

(1993) 02 AHC CK 0067

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12414 of 1988

Satyendra Pratap Singh

APPELLANT

Vs

District Inspector of School and Others

RESPONDENT

Date of Decision : 12-02-1993

Acts Referred:

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 4

Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) (Amendment) Ordinance, 1977 — Section 4(4)

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 16, 21B, 21B(1), 21B(2), 21B(3)

Citation : (1993) 2 AWC 844

Hon'ble Judges : A.P. Singh, J

Bench : Single Bench

Advocate : D.S.M. Tripathi, B.P. Singh and S.K. Misra, for the Appellant; K.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

A.P. Singh, J.—This writ petition is directed against the order passed by the District Inspector of Schools, Jaunpur, on 19-4-1988 (Annexure-13 to the writ petition) whereby the Respondent No. 2 namely, Fateh Bahadur Singh has been appointed u/s 21-B(3) of the U.P. Secondary Education Services Commission Act, 1982 (hereinafter called as the Act). Petitioner's case is that out of eight posts of Lecturer in the College known as Uchchatar Madhyamik Vidyalaya Newadhia District Jaunpur within the administrative control of the District Inspector of Schools, Jaunpur, five posts are earmarked for appointment by way of direct recruitment whereas three posts were left for being filled up by way of promotion from amongst L. T. grade teachers of the College, out of these three posts, two posts were already filled up by promotion and only one post was yet to be filled up by way of promotion which became available for promotion on account of retirement of one Ram Dulare Singh who retired from service on 30th June,

1982. Petitioner's case further is that he, being the senior most L.T. Grade teacher, was entitled for promotion on the post of Lecturer which had fallen vacant on account of retirement of Sri Ram Dulare Singh. But instead of considering his case for promotion, the District Inspector of Schools, Jaunpur, appointed Respondent No. 2 u/s 21-B(3) of the Act.

2. I have heard the learned Counsel for the Petitioner, Standing Counsel and Sri K.K. Singh, counsel for the Respondent No. 2, Sri R.K. Singh has prayed that he may be granted time for filing the counter affidavit. I am afraid that I cannot grant time to Sri K.K. Singh at this late stage. Sri K.K. Singh has appeared on behalf of Respondent No. 2 (as back as) in the year 1989 and did not care to file counter affidavit in the case so far. Normally time for filing the counter affidavit is granted In ease the Court is satisfied that the concerned Respondent is vigilant In pursuing his case and is not causing unnecessary delay in disposal of the writ petition. In the present case, Respondent No. 2 has put his appearance in the case more than three years ago, but he did not care to file his version in the case in the shape of counter affidavit so far. In the circumstances, at this late stage when the case is listed after a lapse of four years, it is not proper for the Court to postpone the hearing of the case further. I, therefore, decline to grant any time to the Respondent No. 2 for filing counter affidavit, especially when the question to be decided in the writ petition is one of law then than of fact in the present case, the interpretation of Section 21-B(3) of the Act is involved, it does not involve any controversy of facts. Section 21-B of the Act reads as under:

21-B-Absorption of reserve pool teachers:

(1) The Inspector shall maintain in the prescribed manner a register of "reserve pool teachers" consisting of subject wise lists of persons who were appointed as teachers in any institution situated in the district, either by the management or by the Inspector under Sub-section (4) of Section 4 of the Uttar Pradesh High Schools and Intermediate Colleges (Payment of salaries of teachers and other Employees)(Amendment) Ordinance, 1977, was in force, and had actually joined their duties in pursuance of the said provision between January 9, 1978 and January 19, 1978 (both days inclusive).

(2) Every reserve pool teachers, who having been appointed to the post of a teacher in any institution in accordance with the provisions of the Uttar Pradesh High School and Intermediate Colleges (Reserve Pool teachers) Ordinance, 1978 (U.P. Ordinance No. 10 of 1978). or the Uttar Pradesh High School and Intermediate Colleges (Reserve Pool Teachers (Second) Ordinance, 1978 (U.P. Ordinance No. 22 of 1978), continue to be in service by reason of any order of any court or by any other reason, shall be deemed to have been regularly appointed to such post and shall be entitled to be confirmed in such post with effect from the date on which he would have been confirmed in the normal course.

(3) Where any substantive vacancy in the post of a teacher in an institution is to

be filled by direct recruitment, such post shall at the instance of the Inspector be offered by the Management to a teacher other than a teacher referred to in Sub-section (2), whose name is entered in the register referred to in Sub-section (1).

(4) If any teacher is offered appointment in accordance with the provision of Sub-section (5) and he fails to Join the post within the time allowed therefor, which shall not be less than seven days, his name shall be removed from the register referred to in Sub-section (1), and the appointment shall be offered to the next reserve pool teacher of the same district in the subject.

(5) If such other teacher to whom offer of appointment is made also fails to join, then the same process shall be repeated until the list of reserve pool teachers of that district in the is exhausted.

(6) No appointment of any teacher to an institution shall be made u/s 16 until the list of reserve pool teachers of that district in the subject concerned is exhausted in accordance with Sub-section (5).

Explanation : For the removal of doubts, it is hereby declared that no teacher shall, by virtue of the provisions of this section, be entitled to claim appointment to any particular post which he had joined in the manner referred to in Sub-section (1), of to any other post carrying the same or a higher grade.

3. A perusal of Section 21-B would show that the District inspector of Schools of each district is required to prepare a register of reserve pool teachers in which he will arrange subject wise persons who has been appointed as teacher in any Institution either by management or Inspector himself u/s 4 of the U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971, While U.P. High School & Intermediate Colleges (Payment of Salaries of teachers and other employees)(Amendment) Ordinance, 1977 was in force. in case they had already Joined the duties in between 9-1-1978 and 19-1-1978 (both days Inclusive) Sub-section (2) of Section 21-B requires that in case such teachers still continues in service by reason of any order of any Court or by any other reasons shall be deemed to have been regularly appointed to such post and shall be entitled to be confirmed in such post with effect from the date on which he would have been confirmed in the normal course. Sub-section (3) of Section 21-B is important for the present case. It provides that where a substantive vacancy in the post of a teacher in an institution is to be filled by direct recruitment, such post shall at the instance of Inspector be offered by the Management to a reserve pool teacher. Thus, it is clear that appointment of reserve pool teacher at the instance of Inspector by the Management can be made against the substantive vacancy meant for being filled up by direct recruitment i.e. reserve pool teacher's appointment under Sub-section (3) cannot be made on a post which is reserved for promotion from amongst the teachers of the institution concerned under 40% promotional quota.

4. From the facts on record of the case, admittedly Respondent No. 2 was appointed in the vacancy caused on the retirement of Sri Ram Dulare Singh. This

post falls under the 40% quota reserved for promotion from amongst L.T. grade teachers. A perusal of Section 21-B(3) of the Act would show that no appointment of reserve pool teacher against such a vacancy can be made. The appointment of reserve pool teacher can be made only against the vacancy meant for appointment by direct recruitment and not on posts reserved for promotees. The present appointment order, which is Annexure-13 to the writ petition, shows that the appointment of Respondent No. 3 had been made on the basis of an order of this Court dated 15-2-1988. I have seen the order of the Court, which was passed in Civil Misc. writ Petition No. 2806 of 1988. The order of the Court did not require the District Inspector of Schools, Jaunpur to make appointment against the provisions of Section 21-B(3) of the Act. As a matter of fact, there is no direction for making appointment, the direction is only to consider the claim of the Respondent No. 2 for appointment as lecturer as per the stipulation made by the inspector himself in his earlier order dated 5-3-1986 by which order he had appointed the Respondent No. 2 in the C.T. grade of the said College.

5. Even if the District Inspector of Schools, Jaunpur took the order dated 15-2-1988 passed in the Writ Petition No. 2886 of 1988 as a direction, for making appointment of Respondent No. 2, the said order could in no situation be interpreted to over-ride the provisions of Section 21-B(3) of the Act. The order dated 15-2-1988 passed in the writ petition No. 2806 of 1988 thus had to be read subject to the provisions of Section 21-B(3) of the Act. In my opinion, a judicial order cannot over-ride the express provision of the Act of Legislature. Thus, the Petitioner had no right to claim appointment nor the District Inspector of Schools, Jaunpur had power to appoint the Petitioner on the post of Hindi Lecturer in the college as the said post was meant to be filled up by promotion of L.T. grade teachers of the College within 40% promotional quota.

6. In my opinion, the appointment of Respondent No. 2 on the post of Hindi Lecturer of the College which falls under the promotion quota of 40% was wholly illegal. I, therefore, set aside the orders of appointment dated 19-4-1988 and dated 20-4-1988 whereby the Respondent No. 2, namely, Sri Fateh Bahadur Singh, has been appointed as Lecturer in Hindi in the College u/s 21-B(3) of the Act and direct the District Inspector of Schools, Jaunpur to reconsider the matter keeping in mind the claim of the Petitioner for appointment by way of promotion. and in case he finds that the post of Hindi Lecturer does not fall within 40% quota reserved for promotion, he will revive the appointment order of the Respondent No. 2 with retrospective effect and in case he finds that the post is within 40% quota of promotion, he will direct the management to take action for promotion of the Petitioner in accordance with law.

7. With these directions, the writ petition is allowed. There will, however, be no order as to costs.