forwarded to the District Inspector of Schools on 26th September, 1989. The District Inspector of Schools, Jaunpur, issued a letter to the Committee of Management making queries as to when the vacancy had occurred and when the intimation of vacancy was given to the Commission u/s 18 of the U.P. Secondary Education Services Commission and Selection Boards Act, 1982 (in short the Act, 1982).

3. In the meantime, the writ-Petitioner and Sri R.K. Pandey filed Writ Petition No. 24536 of 1989 in this Court for writ of mandamus commanding the Respondent to pay salary on the basis of their appointment from 25th June, 1989. The writ petition was, however, withdrawn on 11th April, 1990. Nitya Nand Shukla, Respondent No. 5. filed Writ Petition No. 12733 of 1990. challenging the selection held on 25th June, 1989 on the ground that only one select-list was to be prepared for both the posts on the basis of quality points and according to such list, he was at serial No. 2 and was entitled for appointment. This writ petition was disposed of by this Court on 9th May, 1990 with a direction to the Deputy Director of Education to decide the representation filed by Nitya Nand Shukla.

4. In pursuance of the order of this Court, the Deputy Director of Education decided the representation by his order dated 18th July, 1990. He took the view that in the advertisement published in the newspaper, the vacancy was not notified subject wise and, therefore, the selection should have been made on the basis of quality points awarded to the candidates not subjectwise, but one single merit list should have been prepared. He held that in one single list on the basis of the quality point, Nitya Nand Shukla was at serial No. 2 and he was entitled to be appointed as L.T. grade teacher in preference to the writ Petitioner-Appellants Kailash Nath Shukla who had received less quality points than him, and issued a direction to the Management to issue appointment letter to him.

5. The writ Petitioner-Appellants made a representation to the Deputy Director of Education on 3rd August, 1990 but before the representation could be decided, he filed Writ Petition No. 22185 of 1990. Challenging the order of Deputy Director of Education dated 18th July, 1990. It was alleged that first selection was cancelled by the Committee of Management and the post was re-advertised on 25.4.1990, He applied for appointment. The interview took place on 29.5.1990 and he and one R.K. Pandey were selected on two different posts and they were given appointment letters. The papers were forwarded to the District Inspector of Schools but no order was passed by him and that he was entitled to salary on the basis of the second selection. In the writ petition, he had impleaded Nitya Nand Shukla as Respondent No. 5.

6. The learned Single Judge held that the appointment made by the Committee of Management was invalid as the vacancy was not notified to the Commission as provided in Section 18(1) of the Act, 1982. The order of Deputy Director of

Education dated 18.7.1990 was quashed but the writ petition was dismissed as none of them were found entitled to receive the salary under the provisions of U.P. High School and Intermediate Colleges (Payment of Salary of Teachers and Other Employees) Act, 1971. Aggrieved against the said judgment, Nitya Nand Shukla has filed Special Appeal No. 70 of 1991 and Kailash Nath Shukla, the writ Petitioner has filed Special Appeal No. 90 of 1991. In this judgment Shri Kailash Nath Shukla has been referred to as the Appellants and Nitya Nand Shukla as Respondent No. 5.

7. We have heard Sri H.S. Nigam and Sri Radhey Shyam learned Counsel for the parties.

8. one of the questions involved in the appeal is whether the Management was bound to advertise the two different posts indicating the subjects in which the teachers were required to be appointed. It is admitted that in the institution two posts had fallen vacant, one for teaching Sanskrit subject and another for general subjects. The posts were advertised without indicating the subjects in which the teachers were to be appointed. In absence of such Indication in the advertisement, the eligible candidates may not know that they have to apply for a post relating to the subject concerned. If the subject is made clear in the advertisement and applications are received accordingly, two different sets of interview will take place according to the subject for which the posts have been advertised. The qualifications for appointment of a teacher either to L.T. grade or lecturer's grade are given in Appendix "A" of the Regulation framed under the U.P. Intermediate Education Act, 1921. The qualification is subjectwise for the teachers for High School as well as Intermediate. The teachers who are appointed in L.T. grade are entitled to teach the students upto High School. This clearly indicates that if a teacher is appointed to teach a particular subject, he must be qualified according to the qualifications as provided in Appendix "A".

9. Secondly, if a vacancy falls for a particular post in the institution, either on the retirement, resignation or death of a teacher, he must have been teaching the students specific subjects and if such post falls vacant and another teacher is to be appointed on that post, he must possess qualification to teach that subject. If a post of science teacher falls vacant, it cannot be conceived that such post can be filled up by those teachers who do not possess the qualification to teach science subject. When the selection for such post is to take place, the experience of teaching in that subject shall also be relevant. In absence of Indication of subject in the advertisement and merely indicating the vacancy of L.T. grade post is insufficient information to the candidates. The Selection Committee has to be constituted accordingly and interview of the candidates shall be taken separately for the subjectwise posts.

10. Learned Counsel for the Respondent urged that there is no requirement under any provision of the Act, 1982 or the Rules framed thereunder that the L.T. grade teacher's appointment is to be made subjectwise. It is only the lecturers who are appointed subjectwise and not L.T. grade teachers. There may not be

any specific provision requiring the Management to advertise the posts subjectwise but a reading of Rule 4 of the U.P. Secondary Education Services Commission Rules, 1983 (in short the 1983 Rules) indicates that the Management shall intimate to the Commission in a proforma given in Appendix "A". A perusal of Appendix "A" shows that the name of subject and qualification for the post have to be indicated. Further Rule 9 of (he Rules of 1983 provides that where any vacancy is to be filled by promotion, all teachers working in L.T. or C.T. grade who possess the minimum qualification and have put in atleast five years continuous service as teacher in the concerned subject (emphasis supplied) on the date of occurrence of vacancy shall be considered for promotion without their having applied for the same. These provisions contemplate that the vacancy to a post is In respect of a particular subject and that should be clearly specified. The Managing Committee should accordingly advertise the post giving the details of subject in which a teacher is required to be appointed. The selection committee shall also be constituted for different subjects.

11. The version of the Petitioner-Appellants was that two posts of teachers had fallen vacant; one was for teaching the Sanskrit Subject and the other was for teaching the general subjects. The selection committee had taken two separate interviews-one for the post of L.T. grade teacher for the subject of Sanskrit and the other for the post of L.T. grade teacher for the general subjects and accordingly in the subject of Sanskrit Rakesh Kumar Pandey hau secured 23 and Nitya Nand Shukla 22 quality points and in the general subject Kailash Nath Shukla, the Petitioner-Appellants had secured 19 quality points. The Deputy Director of Education took the view that as the advertisement was made for two posts without specification of the subject, the merit list should have been prepared by the Management and if only one merit list is prepared, Nitya Nand Shukla had secured higher quality points than Kailash Nath Shukla, the Petitioner-Appellants, and accordingly he directed for his appointment to the vacant post of L.T. grade teacher. The view taken by the Deputy Director of Education that one single merit list of all candidates in respect of different subjects is to be prepared, is unsustainable under law.

12. The Appellants or Respondent No. 5 are otherwise not entitled to claim appointment on the basis of selection held on 25.6.1989. The posts had fallen vacant on 30.6.1989 and prior to it, the posts were advertised in the newspaper on 1.6.1989 and selection took place on 25.6.1989. It was incumbent on the Managing Committee to notify the vacancy to the Commission as provided u/s 18(1) of the 1982 Act. The learned single Judge found that the vacancy was not notified to the Commission. The learned Counsel for the parties have not assailed the finding. The selection without notification of vacancy to the Commission was invalid.

13. Shri Nigarn, learned Counsel for the Appellants then urged that the Appellants was entitled to appointment on the basis of another selection held on 20.5.1990. He submitted that the first selection was cancelled by the Commit of

Management on 26.9.1989 and thereafter the vacancy was intimated to the Commission through the District inspector of Schools on 13.12.1989 and only thereafter the two posts of L.T. grade teachers were advertised on 25.4.1990. Only four applications were received. The candidates were interviewed on 20.5.1990. the Petitioner Appellants and one Sri R.K. Pandey were selected for the post and they were Issued appointment letters or, the same day. This second selection was made alter the vacancy was notified to the Commission. He assailed the finding of the learned single Judge that the vacancy was not notified to the Commission before selection had taken place on 20.5.1990.

14. There was no issue before the Deputy Director of Education regarding the second selection which was alleged by the Petitioner in the writ petition. In the order dated 18th July, 1990, he had considered the validity of the selection and appointment made by the Management on the basis of the first selection. The Appellants was claiming the right in the writ petition on the basis of the second selection. It was his duty to plead and establish that the Committee of Management had notified the vacancy to the Commission in accordance with the provisions of Section 18 of the Act. there is no specific allegation in the writ petition that the Committee of Management had notified the vacancy to the Commission on 13.12.1989, nor any material was placed before the learned single Judge to establish that the vacancy was notified to the Commission on 13.12.1989. In the Special Appeal along with the application for stay, a letter of the Manager dated 8.10.1991 has been filed indicating that on the promotion of Sri R.K. Mishra to the post of lecturer and on the retirement of Sri Chandra Shekhar Mishra, the vacancy for these two posts were notified to the District Inspector of Schools, Jaunpur by letter dated 13.12.1989. The Appellants has further filed a copy of the letter of District Inspector of Schools, Jaunpur dated 29.10.1991 purporting to be a reply to the letter of the Manager dated 30.10.1991 that the Manager had by letter dated 30.10.1991 sent intimation of vacancy which was received in his office on 15.12.1989. These letters were not filed in the writ petition. It is strange that the letter of the District Inspector of Schools is dated 29.10.1991. It has been signed on 28.10.1991 but it refers to a reply of the letter of the Manager dated 30.10.1991.

15. The vacancy has to be notified to the Commission in accordance with the provisions of Act 1982 Rule 4 of the Rules 1983 provides that the Management shall determine and intimate to the Commission in the proforma given in Appendix "A and in the manner specified therein, the number of vacancy existing or likely to fall vacant during the year of recruitment. Sub-rule (2) of Rule 4 provides that the statement of vacancy shall be sent by the Management to the Inspector quadruplet by 16th September of the year and the Inspector shall after verification, forward two copies of the same to the Deputy Director of Education by 16th October with a copy to the Commission. Sub-rule 3 provides that the Deputy Director shall after getting the copy, forward the statement received by him under Sub-rule (2) along with a consolidated subjectwise statement of various categories of vacancy to the Commission by 15th of November.

16. learned Counsel for the Appellants urged that the Management had notified the vacancy to the District Inspector of Schools and it was his duty to forward the papers to the Commission and the Deputy Director of Education and if he falls to discharge his duty, the Management is entitled to make appointments. This submission of learned Counsel for the Appellants is not acceptable. u/s 18(1) of the Act, 1982, the duty is cast upon the Management to notify the vacancy to the Commission. The Management is not absolved from its duty by merely sending the papers to the District Inspector of Schools. It must further see as to whether the papers have been received by the Commission. If the District Inspector of Schools falls to discharge his duty, there is no bar under the provisions of the Act to directly intimate the vacancy to the Commission. Further, in the present case, there is no averment that the Management had notified the vacancy in a prescribed proforma giving four copies to the District Inspector of Schools concerned. The Appellants has thus failed to establish that the Managing Committee had notified the vacancy to the Commission before the alleged selection was held on 20.5.1990.

17. There is another legal infirmity in this selection. The selection was to be made through the District Inspector of Schools concerned as provided under Para 5 of the U.P. Secondary Education (Removal of Difficulties) Order, 1981.

18. In Full Bench decision of this Court In *Km. Radha Raizada v. Committee of Management, Vidyawati Darbari Girls Inter College and Ors.* 1994 (3) UPLBEC 1551, it has been held that ad hoc appointment to a vacant post can be made by the Management only in accordance with the procedure provided under the U.P. Secondary Education Services (Removal of Difficulties) Order, 1981. Para 5(2) provides that the Management shall, as soon as may be, inform the District Inspector of Schools about the details of the vacancy and such Inspector shall invite applications from the local Employment Exchange and also through public advertisement in atleast two newspapers having adequate circulation in Uttar Pradesh. Para 5(3) provides that every application referred to in Sub-clause (2) shall be addressed to the District Inspector of Schools. This para clearly contemplates that, the entire process of selection shall be done by the District Inspector of Schools. Admittedly, this procedure has not been followed.

19. Learned Counsel for the Appellants urged that para 2 of the First Removal of Difficulties Order, 1981 has been substituted and on such substitution, the Management shall be entitled to make selection. Para 2 as amended in the First Removal of Difficulties Order, 1981 provides that the Management of the institution may appoint by promotion or by direct recruitment a teacher purely on ad hoc basis in accordance with the provisions of this order in case of a substantive vacancy caused by death, retirement, resignation or otherwise. The Management may be entitled to make appointment on these conditions but para 5 of the First Removal of Difficulties Order provides the procedure for making the selection. This selection has to be made by the District Inspector of Schools in accordance with the procedure provided therein and only such selected

candidate, as may be found suitable, shall be appointed by the Committee of Management. In view of the decision in the Full Bench case of Radha Raizada(supra), the Management was to follow the procedure prescribed in para 5 of the First Removal of Difficulties Order and as It has not been followed, the Appellants cannot claim that he has been validly appointed and entitled for payment of salary.

20. In view of the above, there is no merit in both these appeals. They are accordingly dismissed. The parties shall bear their own costs.