

(2005) 02 AHC CK 0142

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 8286 of 2000

Sarita Gupta (Smt.)

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 14-02-2005

Acts Referred:

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 33

Citation : (2005) 2 ESC 851 : (2005) 1 UPLBEC 832

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Y.K. Srivastava and Anil Bhushan, for the Appellant; M.C. Chaturvedi, Addl. C.S.C., Amresh Malviya and S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri Anil Bhushan Advocate on behalf of the petitioner, Sri Ambresh Malviya Advocate on behalf of respondent No. 3 and learned Standing Counsel on behalf of respondent Nos. 1 and 2.

2. Smt. Revati Devi Balika Vidyalaya Inter College, Firozabad, is an aided institution, recognized under the provisions of the Intermediate Education Act. The provisions of the said act as also those of the U.P. High School and Intermediate College (Payment of Salaries of Teachers and other Employees) Act, 1971 and those of U.P. Secondary Education Services Selection Board Act, 1982 along with the Rules and regulations framed there under are fully applicable to the teaches of the said institution.

3. One Smt. Manorama Verma, who was working as Assistant Teacher in the said institution, applied for and was granted leave for the period between 11.11.1994 to 30th June, 1996, The resultant short-term vacancy was advertised in Hindi newspaper" Amar Ujala" dated 14th November, 1994 as also on the notice board of the institution. The petitioner, who is possessed of all the prescribed qualifications, applied in pursuance of the said advertisement. After necessary

selection the petitioner was found to be most suitable candidate and was accordingly appointed against the leave vacancy vide letter dated 7th January, 1995. The petitioner joined the institution on 9th January, 1995. The appointment of the petitioner was also approved by the Regional Joint Director of Education-II, Agra. The petitioner continued to function as such and was paid salary up to 14th May, 1996. Smt. Manorama Verma, however, extended her leave for the period 15.5.1996 to 30th June, 1997, which was also sanctioned and as a result whereof the petitioner continued to function as L.T. Grade Teacher in the institution. However, she was not paid salary for the period subsequent to the 14th May, 1996, while the papers pertaining to the extension of the appointment of the petitioner were pending before the authorities, Smt. Manorama Verma submitted her resignation from the post on 31.12.1996, which was also accepted, as a consequent thereto the short-term vacancy against which the petitioner was appointed stood converted into a permanent vacancy. The various papers submitted by the institution to the authorities for granting approval to the said continuance of the petitioner went unattended. However, in the meantime petitioner continued to function as Assistant Teacher in the institution.

4. Since the petitioner was not being paid her salary, she approached this Court by means of Writ Petition No. 43031 of 1999. The writ petition was disposed of by this Court on 6th October, 1999 with a direction upon the respondent No. 1 to decide the representation of the petitioner. By means of order dated 6th January, 2000, the representation so made by the petitioner has been rejected on the ground that the short-term vacancy, against which the petitioner was appointed, stood converted into a substantive vacancy and, therefore, petitioner was not entitled to continue in the institution nor she is entitled for payment of salary. The aforesaid order has been passed on the basis of the order passed by the Deputy Director of Education (Madhyamik) dated 20th April, 1997, copy whereof has been brought on record as Annexure SA-1 along with supplementary affidavit. It is further stated that the appointment offered to the petitioner by the Management subsequent to 14th May, 1996 was illegal inasmuch as from 15th May all the institutions were closed and there was no requirement of any adhoc teacher. It is against the order dated 6th January, 2000, the present writ petition has been filed.

5. On behalf of the petitioner it is contended that there is no automatic termination of services of a person appointed against the short-term vacancy, on the short-term vacancy being converted into a permanent vacancy. Reliance has been placed upon the judgment reported in (2000) 3 UPLBEC 2494 , Devendra Pratap Singh Vs. State of U.P. and Others,

6. On behalf of the State Authorities reliance has been placed upon the Full Bench judgment of this Court reported in (1997) 2 UPLBEC 1329 , Smt. Pramila Mishra v. Dy. Director of Education and on the Division Bench judgment of this Court reported in Ram Shanker Pandey Vs. State of U.P. and Others, It is

submitted that from 15th May, 1966 petitioner was not entitled to continue nor the Management was justified in offering appointment to the petitioner subsequent to said date. Further with the conversion of the vacancy from the short-term vacancy to substantive vacancy, the entitlement of petitioner for being continued in the institution does not survive nor she has any right for payment of salary.

7. The petitioner in rejoinder submits that the Full Bench judgment of this Court in the case of *Pramila Mishra v. Deputy Director of Education (supra)* in paragraph 10, after referring to the provisions of Section 33 (b), which provides for regularization of the services of a teacher other than Principal and Headmaster, appointed by promotion or direct recruitment on or before May 14, 1991 against a short-term vacancy in accordance with paragraph 2 of the Removal of Difficulties Order and such vacancy being subsequently converted into substantive vacancy, has not taken into consideration the intent of the aforesaid provision while holding that there is no provision for a candidate appointed against a short-term vacancy to continue even after the said short-term vacancy has ceased to exist because; of it being converted into substantive vacancy.

8. According to petitioner Section 33 (b) of the Act itself provides for condition where adhoc teacher appointed against a short-term vacancy becomes entitled for regularization on the vacancy being converted into substantive vacancy. The said section itself contemplates continuance of a teacher appointed against a short-term vacancy on adhoc basis even after the said vacancy is converted into a substantive vacancy.

9. It is further submitted that the different procedure, which was prescribed under the Removal of Difficulties Orders for adhoc appointment against short-term vacancies and against substantive vacancies, has been done away with vide Section 33 (e) as added by U.P. Act No. 13 of 1999 w.e.f. 25th January, 1999 and therefore, there ceases to be any different procedure viz-a-viz adhoc appointment against short-term vacancies and substantive vacancies respectively. In the alternative it is submitted that subsequent to 25th January, 1999 there cannot be an adhoc appointment and the appointee against a short-term vacancy, if restrained from continuing on the post, would necessarily create a vacuum as the post shall remain left vacant till candidate selected by the Commission joins. According to petitioner such a situation cannot be said to be in the interest of the institution nor it would be reasonable to comprehend such a situation as it result in the vacancy being left unfilled although a teacher qualified to teach the said subject was earlier appointed and was working on adhoc basis and is still available for teaching. It is in this background the Division Bench of this Court in its judgment reported in *District Inspector of Schools, Kanpur Nagar and another Vs. Diwakar Lal and others*, has rightly held in paragraph 15 that there is no automatic termination of services of an adhoc appointee against short-term vacancy, on the post being converted into substantive vacancy. The Division

Bench judgment of this Court in the case of Ram Shankar Pandey v. State of U.P. also more or less, in paragraph. 6, affirms the said judgment of the Division Bench.

10. In order to appreciate the aforesaid controversy, it would be relevant to refer the provisions of Section 33 (b) as was introduced w.e.f. 7th August, 1993 vide Act No. 1 of 1993 and Section 33 (e) which has been enforced w.e.f. 25th January, 1999 vide U.P. Act No. 13 of 1999 be referred to which read as follow :

"33-B. Regularisation of certain other appointments.-(1) Any teacher other than the Principal or Headmaster, who, -

(a) (i) was appointed by promotion or by direct recruitment in the lecturer grade or Trained Graduate grade on or before May 14, 1991 or in the Certificate of Teaching grade on or before May 13, 1989 against a short-term vacancy in accordance with Paragraph 2 of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981, and such vacancy was subsequently converted into a substantive vacancy, or....."

"33-E. Rescission of orders.-The Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981, the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981, the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (Third) Order, 1982 and the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties (Fourth) Order, 1982, are hereby rescinded."

11. It is also worthwhile to refer to paragraph 16 of Full Bench judgment of this Court in the case of Smt. Pramila Misra (supra), which is being quoted herein below:

"From the provisions of the Acts, Rules, Regulations and Removal of Difficulties Orders discussed above, it is manifest that a clear distinction has been maintained between substantive vacancy and short-term vacancy of the post of a teacher. The authority to make the appointment, the procedure to be followed in making the appointments and the considerations to be made in making the appointment in the two cases are distinct and different from each other. In each case the duration of adhoc appointment is also laid down under the statutory provisions. In the case of ad hoc appointment in a short-term vacancy Paragraph 3 of the Second Order specifically lays down that the appointment will come to an end if the short-term vacancy otherwise ceases to exist. It follows, therefore, that when a vacancy caused due to grant of leave to or suspension of the permanent incumbent becomes a substantive vacancy on account of his death, resignation or termination or removal from service, the short-term vacancy ceases to exist and a substantive vacancy is created in its place. On a perusal of the relevant provisions of the Acts, Rules and Removal of Difficulties Orders and giving our anxious consideration to the matter, we do not find any provision which directly or even indirectly vests a right in a person appointed 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 contention raised on behalf of the respondents that such an appointee (in short-term vacancy) is entitled to continue in the post (substantive vacancy) till a candidate selected by the Commission/Board joins the post does not get any support from the statutory provisions and, therefore, cannot be accepted. The contention is also not acceptable for the reason that it runs counter to the intendment of the provisions of the Acts, Rules and Regulations. We should not be understood to be saying that an ad hoc teacher in a short-term vacancy cannot be appointed in a substantive vacancy. He can be appointed in the substantive vacancy if he is selected in accordance with the procedure and in the manner laid down in the relevant provisions of the Acts, Rules, Regulations and Removal of Difficulties Orders. What we want to stress and which is clear to u/s is that he cannot claim as a matter of right that he is entitled to continue in the post till the candidate selected by the Commission/Board joins even if the short-term vacancy has ceased and a substantive vacancy in the post of teacher has been created in its place."

12. The Division Bench of this Court, after considering the judgment of Full Bench reported in (1997) 2 UPLBEC 1329, referred to above, vide its judgment dated 25th May, 2000 in Special Appeal No. 40/2000, District Inspector of Schools, Kanpur Nagar and another Vs. Diwakar Lal and others, has held as follows :-

"....We are of the opinion that the incumbents working on ad hoc basis against short-term vacancies should not be automatically thrown out of service-in view of the decision in the case of Pramila Mishra (supra) when "short-term" vacancy became "substantive vacancy". In such a situation an ad hoc appointee should normally be allowed to continue (if there is no complaint about his working), till a regular ad-hoc appointment is made against substantive vacancy as contemplated under Removal of Difficulties Orders."

13. The Division Bench of this Court in the judgment reported in Ram Shanker Pandey Vs. State of U.P. and Others, after referring to paragraph 16 of the judgment of the Full Bench of this Court in the case of Raj Kumar Verma as well as judgment in the case of Shashi Saxena in paragraph 6 has held as follows:

"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 was already joined in view of the clear provisions of Clause 3 of the Second Removal of Difficulties Order, 1981."

14. In these set of facts, it is to be examined as to whether even after the enforcement of Sections 33 (b) and 33 (e), a teacher appointed on adhoc basis against a leave vacancy is entitled to continue even after the vacancy has been converted into a substantive vacancy till a regularly selected candidate appointed by the Commission joins or else there is automatic termination of service of such

an adhoc appointee (appointed against a leave/short-term vacancy) on the vacancy being converted into a substantive vacancy.

15. From the judgment of the Full Bench in the case of Pramila Mishra, it is apparently clear that the Court has come to a conclusion that there is no provision which directly or indirectly vests a right in a person appointed as an adhoc 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 his favour. The Court has further held that such an adhoc appointee cannot claim as a matter of right that he is entitled to continue in the post till the candidate regularly selected by the Commission/Board joins.

16. The aforesaid conclusion of the full Bench of this Court has been explained by the Division Bench of this Court in its judgment in the case of District Inspector of Schools, Kanpur Nagar v. Diwakar Lal (supra), wherein it has been held that an adhoc appointee in the short-term vacancy normally be allowed to continue, if there is no complaint about his working, till regular adhoc appointment is made against the substantive vacancy as contemplated under the Removal of Difficulties Order, It is in this background that the judgment of Ram Shanker Pandey v. State of U.P. (supra) has to be read.

17. In the opinion of the Court, the legal position emerging from the aforesaid judgment is that a person appointed against a short-term vacancy is not entitled as a matter of right to claim continuance on the post of adhoc short-term vacancy after the vacancy has been converted into substantive vacancy nor he can claim that he should be permitted to continue on the basis of such short-term appointment till the regularly selected candidate from the Commission joins nor he can object to the appointment of another adhoc appointee in accordance with the provisions of Removal of Difficulties Order as were then applicable in respect of substantive vacancy. Meaning thereby that the person appointed against a short-term vacancy can continue in the office only till a regular adhoc appointment against the substantive vacancy is made under the provisions of Removal of Difficulties Order in respect of substantive vacancy. An automatic termination of the services of an adhoc appointee against a short-term vacancy, on the vacancy being converted into a substantive, would lead to a situation where vacuum is created inasmuch as the post would remain vacant till a candidate appointed on adhoc basis against a substantive vacancy joins or till a regularly selected candidate appointed by the Commission joins. Provisions of an Act may not normally be read in a manner so as to create a vacuum. Even otherwise, it is in the interest of institution and the students receiving education therein that there must be availability of teachers for the purposes of imparting education . No purpose would be served by, removing the adhoc appointee against short-term vacancy although no other candidate has been selected on adhoc basis in accordance with the provisions of Removal of Difficulties Order after the vacancy has so converted into a substantive vacancy. From Section 33(b), as quoted herein above, it is further apparent that regularization has been

provided for in respect of appointees against short-term vacancies, subsequent to the conversion of the short-term vacancy into a substantive vacancy with reference to the cut-off date, as mentioned in the section itself. Meaning thereby that the Act itself recognizes continuance of adhoc appointees against short-term vacancies even after the vacancy has been converted into substantive vacancy and has further provided for regularization of certain adhoc appointees against short-term vacancy u/s 33 (b).

18. Thus, in the opinion of the Court, there cannot be automatic termination of services of a teacher who was initially appointed against a short-term vacancy after the vacancy has been converted into a substantive vacancy. However, it is clarified that such an appointee cannot claim a right to continue after another adhoc appointee selected in accordance with the Removal of Difficulties Order providing for adhoc appointment against a substantive vacancy becomes available or a regularly selected candidate recommended by the Commission becomes available.

19. An other development, which has taken place subsequent to the judgment of Full Bench, which is requires consideration, is addition to Section 33 (e) to the U.P. Secondary Education Services Selection Board Act, 1982, By means of Section 33 (e) the Removal of Difficulties Order issued from time to time have been rescinded, meaning thereby that they cease to exist in the eyes of law from the date Section 33 (e) is enforced. With the recession of the Removal of Difficulties Order, the separate procedure prescribed for adhoc appointment against a short-term vacancy viz-a-viz adhoc appointment against substantive vacancy has been done away with and no different procedures are now provided for and as a matter of fact there is no provision for the purposes of adhoc appointment by direct recruitment. Meaning thereby if an adhoc appointee against short-term is now removed from his post on the ground that vacancy has been converted into substantive vacancy, it would only mean that the post, against which he was working, shall remain vacant till the regularly selected candidate from the Commission joins.

20. It is common knowledge that the appointment on the recommendation of the Commission takes years together and in such circumstances removal of an adhoc appointee working against a short-term vacancy, whose appointment has been made in accordance with the provisions and Rules applicable, cannot be said to be in the interest of the institution or in the interest of the students or in the interest of the education at large. Non-availability of teachers in required category and in required number in the institution would only lead to a situation where by the purpose of education would be frustrated.

21. In such circumstances, the petitioner having been appointed against a short-term vacancy, which has subsequently been converted into a substantive vacancy and further since no other candidate has been appointed on adhoc basis against such substantive vacancy and there being no other candidate recommended by the Commission for regular appointment against the said

substantive vacancy, petitioner is entitled to employment. In such circumstances, the present writ petition is allowed. The order passed by the Deputy Director of Education (Madhyamik) dated 6th January, 2000 is hereby quashed. Respondents are directed to permit the petitioner to continue in the institution and pay salary to the petitioner on the post, so long as valid and legal appointment is made in accordance with the provisions of Act against the post held by the petitioner.