

(1988) 01 AHC CK 0004

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 699 of 1988

Ravindra Singh Niranjana

APPELLANT

Vs

District Inspector of Schools and Another

RESPONDENT

Date of Decision : 05-01-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 18, 18(1), 18(2), 33

Citation : (1988) 1 AWC 658

Hon'ble Judges : S.D. Agarwala, J; Anshuman Singh, J

Bench : Division Bench

Advocate : Pradeep Chandra, for the Appellant;

Final Decision : Allowed

Judgement

S.D. Agarwala, J.—By means of the present petition under Article 226 of the Constitution of India, the petitioner has challenged the order dated October 13, 1987. In this order, the District Inspector of Schools, Jhansi, has refused to give approval to the ad hoc appointment of the petitioner in Gandhi Vidyalaya Inter College, Mauranipur, district Jhansi, in the C. T. Grade on the ground that the provision of Section 18 of the Uttar Pradesh Secondary Education Services Commission and Selection Board Act, 1982 (U.P. Act No. 5 of 1982) (hereinafter referred to as the Act) does not apply.

2. Parties are agreed that since the petition involves a pure question of law, it may be disposed off finally at this stage.

3. Section 18 of the Act provides for the appointment of ad hoc teachers in certain contingencies. Sub-section (1) of Section 18 of the Act deals with the appointment of teachers specified in the Schedule. Sub-section (2) deals with the appointment of teachers other than teachers specified in the Schedule with the substitution of the expression "Board" for the expression "Commission". Section 18 Sub-sections (1) and (2) which are relevant for the purposes of determining

the controversy in the present petition are quoted below:

(1) Where the management has notified a vacancy to the Commission in accordance with the provisions of this Act, and-

(a) the Commission has failed to recommend the name of any suitable candidate for being appointed as a teacher specified in the Schedule within one year from the date of such notification; or

(b) the post of such teacher has actually remained vacant for more than two months, then, the management may appoint, by direct recruitment or promotion, a teacher on purely adhoc basis from amongst the persons possessing qualifications prescribed under the Intermediate Education Act, 1921 or the regulations made thereunder.

(2) The provisions of Sub-section (1) shall also apply to the appointment of a teacher (other than a teacher specified in the Schedule) on adhoc basis with the substitution of the expression "Board" for the expression "Commission".

4. Section 33 of the Act empowers the State Government to remove certain difficulties which may arise in the enforcement of the Act. It specifically empowers the State Government to pass an order for removing any difficulty by which it can direct adaptation, modification, addition or omission in the provisions of the Act as it may deem necessary or expedient. In pursuance of this power, since the Board had not been constituted, the State Government issued on 31st July, 1981, the U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981 (hereinafter referred to as the Order). Sub-clause (2) of Paragraph 5 of this order provides that the management shall as soon as may, inform the District Inspector of Schools about the details of the vacancy in the post of a teacher. It further provides the procedure to be followed by the District Inspector of Schools so that he may make an adhoc appointment till a candidate is selected by the Board as contemplated by the Act.

5. It is, therefore, apparent that till the Board is not constituted, the adhoc appointments have to be made in accordance with the Order. The difficulty, however, arises where inspite of the fact that the management informs the District Inspector of Schools about the details of the vacancy in the post of a teacher, still the District Inspector of Schools does not take any action or makes an adhoc appointment.

6. The argument of learned Counsel for the petitioner is that in such a case the management has a power to make the appointment of an adhoc teacher in accordance with Section 18 of the Act. As according to him then for the purposes of Section 18(1), the word "District Inspector of Schools" should be deemed to be substituted for the expression "Board". In our opinion, this submission of learned Counsel is well-founded.

7. Section 18 Sub-section (1) read with Sub-section (2) makes clear that if here the management has notified a vacancy to the Board in accordance with he

provisions of the Act and the Board falls to recommend the name of any uitable candidate for being appointed as a teacher other than teachers specified n the Schedule on adhoc basis within one year or the post of a teacher has actually remained vacant for more than two months, then the management has been given power to make appointment on adhoc basis from amongst the persons possessing qualifications prescribed under the Intermediate Education Act, 1921 or the Regulations made thereunder.

8. It is not disputed that the Board has not yet been constituted. Consequently where the District Inspector of Schools does not make any adhoc appointment as required by the Order, then if the word "District Inspector of Schools" is not read for the word "Board" in Sub-section (1) of Section 18, there would be no power left for appointment of an adhoc teacher in the case of teachers other than teachers specified in the Schedule, namely, as in the present case, the appointment of a teacher in the C. T. Grade, In our opinion, Section 18, Section 33 and the Order have to be harmoniously construed in order to serve the purposes of the Act Since the Board has not yet been constituted, the word "Board" in Sub-clause (1) has to be read as District Inspector of Schools in view of the order passed u/s 33 of the Act till the Board is not constituted. Section 18 of the Act would be applicable in the case of an appointment of a teacher in the C. T. Grade where the District Inspector of Schools does not make an appointment under the Order referred to above.

9. In the instant case, it is not disputed that after the vacancy of a C. T. Grade teacher arose, the management intimated the vacancy to the District Inspector of Schools as required by the Order. It is also not disputed that more than one year has elapsed since the notification of the vacancy to the District Inspector of Schools. Consequently, Section 18 of the Act would be applicable to the instant case. The view to the contrary taken in the impugned order is manifestly erroneous.

10. In the circumstances, we allow the petition and quash the order dated 13th October, 1987, We further direct that the petitioner would be entitled to continue as an adhoc teacher, till a candidate selected by the Board joins the post of the petitioner is removed in accordance with law whichever is earlier. The petitioner shall also be entitled to his salary in accordance with law.