
(2004) 03 AHC CK 0134
In the Allahabad High Court
Case No : Special Appeal No. 478 of 2003

Ram Shanker Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-03-2004

Acts Referred:

Uttar Pradesh Secondary Education Service Commission Act, 1982 — Section 33F

Citation : (2004) 2 AWC 1627 : (2004) 2 UPLBEC 1866 : (2004) 2 UPLBEC 1266

Hon'ble Judges : Tarun Chatterjee, C.J.; Dilip Gupta, J

Bench : Division Bench

Advocate : Prakash Padia, for the Appellant; V.B. Khare and A.K. Shukla, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Tarun Chatterjee, C.J.—Gandhi Adarsh Vidyalyaya Inter College, Barhni, District Siddharthanagar (hereinafter referred to as the "institution") is a duly recognised institution under the provisions of U. P. Intermediate Education Act, 1921 (hereinafter referred to as the "Act"). The institution is in grant-in-aid list of the State Government and the provisions of U. P. High Schools and Intermediate Colleges (Payment of Salaries to the Teachers and Other Employees) Act, 1971 is applicable to this institution. In this institution one Rama Shanker Mishra was promoted on account of resultant vacancy occurred on which the appellant was appointed under the provisions as contained in Second Removal of Difficulties Order, 1981. The appointment of the appellant was duly approved by the District Inspector of Schools, Siddharthanagar by communication dated 31st March, 1995 and since then the appellant was regularly performing and discharging his duties and was paid his salary under the Act. However, the Manager of the institution, thereafter, passed an order of termination of the appellant on 31st May, 2002 which was issued by the District Inspector of Schools, Siddharthanagar. It is an admitted position that in the institution Rama Shanker Mishra, who was an Assistant Teacher in L.T. grade was promoted as a Lecturer in History on 9th

July, 1990. The Committee of Management, thereafter, appointed the appellant against the resultant short term vacancy after a period of four years and by means of the communication dated 31st March, 1995, the District Inspector of Schools intimated the Manager that approval was accorded to the appointment of the appellant on the condition that it would be ad hoc and purely temporary, in nature, and that the ad hoc appointment would automatically come to an end if Rama Shankar Mishra was reverted to his substantive post or a regularly selected candidate from the Commission Joined the services whichever was earlier.

2. Upon regularisation of the services of Rama Shanker Mishra as Lecturer, the vacancy in L.T. grade became substantive, in nature. According to Clause 3 of the U. P. Secondary Education Services Commission (Removal of Difficulties) Second Order, 1981, the duration of the ad hoc appointment of the appellant ceased since the short term vacancy came to an end. That is why the Committee of Management issued a letter dated 31st May, 2002 to the appellant intimating him that since the services of Rama Shankar Misra had been regularised, the ad hoc appointment of the appellant automatically came to an end. It is this letter of the Committee of Management of the institution intimating that his ad hoc appointment was going to cease against which the writ petitioners-appellant filed a writ application being Writ Petition No. 50510 of 2002 for quashing the order dated 31st May, 2002 seeking a further direction to the authorities of the institution to permit the appellant to discharge his duties as Assistant Teacher in L.T. Grade till a regularly selected candidate from the Commission joins. The writ application was dismissed by the learned Judge of this Court holding that once the short term vacancy was converted into a substantive one, the short term appointment of the appellant automatically came to an end. The learned Judge while dismissing the writ application on this ground relief on a decision of this Court in *Ran Vijay Singh Chauhan Vs. Joint Director of Education, Jhansi and others*,

3. On behalf of the appellant, it was urged that the appellant was entitled to the benefit as provided u/s 33F of the U. P. Secondary Education (Service Selection Board), Act, 1982 for regularisation of the appointment of the appellant. It is difficulty to accept this submission of the learned counsel for the appellant. Section 33F of the act provides that a teacher must have been appointed by promotion in the Lecturers Grade on or after 14th May, 1991 but not later than 6th August, 1993 against the short term vacancy in accordance with paragraph 2 of the Second Removal of Difficulties Order, 1981. In the present case, the fact is that the appellant was admittedly appointed on 13th March, 1995 and, therefore, Section 33F of the Act cannot be made applicable to the facts of the present case. It was next argued by the learned counsel for the appellant that the appellant was entitled to continue irrespective of the fact that the short term vacancy had come to an end till regularly selected candidate from the Commission joined the post. This contention is no longer available to the appellant as in the case of *Smt. Pramila Mishra v. Deputy Director of Education*,

1997 AWC 466 : 1997 (2) UPLBEC 1329 a Full Bench of this Court in paragraph 16 has held that there was no provision which directly or even indirectly vests a right on 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. The Full Bench also, in the aforesaid decision, did not accept the contention that such an appointee in a short term vacancy was entitled to continue against the substantive vacancy till the joining of a candidate selected by the Commission.

4. Learned counsel for the appellant, however, has placed reliance on a decision of this Court in Raj Kumar Verma and another Vs. District Inspector of Schools, Saharanpur and others, so as to satisfy this Court that the appellant was entitled to be considered for regular appointment. In our view, this decision is not, at all, applicable to the facts and circumstances of the present case. In that decision this Court was specifically dealing with the provisions of Section 33B of the Act which provides that any teacher appointed between certain dates and on certain conditions, shall be given substantive appointment by the Management of the institution. It is the admitted position in this case that the appellant was appointed against a short term vacancy between the dates mentioned in the section and, accordingly, as noted hereinafter, this decision is of no help to the appellant, Reliance was also placed in Smt. Shashi Saxena Vs. Deputy Director of Education and others, In our view, this decision too does not help the appellant since this decision deals with the regularisation of appointment either u/s 33A or Section 33B of the Act which benefit cannot be availed of by the appellant since he did not satisfy the conditions stipulated in the said sections.

5. That part, from the counter-affidavit, it appears that a regularly selected candidate from the Commission, namely, Ranjit Ram Verma has already joined and the appointment letter dated 28th May, 2003 is already placed on record.

6. Such being the position, the appellant could not have continued once the short term vacancy was converted into a substantive vacancy and a candidate has already been selected who has already joined in view of the clear provisions of Clause 3 of the Second Removal of Difficulties Order, 1981.

7. For the reasons aforesaid, there is no merit in this special appeal. The special appeal is, accordingly, dismissed. There will be no order as to costs. The interim order, if there be any, stands vacated.