

(2013) 05 AHC CK 0034

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 18046 of 1985, 2775 of 1986, 22891 of 1989, 50312 of 2010, 18696 of 2012 and 24051 of 2013

Ram Mani Pandey

APPELLANT

Vs

District Inspector of Schools, Basti and Others

RESPONDENT

Date of Decision : 16-05-2013

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 18

Citation : (2013) 4 UPLBEC 2805

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : G.D. Mishra and Sri Vijay Kumar Ojha, for the Appellant; Uma Nath Pandey and Sri J.P. Pandey, for the Respondent

Judgement

Arun Tandon, J.—Heard Sri Vijay Kumar Ojha and Sri G.D. Mishra, Advocates on behalf of Ram Mani Pandey, Sri Uma Nath Pandey, Advocate on behalf of the Committee of Management and learned Standing Counsel on behalf of State-respondents. This bunch of writ petitions raise common question of facts and law in relation to the appointment of a teacher, namely, Ram Mani Pandey. Therefore, all these petitioners have been clubbed together and are being decided by this common judgment.

2. Facts in short as reflected from the records of these writ petitions are as follows:

3. Kisan Intermediate College, Rasoolpur Tareta, Post Office Rasoolpur, District Basti (hereinafter referred to as the "institution" is an aided and recognized intermediate college. Provisions of U.P. Intermediate Education Act, 1921 (hereafter referred to as the "Act, 1921") and the rules and regulations framed thereunder as also those of U.P. Secondary Education Services Selection Board, 1982 (hereinafter referred to as "Act, 1982") are fully applicable to the teachers of the said institution.

4. According to Ram Mani Pandey, one Hari Prasad Pathak was working as L.T. Grade teacher in the said institution. He was granted promotion as Lecturer (Civics). His promotion was approved by the District Inspector of Schools, Basti vide order dated 7.10.1983. According to Ram Mani Pandey such promotion was ad-hoc and therefore, a short term vacancy was caused in L.T. Grade in the institution. The vacancy was advertised, petitioner was appointed. The appointment of Ram Mani Pandey was approved under order of the District Inspector of Schools dated 31.12.1984. It is mentioned in the appointment letter as well as in the order of approval that appointment of Ram Mani Pandey was being made u/s 18 of the Act, 1982 and that his appointment would cease on the date a candidate recommended by the U.P. Secondary Education Selection Board joins on the post of Lecturer. According to Ram Mani Pandey, his salary was stopped after 20.5.1985. Application made by him for payment of salary went unheard. He therefore, filed Civil Misc. Writ Petition No. 18046 of 1985 for a writ of mandamus directing the respondents to ensure payment of salary w.e.f. 21.5.1985 onwards. This writ petition was disposed of by a Division Bench of this Court on 22.11.1985 by providing that Ram Mani Pandey would continue till appointment is made on the post by the U.P. Secondary Services Commission or his services are terminated otherwise in accordance with law.

5. In the meantime, an order was issued by the District Inspector of Schools, Basti dated 27.7.1985 stating therein that no ad-hoc appointee is to continue after 30th June and therefore, salary of such ad-hoc employee may not be included in the salary bill of July. On 4.11.1985, another order was passed by the District Inspector of Schools in respect of Hari Prasad Pathak. It was directed that the Committee of Management did not have any jurisdiction to make any appointment on the vacancy which was within the direct recruitment quota. Accordingly, the proposal for promotion of the Committee of Management of Hari Prasad Pathak was rejected.

6. Against the order of the District Inspector of Schools dated 27.7.1985 and dated 4.11.1985, Ram Mani Pandey filed Civil Misc. Writ Petition No. 2775 of 1985.

7. The Committee of Management coming to know of the order of the Division Bench dated 22.11.1985 passed in Civil Misc. Writ Petition No. 18046 of 1985 made a recall/review application as the order was passed without notice being issued to the Committee of Management. It was stated in the counter affidavit that since the promotion of Hari Prasad Pathak as Lecturer (Civics) has been disapproved by the District inspector of Schools, he has been reverted to the post of L.T. Grade teacher and that he is working and getting salary of the L.T. Grade since July, 1985. Therefore, there being no vacancy, against, which Ram Mani Pandey could function as ad-hoc teacher. It was specifically stated in paragraph-31 that the short term vacancy came to automatic end with the reversion of Hari Prasad Pathak. Review/recall application filed in Civil Misc. Writ Petition No. 18046 of 1985 and the writ petition No. 2775 of 1986 were heard

together by a Division of this Court and by means of a reasoned speaking order dated 8.9.1987, writ petition No. 2775 of 1986 filed by Ram Mani Pandey was dismissed after recording that he had no locus to challenge the order disapproving the promotion of Hari Prasad Pathak. Recall application made by the Committee of Management was allowed and the order dated 22.11.1985 passed in writ petition No. 18046 of 1985, whereby Ram Mani Pandey was permitted to continue till a person from Commission joins or till his services are terminated in accordance with law was withdrawn. Civil Misc. Writ Petition No. 19046 of 1985, therefore, stood restored to its original number.

8. According to Ram Mani Pandey he made a review application in writ petition No. 2775 of 1986 being Review Application No. 1736526 of 1987, which remained pending.

9. It is surprising that for 25 years neither the review application in writ petition No. 2775 of 1986 nor writ petition No. 18046 of 1985 were listed before the Court. As matter of fact records of both the writ petitions were consigned by the office of the High Court. It took a detail order from this Court for the records being searched out and being placed again for disposal of the review application and the writ petition.

10. To complete the narration of facts, it may be noticed that Hari Prasad Pathak did not challenge the order of the District Inspector of Schools disapproving his promotion as Lecturer referred to above. There was no order permitting Ram Mani Pandey to continue after 20.5.1985.

11. Vacancy on the post of Lecturer (Civics) of the institution was advertised on 19.6.1988. This advertisement was subjected to challenge by Hari Prasad Pathak by means of Civil Misc. Writ Petition No. 20499 of 1988, wherein interim order was granted by a Division Bench of this Court dated 14.10.1988 restraining the respondents from making any appointment on the post of Lecturer (Civics) in pursuance to the advertisement. As a result whereof Hari Prasad Pathak claimed that he was permitted to continue on the post of Lecturer (Civics). Second advertisement was published in respect of same post by the Selection Board in August, 1992. This advertisement was again challenged by Hari Prasad Pathak by means of Civil Misc. Writ Petition No. 30808 of 1992.

12. It may be recorded that in these two writ petition filed by Hari Prasad Pathak, Ram Mani Pandey was not a party and therefore, any order for continuance of Pathak as Lecturer (Civics) will not confer any benefit upon Ram Mani Pandey. Civil Misc. Writ Petition No. 20499 of 1988 has been dismissed on 3.11.2008 and Civil Misc. Writ Petition No. 30808 of 1992 has been dismissed on 13.1.2009.

13. Ram Mani Pandey filed Civil Misc. Writ Petition No. 22891 of 1989 for a mandamus directing the respondents to treat the petitioner in service and to pay salary to him of the post of teacher in L.T. Grade along with arrears. In paragraph-19 of the writ petition, it has been stated as follows:

That however, the petitioner is not being paid any salary since 21.5.1985 in the institution, although he is working in the institution.

14. In the said writ petition, initially no interim was granted and only notices were issued. However, on 11.4.1994, an interim mandamus was passed to pay salary or to show cause. It appears that cause was shown as the District Inspector of Schools filed a counter affidavit therein.

15. Ram Mani Pandey along with Hari Prasad Pathak filed Civil Misc. Writ Petition No. 19691 of 1995, against the advertisement published by the Commission dated 19.6.1995, whereunder the vacancy on the post of Lecturer (Civics) was again advertised. This writ petition is stated to have been decided on 31.3.2010. So far as Hari Prasad Pathak is concerned, writ petition was dismissed as infructuous, while in respect of Ram Mani Pandey it has been provided that his claim for regularization may be considered in accordance with the provisions of Act, 1982.

16. The Selection Committee constituted under Act, 1982 has considered the case of Ram Mani Pandey on 31.7.2010 and directed his regularization u/s 33F of Act, 1982.

17. Against this order of the Regional Selection Committee dated 31.7.2010, the Committee of Management has filed Civil Misc. Writ Petition No. 50312 of 2010, wherein no interim order was granted. The Committee of Management, therefore, filed Special Appeal No. 1847 of 2010 against the order of the learned Single Judge dated 31.3.2010 passed in Civil Misc. Writ Petition No. 19691 of 1995, which is pending.

18. It appears that the Committee of management in the meantime, suspended Ram Mani Pandey vide resolution dated 28.10.2010 and thereafter passed a resolution dated 6.4.2011 proposing punishment of dismissal from service. Matter was referred to the Selection Board u/s 21 of Act, 1982 for its approval. Committee of Management filed Civil Misc. Writ Petition No. 18696 of 2012 for a mandamus commanding respondent No. 2 to take appropriate decision on the resolution of the Committee of Management dated 6.4.2011 by which the services of Ram Mani Pandey had been proposed to be terminated. This writ petition is pending.

19. The Selection Board under order dated 31.3.2013 has disapproved the proposed punishment.

20. Civil Misc. Writ Petition 24051 of 2013 has been filed by Ram Mani Pandey challenging the order dated 4.4.2013, wherein management of the College refused to accept the joining of Ram Mani Pandey and for his continuance in the institution. This petition is also under consideration today.

21. This Court will deal with the writ petitions serially:

22. Writ Petition No. 18046 of 1985 has been filed by Ram Mani Pandey for a writ

of mandamus for payment of salary for the period subsequent to 21.5.1985. In the counter affidavit filed on behalf of the Committee of Management it has been stated that Hari Prasad Pathak had been reverted to the post of L.T. Grade teacher under the order of the District Inspector of Schools dated 4.11.1985 and that there was no short term vacancy now left in L.T. Grade against which Ram Mani Pandey could continue on ad hoc basis. Reference has also been made to the order of the District Inspector of Schools dated 27.7.1985 whereby it was directed that salary bill of ad hoc appointees be not submitted after 30.6.1985.

23. In reply to the said allegation Ram Mani Pandey in rejoinder affidavit stated that he has filed Civil Misc. Writ Petition No. 2775 of 1986 challenging the said orders. Writ petition No. 2775 of 1986 stands dismissed as on date under the orders of the Division Bench dated 8.9.1987.

24. In view of the aforesaid, it being established on record that Hari Prasad Pathak had been reverted on the post of L.T. Grade teacher and he was getting salary of L.T. Grade teacher after 4.11.1985. The question of petitioner being permitted to continue and being paid salary against the post of L.T. Grade teacher does not arise. The vacancy in L.T. Grade itself ceased to exist after reversion of Hari Prasad Pathak. Moreover, the order of the District Inspector of Schools directing non-submission of salary bill of ad hoc teacher after June i.e. dated 27.7.1985 also stands on record.

25. So far as the review application filed in Civil Misc. Writ Petition No. 2775 of 1986 is concerned, since the writ petition was earlier decided by a Division Bench, it would be appropriate that the review application be listed before appropriate Division Bench. However, it may be recorded that there is no interim order operating in the said petition and mere pendency of review application will not dilute the effect of the judgment dated 8.9.1987.

26. Writ petition No. 18046 of 1985 is dismissed.

27. Writ petition No. 22891 of 1989 has been filed by Ram Mani Pandey for payment of salary on the allegation that his writ petition No. 18046 of 1985 and the review application filed in writ petition No. 2775 of 1986 were pending. In paragraph 15 it is stated that Hari Prasad Pathak continues to function on the post of Lecturer, therefore, there is a vacancy in L.T. Grade. Reference was made to Civil Misc. Writ Petition No. 20499 of 1988 filed by Hari Prasad Pathak wherein an interim order was granted restraining appointment on the post of Lecturer (Civics) in the institution.

28. Counsel for the Ram Mani Pandey made a statement that the Writ Petition No. 29499 of 1988 has been withdrawn. Even otherwise the interim order passed therein did not permit Hari Prasad Pathak to continue as Lecturer (Civics). It only restrained fresh appointment by the Selection Board in terms of the Advertisement.

29. In Writ Petition No. 22891 of 1989 filed by Ram Mani Pandey, no interim

order was granted at the initial stage. It was only on 11.4.1994 that an interim mandamus was issued to pay or to show cause. Cause was shown by the District Inspector of Schools by filing counter affidavit as is admitted by Ram Mani Pandey. In the counter affidavit, right as claimed by Ram Mani Pandey has been denied.

30. In paragraph 18 of the writ petition it has been stated that Ram Mani Pandey is still continuing as L.T. Grade teacher but has not been paid salary since 21.5.1985.

31. While the said petition was still pending, Ram Mani Pandey filed Civil Misc. Writ Petition No. 19691 of 1995 along with Hari Prasad Pathak wherein an order was passed on 24.7.1995 directing that there shall be an interim order till 11.9.1995 restraining the respondents from interfering in the working of the petitioners in the institution and they shall be paid salary in accordance with law. The respondents were also restrained from making any fresh appointment in terms of the Advertisement dated 19.6.1995. The interim order was extended on 12.9.1995 until further orders. This writ petition has been finally decided on 31.3.2010 with a direction that the case of Ram Mani Pandey for regularization be considered by the competent authority strictly in accordance with law. So far as Hari Prasad Pathak is concerned, the petition has been dismissed as infructuous.

32. In compliance to the order passed by the High Court on 31.3.2010, the Selection Committee has regularized the services of Ram Mani Pandey u/s 33F of U.P. Act No. 5 of 1982. Against this order, the Committee of Management has been filed No. 50312 of 2010 challenging the regularization.

33. Against the order of the Hon'ble Single Judge dated 31.3.2010, refusing interim order, the Committee of Management filed an Special Appeal which is pending.

34. Last Writ Petition No. 20451 of 2013 has been filed by Ram Mani Pandey for his being permitted to join in terms of the order of the Selection Board disapproving the punishment of removal as proposed by the Committee of Management.

35. From the narration of facts, it is to be examined by this Court in all these writ petitions, as to whether the petitioner is entitled for regularization u/s 33F of U.P. Act No. 5 of 1982 or not.

36. At the very outset, this Court may record that it is an admitted position that between 1985 to 1995 i.e. for nearly 10 years, the petitioner actually did not work in the institution. He is stated to have marked his presence in the office of the District Inspector of Schools. Further for this period of 10 years, he had not been paid even a single penny from the State exchequer.

37. If the entire case pleaded by the petitioner is taken to be correct on its face value, it will mean that the petitioner has been appointed against a short term

vacancy in the year 1984 and that the said vacancy has become substantive with the retirement of Hari Prasad Pathak on 30.6.2011 or on the date Hari Prasad Pathak is stated to have been regularized i.e. 28.11.2008. On these facts, the Court will examine the applicability of Section 33F to the case of Ram Mani Pandey.

38. It is worthwhile to reproduce Section 33F of Act No. 5 of 1982 which reads as follows:

33-F. Regularization of appointment against short term vacancies.--

(1)

Any teacher who,

(a) was appointed by promotion or by direct recruitment in the lecturer's grade or trained graduates grade on or after 14.5.1991 but not later than 6.8.1993 against a short term vacancy in accordance with paragraph 2 of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981, as amended from time to time, and such vacancy was subsequently converted into a substantive vacancy;

(b) possesses the qualification prescribed under, or is exempted from such qualifications in accordance with, the provisions of the Intermediate Education Act, 1921;

(c) has been continuously serving the institution from the date of such appointment up to the date of commencement of the Uttar Pradesh Secondary Education Services Selection Board (Amendment) Act, 2001;

(d) has been found suitable for appointment in a substantive capacity by the Selection Committee referred to in clause (a) of sub-section (2) of Section 33C in accordance with the procedure prescribed under clause (b) of the said sub-section;

shall be given substantive appointments by the Management.

39. From a simple reading of the aforesaid Section, it is apparently clear that only such ad hoc appointees who were appointed in accordance with paragraph 2 of the Removal of Difficulties Order, 1981 or after 14.5.1991 against short term vacancy, become entitled to be considered for regular appointment provided they have been continuously serving the institution from the date of such appointment up to the date of commencement of Uttar Pradesh Secondary Education Services Selection Board (Amendment) Act, 2001 and that the vacancy has subsequently been converted into substantive vacancy.

40. Ram Mani Pandey was not appointed on 14.5.1991 or after 14.5.1991. According to him, he has been appointed on ad hoc basis in the year 1984. Therefore, on this ground alone Section 33F will have no application qua the petitioner. If the date of appointment is taken as 1994 or 1995 i.e. from when he

has been paid salary from the State exchequer again, it would be beyond cut of date as per Section 33F i.e. 6.8.1993.

41. It is worthwhile to mention that Section 33B of Act, provides for regularization of ad hoc appointments made against short term vacancies on or before 14.5.1991. Therefore, the case of the Ram Mani Pandey will not be covered by Section 33F. The order of regularization appears to be misconceived.

42. At this stage, Counsel for Ram Mani Pandey states that there has been wrong mention of Section in the regularization order. His case is covered by Section 33B. Relevant paragraph of Section 33B reads as follows:

Regularisation of certain other appointments.--

(I) Any teacher other than the Principal or Headmaster, who--

(a) (I) was appointed by promotion or by direct recruitment in the lecturer grade or Trained Graduate grade on or before 14.5.1991 or in the Certificate or Teaching grade or before 13.5.1989 against a short term vacancy in accordance with paragraph 2 of the Uttar Pradesh Secondary Education Services (Removal of Difficulties) (Second) Order, 1981 and such vacancy was subsequently converted into a substantive vacancy or

(b)

(c) has been continuously serving the Institution from the date of such appointment up to the date of the commencement of the Act referred to in sub-clause (iii) of clause (a);

(d)

(e) has been found suitable for appointment in a substantive capacity by a Selection Committee constituted under subsection (2), shall be given substantive appointment by the Management.

43. It is no doubt true that the appointment of Ram Mani Pandey against short term vacancy is on or before 14.5.1991 and, therefore, Section 33B is attractive to that extent only.

44. Heavy reliance has been placed by the petitioner on the Enquiry Report on the basis of which it is claimed that he has been continuously working since 1984.

45. However, from the records this Court is satisfied that Ram Mani Pandey had actually not worked continuously since his initial appointment in the institution. It is the case of Ram Mani Pandey himself in Civil Misc. Writ Petition No. 2775 of 1986 that he has not been permitted to work as L.T. Grade teacher in the institution after 18.10.1985 and that he was giving his attendance in the office of the District Inspector of Schools.

46. It may also be recorded that between 1985 to 1995 there was no interim order operating in favour of Ram Mani Pandey in any of the writ petitions

permitting him to continue in the institution. It is also admitted on record that for this period between 1985 to 1994 i.e. for nearly ten years, he has not been paid salary from the State exchequer which fact is admitted by the Counsel for Ram Mani Pandey today in open Court.

47. In such circumstances it cannot be said that despite having not worked for nearly 10 years, Ram Mani Pandey can be treated to be in continuous service in terms of Section 33B(c) so as to be eligible for regularization. It has to be kept in mind that admission is the best piece of evidence. The enquiry report relied upon by Ram Mani Pandey is based more on assumption than on hard facts qua actual working of Ram Mani Pandey in the institution between 1985 to 1994.

48. In the totality of the circumstances on record, this Court finds that the case of the petitioner is neither covered by Section 33F nor is covered by Section 33B. Therefore, the order regularizing the petitioner cannot be legally sustained.

49. It is admitted on record that the vacancy in L.T. Grade had become substantive on 28.11.2008 with the regularization of Har Prasad Pandey as Lecturer (Civics). Therefore, the services of the petitioner have come to an automatic end in view of the law laid down by the Division Bench of this Court in the case of Surendra Kumar Srivastava Vs. State of U.P., .

50. Writ petition filed by the Committee of Management No. 50312 of 2010 is allowed. Order of regularization dated 31.7.2010 passed by the Regional Selection Committee is hereby set aside. The services of Ram Mani Pandey have come to an end by operation of law on 28.11.2008. Therefore, no mandamus as prayed for in Civil Misc. Writ Petition No. 24051 of 2013 and in Civil Misc. Writ Petition No. 22891 of 1989 need be granted as Civil Misc. Writ Petition No. 18696 of 2012 is rendered infructuous. All these writ petitions stands decided accordingly.