
(1987) 08 AHC CK 0006

In the Allahabad High Court

Case No : Writ Petitions No"s. 3326, 3327, 3328, 3329, 3474, 3487, 4625, 5264 and 5305 of 1985 and 3410, 3411, 3412, 3437, 4325, 4493, 4525, 4537, 4542, 4688, 4737, 4740, 4838, 4840, 4896, 4907, 4908, 5362, 5486, 5562, 5615 and 5642 of 1986

Pramod Shukla

APPELLANT

Vs

The District Inspector of Schools and Others

RESPONDENT

Date of Decision : 20-08-1987

Acts Referred:

Constitution of India, 1950 — Article 14
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 11, 18, 18(3), 21B, 33A

Citation : (1988) 1 AWC 478

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

Bench : Division Bench

Advocate : P.K. Khare, for the Appellant;

Judgement

B.L. Loomba, J.—All these writ petitions raise common questions of law and are, as such, taken up to be decided together.

2. It may be useful to give brief reference to the facts of each of these cases. In W.P. 5642 of 86 the Petitioner was appointed by the Committee of Management of the institution as Lecturer under order dated 20-12-1985. The District Inspector of Schools granted approval to this appointment under letter dated 6-1-1986. It is alleged that the appointment has been made u/s 18 of the U.P. Secondary Education Commission and Selection Board Act, 1982 (U.P. Act No. 5 of 82). Petitioner's case is that this appointment can legally continue until a regular selected candidate from the commission becomes available and mandamus is claimed seeking command to the Respondents to treat the Petitioner to be in continued service until a regular selectee is made available by the commission. In Writ Petition No. 4525 of 86 also the appointment of the Petitioner was made as Lecturer under the said Section 18 and as per the claim raised he is entitled to continue till a regular selected candidate becomes

available. The Petitioner is aggrieved against orders of the opposite-parties where under the appointment is restricted to last upto 30th June of the year next to the year of appointment. In W.P. No. 4542 of 86 the Petitioner was appointed in L.T. Grade under the said Section 18 and the same plea of the entitlement to continue till a regular selectee from the commission becomes available. The Petitioner is aggrieved against the order dated 27-5-1986/6-6-1986, Annexure-3 whereunder a reserve pool teacher has been directed to be appointed against this vacancy. This order of the District Inspector of Schools, Annexure-3 is sought to be quashed. The Petitioner of W.P. No. 3326 of 85 was appointed in the C.T. grade under order dated 27-9-1984 under the Removal of Difficulties Order. The averment made is that no regular candidate has so far been selected by the commission and the Petitioner is entitled to continue in service in C.T. grade until a regularly selected candidate becomes available. The Petitioner in W.P. No. 3329 of 85 was appointed in the C.T. grade in the year 1982 on ad-hoc basis under the Removal of Difficulties Order and according to him he is entitled to continue till a regular selectee from the Commission/Board becomes available. He is aggrieved by the order of the District Inspector of Schools dated 27-6-1985 according to which the Petitioner's appointment could not continue beyond 30-6-1985.

3. In W.P. No. 3437 of 86 the Petitioner was appointed under the Removal of Difficulties Order initially for six months then upto 30-6-1985 and again upto 30-6-1986 with break in service between 21-5-1985 to 26-7-1985. Prayer is to have the order dated 1-3-1986, Annexure-5 quashed in so far as it places restriction on the continuance of the Petitioner's appointment only upto 20-5-1986, writ of mandamus is also sought commanding the opposite-parties to allow the Petitioner to continue till a regular appointee joins the post. Break in service between 21-5-1985 and 26-7-1985 is sought to be regularised. In W.P. No. 4537 of 86 the Petitioner was appointed in C.T. grade on ad-hoc basis against the vacancy caused by the death of his father. His appointment was approved by the District Inspector of Schools vide letter dated 16-10-1986. It was directed that the approval was for the period upto 30-6-1986. The grievance of the Petitioner is that inaction of the District Inspector of Schools in not extending the term of appointment beyond 30-6-1986 is illegal and the prayer is for mandamus to allow the Petitioner to continue till a regular selectee joins and for payment of salary beyond 30-6-1986. Petitioner in W.P. No. 4688 of 86 was appointed u/s 18 of the Act by order dated 24-1-1984, Annexure-1. Vacancy was notified to the Commission but no candidate is said to have been selected so far. The District Inspector of Schools is directing the Management to repeat the exercise of fresh appointment after 30th June. The case of the Petitioner is that the Petitioner can lawfully continue till a regular selectee from the Commission becomes available.

4. In W.P. No. 311 of 86 the Petitioner was appointed u/s 18 of the Act with the stipulation that his appointment as Lecturer was to continue upto 30th June, 1986. The District Inspector of Schools issued an order dated 7-5-1986, Annexure-2 providing for appointment of Respondent No. 3, a reserve pool

teacher. The Committee of Management accordingly issued order dated 17-5-1986, Annexure-3 for termination of the Petitioner's services. Validity of this termination order is challenged in this writ petition. W.P. No. 4325 of 86 has been filed by U.P. Vikasvadi Shikshak Manch through its President Sheo Nath Misra. Petitioners 2-11 are the teachers appointed in the various institutions at Lucknow under the Removal of Difficulties Order on ad-hoc basis. It has been pleaded that the ad-hoc appointees can continue in the post so long as a regular candidate selected by the Commission becomes available. The grievance of the Petitioner is that the District Inspector of Schools has been issuing illegal orders directing the managements of the institutions to make appointments only for a period of six months or until 30th June of the next year whichever is earlier and it is also directed that fresh appointments may be made after 30th June. This writ petition has been filed with a view to safeguarding the interest of all the ad-hoc teachers whose services under the orders of the District Inspector of Schools concerned Committee of Management may be terminated on 30th June, 1986. It has been pleaded that all these teachers can continue so long as regular candidates selected by the Commission/ Board becomes available. Prayer has been for mandamus directing the opposite-parties to issue necessary direction to all the District Inspector of Schools not to treat the ad-hoc teachers out of employment after 30-6-1986 and they may be paid salary month after month after 30-6-1986.

5. In Writ Petitions Nos. 5615 of 86, 5562 of 86, 5486 of 86, 5362 of 86, 4908 of 86, 4907 of 86, 4896 of 86, 3328 of 85, 3474 of 85, 5264 of 85, 3410 of 86, 4838 of 86 and 4840 of 86, the Petitioners were appointed on ad-hoc basis and their claim is for continuance till a regular candidate selected by the Commission/ Board becomes available.

6. In W.P. No. 4493 of 86 the Petitioner was appointed as Lecturer in English under order dated 13-11-1983, Annexure-1. The appointment was made u/s 18 of the U.P. Secondary Education Commission and Selection Board Act, 1982 (Act No. 5 of 82). The District Inspector of Schools approved the appointment only upto 30th June, 1985 and by another letter the approval was granted upto June 30, 1986. The District Inspector of Schools has issued order dated 23-6-1986, Annexure-4 addressed to all the aided Higher Secondary institutions mentioning that in order to accommodate the reserve pool teachers ad-hoc appointments made u/s 18 of the Act shall not be extended. The Petitioner has challenged the validity of this order on the ground that the Petitioner is regularly working since October, 1984 and is entitled to the regularisation of this post.

7. In W.P. no 4737 of 86 the Petitioner was promoted to C.T. grade on ad-hoc basis under order dated 25-9-83. The grievance of the Petitioner is that the District Inspector of Schools by order dated 27-5-86/5-6-86 has directed the appointment of Respondent No. 4 to the post in question. The validity of this order is challenged on the ground that the Petitioner can continue to hold the post until a regular candidate selected by the Commission becomes available.

Respondent No. 4 is a reserve pool teacher and is required to be accommodated under Annexure 4.

8. In W.P. No. 5305 of 85 the Petitioner was initially appointed in C.T. grade in July, 1967. He was promoted on ad-hoc basis in L.T. grade by the Committee of Management in July, 1984. His appointment was continued under resolution dated 5-6-85. District Inspector of Schools accorded approval to this promotion u/s 18 of the Act but a condition was laid down that this appointment shall exhaust when a reserve pool teacher becomes available to fill up this vacancy. The Petitioner has challenged the validity of this condition. It is submitted that on the promotion of the Petitioner to the L.T. grade one Gauri Shanker Pal has been appointed in C.T. grade and as such there is no vacancy in the C.T. grade where the Petitioner can be accommodated and as such there is no vacancy for accommodating a reserve pool teacher. Writ of mandamus is claimed for direction that the Petitioner is entitled to continue to hold the post in L.T. grade.

9. In W.P. No. 4740 of 86 the Petitioner was appointed on ad-hoc basis under order dated 13-11-84 by the Committee of Management of the institutions, opposite party no, 4. This appointment was made u/s 18 of the Act. The District Inspector of Schools under order dated 15-12-84, Annexure 2 approved this appointment. The Petitioner's claim is that he is entitled to be regularised on the post and that Section 33A of the Act is invalid being arbitrary and discriminatory in so far as it extends benefit of regularisation only in favour of the teachers appointed directly under the Removal of Difficulties Order. Relief of mandamus is claimed for direction to opposite parties to treat the Petitioner regularised on the post of Lecturer and to declare the provision of Section 33A of the Act invalid in so far as it excludes the Petitioner from the benefit of regularisation.

10. In W.P. No. 3412 of 86 the Petitioner was appointed as Lecturer u/s 18 of the Act through the, order dated 5-8-85, Annexure 1 with the stipulation that the appointment would lapse on 30-6-86. The District Inspector of Schools has issued, order dated 7-5-86 providing for the adjustment of reserve pool teachers against the available vacancies. In pursuance of this order the Committee of Management issued order dated 17 -5-86, Annexure 3, terminating the services of the Petitioner. Through this writ petition the impugned order contained in Annexure 3 is sought to be quashed. V

11. In W.P. No. 3327 of 85 the Petitioner was appointed as Lecturer on (1-9-84 on ad-hoc basis under the Removal of Difficulties Order. The Petitioner's claim is that he is entitled to regularisation u/s 33A of the Act but the opposite parties are not permitting him to join after 30-6-85. The prayer is for mandamus to continue the Petitioner in service and to pay him alary month after month.

12. In W.P. No. 4625 of, 86 the Petitioner was appointed as Lecturer in July, 1985 u/s 18 of the Act. Petitioner's claim is that he is entitled: to continue on this post till a candidate regularly selected by the Commission becomes available. The Committee of Management opposite party No. 2 has passed order, contained in

Annexure 2, according to which the services of the Petitioner shall come to an end on 30-6-86. It is submitted that this order has been passed by the Committee of Management under the instructions of the District Inspector of Schools in order to accommodate a reserve pool teacher.

13. In W.P. No. 3487 of 85 the Petitioner was appointed as a teacher in L.T. grade on ad-hoc basis under order dated 9-11-83, Annexure I. It was expressly provided in this order that this appointment shall last until a regular candidate selected by the Commission becomes available. The Petitioner pleaded that the Commission has advertised this post and that the Petitioner applied for considerations and he has all the chances of selection. The District Inspector of Schools vide his letter dated 13-7-85, Annexure 4 has intimated the Management of the institution that Subbash Chandra Gupta, opposite party No. 5 is reserve pool teacher and be accommodated against the vacancy in question. The Petitioner is aggrieved by this order and has pleaded that he is entitled to be confirmed u/s 33A of the Act and the provision in so far as it excludes from the benefit of regularising, the teachers appointed u/s 18 is ultra vires being arbitrary and discriminatory. The validity of Section 21B of the Act is also challenged in so far as it provides for appointment of reserve pool teachers in preference to the ad-hoc appointees. Writ in the nature of mandamus has been claimed declaring the provisions of U.P. Ordinance No. 12 of 85 as ultra vires and to have the order of the Additional Director of Education dated 23-6-85, Annexure 1 quashed. The order of the District Inspector of Schools dated 13-7-85 is also sought to be quashed. The order of the Additional Director of Education dated 23-6-85 contains direction for enforcement of the provisions of U.P. Ordinance No. 12 of 85.

14. This is the undeniable position that the Petitioner in each of these writ petition was appointed as teacher purely on ad-hoc basis either u/s 18 of U.P. Act No. 5 of 82 or under the Removal of Difficulties Order of 1981, by way of promotion or by direct recruitment. The duration of ad-hoc appointment made u/s 18 was to last from the earliest of either of these dates, namely, when the candidate recommended by the Commission or the Board, as the case may be, joins the post, when the period of one month referred to in Section 11(b) of this Act expires or on 30th June following the date of such ad-hoc appointment (see Sub-section (3) of Section 18). The duration of ad hoc appointment made under the Removal of Difficulties Order was to last till the candidate recommended by the Commission or the Board, joins the post or when the period of six months from the date of such appointment expires (see para 3 of the Removal of Difficulties Order). Para 3 as amended by the Third Removal of Difficulties Order issued on 30th Jan. 1982, provided that every appointment of ad hoc teacher 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 term of appointment of a teacher appointed on ad hoc basis was not indefinite and with reference to the provisions referred to above was to last only until a candidate recommended by the Commission or the Board, joins the post. Legal position in

this regard came to be settled by the various decisions of this Court, the last in the series being the decision in *Uttar Pradesh Madhyamik Shikshak Sangh v. State of U.P.* 1987 Ed Cas. 13. In this case the question was analysed in details and general directions were issued to the Director of Education (Secondary) U.P. to require the District Inspector of Schools to have considered the particulars of each case and in cases where the teacher concerned possesses the prescribed qualifications and person regularly selected by the Commission or the Board was not available, the Management shall be deemed to have renewed the ad hoc appointment beyond 30th June and the teacher shall be treated to be validly appointed and entitled to continue in service till his services are terminated in accordance with law or till the candidate recommended by the Commission or the Board, as the case may be, joins the post, whichever may be earlier. According to the terms of the appointment order also the term of appointment of the Petitioner in each of these cases was not indefinite and was provided to last for six months or upto 30th June following the date of appointment, whichever is earlier, or at best such appointment shall be available only until a candidate selected by the Commission or the Board joins the post. Accordingly, on the basis of the term of the appointment order and the referable provisions of law no such ad hoc appointment can last indefinitely and the submission to that effect made by the Petitioners in some cases lacks merit.

15. The next question is relating to the admissibility of the benefit of Section 33A of U.P. Act no 5 of 82, as added by U.P. Ordinance No. 12 of 85. This section provided for regularisation of one category of ad hoc appointees, namely, those who were appointed on ad hoc basis directly before 12-6-85 against a substantive vacancy in accordance with para 2 of Removal of Difficulties Order, 1981, as amended from time to time, and possessed the prescribed qualifications and had continued to serve the institution from the date of such appointment upto the date of commencement of the Ordinance, namely, 12-6-85. Paragraph 2 of the Removal of Difficulties Order, 1981 read with para 5 thereof provided for direct appointment through the District Inspector of Schools on merit to be assessed on the basis of quality points specified in the appendix to this order. This is not the case of the Petitioner in any of these writ petitions that he was appointed directly according to the procedure laid down in para 5 of the Removal of Difficulties Order, 1981.

16. In some of the writ petitions validity of Section 33A has been challenged on the ground that the denial of protection of regularisation in favour of the other ad hoc appointees is invalid being arbitrary and discriminatory.

17. In *Chandrika Prasad Yadav v. State of U.P.* 1986 Ed. Cas 223 validity of Section 33A came to be considered and it was held that this section is not hit by Article 14 of the Constitution and that the classification is perfectly legitimate, reasonable and relatable to the object sought to be achieved. We respectfully agree with the view adopted under that decision.

18. Section 33A was added with the object of regularisation of services of only

such ad hoc who possessed the prescribed qualification and were directly appointed on the quality marks basis. They constitute a class by themselves and the teachers appointed on ad hoc basis by way of promotion or without undergoing selection on merits cannot be equated with this category of directly appointed teachers. The plea of discrimination as regards the teachers appointed by promotion or appointed by the Committee of Management without undergoing the procedure laid down under paras 2 and 5 of the Removal of Difficulties Order or u/s 18 of the Act lacks merit and is liable to be dismissed. Further this aspect of the matter is also covered by Chandrika Prasad Yadav's case (supra).

19. The question next is as to the validity of Section 21B of the Act. This section was enacted to give effect to the judgment of their Lordships of the Supreme Court in *Prabodh Verma v. State of U.P.* 1984 ALJ 931. We have discussed in details this question in a bunch of writ petitions ; leading case being Writ Petition No. 4648 of 85 *Lalta Prasad Yadav v. State of U.P.* and have held that the challenge to the validity of Section 21B is untenable and plea to that effect has been rejected. In *Prabodh Verma's* case their Lordships of the Supreme Court held that reserve pool teachers form a separate and distinct class from other teachers and preferential treatment in the matter of recruitment in favour of reserve pool teachers is not discriminatory and does not offend Article 14 of the Constitution. Section 21B has been enacted only to give effect to the said judgment of the Supreme Court. This is also clear from the statements of objects and reasons of U.P. Secondary Education Service Commission and Selection Board Amendment Act, 1985 which replaced U.P. Ordinance No. 12 of 1985. We need not repeat what has been discussed in detail by us in *Lalta Prasad Yadav's* case. Accordingly, the challenge to the validity of Section 21B of the Act is lacking merit and has to be rejected.

20. As would become clear, there are two types of cases being decided under this judgment. The first category of cases are such where the appointments are directed to last for six months or upto 30th June following the date of appointment and the Petitioners have claimed relief for mandamus for direction to the District Inspector of Schools concerned as also to the Committee of Management of the institution concerned to treat the Petitioner to be continuing in service without break until a candidate regularly selected by the Commission or Board, as the case may be, joins the post. In some of these cases break in service occurred because of the time gap upto which the initial appointment order was to last and the date on which fresh appointment was made. In all these cases interim stay orders were granted by this Court.

21. The second category covers those cases wherein the validity of Section 33A and or 21B has been challenged and the reserve pool teacher is required to be accommodated against the post on which the Petitioner has been working as ad hoc appointee and for that reason the services of the Petitioner have been terminated or are required to be terminated.

22. The First category of cases are covered by the decision of this Court in *Uttar*

Pradesh Madhyamik Shikshak Sangh v. State of U.P. (supra) and these writ petitions have to be decided broadly in terms of the decision in the said case. This category covers Writ Petition Nos. 5642 of 86, 4525 of 86, 3326 of 85, 3329 of 85, 3437 of 86, 4537 of 86, 4688 of 86, 5615 of 86, 5562 of 86, 5486 of 86, 5362 of 86, 4908 of 86, 4907 of 86, 4896 of 86, 3328 of 85, 3474 of 85, 5264 of 85, 3410 of 86, 4838 of 86, 4840 of 86, 4493 of 86, 4740 of 86 and 3327 of 85. It is accordingly directed that Writ Petitions Nos. 5642 of 86, 4525 of 86, 3326 of 85, 3329 of 85, 3437 of 86, 4537 of 86, 4688 of 86, 5615 of 86, 5562 of 86, 5486 of 86, 5362 of 86, 4908 of 86, 4907 of 86, 4896 of 86, 3328 of 85, 3474 of 85, 5264 of 85, 3410 of 86, 4838 of 86, 4840 of 86, 4493 of 86, 4740 of 86 and 3327 of 85 are allowed with the order that:

(i) If the Petitioner possesses qualifications for the post in question as prescribed under the Intermediate Education Act, 1921 and the regulations made thereunder and was duly appointed by the Management by direct recruitment or promotion ;

(ii) If the Commission/Board, as the case may be, has failed to recommend the name of candidates for being appointed and if the services of the Petitioner have not otherwise been terminated according to law:

then the Management of the institution shall be deemed to have renewed the ad hoc appointment of the Petitioner on the expiry of 30th June, following the date of such appointment and the District Inspector of Schools shall treat the Petitioner validly appointed and continuing in service and pay salary to him till the services of the Petitioner are terminated in accordance with law including the termination on account of availability of the reserve pool teacher or till the candidate recommended by the Commission or Board, as the case may be, joins the post, whichever may be earlier.

23. The other category of Writ Petitions, namely, Writ Petitions Nos. 4542 of 86, 3411 of 86, 4325 of 86, 4737 of 86, 5305 of 85, 3412 of 86, 4625 of 86 and 3487 of 85 are dismissed and the Petitioner in each of these cases shall give place to the reserve pool teachers as per directions contained in the impugned orders.

24. Parties shall bear their own costs in each of these writ petitions.