
(2004) 08 AHC CK 0139
In the Allahabad High Court
Case No : Special Appeal No. 345 of 2003

State of U.P. and Another	Vs	APPELLANT
Sudha Chaturvedi (Smt.) and Another		RESPONDENT

Date of Decision : 18-08-2004

Acts Referred:

Uttar Pradesh General Clauses Act, 1904 — Section 24
Uttar Pradesh Secondary Education Service Commission (Removal of Difficulties)
(Second) Order, 1981 — Rule 2(3)
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 33, 33C(2), 33E, 33F

Citation : (2005) 2 AWC 1902 : (2004) 3 UPLBEC 2965

Hon'ble Judges : Umeshwar Pandey, J; M. Katju, J

Bench : Division Bench

Advocate : S.C, for the Appellant; A.K. Rai, Y.K. Singh, A.P. Sahi, V.K. Singh and G.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This special appeal has been filed against the judgment of the learned Single Judge dated 5.2.2003;

2. Heard learned Counsel for the parties.

3. Before dealing with the issues involved in this appeal it is necessary to mention certain back ground facts. Adarsh Kariya Intermediate College, Sikhar, Mirzapur is a School recognised under the U.P. Intermediate Education Act and is imparting education to girls only. On 30.6.94 the post of Head Mistress of the institution fell vacant. On 1.7.94 Smt. Veena .Mishra. senior most L.T. Grade teacher was promoted as Head Mistress on ad hoc basis. On 17.12.1994 the Committee of Management of the institution decided of fill up the short, term vacancy which had occurred in L.T. Grade on account of ad hoc promotion of Smt. Veena Mishra as Head Mistress. This vacancy was advertised in two news paper "Aaj" and "Dainik Jagran. The petitioner and others .applied for the post.

On 21.1.96 the Committee of Management selected the petitioner and on 29.1.96 papers were sent to the Deputy Director of Education for his approval. When there was no communication from the Deputy Director of Education either approving or disapproving the appointment the Committee of Management treated it as a case of deemed approval. On 16.2.96 the petitioner joined duty and has been continuously working. However, no salary was paid to her.

4. The petitioner had earlier filed Civil Misc. Writ Petition No. 18796 of 1996 which was disposed of on 13.12.96 with the direction that the Deputy Director of Education shall decide the matter. By his order 23.4.97 the Deputy Director of Education refused to accord approval to the petitioner's appointment on the ground that on the date on which the petitioner was appointed there was a ban imposed by the State Govt. Thereafter Writ Petition No. 15370 of 1997 was filed by the petitioner challenging the order dated 23.4.97 and the impugned judgment has been passed in this writ petition.

5. On 19.10.2001 an interim order was passed by this Court which has been quoted in toto by the learned Single Judge in the impugned judgment.

6. Thereafter the impugned judgment was delivered.

7. The only reason assigned in the order dated 23.4.97 in refusing approval to the appointment of the petitioner was that at the time when she was appointed there was a ban imposed by the State Government.

8. The petitioner was appointed on 15.2.1996. On 15.2.1996 there was no ban on making ad hoc appointment in short term vacancies. A ban was issued on 29.6.1991 on making appointments, which was lifted on 26.9.1991. After 26.9.1991 there was no ban at all.

9. This Court in *Mukesh Kumar v. State U.P. and Ors.* 1996 AWC 556, has held that the procedure for appointment in short term vacancy was the same which was there prior to 14th July, 1992. It appears that the Deputy Director of Education had in mind the change which had been brought about u/s 18 with effect from 14th July, 1992. The appointments in short term vacancies were to be made following the procedure as prescribed under the Second Removal of Difficulties Orders, which remained unaffected. No other defect was pointed out in the impugned order by the Deputy Director of Education. Hence in our opinion the learned Single Judge rightly allowed the writ petition filed by the petitioner setting aside the impugned order dated 23.4.1997.

10. The Second Removal of Difficulties Orders had been issued on 11.9.1981 by the State Government u/s 33 of the U.P. Secondary Education Services Commission Act.

11. U.P. Act No. 5 of 1982 was amended by U.P. Act No. 13 of 1994 with effect from 25.1.1999. By means of the aforesaid amending Act Section 33-E was inserted by which the Removal of Difficulties Orders, which were issued by the State Government, were rescinded.

12. A learned Single Judge placing reliance upon, Section 33-E held in *Daya Shanker Pandey v. State of U.P. and Ors.* 2000 (1) ESC 204, that the teacher appointed under the Second Removal of Difficulties Order had no right to continue beyond 25.1.1999 i.e. the date from which the Removal of Difficulties Orders were rescinded. Based upon this judgment the contention of the appellant is that the petitioner-respondent cannot continue beyond 25.1.1999. We do not agree.

13. Firstly, the controversy in the present case is with regard to the grant of approval to the appointment of the petitioner, which was made on 15.2.1996. In case it is held that the appointment of the petitioner was rightly made, she would become entitled for salary from 15.2.1996 and therefore, according to the case of the appellant itself, there is no dispute that the petitioner-respondent was entitled to continue from 15.2.1996 to 25.1.1999.

14. However, the judgment which has been relied upon by the appellant is in our opinion not correct for the following reasons :

The learned Single Judge while taking the aforesaid view that on insertion of Section 33-E all the teachers who were appointed under the Second Removal of Difficulties Orders would cease to continue, has failed to notice Section 33-F which was inserted by the U.P. Act No. 5. of 2001 with effect from 30.12.2000. Section 33-F of the Act states :

"33-F Regularisation of appointments against short term vacancies.--

(1) Any teacher who-

(a) was appointed by promotion or by direct, recruitment in the lecturer's grade or trained graduate grade on or after May 14, 1991 but not later than August 6, 1993 against a short term vacancy in accordance with paragraph 2 of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981, as amended from time to time and such vacancy was subsequently converted into a substantive vacancy;

(b) possesses the qualification prescribed under, or is exempted from such qualifications in accordance with the provisions of the Intermediate Education Act, 1921;

(c) has been continuously serving the institution from the date of such appointment up to the date of the commencement of the Uttar Pradesh Secondary Education Services Selection Board (Amendment) Act, 2001;

(d) has been found suitable for appointment in a substantive capacity by the Selection Committee referred to in clause (a) of sub-section (2) of Section 33-C in accordance with the procedure prescribed under clause (d) of the said subsection shall be given substantive appointment by the Management."

15. In case the view taken by the learned Single Judge in the case of *Daya Shanker Pandey (supra)* is upheld, Section 33-F of the Act would be rendered

meaningless. According to the learned Single Judge every teacher would cease to continue with effect from 25.1.1999. On the other hand, Section 33-F grants benefit of regularisation only on the condition that the adhoc appointee was continuously working as on 30.12.2000 i.e. the date on which the amending Act of 2001 was enforced. Both the provisions, therefore, cannot co-exist in case it is held that in view of Section 33-E teachers, appointed under the Second Removal of Difficulties Orders would cease to continue beyond 25.1-1999.

16. Dealing with Section 24 of UP. General Clauses Act, 1904, the learned Single Judge while deciding Daya Shcmker Pandey's case (supra) has stated that the Removal of Difficulties Orders were of temporary nature and therefore, appointments made under them would not be saved u/s 24 of the UP. General Clauses Act. It seems to us that, the learners Single Judge failed to notice the judgment given by the Supreme, Court in Prabhat Kumar Sharma and others Vs. State of U.P. and others, . In paragraph 11 of the said judgment it has been held that the Removal of Difficulties Orders were permanent and not transient.

17. The learned Single Judge has also failed to notice the judgment of this Court in Civil Misc. Writ Petition No. 33880 of 1999 (Shyam Singh v. District Inspector of Schools and Ors.), decided on 11.8.1999 wherein it was held that Section 33-E was prospective and it would not affect the appointments already made.

18. For the aforesaid reason we are of the opinion that the judgment given by the learned Single Judge in the case of Daya Shanker Fandey (supra) is not correct.

19. Another objection taken by the appellant is that the Committee of Management had wrongly forwarded the papers to the Deputy Director of Education seeking his approval. In this connection it may be noted that after deciding to appoint the petitioner, the management of the institution sent the papers to the Deputy Director of Education for this approval. Under Rule 2 (3) (ii) of the Second Removal of Difficulties Orders the papers were to be sent to the District Inspector of Schools for this approval. It appears that the learned Standing Counsel had the aforesaid provisions in mind while raising the aforesaid argument. He has failed to take note of Explanation (ii) which clearly provides that in case the Institution was imparting Education to women, the District Inspector of Schools would mean the Regional Inspectress of Girls Schools. The Institution in question is imparting education only to girls and therefore, the papers were to be sent to the Regional Inspectress of Girls Schools. The post of Regional Inspectress of Girls Schools was re-designated as Deputy Director of Education and therefore, the papers in the present case were sent to the Deputy Director of Education. The functions which were performed by the then Deputy Director of Education are now being performed by the Joint Director of Education.

20. Apart from the above, no such objection appears to have been taken either in the impugned order dated 23.4.1997 passed by the Deputy Director of Education nor in the counter affidavit which was filed in reply to the writ petition.

21. There is no infirmity in the impugned judgment and the special appeal is dismissed.