
(2012) 07 AHC CK 0291

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14850 of 2007

Raj Bahadur Upadhyay

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Citation : (2012) 7 ADJ 531 : (2012) 6 AWC 6243

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : S.D. Shukla, Amit Singh and B.M. Chaturvedi, for the Appellant;
Siddharth Singh, Santosh Kumar Srivastava and C.S.C, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble B. Amit Sthalekar, J.—By this writ petition the petitioner is challenging the order dated 30.10.2006 whereby his appointment against the short-term vacancy of Assistant Teacher has been disapproved by the respondent No. 3, the District Inspector of Schools, Azamgarh. The facts of the case, in brief, are that there is an institution by the name of Janta Inter College Ahiraula, Azamgarh (Institution). The institution is governed by the U.P. Intermediate Education Act, 1921 and the U.P. Secondary Education (Services Selection Boards) Act, 1982 and as also the U.P. High Schools & Intermediate Colleges (Payment and Salaries of Teachers and other Employee) Act, 1971. One Vidyadhar Upadhyay, Assistant Teacher in L.T. Grade in the institution is stated to have proceeded on leave on 24.12.1997 on account of ill health. Leave was sanctioned by the Committee of Management by order dated 27.12.1997 for three months. However, even after the expiry of the said period, Vidyadhar Upadhyay could not join his duty. Subsequently he retired as such on 30.6.1998 on attaining the age of superannuation. In the meantime to fill up vacancy arising out on account of the non-joining of Sri Vidyadhar Upadhyay, the Committee of Management advertised the vacancy in two newspapers "Aaj" and "Dainik Jagran" both dated 29.12.1997. Applications were invited and the petitioner was also one of the

applicants for the said post. According to the petitioner, he is M.A. (Sanskrit) and M.A. (Politics) as well as he has done his B.A. in Education and he is, therefore, fully eligible for the appointment as Assistant Teacher in L.T. Grade against the post so advertised. The Committee of Management considered the candidature of the various candidates. Thereafter, by its resolution dated 19.1.1998 finding the petitioner to be the best candidate, granted ad hoc appointment to the petitioner. The petitioner also joined the post as Assistant Teacher in L.T. grade on 20.1.1998. Thereafter, papers relating to the selection were forwarded by the Committee of Management by its letter dated 20.1.1998 to the District Inspector of Schools, Azamgarh.

2. When no decision was communicated by the District Inspector of Schools the petitioner filed a writ petition No. 14097 of 1998 in which notices were issued and subsequently the writ petition was disposed of by this Court on 18.5.1999 with a direction to the District Inspector of Schools to decide the question of grant of financial approval.

3. Again when no decision was taken by the District Inspector of Schools the petitioner was compelled to file Contempt Petition No. 3169 of 1999 in which notices were issued on 12.9.2006. It is after the issue of the notices in the contempt petition that the District Inspector of Schools has passed the order dated 30.10.2006, which is impugned in the present writ petition.

4. I have heard Sri Amit Singh, learned counsel appearing for the petitioner and learned Additional Chief Standing Counsel appearing for the respondent Nos. 1 to 4. No one appears for the Committee of Management, respondent No. 5 although the name Sri Siddharth Singh has been shown in the cause list in the array of the respondents. List has been revised.

5. The submission of learned counsel for the petitioner is that he was appointed against the short-term vacancy which occurred on account of regular teacher, Sri Vidyadhar Upadhyay, proceeding on medical leave. It is also submitted that the appointment was made after the vacancy had been advertised in two newspapers "Aaj" and "Dainik Jagran" both published on 29.12.1997 and out of several applications which were received, the candidature of the petitioner was found to be most suitable and thereafter the petitioner was issued appointment letter on 19.1.1998 by resolution of the Committee of Management of the same date. The petitioner also joined as Assistant Teacher on 20.1.1998. His submission is, therefore, that the selection of the petitioner has been made through proper procedure by advertising the vacancy in two newspapers and therefore, the same cannot be faulted. His further submission is that the regular incumbent, Sri Vidyadhar Upadhyay, retired on 30.6.1998 on attaining the age of superannuation, therefore, the vacancy became a substantive vacancy and ever since the petitioner has taken charge of the post, no other selection has been held and no other candidate selected by the Service Selection Board has come to join the post.

6. The further submission of learned counsel for the petitioner is that the impugned order dated 30.10.2006 is bad in law inasmuch as Section 18 of the Act, 1982 does not place any embargo upon the powers of the Committee of Management to make appointment against short-term vacancy without making any reference to the Service Selection Board.

7. From a perusal of the impugned order dated 30.10.2006 it appears that the petitioner was appointed through proper selection in which vacancy arising out of the regular incumbent, Sri Vidyadhar Upadhyay, proceeding on leave, had been published in two newspapers "Aaj" and "Dainik Jagran" both dated 29.12.1997. Alongwith the various other applicants, the petitioner had also submitted an application and after considering the candidature of the candidates, the petitioner was found to be best candidate and by the resolution of the Committee of Management dated 19.1.1998 the petitioner was recommended for appointment and a letter was also issued to him. In pursuance of the resolution of the Committee of Management the petitioner also joined as Assistant Teacher, L.T. grade on 20.1.1998. It is also the admitted position that Sri Vidyadhar Upadhyay thereafter never reported for joining and remained on leave till 30.6.1998 on which date he retired on attaining the age of superannuation.

8. In the impugned order it is also stated that requisition was sent to the Uttar Pradesh Secondary Education Service Selection Board, Allahabad but no candidate has been selected so far. The petitioner has been working as Assistant Teacher, L.T. Grade since 20.1.1998

9. From the impugned order it is seen that the ground on which the appointment of the petitioner has been held to be bad was that it was made by the Committee of Management by advertising the vacancy in two newspapers without reference to the Uttar Pradesh Service Selection Board, Allahabad and, therefore, such appointment was bad in law being in violation of the provisions of Section 18 of the Act, 1982 which provided that after coming the enforcement of the Act 1982 all appointments shall be made only through the Uttar Pradesh Service Selection Board.

10. This aspect of the mater has already been considered by the Division Bench of this Court in the case in Daya Shankar Misra v. District Inspector of Schools and others, 2010 (10) ADJ 829 (DB) and the Division Bench while interpreting the provision of Section 18 of the (Service Selection Board) Act, 1982 has held as follows :

29. The next question to be considered which is interrelated is as to whether there is any power with the management surviving to make ad hoc appointments on short-term vacancies after insertion of Section 33-E in the 1982 Act which rescinded the various Removal of Difficulties Orders issued. With regard to this question two aspects have to be considered. Firstly the effect of Section 32 of the 1982 Act, which provides that the provisions of 1921 Act, the Rules and Regulations made thereunder shall continue to be in force for the purposes of

selection, appointment, promotion, dismissal, removal, termination or reduction in rank of a teacher, so far as they are not inconsistent with the provisions of the 1982 Act or Rules or Regulations made thereunder. Secondly whether there is any power under the 1921 Act or the Regulations framed thereunder to fill up short-term vacancies.

30. We may note here with emphasis that Section 32 of the 1982 Act uses the words selection, appointment and promotion of a teacher. The words selection, appointment and promotion will include substantive as well as short-term vacancies. Further we have to see whether there is any inconsistency or not in the provisions of the two Acts and the Rules and Regulations framed thereunder. We have already held above that the power of the Board to make selections is only with regard to appointments against substantive vacancies. There is no provision under the 1982 Act for making selection for appointments against short-term vacancies.

31. Under the 1921 Act, the procedure for selection of teachers and head of the institutions is laid down in Section 16-E thereof. Power of the management to fill up short-term vacancy having occurred on account of leave extending for more than six months or on suspension is specifically provided in sub-section 11 of Section 16-E of the 1921 Act. Further Chapter-II of the Regulations framed under the 1921 Act deals with the appointments of heads of the institutions and teachers. It refers to Sections 16-E, 16-F and 16-FF of the 1921 Act. Regulation 9 of the said Chapter confers the power on the management to fill up the short-term vacancies arising out of leave exceeding period of six months and suspension of a teacher having been approved. The management thus was vested with the power under the 1921 Act and the Regulations framed thereunder to fill up short-term vacancy. Further as there is no provision under the 1982 Act or the Rules and Regulations framed thereunder with regard to filling up of short-term vacancies, it can be safely concluded that there is no question of any inconsistency in the two Acts or the Rules and Regulations framed thereunder for filling up short-term vacancies. Thus taking aid of Section 32 of the 1982 Act the definition of vacancy given in 1998 Rules and the provisions contained in Section 16-E(11) of the 1921 Act and Chapter-II of the Regulations framed under the 1921 Act, the management of an institution is vested with the power to fill up short-term vacancies.

32. A Full Bench of this Court in the year 1994 in the-case of Radha Raizada (*supra*) while dealing with the various provisions contained in the 1982 Act and the 1921 Act, had laid down that no ad hoc appointment could be made by the management against the sub-stantive vacancy in view of the provisions contained in Sections 16 and 18 of the 1982 Act. It, however, further held that only short-term vacancies could be filled up by the management after following the due procedure prescribed in the Second Removal of Difficulties Order, which had not been rescinded till then. After its rescission in 1999 the power to fill up short-term vacancy of a teacher can be derived by the management from Section

16-E(11) of the 1921 Act and regulation 9 of the Chapter II of the Regulations framed under the 1921 Act.

33. We have also dealt with the practical aspect of the matter that in order to maintain not only the discipline but also the standard of education and commitment enforced under the Constitution, regular teaching is essential. For enforcing the same, in the given circumstances and under emerging situations, the short-term vacancies need to be given urgent attention. If short-term vacancies are not filled up in time, the teaching would intensely suffer. Apparently for this reason the Legislature knowing fully well that selections will be made by the Board, not for individual cases, but at State level would result into long durations, left the selection for short-term vacancies outside the purview of the Board.

11. In view of the aforesaid legal position and the facts admitted in the impugned order itself, the impugned order dated 30.10.2006 therefore, is absolutely illegal and cannot survive.

12. The writ petition is allowed and the impugned order dated 30.10.2006 is quashed. It is directed that the petitioner will be entitled to full salary and other emoluments on the post of Assistant Teacher, L.T. grade month to month and in case he has not been paid salary, he shall also be entitled to arrears of salary as per Rules.