
(1997) 11 AHC CK 0023

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 34640 of 1997

Ram Kripal Sharma

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 22-11-1997

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G(3)

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 11, 12, 7, 8, 9A

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 18, 21(1)

Uttar Pradesh Secondary Education Services Commission Rules, 1995 — Rule 15

Citation : (1997) AWC 672 : (1998) 1 UPLBEC 159

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Ashok Khare, for the Appellant;

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—The petitioner is claiming salary for the month of September, 1997 and onwards for the post of Assistant Teacher in L.T. grade in Maharana Pratap Inter College, City and District Gorakhpur.

2. The version of the petitioner is that a substantive vacancy of the post of Lecturer in Biology came into existence on account of retirement of the permanent Lecturer in Biology in the institution. Sri Baud Nath Yadav, who was a permanent Assistant Teacher in L.T. Grade, was granted ad-hoc promotion to the post of Lecturer. As a consequence of grant of ad-hoc promotion to Baud Nath Yadav a short term vacancy came into existence in L.T. Grade for Biology Teacher. The Committee of Management of the institution advertised the post for filling the short term vacancy of the post of Assistant Teacher in L.T. Grade for teaching Biology subject. The petitioner applied for appointment. He was selected. The Committee of Management passed resolution on 5.12.1993 to appoint the petitioner on the said post and forwarded the papers to the District

Inspector of Schools for according approval of the appointment. The Management of the institution permitted the petitioner to join the institution on 3.2.1994 and the District Inspector of Schools, Gorakhpur accorded approval of the appointment of the petitioner by means of order dated 4.7.1994. The petitioner has been paid monthly salary regularly from June, 1994 till the month of August, 1997. The petitioner has not been paid salary for the month of September, 1997. An objection was raised on behalf of respondent No. 2 that the short term vacancy of the petitioner ceased when the U.P. Secondary Education Service Commission approved the promotion of Baud Nath Yadav.

3. The contention of the learned Counsel for the petitioner is that U.P. Secondary Education Service Commission has selected Sri Baud Nath Yadav for granting regular promotion on 28.1.1997. His promotion should be treated for a period of one year which would expire on 27.1.1998 and secondly, if his promotion is taken to have been confirmed, the petitioner shall be treated as having been appointed on substantive vacancy. This argument is based on Regulation 9-A of Chapter II of the Regulations framed under the U.P. Intermediate Education Act which reads as under :-

"A teacher appointed to a post to fill a vacancy caused by the promotion of a permanent teacher from a lower grade to higher grade shall be deemed to have been appointed in substantive capacity on the post from the date of confirmation of such permanent teacher in the higher grade."

4. This provision is not applicable to the facts of the present case. The petitioner was not appointed under Regulation 9-A of Chapter II of the Regulations framed under U.P. Intermediate Education Act. The petitioner was appointed on a short term vacancy as contemplated under U.P. Secondary Education Service Commission (Removal of Difficulties) (Second) Order, 1981, This Order also prescribes procedure for making appointment on short term vacancy. The ad hoc appointment was made u/s 18 of U.P. Secondary Education Service Commission and Selection Boards Act, 1982 as it then existed. The petitioner therefore cannot rely upon Regulation 9-A for the purpose of treating his appointment to have been made on substantive capacity.

5. The second submission of the learned Counsel for the petitioner is that the promotion of Baud Nath Yadav to the post of Lecturer in the institution shall be treated on probation for one year and the period of one year having not expired, the short term vacancy on the post of Assistant Teacher in L.T. Grade continues. He relies upon Regulation 7 of Chapter III of the Regulations framed under the U.P. Intermediate Education Act, 1921 which provides that a person selected for substantive appointment against a clear vacancy shall be placed on probation from the date of joining duties. Regulation 8 provides that the period of probation shall be one year. Regulation 11 provides that unless before expiry of the period of probation, the service of a Headmaster, Principal or a teacher is terminated or action is taken to dismiss, discharge or remove him or reduce him in rank or in the case of Headmaster or Principal the period of probation is

extended under Regulation 12, he shall be confirmed on the post and in the grade at the end of his probation. The services of a teacher working on probation cannot be terminated except with prior approval of the District Inspector of Schools as provided u/s 16-G(3) of U.P. Intermediate Education Act, 1921 vide *Govind Saran Aeron v. Deputy Director of Education, III Region, Bareilly and Ors.* 1983 UPLBEC 307

6. Baud Nath Yadav has been promoted on regular basis after selection by the U.P. Secondary Education Service Commission. His services cannot be terminated except with the prior approval of UP. Secondary Education Services Commission as provided u/s 21 (1) of U.P. Secondary Education Service Commission and Selection Boards Act, 1982. A teacher having been appointed/promoted to a post, though he may be appointed on probation, shall be entitled to continue till his services are terminated. The appointment by promotion having been made to the post on which the said teacher is appointed, shall be treated to have been filled in on regular basis, The post cannot be treated as vacant. Baud Nath Yadav having been regularly promoted to the post of Lecturer, the post of Assistant Teacher in L.T. grade shall be treated as vacant. The short term vacancy shall be converted into permanent vacancy. A person having been appointed/promoted to any post after selection by the U.P. Secondary Education Services Commission is not entitled to claim lien on the post on which he was working in any institution before his appointment.

7. The last submission of the learned Counsel for the petitioner is that the post of Assistant Teacher in L.T. grade continues to remain vacant and the petitioner is entitled to continue to work on the said post till any selected candidate is appointed by the U.P. Secondary Education services Commission. Having found that the short term vacancy ceases to continue and such vacancy turns to be a substantive vacancy, the ad hoc appointment has to be made in accordance with Rule 15 of U.P. Secondary Education Services Commission Rules, 1995 which provides that the Regional Deputy Director of Education shall advertise the post and make the selection for the purpose of ad hoc appointment. The short term vacancy has now been converted into substantive vacancy. It is Regional Deputy Director of Education who has to take steps for making ad hoc appointment. On the advertisement being made by the Regional Deputy Director of Education, the petitioner can also apply for appointment.

8. The petitioner having been appointed on short term vacancy cannot claim as a right to continue on the post in question even after conversion of that vacancy into a substantive vacancy in view of Full Bench decision of this Court in *Smt. Pramila Mishra v. Deputy Director of Education, Jhansi and Ors.* (1977) 2 UPLBEC 1329. The petitioner, however, having already worked as Assistant Teacher in L.T. grade and paid salary for the said period shall not be asked to refund the salary received by him.

9. In view of the above discussion there is no merit in the writ Petition. It is accordingly dismissed.