

(1999) 07 AHC CK 0165
In the Allahabad High Court
Case No : Special Appeal No. 955 of 1997

Raj Kumar Verma and another	Vs	APPELLANT
District Inspector of Schools, Saharanpur and others		RESPONDENT

Date of Decision : 09-07-1999

Acts Referred:

Uttar Pradesh Secondary Education Service Commission Selection Boards (Second Amendment) Act, 1992 — Section 33A(1), 33B(2), 33B(5)
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 16(2), 33A(2), 33B, 33B, 33B(1)

Citation : (1999) 3 AWC 2485 : (1999) 2 UPLBEC 1420

Hon'ble Judges : N.K. Mitra, C.J;S.R. Singh, J

Bench : Division Bench

Advocate : B.N. Rai, for the Appellant;

Final Decision : Partly Allowed

Judgement

S.R. Singh, J.—The appellants are aggrieved by the judgment dated 15.10.1997 whereby the learned Single Judge while allowing the writ petition made the following observation :

"It is, however, made clear that the District Inspector of Schools. Saharanpur shall take a decision in the matter within a month from the date of production of a certified copy of this order as to whether the promotion of those persons on whose vacancies the petitioners had been appointed, have been confirmed. In case respondent No. 1 finds that their promotions had been confirmed, the short term vacancy ceases and ad hoc appointments can be made by the Deputy Director of Education in accordance with the rule referred to above. Respondent No. 1 will take appropriate action by intimating such vacancies to the Deputy Director of Education of the region concerned and he will take suitable action in the matter. As regards the past salary, if for the period the petitioners have worked that has not been paid, that shall be paid in accordance with law to the petitioners within two months from the date of production of a certified copy of

this order."

2. The core question that calls for consideration in this case is whether a teacher appointed in C.T. grade under para 2 of the U. P. Secondary Education Service Commission (Removal of Difficulties) (Second) Order, 1981 on or before May 13, 1989 is on the short-term vacancy being converted into a substantive one entitled to a substantive appointment and on fulfillment of conditions stipulated in Section 33B of the U. P. Secondary Education Service Selection Boards, 1981 (U.P. Act 5 of 1982)?

3. The case of the appellants before the learned single Judge was that they were appointed in short-term vacancies caused due to ad hoc promotion of permanent incumbents to L.T. grade. Learned single Judge held that the appellants were appointed assistant teachers in C.T. grade on 17.8.1987 and their appointments were approved by the District Inspector of Schools vide letter dated 11.11.1988. Their claim for salary was opposed on two grounds : First, that the approval of the petitioner was accorded only for specified period from 17.8.1987 to 31.12.1987 and not till the selected candidates were appointed by the Selection Board ; Second, that the appointments were to be made from the quota of reserved pool teachers but instead of making appointments from that category, the management illegally appointed the petitioners. Overruling the first objection, the learned single Judge held, relying upon a decision of this Court in *Shiva Chandra Mishra v. District Inspector of Schools, Allahabad* and another 1986 UPLBEC 248. that the appellants were entitled to continue till the short-term vacancy existed or till the regularly selected candidates were appointed by the management. Learned single Judge, however, held that there was nothing to show that the teachers who were given ad hoc promotion and in whose place the appellants were given ad hoc appointments had been confirmed. Learned single Judge was of the view that a short-term vacancy would cease to exist in case the promotee teachers had been confirmed and in that event, fresh appointments could be made in accordance with the provisions of the U. P. Secondary Education Service Commission and Selection Boards Act. 1982 and the rules made thereunder and it was in this view of the matter that the District Inspector of Schools has been directed by the learned single Judge to take a decision as to whether the promotee teachers in whose place the appellants were given ad hoc appointments had been confirmed. As regards the second objection taken in the counter-affidavit filed on behalf of the District Inspector of Schools, the learned single Judge held that it had not been stated in the counter-affidavit that any reserve pool teacher was available who could claim appointment in preference to the appellants.

4. The appellants are aggrieved by that part of the judgment in which it has been held that in case the short-term vacancies ceased to exist, fresh appointments could be made according to law. The submission made by the learned counsel for the appellants is that in the fact situation of the case, the appellants were entitled to be regularised and given substantive appointments by virtue of the

provisions contained in Section 33B of the U. P. Secondary Education Service Commission Selection Boards Act, 1982 which was inserted by U. P. Act No. 1 of 1993 w.e.f. 7.8.1993 and the learned single Judge, submitted the learned counsel, failed to notice the said provision and accordingly erred in directing that fresh appointments could be made in case the short-term vacancies had ceased to exist by virtue of being converted into substantive vacancies. Shri Sabhajeet Yadav, learned standing counsel tried to support the direction contained in the Impugned judgment for making fresh appointments in case the vacancies have been converted into substantive vacancies due to the reason of confirmation of ad hoc promotees into L.T. Grade posts. Learned standing counsel placed reliance upon Full Bench decision of this Court in *Pramila Mishra v. Deputy Director of Education, Jhansi Division, Jhansi and others.* (1997) 2 UPIBEC. 1329.

5. We have given our anxious consideration to the submissions made across the Bar. At the very outset, it may be pointed out that although the learned counsel appearing for the appellants tried to urge that the appellants were given ad hoc appointment in substantive vacancies but on being confronted with the legal position that in that situation, appointments of the appellants would be void ab initio in view of Section 16 (2) of the Act aforesaid, being ad hoc appointments without satisfying the conditions stipulated in Section 18 of the Act and without following the procedure laid down in U. P. Secondary Education Service Commission (Removal of Difficulties) Order, 1981 for ad hoc appointments by direct recruitment in substantive vacancies, the learned counsel very fairly conceded that the submissions made by him as also the grounds taken in that regard in the memo of appeal were born of factual and legal misconceptions. The learned counsel, however, placed reliance on Section 33B of U. P. Act No. 5 of 1982 to support his contention that the appellants were entitled to be given substantive appointment upon conversion of the short-term vacancies into substantive vacancies.

6. Section 33B inserted in the Statute by U. P. Act No. 1 of 1993 w.e.f. 7.8.1993. inter alia, provides that any teacher who was appointed in C.T. grade on or before May 13. 1989 against short-term vacancy in accordance with paragraph 2 of the U. P. Secondary Education Service Commission (Removal of Difficulties) (Second) Order. 1981 shall on such vacancy being converted into a substantive vacancy be given substantive appointment by the management if such teacher fulfils the conditions : first, that he possesses the qualifications prescribed under, or is exempted from such qualifications, in accordance with the provisions of the U. P. Intermediate Education Act. 1921 ; second, that he has been continuously serving the Institution from the date of such appointment upto the date of the commencement of the U. P. Secondary Education Service Commission and Selection Boards (Second Amendment) Act, 1992 ; third, that he is not related to any member of the management or the Principal or Head Master of the Institution concerned in the manner specified in the Explanation to subsection (3) of Section 33-A ; and he has been found "suitable" and "eligible" for appointment in a substantive capacity by the Selection Committee constituted

under sub-section (2). The Regional Selection Committee for the aforesaid purposes comprises of Regional Deputy Director of Education as Chairman ; one officer holding a Group "A" post (specified as such by the State Government from time to time) in any department other than Education, to be nominated by the State Government ; and Regional Inspectress of Girls School of the region concerned. As visualised by sub-section (2) of Section 33A of the Act, the Inspector of Schools of the district shall be co-opted as a member. Sub-section (2) further provides that selection committee so constituted shall consider the case of such teacher and on being satisfied about his "eligibility" and "suitability" in view of the provisions of subsection (1) shall, recommend his name to the management for appointment in a substantive vacancy. Sub-section (3) provides that the names of the teacher shall be recommended for substantive appointment in order of seniority as determined from the date of their appointment, Sub-section (4) provides that every teacher so appointed in substantive vacancy shall be deemed to be on probation from the date of such substantive appointment. Subsection (5) provides that a teacher who is not found suitable under subsection (1) and a teacher who is not eligible to get a substantive appointment under that sub-section shall cease to hold the appointment on such date as the State Government may by order specify. Sub-section (6) provides that nothing contained in this section shall be construed to entitle any teacher to substantive appointment, if on the date of commencement of the Act referred to in sub-clause (iii) of clause (a) of subsection (1), such vacancy had already been filled or selection for such vacancy has already been made in accordance with this Act.

7. In view of the provision of Section 33B, we are of the considered view that in case the short-term vacancies on which the appellants were appointed are found to have been converted into substantive vacancies, the first question that should be considered by the concerned authority is whether the appellants are "suitable" and "eligible" for being given substantive appointment. In case they are found "suitable" and "eligible", the Selection Committee referred to in sub-section (2) of Section 33B shall recommend their names for substantive appointment which they shall be entitled to be given subject to the provisions contained in sub-section (6). In case, however, they are not found "suitable" and "eligible", they would cease to hold the appointment with effect from such date as may have been specified by the State Government in this regard under subsection (5) of Section 33B of the Act notwithstanding the provisions contained in para 3 of the U. P. Secondary Education Service Commission (Removal of Difficulties) (Second) Order, 1981 which provides that appointments under para 2 thereof will cease to have any effect on the cessation of the short-term vacancies. The view we are taking is not in conflict with the view taken by the Full Bench of this Court in the case of Promila Misra.

8. The question for consideration before the Full Bench in the case of Pramila Misra (supra) was whether a teacher appointed on ad hoc basis in a short-term vacancy, such as a vacancy caused due to leave, was entitled "as of right" to

continue on the said post even after the short-term vacancy had been converted into a permanent vacancy due to death, resignation, retirement or termination of the permanent incumbent. The Full Bench noticed that the answer to the question would depend on the interpretation of Section 33B of the U. P. Secondary Education Services and Selection Boards Act, 1982 (U. P. Act No. 5 of 1982) and its "interaction" with the provisions of the U. P. Secondary Education Service Commission (Removal of Difficulties) (Second) Order. 1981. The Full Bench held as under :

"In the case of ad hoc appointment in a short-term vacancy paragraph 3 of the Second Order specifically lays down that the appointment will come to an end If the short-term vacancy otherwise ceases to exist. It follows. therefore, that when a vacancy caused due to grant of leave to or suspension of the permanent incumbent becomes a substantive vacancy on account of his death. resignation or termination or removal from service, the short term vacancy ceases to exist and a substantive vacancy is created in its place. On a perusal of the relevant provisions of the Acts, Rules and Removal of Difficulties Orders and giving our anxious consideration to the matter, we do not find any provision which directly or even indirectly vests a right in a person appointed as an ad hoc teacher in a short term vacancy to continue even after the said vacancy has ceased to exist and a substantive vacancy has been created in its place.....What we want to stress and which is clear to us is that he cannot claim as a matter of right that he is entitled to continue in the post till the candidate selected by the Commission/ Board joins even if the short term vacancy has ceased and a substantive vacancy in the post of teacher has been created in its place."

9. Paragraph 3 of the U. P. Secondary Education Service Commission (Removal of Difficulties) (Second) Order. 1981 as amended by para 3 of the U. P. Secondary Education Service Commission (Removal of Difficulties) (Third) Order. 1982 provides that every appointment of an ad hoc teacher under paragraph 2 shall cease to have effect (i) when the teacher, who was on leave or under suspension joins the post of (ii) when the short-term vacancy otherwise ceases to exist. The Full Bench in support of its conclusion aforesaid has placed reliance on the provisions contained in para 3 of the Second Removal of Difficulties Order. 1981 referred to above. The Full Bench, in support of its conclusion referred to above, also noticed the difference in the manner of appointments under the provisions in the following words :

"A clear distinction has been maintained between substantive vacancy and short-term vacancy of the post of a teacher. The authority to make the appointment, the procedure to be followed in making the appointment and the consideration to be made in making the appointments in the two cases are distinct and different from each other."

10. The question herein is not whether a teacher appointed in a short-term vacancy is entitled to continue as of right even after the vacancy is converted into a substantive vacancy. The question involved in the instant case is whether

the appellants are entitled to be considered for being given substantive appointment. The right to be so considered for being given substantive appointment u/s 33B accrues only upon conversion of the short-term vacancy into substantive vacancy as provided in sub-section (1) of Section 33B. A teacher appointed in short-term vacancy on or before the dates specified in sub-clause (a) (i) of subsection (1) of Section 33B if not found "suitable" and "eligible" to get substantive appointment would cease to hold the post on such date as the State Government may by order specify. That is how the provisions contained in Section 33B of U. P. Act No. 5 of 1982 "interact" with those of the U. P. Secondary Education Service Commission (Removal of Difficulties) (Second) Order, 1981 in respect of teachers appointed prior to the date specified in the section. The question as to how do the two provisions "interact" has not been specifically answered by the Full Bench in Pramila Mishra's case (supra). In our opinion, the right of a teacher appointed in a short-term vacancy on or before the date specified in Section 33-B (1). accrues only upon the short-term vacancy being converted into a substantive vacancy and a teacher, appointed in short-term vacancy on or before the specified dates, who is not found "suitable" and "eligible" for substantive appointment shall cease to hold the appointment on such date as the State Government may by order specify and not on the date the short-term vacancy came to be converted into substantive vacancy. The question, in our considered opinion, needs to be examined by the duly constituted Selection Committee comprehended by sub-section (3) of Section 33B as the appellants were concededly appointed in Certificate of Teaching Grade before the specified date namely, May 13, 1989. Whether they fulfill other conditions of being given substantive appointment is a question which is to be decided by the Selection Committee. In our opinion, therefore, the Judgment of the learned single Judge needs to be modified accordingly for nothing in Pramila Mishra's case, inhibits substantive appointment being given to a teacher appointed against a short-term vacancy prior to the dates specified in Section 33B of U. P. Act No. 5 of 1982 if the conditions stipulated therein are satisfied and such teacher is found by the Selection Committee "suitable" and "eligible" for being given substantive appointment. As a matter of fact, the question as to the "interaction" of Section 33B of U. P. Act No. 5 of 1982 with the provisions contained in the U. P. Secondary Education Service Commission (Removal of Difficulties) (Second) Order. 1981. though posed by Full Bench in Pramila Mishra, has not been answered, perhaps due to inadvertence, if we may say so with utmost respect and humility. The contention of Sri Sabhajeet Yadav. standing counsel is. therefore, unacceptable to us.

11. In view of the conclusion-aforestated. the appeal succeeds and is allowed in part. The judgment of the learned single Judge is modified to the extent indicated in this judgment. The appellants are given liberty to represent their case before the Regional Deputy Director of Education/Chairman of the Selection Committee constituted under subsection (2) of Section 33B of the Act who shall get the matter examined in accordance with Section 33B of the U. P. Act No. 5 of

1982 and take appropriate decision thereon within two months of the receipt of representation. The parties shall bear their own costs.