
(1987) 08 AHC CK 0060
In the Allahabad High Court
Case No : Writ Petition No. 4947 of 1986

Om Prakash Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-08-1987

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 21B(1)

Citation : (1988) 1 AWC 340

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

Bench : Division Bench

Advocate : L.P. Misra, for the Appellant; A.R. Khan, for O.P. No. 4 and C.S.C.
and J.C. Srivastava, for O.P. No. 3, for the Respondent

Final Decision : Allowed

Judgement

B.L. Loomba, J.—Petitioner's case is that a vacancy in the post of Assistant Teacher in the C. T. Grade in the subjects of Science and Mathematics became available with effect from 1-7-84 in Gram Swavalambi Inter College, Raniwan, Faizabad, on retirement of Chintamani Tewari who possessed B. Sc, B. Ed. qualification and used to teach subject of Science and Mathematics. The Committee of Management of this institution communicated to opposite party No. 2 District Inspector of Schools, Faizabad about the existence of this vacancy clearly stating that the teacher required was for teaching Science and Mathematics subjects. The Committee of Management issued an advertisement asking for applications for this post and interviewed all the candidates who applied for the post on 25-12-85. The petitioner having secured highest marks was selected and appointed as Assistant Teacher in C. T. Grade in the said college, vide order of appointment dated 30-12-85, contained in Annexure-3 to the writ petition, the Committee of Management sent the papers indicating the quality point marks obtained by the respective candidates to the District Inspector of Schools for accord of his approval on 6-1-86. The District Inspector of Schools did not send any intimation regarding approval to the petitioner's

appointment but on the other hand he sent letter dated 11-2-86 intimating that opposite party No. 4 Anant Ram Misra, a reserve pool teacher was being appointed against this vacancy. By a subsequent letter dated 15-2-86 of the District Inspector of Schools the petitioner's appointment was disapproved. Petitioner's case is that he is continuously working on this post since 1-1-86 and being B. Sc, B. Ed. he is fully qualified to teach subjects of Science and Mathematics and that opposite party No. 4 did not come to the college to submit his joining report in pursuance of the order dated 11-2-86.

2. Petitioner sought reliefs to have order dated 11-2-86 and 15-2-86 of the District Inspector of Schools contained in Annexure-6 and 7 respectively quashed and for writ of mandamus commanding the opposite parties to treat the petitioner as regularly selected in C. T. Grade and for a direction to pay the salary with effect from 1-1-1986.

3. Opposite party No. 4 Anant Ram Misra filed his counter-affidavit wherein it is stated that the vacancy was not in any specific subjects of Science and Mathematics and that the mere fact that Chintamani Tewari was B. Sc, B. Ed. is of no consequence. It is further submitted that the Committee of Management had wrongly mentioned the subjects of Science and Mathematics while intimating the vacancy to the District Inspector of Schools and a reserve pool teacher has a preferential right to be appointed on the post in question.

4. On behalf of the petitioner rejoinder affidavit has been filed. According to the annexures filed along with rejoinder affidavit Chintamani Tewari used to teach subjects of Science and Mathematics for which purpose he was appointed by letter of appointment dated 19-7-82 and that the petitioner was also appointed against the vacancy on the post meant to teach subjects of Science and Mathematics to students from Class VI to VIII standard. It is also submitted that the petitioner having been appointed under the provisions of Removal of Difficulties Order, his appointment stood automatically approved and the order of the District Inspector of Schools disapproving the petitioners appointment, is without jurisdiction. It is the admitted position that the minimum qualification for appointment in C. T. Grade is intermediate. Opposite party No. 5 is qualified for appointment in C. T. Grade being possessed of minimum qualification of Intermediate but he is not a Science teacher having not done his Intermediate with Science subjects. The main question falling for consideration is whether the vacancy existing in the institution for teaching in Science and Mathematics subjects can be filled by a candidate who does not possess Inter Science qualifications or any higher qualification in the subjects of Science and Mathematics.

5. Learned Counsel for the petitioner has invited our attention to Sub-section (1) of Section 21B of the U.P. Secondary Education Services Commission and Selection Boards Act, 1982, as inserted by U.P. Ordinance No. 12 of 1985. It provides that the Inspector shall maintain in the prescribed manner a register of reserve pool teachers consisting of subject wise lists of persons of reserve pool

teachers. On the strength of this provision it is argued that the vacancy in question being for the subjects of Science and Mathematics for teaching the subjects in the institution only such reserve pool teacher can be appointed to this post who possesses qualifications in subjects of Science and Mathematics.

6. Learned Counsel for the petitioner further argued that even in the C. T. Grade, vacancies normally exist subject wise and that the needs of the institution for teaching particular subjects cannot be overlooked even though the prescribed qualification for appointment to C. T. Grade is only intermediate. It is also submitted that in the instant case the management had asked for appointment against a vacancy existing in the subjects of Science and Mathematics and a teacher not possessing any qualification in these subjects cannot be forced on the institution because to do so would be against the interest of the students who are required to be taught in the subjects of Science and Mathematics.

7. The submission of the learned Counsel for the petitioner has force. There appears no justification in posting a reserved pool teacher not possessing Science and Mathematics subjects qualification against the post meant for a Science and Mathematics teacher. In the present case the post was held by a teacher who possessed Science and Mathematics subjects qualification. The manager of the institution had notified this vacancy to be of Science and Mathematics teacher. If the institution needed Science and Mathematics teacher for providing education to the students of the institution a reserve pool teacher who is not qualified to teach the subjects of Science and Mathematics cannot be forced on the institution more so, when the register of reserved pool teachers is maintained in the district subjectwise. Under the interim order dated 24-7-86 the petitioner was allowed to continue on the post in question until further orders and it was provided that he shall not be displaced by any other candidate, not even by opposite party No. 4. The petitioner claims to have been appointed on the basis of quality point marks and according to him he became a regular teacher entitled to continue. However, there is nothing on record to show that the petitioner was appointed in accordance with the provisions of para 2 of the First Removal of Difficulties Order, 1981, through the District Inspector of Schools. On the other hand it appears that the petitioner's appointment was purely ad-hoc and would last only for so long as a candidate regularly selected by the U.P. Secondary Education Services Commission becomes available.

8. In view of the above, the writ petition merits to be allowed and it is accordingly allowed. It is directed that the petitioner shall be allowed to continue on the post in question for so long as a candidate regularly selected by U.P. Secondary Education Services Commission or a reserve pool teacher in the subjects of Science and Mathematics does not become available. There shall be no order as to costs.