

(2000) 02 AHC CK 0100

In the Allahabad High Court

Case No : Special Appeal No's. 426 and 510 of 1998 and C.M.W.P. No's. 35079 of 1999 and 41564 of 1997

Sanjeev Kumar Dubey

APPELLANT

Vs

District Inspector of Schools, Etawah and others

RESPONDENT

Date of Decision : 01-02-2000

Acts Referred:

Constitution of India, 1950 — Article 14
Uttar Pradesh Intermediate Education Act, 1921 — Section 16(1), 16EE, 18, 21B, 33
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 103, 105, 106
Uttar Pradesh Secondary Education Services Commission and Selection Boards (Amendment) Act, 1995 — Section 16(1)
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 16(1)

Citation : (2000) 1 AWC 857 : (2000) 2 UPLBEC 986

Hon'ble Judges : N.K. Mitra, C.J;S.R. Singh, J

Bench : Division Bench

Advocate : Yogesh Kumar Saxena, for the Appellant; S.C. and V.K. Saxena. Advocate, for the Respondent

Final Decision : Disposed Of

Judgement

S. R. Singh, J.—The vexed question that begs determination in this Special Appeal is whether the third proviso to Section 16 (1) of the U. P. Secondary Education Service Selection Boards Act, 1982 and the Notification No. 300/XV/72 (1)/90, Shiksha Anubhag-7, Lucknow, dated February 2, 1995 which enable appointment of the dependent of a teacher or other employee of an institution dying-in-harness as a teacher in trained graduate grade, are ultra vires the Constitution.

2. A brief sketch of necessary facts giving rise to Special Appeal No. 426 of 1998 is that the appellant's father, Sri Narain Prasad Dubey. a Science demonstrator in Sri Radha Ballabh inter College, Phaphund in the district of Etawah. was spirited away by death while in harness on 31.12.1993. The appellant staked his claim

for compassionate appointment as demonstrator in the Institution vide application dated 24.7.1995. The Committee of Management of the institution adopted a resolution on 10.3.1996 for appointing the appellant as demonstrator on compassionate ground. The resolution passed by the Committee of Management was frowned upon with disapproval on the premises that the appellant fell short of requisite training in order to qualify for appointment as a teacher. The appellant was communicated with accordingly, by the District Inspector of Schools vide letter dated 30.9.1997 which was made the subject matter of impugment in the writ petition from which has stemmed the Instant special appeal. The learned single Judge held the view that the third proviso to sub-section (1) of Section 16 of the U. P. Secondary Education & Service Selection Boards Act, 1982 which enables appointment of the dependent of a teacher or other employees of an Institution dying-in-harness as a teacher in trained graduate grade in accordance with the regulations made under sub-section (4) of Section 9 of the U. P. Intermediate Education Act. 1921. Is ultra vires the Article 14 of the Constitution. The Notification dated 2.2.1995 was also struck down by the learned single Judge on the ground that it constituted Infraction of Article 14 of the Constitution.

3. We have had heard counsel for the appellant and the learned Standing Counsel representing the State.

4. The U. P. Secondary Education Service Selection Boards Act. 1982 encapsulates provisions for appointments of teachers in the secondary institutions recognised by the U. P. Board of High Schools and Intermediate Education. Earlier such appointments were governed by the intermediate Education Act. 1921 and regulations made thereunder. Section 16 of the Act being germane to the vexed question under consideration is excerpted below :

"16. Appointment to be made only on the recommendation of the Board.--(1) Notwithstanding anything to the contrary contained in the intermediate Education Act. 1921 or the regulations made thereunder but subject to the provisions of Sections 18. 21B, 21C, 21D. 33, 33A and 33B, every appointment of a teacher, shall, on or after the date of commencement of the [U. P. Secondary Education Services Selection Boards (Amendment) Act, 1995 be made by the management only on the recommendation of commission] :

Provided that in respect of retrenched employees, the provisions of Section 16EE of the Intermediate Education Act. 1921, shall mutatis mutandis apply.

Provided further that the appointment of a teacher by transfer from one institution to another, may be made in accordance with the regulations made under clause (c) of subsection (2) of Section 16G of the Intermediate Education Act. 1921.

[Provided also that the dependent, of a teacher or other employee of an Institution dying-in-harness, who possess the qualifications prescribed under the Intermediate Education Act. 1921 may, be appointed as teacher in Trained

Graduate's Grade in accordance with the regulations made under subsection (4) of Section 9 of the said Act).

(2) Any appointment made in contravention of the provisions of sub-section (1) shall be void.

5. The third proviso to subsection (1) of Section 16 was Inserted by the U. P. Act 15 of 1995 with effect from 28.12.1994. Sub-section (1) of Section 16 envisages that subject to the provisions of Sections 18, 21B, 21C, 21D, 33, 33A and 33B, every appointment of a teacher is to be made by the Management only on the recommendations of the Selection Board constituted under the Act notwithstanding anything to the contrary contained in the Intermediate Education Act, 1921 or Regulations made therein. The third proviso to sub-section (1) however, carves out an exception to this method of recruitment in respect of dependents of teachers or other employees of an Institution dying-in-harness and postulates that such dependent may be appointed as a teacher in the trained graduate grade in accordance with the regulations made under sub-section (4) of Section 9 of the U. P. Intermediate Education Act, 1921.

6. In *Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others*, the quintessence of what has been held is that the provision for grant of compassionate employment which savours of the nature of an exception to the general provision, does not unduly Interfere with the right of other persons who are eligible for appointment to seek employment against the posts which would have been forthcoming to them but for the provisions enabling appointment being made on compassionate grounds of the dependent of a deceased employee. Regard being had to the social Justice objective sought to be achieved by the provisions providing for compassionate appointment, we feel persuaded to the view that the third proviso to sub-section (1) of Section 16 which provides a different procedure of appointment to L.T. grade in respect of dependents of a teacher and other employees in an Institution dying-in-harness, is not in antagonism of Article 14 of the Constitution. In *Umesh Kumar Nagpal Vs. State of Haryana and Others*, the Supreme Court held that the provision of compassionate employment in the lowest post by making an exception to the general rule of appointment could be Justifiable and valid in that favourable treatment given to dependents of the deceased employees has a rational nexus with the object sought to be achieved viz. relief against destitution. The exception made in favour of the deceased employee was vindicated on the ground that it would be in consideration of the services rendered by him and the legitimate expectations, and the change in status and affairs of the family engendered by the erstwhile employment which are suddenly upturned.

7. The appointment as a teacher in the trained graduate grade in an Institution recognised under the U. P. Intermediate Education Act, 1921 is an appointment in the lowest grade of teaching staff of secondary institutions after the abolition of C.T. grade. It cannot be gainsaid that appointment under the proviso may be made only if the candidate is equipped with the qualifications prescribed under

the Intermediate Education Act. 1921. The essential qualifications have not been dispensed with. The procedure for such appointment is laid down in Regulations 105 and 106 of Chapter III of the Regulations as they stand substituted by impugned notification dated February 2, 1995 issued in exercise of power u/s 9 (4) of the U. P. Intermediate Education Act. It forms a class in itself and the classification so made has a reasonable and rational nexus with the object sought to be achieved, viz., relief against destitution as held in Umesh Kumar Nagpal (supra). The procedure as laid down in Regulation 105 of Chapter III of the Regulations made under the U. P. Intermediate Education Act visualises selection by a duly constituted Selection Committee consisting of the District Inspector of Schools, the Lekhadhikari, Office of District Inspector of Schools and Zila Basic Shiksha Adhikari. Since a teacher serves as a melting pot in shaping the career, character and weaving moral fibre and aptitude for educational excellence in impressionable young children and being principal instrument to awakening the child to the cultural ethos, Intellectual excellence and discipline, the enabling provision contained in the third proviso to sub-section (1) of Section 16 of the Act and those contained in Regulations 105 and 106 of Chapter III of the Regulations made in exercise of power u/s 9 (4) of the U. P. Intermediate Education Act must be so construed as to enable the selection committee to select the dependent only if he is found suitable. The third proviso to sub-section (1) of Section 16 of the Act is only an enabling provision and the word "may" used in the proviso imparts discretion in the Selection Committee referred to in Regulation 105 to select the dependent of a teacher or other employees dying-in-hamess for appointment in trained graduate grade only if the candidate is found by the Selection Committee suitable, qualified for and deserving of such appointment. In our opinion, therefore, the third proviso to subsection (1) of Section 16 and the Notification dated 5.2.1998 by which Regulations 103 to 107 of Chapter III -of the Regulations made under the U. P. Intermediate Education Act were substituted are not ultra vires the Article 14 of the Constitution. Broader perspective of social Justice sought to be achieved by these provisions must be borne in mind while examining the reasonableness of the classification made by the Legislature.

8. In Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, , the Supreme Court has laid the test of a valid classification in the following words :

"The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the territory of India Irrespective of differences of circumstances.. It only means that all persons similarly circumstanced should be treated alike and there should be no discrimination between one person and another if as regards the subject-matter of the legislation, their position is substantially the same- By the process of classification, the State has the power to determine who should be regarded as a class for the purposes of legislation and in relation to a law enacted on a particular subject. The classification to be valid, however, must not be arbitrary but must be rational- it must not only be based on some qualities or

characteristics which are to be found in all the persons grouped together and not in Others who are left out but those qualities or characteristics must have a reasonable nexus or relation to the object of the legislation. In order to pass the test, two conditions have to be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) the differentia must have a rational nexus or relation to the object sought to be achieved by the legislation see *In Re: The Special Courts Bill, 1978*,

The impugned provisions satisfy the tests aforesaid.

9. In *Director of Education (supra)*, the Impugned notification dated 2.2.1995 was not held violative of Article 14. In that case, some of the respondents therein, were appointed on class IV posts on compassionate ground. Subsequently, they filed writ petition seeking appropriate order/direction for being appointed on class 3 posts on the ground that they were possessed of the requisite qualification for promotion on class 3 posts of clerk. The High Court quashed the order of such appointment and directed that they be appointed on class 3 posts provided they were possessed of necessary qualification for the post super-added with a command to create a post in case the vacancies were not available. The Supreme Court viewed the direction given by the High Court with disapproval holding that if the regulations were so construed, they would be open to challenge on ground of being violative of the right to equality in the matter of employment inasmuch as other persons who are eligible for appointment and who may be more meritorious than the dependents of deceased employees, would be balked of their right of being considered for such appointment under the Rules. The provisions were not struck down by the Apex Court. Instead, they were rationalised by construing to mean that in the matter of appointment of a dependent of a teaching/non-teaching staff in non-Government recognised aided institutions dying-in-harness, if a post in class III is not available in the Institution in which the deceased was employed or any other institution in the district, the dependent would be appointed on a class IV post in the institution in which the deceased employee was employed and for that purpose, supernumerary post in class III would be created. The language employed in the third proviso to subsection (1) of Section 16 of the Act does not confer an absolute right in the dependent of a teacher and other employee of an institution dying-in-harness who is possessed of prescribed qualification to claim appointment as a teacher in the trained graduate grade as of right. The Selection Committee referred to in Regulation 105 can reject the claim of the dependent if he is not found suitable for the Job.

10. True, the language used in Regulation 106 of Chapter III of the Regulations as it stands substituted by notification dated 2.2.1992 is of mandatory character but it is settled by a catena of decisions of the Supreme Court that a compassionate appointment cannot be claimed as a matter of course irrespective of the financial status of the family of the deceased and qualifications and

suitability of his dependent seeking compassionate appointment. A construction, which leads to Invalidity of a statutory provision, should be avoided. The gloss of construction which we are putting on the impugned provisions will go a long way to strike a reasonable balance between the interest of the family of the deceased and that of the student community without unduly encroaching upon the fundamental right of equality of opportunity of other eligible and qualified persons.

11. Without meaning disparagement to the learned single Judge, the view taken by him on the validity of the third proviso to Section 16 (1) of the U. P. Secondary Education Service Selection Boards Act, 1982 and the G.O. dated 2.2.1995 does not commend itself for acceptance- We, however, forbear from expressing any opinion as to whether the appellant could be appointed on the post of demonstrator for that question has not been delved into by the learned single Judge and, in our opinion, the matter should be relegated to the single Judge for decision of the writ petition de novo.

Special Appeal No. 510 of 1998

12. In so far as Special Appeal aforesaid is concerned, suffice it to say that the learned single Judge allowed the writ petition filed by the Committee of Management vide Judgment under challenge in this appeal in view of his judgment in the case of Sanjeev Kumar Dubey v. District Inspector of Schools and others (supra), holding that no appointment of a teacher can be made under dying-in-harness Rules and that any rule permitting such appointment is ultra vires the Article 14 of the Constitution. The facts of this case are that the District Inspector of Schools, Deoria by his order dated 31.12.1997 appointed the appellant as Asstt. Teacher in untrained grade in Janta Junior High School, Mall, Deoria taking cue from the provisions contained in the G.O. dated 31.1.1997 referred to in the appointment order dated 31.12.1997. The Committee of Management, however, despite reminders from the office of the Zila Basic Shiksha Adhikari, Deoria declined to permit the appellant herein to join his duties in the institution who filed a writ petition being Writ Petition No. 7041 of 1998 which came to be disposed of vide Judgment and order dated 5.3.1998 with a direction that in case a representation was filed by the Committee of Management, the same would be disposed of by the Zila Basic Shiksha Adhikari in accordance with law. The Zila Basic Shiksha Adhikari, by his order dated April 25, 1998 rejected the representation. The said order was challenged in the writ petition giving rise to Special Appeal No. 510 of 1998.

13. It brooks no dispute that the provision for compassionate appointment as Asstt. Teacher in Basic Schools is provided in the Government Order No. 231/XV-6-97-28 (66)/90. Shiksha (6) Anubhag. Lucknow, dated January 31, 1997. The learned single Judge without adverting himself to this G.O. was pleased to allow the writ petition filed by the Committee of Management holding that any rule permitting compassionate appointment would be ultra vires the Article 14 of the Constitution. The view taken by the learned single Judge cannot be viewed in

approval in view of what we have discussed in Special Appeal No. 426 of 1998. The appeal, therefore, merits to be allowed.

Civil Misc. Writ Petition No. 35079 of 1999

14. The petition aforesaid, though cognizable by a single Judge Bench, has come up before us in view of the order dated 18.8.1999 passed by the learned single Judge directing the matter to be taken up along with the Special Appeal No. 510 of 1998, Alok Kumar v. State of U. P. The writ petitioner staked his claim for compassionate appointment and hfs application. It is alleged, was forwarded to the District Inspector of Schools. Since the petitioner seeks appointment as an Asstt. Teacher in L.T. grade in an Intermediate college, such appointment would be governed by the provisions contained in the third proviso to Section 16 (1) of the U. P. Secondary Education Service Commission and Selection Boards Act, 1982 and Regulations 103 to 106 of Chapter III of the Regulations made under the U. P. Intermediate Education "Act as amended by Notification dated 2.2.1995 which, in our opinion, is intra vires. The matter, however, needs to be considered by the Selection Committee referred to in Regulation 105 of Chapter III of the Regulations made u/s 9 (4) of the U. P. Intermediate Education Act, 1921 in the light of the observations made in this judgment while discussing the case of Special Appeal No. 426 of 1998.

15. As a result of foregoing discussions, the Special Appeals and the writ petition are disposed of in the following manner :

(1) Special Appeal No. 426 of 1998 is allowed. The order of the learned single Judge is set aside. The matter is remitted to the appropriate single Judge Bench for decision afresh in accordance with law and in the light of the observations made in this judgment :

(2) Special Appeal No. 510 of 1998 succeeds and is allowed. The impugned order passed by the learned single Judge is set aside. The matter is remitted to the appropriate single Judge Bench for decision of the writ petition afresh in accordance with law and in the light of this judgment ; and

(3) Writ Petition No. 35079 of 1999 is disposed of with the directions that in case the petitioner stakes his claim for compassionate appointment as Asstt. Teacher, his case will be considered by the Selection Committee referred to in Regulation 105 of Chapter III of the Regulations made in the U. P. Intermediate Education Act, 1921 and the Notification dated 2.2 1995.