

(1995) 08 AHC CK 0079

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 4984 and 5359 of 1986

Sadhu Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-08-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Secondary Education Service Commission (Removal of Difficulties)
(Second) Order, 1981 — Para 2
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 33A(2)

Citation : (1995) 08 AHC CK 0079

Hon'ble Judges : R.B.Mehrotra, J

Final Decision : Dismissed

Judgement

R. B. Mehrotra, J.—The writ petition No. 5359 of 1986 has been filed by Devendra Singh and others against District Inspector of Schools and others challenging the impugned orders dated U March 1986 marked as Annexure IV, V and VI passed by the Managing Committee of the Vidyalaya. The Manager of the Vidyalaya has passed the three impugned orders in compliance of this Court dated 12 February 1986 passed in the writ petition No. 4984/86 Sad ho Singh and others v. State.

2. Under the circumstances both the writ petitions deserves to be decided together. Accordingly both the writ petitions are being decided together.

3. Writ petition No. 4984/86 has been filed by three petitioners Sadhu Singh, Yash Kumar and Saurabh Pal. According to the allegations made in this writ, Sri Sadhu Singh was selects 1 on 2111984 as a Hindi teacher by the Managing Committee of Vidyalaya for Hitkari Kisan Sakoti Intermediate College Meerut (which will hereinafter be referred to as Institution), the Managing Committee of the institution by its resolution dated 2111984 appointed the petitioner as Hindi lecturer and requested for the approval of the District Inspector of Schools in that letter. The District Inspector of Schools on 13111984 approved the

appointment of the petitioner. In this very sequence it has been mentioned in the writ petition that on 1311984 itself the petitioner assumed the charge of his office and the petitioner received the pay upto 30 June 1985 as Hindi Lecturer. The petitioner No. 2 was interviewed by the Managing Committee of the institution on 2111984 and the said petitioner was found to be best amongst the candidates and the petitioner No. 2 was appointed as English Lecturer by its own order dated 8111984, the petitioner No. 2 on 13111984 assumed the charge of his office and upto 3061985 the said petitioner received the pay as English Lecturer. In connection with petitioner No. 3 Saurabh Pal it has also been alleged in the writ petition that the petitioner was interviewed by the Selection Committee of the Management on 2711985 and the Managing Committee of the institution on its own authority appointed the petitioner as Assistant Teacher in the graduate scale. The District Inspector of Schools approved the appointment of petitioner No. 3 by the latter dated 121985 and the petitioner No. 3 was given the appointment letter on 121985 and by the same the petitioner joined the institution on 121985 itself. The petitioner No. 3 was also paid salary upto 3061985. It has been alleged in the writ petition that the three petitioners were working on their posts upto 1261985 and on the U. P. Secondary Education Commission and Selection Act (for sake of convenience to be referred to as "Act") was amended and Section 33A was inserted and according to the said provision the temporary appointment of the petitioner was regularised and on that footing the petitioners is entitled to be presumed to have been regularly appointed. It has also been mentioned in the petition, that it was illegally mentioned in the appointment letter of the petitioners that the service of the petitioner were on Ad hoc basis, as per Section 18 of the Act upto 2051985. According to the petitioner they were appointed in clear vacancy as per Removal of Difficulties Order,] 981. According to Section 18 of the U. P. Secondary Education Commission ^election Board Act (to be referred to as "Act" for convenience) the petitioners ware to continue on their post till a candidate, regularly selected by Commission Is appointed on that post.

4. Toe petitioners filed the said politico on 1221986 in this court, in support of the petitioner, Sadhu Singh tiled affidavit which was verified on 3rd February, 1986 and it is mentioned in that writ petition that till the filing of the petition, the petitioners are working on their posts.

5. On the strength of the allegation, in the writ petition the Division Bench of this court after hearing the Standing Council and without notice to the respondents and without giving opportunity for counter affidavit allowed the writ petition finally on 12th February, 1989, The ground for allowing the writ petition as mentioned in the judgment, was that appointment made under Section 18 of the Act is to continue till regularly selected candidate by the Commission is appointed.

4. In compliance of the above order, the Manager of the institution on 11 March 1986 passed three orders in respect of working teacher Devendra Singh, Atma

Saran and Jagdish Singh and also mentioned in that order that as per judgment of Allahabad High Court dated 1221986 the services of Saurabh Pal, Sadhu Singh and Yash Kumar were regularised since 20th May 1985 till the orders of appointment of a selected candidate or till the orders of Government. Accordingly it was ordered that it is not possible to make payment of salary to Sri Devendra Singh, Parmatma Saran and Sri Jagdish Singh from 1131986. The above three writ petitioners have challenged the impugned order dated 1131986 in the writ petition No. 5359 of 1986. Apart from the above, the above three persons applied for being impleaded in writ petition No. 4984/86 of Sadhu Singh etc and also prayed the orders in the aforesaid writ have been passed without hearing Devendra Singh etc. The post for which Sadhu Singh etc. have been ordered to continue working are a post held by Devendra Singh etc. who are working as such, the writ petition had been filed by suppressing facts and on the strength of wrong allegations orders have been obtained from this court. The same Division Bench of the court which had decided the writ petition in favour of Sadhu Singh etc. accepted the application for impleadment of Dsvendra Singh etc and on that application the Division Bench recalled its order dated 1224986 by their order dated 1721987. In this order dated 1721987 the Division Bench of this court clearly observed that the order dated 1221986 had been passed in absence of knowledge of correct facts, the said judgment is liable to be set aside. As a result of the above order the writ petition has been listed for disposal on merits again.

7. In support of the writ petition No. 4964/86, 1 have heard Sri A. K. Dwivedi and Surendra Pratap, learned counsel for the petitioners.

8. Sri Surendra Pratap also filed written arguments in support of the petition and that is available on the file and shall be deemed to be part of the file. Sri A.K. Yog has been heard in opposition to the writ. In this very sequence Sri A. K. Yog has been heard in support of the writ petition No. 5359 of 86 and for the respondent learned counsel Sri A. K. Dwivedi has been heard.

9. From the counter affidavit filed by Devendra Singh etc. this fact is indisputably established that on the posts for which the Management of the institution had appointed Sadhu Singh etc. on ad hoc basis upto 2051985 for the same posts as per Section 21A of Chapter IVA of U. P. Ordinance No. 12/85, Devendra Singh by order dated 191985 was appointed assistant teacher in degree grade. Parmatma Saran appointed (in 1391985 as Hindi Lecturer and Sri Jagdish Singh by appointment letter dated 1891985 was appointed as English Lecturer in the institution as teachers of reserve pool. The three petitioners were appointed as per letter of the District Inspector of Schools. The three lecturers joined their posts respectively on 2181985, , 1491985 and 2091985 assumed the charge and were getting regular salary on the said posts.

10. It has been clearly alleged in the counter affidavit of Devendra Singh that by concealing the above material facts Sadhu Singh etc. had got then writ decided in their favour by order dated 1221986 of this Court. Sri Sadhu Singh etc. have given DO satisfactory reply in their rejoinder in respect of suppression of material

facts. On the basis of affidavits and material on record I am satisfied that Sadhu Singh etc. had filed writ petition No. 4984/85 by suppression of material facts on 12286 of the same date obtained orders from this Court in their favour by reason of such suppression.

11. It is established principle of law that if a writ petition is filed by suppression of material facts, then not only the writ petition is liable to be dismissed on that count alone instead the petitioner indulging in suppression of facts while filing petition are also liable to be punished.

12. The writ petition of applicants Sadhu Singh etc. is liable to be dismissed only on the grounds that they filed the writ petition on 1221986 knowingly by suppressing the material facts in this court and made false allegations that the petitioners are working on their posts whereas the reality was that the posts on which they had been appointed upto 2051985 on the strength of letters of District Inspector of Schools, the Manager of the institution had appointed Devendra Singh etc. on 2181985, 1491985 and 2091985 and the three aforesaid persons had assumed their charge of office on the respective dates and received the salary in respect of their posts.

13. So far as the validity of the appointment of the three persons Devendra Singh etc is concerned that will be decided while deciding that writ petition No. 5359/86 for deciding the writ petition No. 4984/86 only this fact is sufficient that on the day Sadhu Singh etc. had filed the writ petition in this court, much before that Devendra Singh etc. respondents had already been appointed on the same posts for which Sadhu Singh etc. had filed the writ petition, for cancelling the appointment of Devendra Singh etc. Sadhu Singh etc did not pray for any relief in the writ petition on this ground also the writ petition No. 4984/86 of Sadhu Singh etc is liable to be dismissed.

14. So far the issue of getting of benefits of Section 33A by Sadhu Singh etc is concerned, in this connection the relevant portion of Section 33A of the Act is reproduced as under :

"33A. Regularisation of certain appointments, Every teacher directly appointed before the commencement of the Uttar Pradesh Secondary Education Service Commission and Selection Board (Amendment) Ordinance, 1985, on an ad hoc basis against a substantive vacancy in accordance with paragraph 2 of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981, as amended from time to time who possess the qualifications prescribed under or is exempted from such qualifications in accordance with the provisions of the Intermediate Education Act, 1921, shall with effect from the date of such commencement be deemed to have been appointed in a substantive capacity provided such teacher has been continuously serving the institution from the date of such appointment upto the date of such commencement."

15. The provision has become effective on 12th June, 1985. According to that provision if any teacher who had been appointed as ad hoc teacher as per U. P.

Secondary Education Commission (Removal of Difficulties Order) prior to the coming into force of the U. P. Secondary Education Commission Board Act, 1985, then that person would be deemed to be regularly appointed as per provision of Section 33A (2) for attracting the said provision, it is essential that the petitioners should establish that they have been appointed under the Removal of Difficulties Order, 1981, para 2.

16. In para 2 of the aforesaid Removal of Difficulties Order the managing committee of the institution has not been authorised to appoint by promotion or direct recruitment to make ad hoc appointment. In that removal of difficulties order the provision for ad hoc appointment has been made. According to para 5 if the vacancy cannot be filled by promotion then it will be the responsibility of the Managing Committee to inform the District Inspector of Schools about the said vacancy and the District Inspector of Schools after receipt of the said information would invited application through Employment exchange and by public advertisement in two papers of U. P. and in that sequence the entire process of filling that vacancy is done by the District Inspector of Schools. It is clear from the facts alleged in the writ that the appointment has been made as per para 5 rather the managing committee has directly appointed on its own Sri Sadhu Singh etc in 1984 on ad hoc basis upto 20 May 1985. According to that appointment the petitioners were not entitled to benefit of Section 33A because the appointment of petitioners had not been made as per provision of Section 2(5) of the Removal of Difficulties Order. In the decision of Kumari Radha Raizada, ALJ 1994 page 1067, a Full Bench of this court has held that by harmonising the provision of para 5 of the Removal of Difficulties Order and Section 18 of the Act, the provisions will have to be followed and as per Section 18 of the Act the Managing Committee is enjoined to make ad hoc appointment according to the provisions of removal of difficulties order 1981. The petitioners have not been appointed according to Removal of Difficulties Order on this score also they are not entitled to benefit of Section 33A of the Act.

17. It is clear from the above discussion that writ petition filed by the petitioners is devoid of force and is liable to be rejected. According the writ petition No. 4984/86 is dismissed, cost to be borne by parties. In opposition of writ petition No. 5359/86 filed by Sadhu Singh etc. filed counter affidavit the main objection in the said writ petition is that appointment of Devendra Singh etc. has been made in illegal manner under Chapter 4A, Sections 21A and 21B of the Act, since the petitioners have failed to prove that the petitioners belonged to the reserved pool category of teachers. According to the counter, it is not made clear in the writ petition as to how the petitioners came within the definition of reserved pool teachers ? Section 21B of Chapter IVA provide that the District Inspector of Schools will keep a register subject wise in respect of these teachers who had assumed charge of their office between 9 January 1978, 19th February 1978 before the coming into force of U. P. High School and Intermediate College Teachers, Employees Payment of Salary Act, 1971 or amended Ordinance 1977, as prepared by the Managing committee or District Inspector of Schools. A

provision has been made under Section 21C, and 21D that if any post is vacant in the institution then the teachers of the reserved group will be first appointed superseding the procedure provided otherwise. The petitioners were appointed at the institution according to that provision and the validity of that provision has not been challenged in this writ petition, even otherwise that provision has been held to be valid by the Hon'ble Supreme Court in Prabodh Vetma and others v. State of U. P. 1984 UPLBBC 778. It has been clearly averred in the writ petition and the rejoinder that between 911978 and 1911978 on different dates the petitioners were appointed in various institutions and one month pay was also given to them. The papers filed with the rejoinder as RA1, RA2 and RA3 which make clear that petitioners Devendra Singh by order dated 11 January 1978 was permanently appointed as Assistant Teacher in K.K. Intermediate College Meerut. This is clear from Annexure RA1. In this very sequence the paper RA9 filed with the rejoinder indicates that Sri Parinatma Sarao had been appointed as Hindi Lecturer on permanent post however, later on his services were terminated. It is clear from Annexure RA14 that Jagdish Singh had been temporarily appointed as English Lecturer at Smarak Intermediate College Sopahi Meerut by letter dated 1091978, from the above annexures and the annexures filed with the rejoinder affidavit is fully proved that Devendra Singh etc. petitioners clearly attract the definition of "Reserved pool teachers" and they have been appointed according to rules on the said basis. The Managing Committee of the institution had terminated the services of the above petitioners in compliance of the judgment of this case dated 1221986, hence the basis for terminating the services of Dsvendra Singh etc. has been extinguished. The writ petition filed by Sadhu Singh has been dismissed by this judgment on this ground also the impugned order terminating the services of the Devendra Singh etc. has also become devoid of force and is liable to be set aside,

18. It is clear from the above discussion that Devendra Singh etc. had been appointed according to rules in the light of Chap. 4A Sees. 21C, 21D & 21E of the "Act" and those appointments are wholly valid and the order passed by the Manager on 11th March, 1986 terminating the services of the petitioners vide Annexure 4, 5 and 6 to the writ petition deserve to be set aside. Accordingly the order dated 1131986 passed by the Managbr dated 1131986 terminating the services of Davendra Singh, Parraatma Saran and Jagdish Singh marked as Annexure 4, 5 and 6 of the writ respectively are liable to be set aside. Accordingly the writ petition is allowed, and the order of Manager of the institution dated 1131986 marked as Annexure 4, 5 and 6 to the writ petition No. 5359/86 are quashed by a writ of certiorari.

19. The parties will bear their own costs of the petition.

20. Under the mandatory provision of Section 7 of the official Languages Act the Registrar of this Court in directed to get English translation of a copy of this judgment done through a competent person within a month and parties be furnished with copies as par rules. Without English translation is being annexed,

copy will not be issued to parties.