

(1986) 02 AHC CK 0065

In the Allahabad High Court

Case No : Civil Misc. Writ No's. (?) and 2747 of 1986

Shiva Chandra Misra and Another

APPELLANT

Vs

The District Inspector of Schools and Another

RESPONDENT

Date of Decision : 11-02-1986

Acts Referred:

Constitution of India, 1950 — Article 113, 133
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 11(1), 11(2), 11(4), 18, 18(1)

Citation : (1986) 02 AHC CK 0065

Hon'ble Judges : S.K. Dhaon, J;A.N. Verma, J

Bench : Division Bench

Advocate : S.C. Srivastava, for the Appellant;

Final Decision : Disposed Of

Judgement

A.N. Varma, J.—These two petitions are typical of a spate of litigations which is coming to this Court in the shape of writ petition praying for a writ of mandamus directing the District Inspector of Schools of the concerned district to pay salary to ad hoc teachers for the period beyond 30th of June following the date of their appointment. The question raised in these petitions being identical they are being disposed of by a common judgment after hearing learned Counsel for the Petitioners as well as the learned Standing Counsel.

2. In each of these petitions coming to this Court the Petitioners grievance is that even though the U.P. Secondary Education Service Commission has not recommended any candidate for appointment Under the U.P. Secondary Education Services Commission and Selection Boards Act (U. P. Act No. v. of 1982), the District Inspector of Schools has stopped payment of salary to the Petitioner on the ground that their adhoc appointment made u/s 18 of the aforesaid Act has automatically come to an end on the 30th of June following the date of such adhoc appointment in virtue of Clause (c) of Section 18(3) of U.P. Act No. v. of 1982. The Petitioners assert that they have been validly appointed u/

s 18 as adhoc teachers and their adhoc appointment having received the approval of the District Inspector of Schools their adhoc appointment should be deemed to be continuing till a candidate recommended by the Commission or the Board, as the case may be, joins the post. It is further asserted that no teacher has yet been selected by the Commission or, if selected, joined the post held by the Petitioner, that being so, it is urged, the District Inspector of Schools should continue to pay salary to the Petitioners even beyond 30th of June following the date of their adhoc appointment.

3. The learned Standing Counsel, on the other hand, submitted that upon plain terms of Clause (c) of Section 18(3) the adhoc appointment of the Petitioner must be deemed to have terminated on the 30th June following the date of such appointment and this is so even if no candidate has been selected or recommended by the Commission for substantive appointment.

4. Before we proceed to consider the validity of the above submissions it will be necessary to have a look at the relevant statutory provision, namely, Section 18 of the aforesaid Act which provides:

18. Adhoc Teachers (1) Where the management has notified a vacancy to the Commission in accordance with the provisions of this Act, and The Commission has failed to recommend the name of any suitable candidate for being appointed as a teacher specified in the Schedule within one year from the date of such notification; or the post of such teacher has actually remained vacant for more than two months, then, the management may appoint, by direct recruitment or promotion, a teacher on purely adhoc basis from amongst the persons possessing qualifications prescribed under the Intermediate Education Act, 1921 or the regulations made there under.

(2) The provisions of Sub-section (1) shall also apply to the appointment of a teacher (other than a teacher specified in the Schedule) on adhoc basis with the substitution of the expression "Board" for the expression "Commission".

(3) Every appointment of an adhoc teacher Under Sub-section (1) or Sub-section (2) shall cease to have effect from the earliest of the following dates, namely, (a) When the candidate recommended by the Commission or the Board, as the case may be, joins the post:

When the period of one month referred to in Sub-section (4) of Section 11 expires;

Thirtieth day of June following the date of such adhoc appointment.

5. It appears that when the legislature had enacted Section 18 of the Act it was not anticipated that the process of selection would be unduly delayed and would not be concluded even up to 30th of June following the date of such adhoc appointments. However, as it is frequently happening the Commission is unable to complete the selection or recommend a candidate for substantive appointment against the post held by the adhoc appointee even after 30th June following the

date of adhoc appointment. In some cases, we have noticed that 30th June following the date of adhoc appointment has intervened more than once as a regular candidate was not selected for up to nearly two years or so. In all such cases the District Inspector of Schools stops paying salary to teachers on the ground that the adhoc appointment does not survive after 30th June following the date of appointment relying on Clause (c) of Section 18(3). In Committee of Management of Sunatan Dharm Intermediate College, Daulatpur, District Mainpuri v. District Inspector of Schools, Mainpuri, 1985 Education Cases 322 a Division Bench of this Court had occasion to consider the legal implications of such a situation. It observed that the legislature could not have intended that the management should repeat the exercise of making an adhoc appointment of a teacher u/s 18 on the expiry of 30th June following the date of such adhoc appointment even though the Commission has not recommended the name of any candidate for substantive appointment. We also think that if the services of a teacher validly appointed u/s 18 have not been terminated after such adhoc appointment or if the Commission has not recommended the name of any candidate for substantive appointment the initial appointment made by the management with the approval of the District Inspector of Schools u/s 18 should be deemed to have been renewed by the management upon the expiry of 30th June following the date of appointment on each occasion. We are clearly of the opinion that the legislature cannot have intended that the same exercise as was involved in the initial adhoc appointment u/s 18 should be repeated on the expiry of 30th June following the date of appointment. The District Inspector of Schools will, therefore, not be justified in stopping payment of salary to a teacher validly appointed u/s 18 merely because of the fact that 30th June following the date of appointment has elapsed even though the Commission may not have, in the meantime, recommended the candidate for appointment to the post held by the adhoc appointee. This is the only way in which Sub-section (3) of Section 18 can be reasonably construed and the various Clauses (a) to (c) of Sub-section (3), reconciled. Any other construction would clearly lead to wholly unnecessary harassment to the teachers validly appointed u/s 18 of the Act.

6. Although the Division Bench in the case mentioned above has given several other reasons for arriving at the same conclusion we would prefer to rest our decision solely on the ground mentioned above, namely, that on a true and proper construction of Section 18 the management must be deemed to have renewed the adhoc appointment of the teacher on the expiry of 30th June following the date of such adhoc appointment where the service of the teacher initially appointed u/s 18 have not been terminated in accordance with law or the commission has failed to recommend the name of any suitable candidate for being appointed as a teacher.

7. The District Inspector of Schools should, therefore, treat the teachers validly appointed on adhoc basis u/s 18 as continuing in service and pay salary to them notwithstanding the expiry of 30th June following the date of appointment till the services of such adhoc teachers are terminated in accordance with law or till the

candidate recommended by the Commission or the Board joins the post or the date mentioned in Clause (b) of Sub-section (3) of Section 18, whichever may be the earliest. The stand taken by the District Inspector of Schools to the contrary seems clearly untenable.

8. In the result, the petitions succeed and are allowed. The District Inspector of Schools (Respondent No. 1) is directed to treat the Petitioners as continuing in service till their services are terminated in accordance with law or a candidate recommended by the Commission or Board joins the post held by the Petitioners on the expiry of the date mentioned in Clause (b) of Section 18(3) of U.P. Act No. v. of 1982, whichever is the earliest of these eventualities and pay salary to them accordingly, notwithstanding the expiry of 30th June following the date of such adhoc appointment. The parties shall bear then-own costs.

9. Learned Standing Counsel made an oral prayer for grant of a certificate under Article 133 of the Constitution of India. The prayer is refused as in our opinion, the case does not involve any substantial question of law of general importance which needs to be decided by the Supreme Court.