

(1999) 08 AHC CK 0159
In the Allahabad High Court
Case No : C.M.W.P. No. 22636 of 1996

Prabha Pathak

APPELLANT

Vs

Director of Education (Secondary) and others

RESPONDENT

Date of Decision : 03-08-1999

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 13, 16(1), 16(2), 18, 2

Citation : (1999) 4 AWC 3096 : (1999) AWC 3096 : (2000) 2 UPLBEC 1045

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : A.K. Yog and Anu Jaiswal, for the Appellant; K.R. Singh, S.C., for the Respondent

Final Decision : Dismissed

Judgement

D.K. Seth, J.—In the present case the impugned order dated 2nd February, 1996 contained in Annexure-5 to the writ petition has since been challenged. Ms. Anu Jaiswal, learned counsel for the petitioner contends that the Impugned order has been passed thoroughly on misconception of the provisions of law. According to her, there cannot be any reservation in respect of ad hoc appointment. That apart even from the record, it appears that number of appointment from reserve quota is already in excess in the said school. On facts the vacancy did not fall within the reserve quota. She secondly contends that the appointment has been made u/s 18 of the U. P. Secondary Education Service Commission and Selection Boards Act. 1982. Therefore, it would not attract the mischief of the U. P. Education Service Commission (Removal of Difficulties) Order, 1981. Therefore, the impugned order should be set aside and quashed.

2. Mr. K. R. Singh, learned standing counsel on the other hand contended that it is for the District Inspector of Schools to determine the number of vacancies, including the number of vacancies in reserve quota. The District Inspector of Schools having determined the same on the basis of his record, the dispute

raised cannot be entertained in writ jurisdiction since he is capable of determining the disputed questions of fact. He then contends that there could not be any power u/s 18 of the Act without resorting to the provisions of the First Removal of Difficulties Order in respect of an ad hoc appointment against a substantive vacancy.

3. Mr. Anu Jaiswal in reply contended that the appointment was made on 13th June, 1993. It was made u/s 18 of the 1982 Act. The contention of Mr. K. R. Singh, according to her, is misconceived. Inasmuch the provisions of law as enunciated in the case of *Radha Raizada v. Committee of Management, Vidyawati Darbari Girls Intermediate College*, 1994 (3) UPLBEC 1551, could be applied only prospectively and not retrospectively. Since the petitioner was appointed before the decision in the case of *Radha Raizada (supra)*, therefore, the ratio decided therein cannot be applied. In the said decision, this Court had held that u/s 18, the Committee of Management had a right to appoint.

4. Mr. K. R. Singh had contended that after the enactment of Act No. 1 of 1983, Section 18 having been deleted by virtue of the said Amendment Act, there could not be any power to appoint by the Committee of Management with effect from 6th January, 1993, which according to him, was the date on which the Act No. 1 of 1993 had come into force. Though both Ms. Jaiswal and Mr. Singh had attempted to point out the date of coming into force of Act No. 1 of 1993 on 7th August, 1993 and 6th January, 1993 respectively but yet a definite information could not be had.

5. In the circumstance, the Court had requisitioned the assistance of Mr. V. K. Singh, learned counsel. Mr. V. K. Singh in his usual fairness had agreed to assist the Court. Accordingly the matter was fixed today. He had pointed out that Act No. 1 of 1993 had come into force on 7th August, 1993 except Section 13 thereof. By Section 13 of the Amendment Act No. 1 of 1993, Section 18 was sought to be deleted. According to him, Section 13 of the Amendment Act had never come into force since the enforcement of the said Act depended on the notification appointing the date of enforcement of the respective sections. While enforcing the said Act in the notification, Section 13 was excluded when the other Sections were given effect to were enforced with effect from August 7, 1993. According to him, Section 18 was never deleted since Section 13 of the Amendment Act was never enforced. 6th January, 1993 was the date on which the Act 1 of 1993 was published in the Official Gazette. On the other hand, he points out that U. P. Act No. 24 of 1992 was promulgated at an earlier point of time which came into force with effect from 14th July, 1994, whereby Section 18 was substituted by Section 2 of the said U. P. Act No. 24 of 1992. In view of the existence of Section 18 as amended by U. P. Act No. 24 of 1992, there was no authority left to the Committee of Management to make an appointment u/s 18 of the Act.

6. I have heard learned counsel for the parties at length.

7. Act No. 1 of 1993 was published in the Official Gazette on 6th January, 1993. But the said Amendment Act No. 1 of 1993 had mentioned in Section 1 Sub-section (2) that the same shall come into force on such date as the State Government may, by notification, appoint in that behalf and different dates may be appointed for different provisions. Thus, though the Amendment Act No. 1 of 1993 was published in the Official Gazette on 6th January, 1993 but it did not come into force on the publication thereof. On the other hand, by a notification dated 7th August, 1993, the State Government had appointed August 7, 1993 as the date of enforcement of U. P. Act No. 1 of 1993 except Section 13 thereof. Thus, Section 13 did never come into force and Section 18 remained on the Statute reserving the power of making ad hoc appointment, despite the bar contained in Section 16.

8. Ms. Anu Jaiswal had contended that since the appointment was made on 13th June, 1993, therefore, the deletion by Act No. 1 of 1993 could not affect the said appointment. In case it is held that Section 18 was not deleted, in that event that will ensure to the benefit of the petitioner since Section 18 had reserved the right of the Committee of Management to make ad hoc appointment. According to her, the ad hoc appointment could have been made either u/s 18 or under the Removal of Difficulties Order.

9. But the said contention appears to be misconceived, since Section 18 was substituted by Act No. 24 of 1992. The said substitution of Section 18 came into force with effect from 14th July, 1992, namely, the date on which U. P. Secondary Education Service Commission and Selection Boards (Amendment) Ordinance, 1992 (U. P. Ordinance No. 21 of 1992) was promulgated by the Governor on 14th July, 1992 since the State Legislature was not in session and immediate alternative action was necessary. Act No. 24 of 1992 was enacted to replace the Ordinance No. 21 of 1992. In sub-section (2) of Section 1 of Act No. 24 of 1992, it is provided that Act No. 24 of 1992 shall be deemed to have come into force on July, 14, 1992. Therefore, the substituted Section 18 came into force with effect from 14th July, 1992. The appointment of the petitioner was made after substituted section was brought in the Statute.

10. u/s 18 as substituted by Act No. 24 of 1992, the power to make ad hoc appointment was vested on the District Inspector of Schools on the basis of the recommendation of the Selection Committee constituted under subsection (9) of Section 18 and the management was bound to appoint a teacher recommended by the Selection Committee. Thus, the substituted Section 18 had taken away whatever rights could be conceived u/s 18 of the 1982 Act against substantive vacancy, by its amendment was completely obliterated. Thus, after 14th July, 1992, the management could not have made appointment against a substantive vacancy on ad hoc basis. The substituted Section 18 has been brought at par with the procedure provided in the First Removal of Difficulties Order with regard to the appointment against substantive vacancy.

11. This was so interpreted in paragraph 68 in the case of Radha Raizada

(supra), wherein it has been observed as follows :

"The Act has again been amended by U. P. Secondary Education Services Commission and Selection Boards (Amendment) Act, 1992 (U. P. Act No. 1 of 1993) and this amending Act has come into force on August 7. 1993 by virtue of a notification issued under sub-section (2) of Section 1. However, Section 13. by which Section 18 of the Principal Act (U. P. Act No. 5 of 1982) has been omitted, has not been enforced. The result, therefore, is that Section 18. still remains in the Statute book. The substituted sub-section (1) of Section 16 now does not save appointment made u/s 18 on account of its omission from its language as it did not prior to amendment. Sub-section (2) of Section 16 still provides that any appointment made in contravention of the provisions of sub-section (1) shall be void. This has created an anomalous situation as any appointment made u/s 18 would be void. Therefore, in my opinion, the management has no power left to make an ad hoc appointment on a substantive vacancy after enforcement of U. P. Act No. 1 of 1993. However, it can make appointment on a short-term vacancy in the post of a teacher caused by grant of leave or on account of his suspension duly approved by the DIOS or otherwise, in accordance with the Second Order."

12. Thus, it appears that on 13th June. 1993, the Committee of Management could not have appointed the petitioner. Thus, it appears that the observation made in the second paragraph of the Impugned order dated 2nd February, 1996 to the effect that after 16th July, 1992 it was only the District Inspector of Schools who could publish the advertisement and invite applications and make the appointment, is contrary law, as has been sought to be propounded by Ms. Jaiswal. cannot be accepted. Therefore, so far as that part of the finding is concerned, the same cannot be said to be contrary to law. If this ground succeeds, in that event, the petitioner cannot claim any relief in respect of the said order even if the other part is held in favour of the petitioner.

13. In that view of the matter, the question with regard to the reservation need not be gone into in the present case.

14. Accordingly, I do not find any infirmity in the order dated 2nd February, 1996.

15. Therefore, the writ petition fails and is. accordingly, dismissed. No cost.

Before I part with the record. I must record my appreciation for the assistance rendered by Mr. V. K. Singh as welt as the manner in which the matter was argued by Ms. Jaiswal.