
(2004) 07 AHC CK 0098

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 35591 of 1999

Ram Swarup Bajpayee

APPELLANT

Vs

Joint Director of Education and Others

RESPONDENT

Date of Decision : 30-07-2004

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards
(Amendment) Act, 1999 — Section 3

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 18, 33F

Citation : (2004) 5 AWC 4905 : (2004) 3 UPLBEC 2356

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Yogesh Kumar Saxena, for the Appellant; Krishna Ji Khare and S.C.,
for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—The petitioner has prayed for the quashing of the order dated 26.6.1999 passed by the District Inspector of Schools, Etawah, whereby his appointment on the post of Lecturer in Geography has not been approved. It transpires that a vacancy on the post of Lecturer in Geography became vacant upon the retirement of Sri Rajendra Kumar Srivastava in Sri Radha Ballabh Inter College, Phaphund, Etawah. This vacancy was required to be filled up by direct recruitment and, for this purpose, the post was notified to the Commission through the District Inspector of Schools, Etawah. In spite of the vacancy being notified, the Commission did not make any appointment within a period of two months. Accordingly, the petitioner was appointed on an adhoc basis u/s 18 of the U.P. Secondary Education Services Commission and Selection Boards Act, 1982 and an appointment letter was given on 9.8.1991. Prior to the issuance of the appointment letter, the Committee of Management had forwarded all the relevant papers, namely, the resolution, advertisement, the details of the selection process etc. to the District Inspector of Schools and in spite of receiving

these papers, no action was taken by the District Inspector of Schools. Accordingly, the appointment letter was issued on the basis of which the petitioner joined on 10.9.1991. Thereafter, the Committee of Management forwarded the petitioner's papers for payment of salary but the same was not processed by the District Inspector of Schools. Instead, the District Inspector of Schools appointed one Sri Narayan as an adhoc Lecturer. The petitioner filed a Writ Petition No. 11710 of 1993 before this Court, challenging the aforesaid order of the District Inspector of Schools. By an interim order the said appointment order was stayed and subsequently, by judgment dated 23.3.1999, the said writ petition was disposed of with a direction to the District Inspector of Schools, Etawah to consider the validity of the petitioner's appointment on the post of Lecturer in Geography and consider the grant of financial approval. Pursuant to the aforesaid direction the District Inspector of Schools, Etawah passed the impugned order dated 26.6.1999 refusing the grant financial approval.

2. The District Inspector of Schools has rejected the petitioner's claim on two grounds, namely, (1) The State Government had imposed a ban on fresh appointment by Government Order dated 30.7.1991 and, therefore, no appointment could have been made by the Committee of Management on 9.8.1991, (2) the appointment of the petitioner was made u/s 18 of the U.P. Secondary Education Services Commission and Selection Boards Act, 1982, which was repealed in 1991 and, therefore, no appointment could have been made u/s 18 of the Act.

3. Heard Sri Yogesh Kumar Saxena, the learned Counsel for the petitioner and the learned Standing Counsel appearing on behalf of respondent Nos. 1 and 2. In my view, the writ petition is liable to be allowed.

4. Admittedly, the selection process had begun and completed by 30.7.1999 and the papers for appointment of the petitioner were forwarded to the District Inspector of Schools on 1.8.1991. The Committee of Management did not and could not have knowledge of the issuance of the Government Order dated 30.7.91. Thus, the Government Order dated 30.7.91 could not be made effective on the selection process, which had begun prior to 30.7.1991 and ended on 30.7.1991. Looking at another aspect of the matter the respondent Nos. 1, 2 and 3 in Paragraph 19 of their counter-affidavit submitted that the Government Order dated 30.7.91 was sent to the District Inspector of Schools vide letter dated 31.8.1991, which was received by the District Inspector of Schools in September, 1991. Therefore, the order of the State Government imposing a ban became known to the authorities only in September, 1991. Thus, for the present purpose, the ban would be made effective from September, 1991 onwards. The selection process could not be rendered otiose merely because the Government Order issued a ban on fresh appointments in the meantime. Admittedly, the respondents have admitted in Paragraph Nos. 6 and 8 of the counter-affidavit that the selection process was carried out in accordance with the provisions of Section 18 of the Act, and that the Commission did not make the appointment

within the prescribed period of two months. Therefore, in my view, the selection process having been validly initiated, could not be set aside merely because of the issuance of the Government Order imposing a ban on fresh appointments which was communicated to the educational authorities much after the entire selection process was over. Thus, the rejection of the petitioner's appointment on this ground is wholly incorrect.

5. The second ground of the rejection of the petitioner's appointment is that Section 18 has been repealed by the U.P. Secondary Education Services Commission and Selection Boards (Amendment) Act, 1999 w.e.f. 25.1.1999 by insertion of Section 33-E in U.P. Act No. 5 of 1982. In my view, the rejection of the petitioner's application for appointment on this ground is wholly illegal. Section 3 of the U.P. Act No. 13 of 1999 states as under :

"Section 3. Repeal and Saving.--(1) The U.P. Secondary Education Services Commission and Selection Boards (Amendment) Ordinance, 1999 (U.P. Act No. 5 of 1999) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the provisions of the Principal Act, as amended by Ordinance referred to in Sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of the Principal Act, as amended by this Act as if the provisions of this Act were enforced at all material times."

6. In view of the aforesaid, the action of the management in appointing the petitioner u/s 18 of the aforesaid Act cannot be rendered illegal or void merely because the said section has been repealed after eight years. In my view, the action taken u/s 18 would remain valid and will not become void merely by the repeal of that section.

7. Consequently, the writ petition is allowed. The order dated 26.6.99 passed by the District Inspector of Schools, Etawah/Auraiya is quashed and a direction is issued to him to grant financial approval to the petitioner on the post of Lecturer in Geography w.e.f. 9.2.1981 within one month from the date a certified copy of this order is produced before the respondent No. 2. In the circumstances of the case there shall be no order as to costs.