

(2011) 04 AHC CK 0145
In the Allahabad High Court
Case No : Writ A No. 16406 of 2011

Prashant Kumar Katiyar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Constitution of India, 1950 — Article 16
Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 — Rule 11
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 13(5), 16(1), 16(2)

Citation : (2011) 4 ADJ 789

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Judgement

Arun Tandon, J.—Under the U.P. Secondary Education Services Selection Board Act, 1982 (herein after referred to as the "Act, 1982") two separate source of appointment (other than absorption/regularization) have been provided against the post of teachers of recognized Intermediate institutions i.e.:

(a) By direct recruitment.

(b) By promotion.

2. So far as the direct recruitment is concerned, the appointment can be made by any of the following modes:

(a) On the recommendation of the Selection Board (Ref. Section 16(1) of the Act, 1982).

(b) By transfer in accordance with Regulations 55 to 62 of Chapter III of the Regulations framed under the Intermediate Education Act. (Ref. Section 16 (1) Second Proviso of the Act, 1982.

(c) By compassionate appointment under Regulations 101 to 106 of the Regulations framed under the Intermediate Education Act (Ref. Section 16 (2)

Proviso of the Act, 1982). The controversy with regard to appointment by mode (b) and (c) against a post of Assistant Teacher which had been requisitioned to the U.P. Secondary Education Services Selection Board and the scope of Section 13(5) of Act, 1982 was subject matter of consideration before the Single Judge in writ petition No. 40377 of 2008 (Raja Ram v. State of U.P. and Ors.)

3. This Court, after considering the provisions of Act, 1982 specifically the provisions of Section 13(5) and 16, recorded that once the vacancy has been requisitioned to the Selection Board, then no appointment can be made except on the recommendation of the Selection Board.

4. The Court held that in respect of posts to be filled by direct recruitment, it is for the management to resort any of the modes available to it, under Clause a, b, and c as above. However, such discretion was limited to the stage of requisition being sent to the Selection Board as per the statutory requirement of Rule 11 of the U.P. Secondary Education Services Selection Board Rules, 1998. The Court found that once the requisition is sent by the Management to the Selection Board, the vacancies come within the jurisdiction of Selection Board. The Selection Board in turn, after computation of vacancies is required to advertise the same for direct recruitment and for the purpose to apply reservation. Any interference in the process in between by reducing the vacancies so requisitioned would result in the entire selection being prejudiced. Similarly the selected candidates can opt for the post which had been requisitioned but has subsequently been filled by transfer or by compassionate appointment so as to create an uncalled for complication. It was also held that u/s 13(5), adjustment of a selected candidate can only be made against a vacancy advertised in the same Advertisement. This is more so when no application for compassionate appointment on the post of teacher was pending on the date of requisition. The judgment of the Single Judge was subject matter of challenge by way of Special Appeal No 9. 146 of 2010 (U.P. Secondary Education Services Selection Board, Allahabad v. State of U.P. and Ors.). The appeal has been dismissed by a reasoned judgment of the Division Bench of this Court on 21.01.2011. The Division Bench has held that once the vacancy has been requisitioned to the Selection Board, there could be no other mode of appointment except on recommendation of the Selection Board. Adjustment of selected candidate u/s 13(5) could only be made against a vacancy subject matter of same advertisement.

5. The discretion with the management to opt for any of the modes for appointment i.e. (a) (b) and (c) as noticed above, has to exercised as per the facts existing on the date of requisition. The management cannot withhold the requisition of the vacancy on the plea that it proposes to reserve the same for compassionate appointment, specifically when no application for compassionate appointment against the post of teacher was pending on the relevant date of requisition.

6. Another Division Bench of this Court in the case of Ved Prakash v. Hari Krishna

Singh and Ors. (Special Appeal No. 30 of 23011) which arose against an interim order passed by a Single Judge has opined that compassionate appointment can still be made after the vacancy has been requisitioned and for the purpose it has been recorded that the Hon"ble Supreme Court in the case of Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, has held that there is an object behind for grant of compassionate appointment, as per Regulations 101 to 106 of Chapter III of the regulations framed under the Intermediate Education Act, 1921. The regulation have to be given effect to and provisions of Section 16 and Section 13(5) of the Act, 1982 be interpreted accordingly. The Division Bench has proceeded to hold that since the Single Judge has not considered the judgment of the Apex Court in the case of Director of Education (Supra), the restriction placed on compassionate appointment after the vacancy had been requisitioned in the case of Raja Ram (Supra) was incorrect. It has further been held that compassionate appointments are neither for ulterior consideration nor in violation of equality clause enshrined under the Constitution of India. It has lastly been held that such compassionate appointments are in conformity with Article 16 of the Constitution of India.

7. This Court finds itself unable to agree with the law laid down by the Division Bench in its judgment in the case of Ved Prakash (Supra) dated 19.01.2011 for the following reasons: Regulations 101 to 107 of Chapter III of the Regulations framed under the Intermediate Education Act, 1921 no doubt provide for compassionate appointment but the regulations do not contemplate that such compassionate appointment must be made against the post of Assistant Teacher only. If the post of teacher is not available, the dependent can be offered appointment on the post of Clerk and if the post of Clerk is not available, he may be appointed on Class IV post. The Supreme Court of India in the case of State of Haryana and Others Vs. Vipin Kumar, has held that compassionate appointment is not given to offer a status nor the person can claim the same post on which the earlier employee was working if the rules/executive instructions provide that appointment can be made on one stage below, it can be made not only on the next below post but to any other lower post, inasmuch as the purpose of compassionate appointment is to re-deem the family from financial constrains and not to confer any other benefit of status. The Apex Court in the case of Haryana State Electricity Board and another Vs. Hakim Singh, has held that the object of providing compassionate appointment is to relieve the family from financial hardship and not to open an alternative mode of recruitment to public employment.

8. This Court may further record that in the matter of apointment in recognized and aided Intermediate Colleges, even if aided by the State Government, Article 16 will have no application. Appointment as Assistant Teacher under the private management of a recognized institution, even if aided, cannot be said to be an appointment to an office under the State.

9. The provision of compassionate appointment and the procedure laid down

under U.P. Act of 1982 have to be harmonised and the subordinate provisions of Regulations framed under the Intermediate Education Act cannot in any way be permitted to create a situation whereby the process of selection under the Act, 1982 is put in jeopardy.

10. There appears to be a conflict in the law as explained by the Division Bench of this Court in the case of U.P. Secondary Education Services Selection Board (Supra) and that laid down in the case of Ved Prakash (Supra) by another Division Bench.

11. It would be appropriate that the records of this writ petition may be placed before the Hon'ble The Chief Justice for constitution of a Larger Bench for consideration of the following questions:

(a) Whether a dependent can claim appointment against a post of teacher even after the post has been requisitioned to the selection Board in view of the Regulations 101 to 106 of Chapter III of the Regulations framed under the Intermediate Education Act merely because he has qualifications for the same, specifically when on the date of requisition, no such application for compassionate appointment was pending.

(b) Whether Article 16 of the Constitution of India will be applicable to the teachers working in recognized Intermediate Colleges which are under the private management even if aided by the State Government.

(c) Whether the judgment of the Division Bench of this Court in the case of Ved Prakash (Supra) lays down the correct law.

12. The Court has been informed that in the case of Ved Prakash (Supra) the requisition which was sent to the Selection Board had been withdrawn within two months.

13. Be that it may, the legal issue has to be examined so that the controversy is settled.