

(1991) 02 AHC CK 0002

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 6018 of 1991

Suresh Chandra

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 26-02-1991

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 18, 18(1), 33, 33A

Citation : (1991) 1 AWC 676 : (1991) 2 UPLBEC 1079

Hon'ble Judges : S.C. Verma, J

Bench : Single Bench

Advocate : Rastrapati Khare, for the Appellant;

Final Decision : Dismissed

Judgement

S.C. Verma, J.—By this petition, the Petitioner has challenged the order of the District Inspector of Schools dated 11-2-1991 by which he has refused to accord approval to the Petitioner's ad-hoc appointment.

2. The brief facts of the case are that a permanent vacancy in L.T. Grade for Physical Instructor was created on account of the retirement of one Sri Kadam Singh Tyagi at the Institution S.D. Inter College, Saharanpur. In spite of the necessary information to the authorities when no appointment was made, proceedings for ad hoc appointment as required u/s 18 of the U.P. Secondary Education Service Commission and Selection Board Act (herein referred to as the Act) were initiated by the Institution. After necessary advertisement and Selection, the Committee of Management selected the Petitioner as the most meritorious candidate out of 14 applicants. The necessary approval was sought by the Institution from the District Inspector of Schools with regard to the Petitioner's ad hoc appointment, but the District Inspector of Schools, after making necessary enquiries, refused to accord approval by the impugned order on the ground that the marks obtained by the Respondent No. 4 Jasbir Singh were greater than the marks of the Petitioner and as such the approval was

refused. According to the District Inspector of Schools, the quality point marks of Sri Jasbir Singh, Respondent No. 4, are 24 marks and 7 marks in interview whereas the quality point marks of Suresh Chandra Petitioner are 21 marks and 7 marks in interview.

3. The Petitioner has challenged this order on various grounds. According to the learned Counsel for the Petitioner, the approval in the case of adhoc appointment u/s 18 of the Act are not required and in support of his case, the learned Counsel cited before me the decision in Ravindra Singh Niranjana Vs. District Inspector of Schools and Another, and Chhatrapal v. District Inspector of Schools Bareilly 1988 UP LB EC 640.

4. Before dealing with the aforesaid argument and the case law, it is necessary to consider the scheme and the requirement laid down under the provisions of the Act, Rules and Regulations framed there under and the various Removal of Difficulties Order issued u/s 33 of the Act for effective implementation of the provisions of the Act. The provisions of Section 18(1)(a) and (b) of the Act are as follows:

18. Ad hoc Teachers--

(1) Where the management has notified a vacancy to the Commission in accordance with the provisions of this Act, and--

(a) 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

(b) 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 ad hoc basis from amongst the persons possessing qualifications prescribed under the Intermediate Education Act, 1921 or the regulations made there under.

5. The criteria and procedure for appointment of adhoc teachers has been laid down in various Removal of Difficulties Orders issued from time to time under this Act. In para 2 of the U.P. Secondary Education Service Commission (Removal of Difficulties) Order, it has been provided that management of an institution may appoint by promotion or by direct recruitment a teacher on purely adhoc basis in accordance with the provisions of this Order in the following cases:

(a) in the case of a substantive vacancy existing on the date of commencement of this Order caused by death, retirement resignation or otherwise;

(b) in the case of a leave vacancy, where the whole or unexpired portion of the leave is for a period exceeding two months on the date of such commencement;

(c) where a vacancy of the nature specified in Clause (a) or Clause (b) comes into existence within a period of two months subsequent to the date of such commencement.

In paragraph 5 of the aforesaid Order, it has been provided:

5. Ad hoc appointment by direct recruitment--

(1) Where any vacancy cannot be filled by promotion under Paragraph 4, the same may be filled by direct recruitment in accordance with CLAUSES (2) to (5);

(2) The management shall as soon as may be, inform the District Inspector of Schools about the details of the vacancy and such Inspector shall invite applications from the local Employment Exchange and also through public advertisement in at least two newspapers having adequate circulation in Uttar Pradesh.

(3) Every application referred to in Clause (2) shall be addressed to the District Inspector of Schools and shall be accompanied--

(a) by a crossed postal order worth ten rupees payable to such inspector;

(b) by a self-addressed envelope bearing postal stamp for purposes of registration.

(4) The District Inspector of Schools shall cause the best candidates selected on the basis of quality points specified in Appendix. The compilation of quality points may be done on remunerative basis by the retired Gazetted Government servants under the personal supervision of such Inspector.

(5) If more than one teacher of the same subject or category is to be recruited for more than one institution, the names of the selected teachers and names of the institution shall be arranged in Hindi alphabetical order.

The candidate whose name appears on the top of the list shall be allotted to the institution the name whereof appears on the top of the list of the institution. This process shall be repeated till both the lists are exhausted.

6. However, in this case the procedure for adhoc appointment as contained in paragraph 5 of the Removal of Difficulties Order was not complied with. The Committee of Management in accordance with the procedure for filling up short term vacancies as contained in the Removal of Difficulties (Second) Order filled up the present vacancy. The provision of paragraph 2 of Second Removal of Difficulties Order is quoted below:

2. Procedure for filling up short term vacancies--

(1) If short term vacancy in the post of a teacher caused by grant of leave to him or on account of his suspension duly approved by the District Inspector of Schools or otherwise, shall be filled by the Management of the institution, by promotion of the permanent senior most teacher of the institution, in the next lower grade. The Management shall immediately inform the District Inspector of Schools of such promotion along with the particulars of the teacher so promoted.

(2) Where any vacancy referred to in Clause (1) cannot be filled by promotion,

due to non-availability of a teacher in the next lower grade in the institution, possessing the prescribed minimum qualifications, it shall be filled by direct recruitment in the manner laid down in Clause (3).

(3)(i) The management shall intimate the vacancies to the District Inspector of Schools and shall also immediately notify the same on the notice board of the institution, requiring the enndidates to apply to the Manager of the institution alongwith the particulars given in Appendix "B" to this order. The selection shall be made on the basis of quality point marks specified in the Appendix to the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981. issued with Notification No. Ma-1993/XV-7-1 (79)-1981, dated July 31, 1981, hereinafter to be referred to as the First Removal of Difficulties Order, 1981. The compilation of quality point marks shall be done under the personal supervision of the Head of institution.

(ii) The names and particulars of the candidate selected and also of other candidates and the quality point marks allotted to them shall be forwarded by the Manager to the District Inspector of Schools for his prior approval.

(iii) The District Inspector of Schools shall communicate his decision within seven days of the date of receipt of particulars by him failing which the Inspector will be deemed to have given his approval.

(iv) On receipt of the approval of the District Inspector of Schools or, as the case may be, on his failure, to communicate his decision within seven days of the receipt of papers by him from the Manager, the Management shall appoint the selected candidate and an order or appointment shall be issued under the signature of the Manager.

7. In this particular case, the management has undertaken the procedure for appointment of the Petitioner as laid down in para 2 above. In these circumstances, necessary papers were forwarded for approval to the District Inspector of Schools. In my opinion, the requirement of approval may not be necessary when the selection process has been conducted by the District Inspector of Schools himself but the approval would be necessary where the selection process has been conducted by the Management alone without taking assistance from the District Inspector of Schools. This aspect is further clarified by recognition of the Government to regularise the services of adhoc appointed teachers as contained in Section 33-A of the Act. The regularization of services of only those adhoc teachers was accepted who were selected and appointed by Selection process conducted by the District Inspector of Schools under Para 5 of the Lalta Prasad Yadava Vs. State of Uttar Pradesh and Others, . Moreover the financial burden of these teachers is to be borne by the State and as such it is necessary to ascertain the correctness of the appointment of the teachers before their salary is released by the District Inspector of Schools.

8. For the aforesaid reasons, the approval in the case of the Petitioner by the District Inspector of Schools was necessary and the contention of the learned

Counsel for the Petitioner in this regard are not correct. The cases cited by the learned Counsel have not dealt with this aspect of the matter and it appears they were dealt with those adhoc appointments where it was not necessary to seek approval. Both the cases dealt with the appointment of C.T. grade teachers. In the case of Ravindra Singh Niranjana (*supra*) the selection process was conducted by the District Inspector Schools and as such. It was held that no approval was necessary. As stated above, the Petitioner sought his appointment on a clear vacancy which fell vacant on account of retirement. The procedure as laid down under the provisions of the Removal of Difficulties (First) Order was required to be followed. Since this procedure was not followed and the procedure for filling short term vacancies by direct recruitment was followed in the present case and the selection process was conducted by the Committee of Management, the approval by the District Inspector of Schools would be required for such adhoc appointment on L.T. grade posts.

9. In the impugned order, the District Inspector of Schools has calculated 21 quality point marks of the Petitioner Suresh Chandra and 24 quality point marks of Sri Jasbir Singh, Respondent No. 4. The Chart which was submitted to the District Inspector of Schools indicating the qualification of each candidate shows that the quality point marks were not calculated in accordance with the criteria laid down in Appendix to the Removal of Difficulties (First) and (Second) Orders. The District Inspector of Schools has not given on what basis the aforesaid quality point marks have been calculated. At this stage it is necessary to mention that any dispute connected with the appointment by promotion or direct recruitment under the Removal of Difficulties Order shall be referred to the Deputy Director of Education of the Region for decision. In my opinion, it is necessary that this dispute be finally decided by the Deputy Director of Education. The Petitioner is, therefore, directed to file an appeal before the Deputy Director of Education against the order of the District Inspector of Schools dated 11-2-1991 refusing to accord approval to his appointment within a month of receipt of a certified copy of this order. He shall also file a certified copy of the order along with the appeal within the aforesaid period. The Deputy Director of Education shall, after affording opportunity to the concerned parties decide the dispute within two months of the presentation of the appeal.

10. With the aforesaid directions, the writ petition is dismissed. There shall be no order as to costs.