

(1999) 02 AHC CK 0151
In the Allahabad High Court
Case No : C.M.W.P. No. 5195 of 1999

Shiv Shankar Singh

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 20-02-1999

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 33, 33C

Citation : (1999) 3 AWC 2169 : (1999) 2 UPLBEC 1126

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Sudhakar Pandey, for the Appellant;

Final Decision : Dismissed

Judgement

- D.K. Seth, J.—The petitioner has challenged validity of Section 33C since been introduced by amendment of the U. P. Secondary Education Service Commission and Selection Board Act, 1982 by means of enactment of U. P. Secondary Education Service Commission and Selection Board (Amendment) Act, 1998 being Act No. 25 of 1998, on the ground that the cut-off date 25th August, 1993 is arbitrary and without any rational basis.

2. Mr. Sudhakar Pandey, learned counsel for the petitioner has challenged the said amendment on the basis of the petitioner's right to avail of benefits of the said provision of Section 33C as amended by reason of petitioner's ad hoc appointment on the post of Principal. Admittedly, a person can challenge vires or validity of an Act provided the same affects his legal right. One can also challenge vires of such Act if in its application. It affects all similarly situated persons generally. This writ petition has not been presented in a representative capacity nor the petitioner has sought to represent any class of people. On the other hand, the petitioner has sought to challenge this amendment solely on his own legal right as an individual. Therefore, unless the petitioner is able to show that he has a legal right to challenge, he cannot maintain this writ petition.

3. In the present case, admittedly the petitioner was promoted on ad hoc basis on the post of Principal on 22.8.1998. The petitioner is aggrieved by the introduction of cut-off date as on 25th August. 1993 in Section 33C as amended by Act No. 25 of 1998. The ground for challenging the vires is insertion of arbitrary cut-off date.

4. Admittedly, the Act was enacted with the assent of the Governor on 25.7.1998 since been published in the official Gazette on 27.7.1998. The Act was given effect from 20.4.1998. The said Act was preceded by an Ordinance which was promulgated on 20.4.1998. Therefore, the cut-off date even assuming but not admitting, at best would be extended till 20.4.1998 and not beyond. Normally such cut-off date for regularisation of an irregularity can take effect on the date of promulgation of the Ordinance or the legislation of the enactment. Since the legislation has followed Ordinance, at best the cut-off date could be stretched till the date of the Ordinance and not beyond, namely, 20.4.1998. The petitioner having been appointed long thereafter, namely, on 22.8.1998, cannot raise any grievance with regard to insertion of the cut-off date. Inasmuch as even if the said cut-off date is held to be ultra vires, still then the same cannot be set forward beyond 20.4.1998 and even then the petitioner's case cannot be brought within the purview of the said amendment. Therefore, the petitioner cannot claim to have any legal right to challenge the vires of the said Act. In such circumstances, it is not necessary to enter into the question as to whether the cut-off date inserted in Section 33C as amended by Act No. 25 of 1998 is arbitrary or without any basis.

5- In the facts and circumstances of the case as observed above, this writ petition is not maintainable and is accordingly dismissed. There will be no order as to costs.