

(1996) 05 AHC CK 0117

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1292 of 1984

Vidya Prasad Shukla

APPELLANT

Vs

District Inspector of Schools, Allahabad & Ors.

RESPONDENT

Date of Decision : 13-05-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 21, 226
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 18(3)

Citation : (1996) 05 AHC CK 0117

Hon'ble Judges : R.K. Mahajan, J

Final Decision : Dismissed

Judgement

R.K. Mahajan, J.—The order in this writ petition will also dispose of writ Petition No. 9144 of 1988 (S. S. Pandey v. D.I.O.S., Allahabad and another; (2) Writ Petition No. 24268 of 1992 (S.S. Pandey v, U.P Secondary Education Service Commission U.P Allahabad and other; (3) Writ Petition No. 1310 of 1989 S.S. Pandey v. Deputy Director of Education, Allahabad Region, Allahabad & Ors.; (4) Writ Petition No. 2819 of 1989 ; Harizan Awam Pichhada Warg Shoshit Dal, Allahabad v. U.P. Secondary Education Commission, Allahabad & Ors.; (5) Writ petition No. 14572 of 1992 (V.P. Shukla v. District Inspector of Schools, Allahabad and another) and (6) Writ Petition No. 2520 of 1990 (S.S. Pandey v. U.P. Secondary Education Service Commission, Allahabad & Ors.) as the facts involved in these writ petitions are same.

2. This writ petition reveals how regularisation process of an employee is thwarted. It also reveals an aspect that how successive writ petitions are filed without making any amendment in the original writ petition, confusing the facts and protracting the journey of the case towards its final end. This writ petition also shows how one party wants to play the war of nerves against the other. The petitioner in the original petition prays for issuing of a writ order or direction in the nature of certiorari quashing the order dated 29101983 (Annexure No. 3)

passed by the respondents No. 3 and he further prays that the respondent No. 1 and 2 be directed to consider the petitioner on the post of Lecturer in Sociology on the basis of promotion in 40% quota in accordance with the provisions of Regulations No. 5 and 6. The petitioner further prays that direction be issued to decide the representation pending before the authorities i.e. respondents No. 1 and 3.

3. Brief facts leading to this writ petition are as follows. The petitioner was appointed as Assistant Teacher in L.T. grade by the respondent No. 2, 1971/1973 and was confirmed on 9/7/1974. The petitioner was placed at No. 3 in the seniority list. He was M.A. in Sociology from Kanpur University which he passed in the year 1973. He was also having qualification of B. Ed. Before 1973 the school was upto High School and after 1973 it was raised upto Intermediate. There were three posts of Lecturership in the School i.e. one in Hindi, the other in Economics and the third in Sanskrit. The appointments were made on the basis of direct recruitment. In the Year 1974 one post of Lecturer in Civics was created and direct recruitment was made. In the year 1975 the post of Lecturer in History was filled up by direct recruitment. On 28/7/1983 the post of teaching in Sociology in Intermediate classes was created in the institution which was sanctioned by Education authorities and the same was to be filled up in accordance with the Regulation No. 5 of the U.P. Intermediate Education Act, 1921. Regulation 5 is quoted with advantage:

"5. (1) Every vacancy in the post of teacher in a recognised institution shall except as otherwise provided in clause (2) be filled by direct recruitment.

(2) Forty percent of the total number of the sanctioned posts in lecturer's grade or in the L.T. grade shall only be filled by promotion from amongst the teachers working in the institution in the L.T., and the C.T grades respectively and promotions shall be made subject to availability and eligibility of such teachers for promotion."

4. Regulation 6 of U.P. Intermediate Education Act, 1921, deals with the vacancy and determination of minimum qualification for teaching the subject in which the teacher in the lecturer's grade is required. Subclause (3) of Regulation 6 reads as under:

"6 (3) Subject to clause (2) where more than one teacher in the L.T. grade are eligible for promotion to the post of lecturer in any subject preference shall be given to the teacher who is the senior most amongst them in service in that grade."

5. The grievance of the petitioner is that when the post of the sociology Lecturer was created regularly the petitioner was not considered for appointment and the benefit of adhoc appointment was given to respondent No. 5 Shri Sheo Shanker Pandey by the Managing Committee by resolution dated 19/10/1983. The petitioner further alleges that he was appointed on 9/7/1993 and was confirmed on 9/7/1974 whereas Sheo Shanker Pandey was appointed in August, 1974 and was

confirmed in 1975. He further alleges that there are six posts in the institution and according to 40% quota he should have been considered for the appointment by the Management. The petitioner says that he made various representation regarding by passing him for not appointing on the adhoc basis and thereafter on regular basis over the preference given to Shri Sheo Shanker Pandey but of no avail. He further alleges that the authorities were hand in glove with the wrong appointment of Shri Pandey. He further alleges that the respondent did not notify the vacancy to the Commission for regular appointment as required under Section 18 of U.P. Secondary Education Service Commission & Selection Board Act, 1982, (hereinafter referred to as the Act of 1982). He further alleges that the approval given vide annexure No. 3 to the writ petition regarding appointment of respondent No. 5 is without jurisdiction and has no effect on the right of the petitioner.

6. The respondent No. 5 Shri Sheo Shanker Pandey filed a detailed counteraffidavit justifying his appointment and inter alia pleaded that he is working in the college for more than 10 years and his service have been confirmed. In para No. 5 of the counter affidavit a concept of creation of mixed posts of Lecturers has been introduced. It says that Sociology subject was yet to be recognised in Intermediate classes and the post was to be created so according to time table of the college teaching of 30 periods in a week was required whereas the Lecturer in Sanskrit was teaching 30 periods per week. Additional periods were to be taught by additional lecturer so it was thought to create post of Lecturer in Sanskrit so that teaching can be done in both the subjects and the proposal was sent that the Lecturer in Sociology may be M.A. so that within the sanctioned strength double purpose can be solved i.e. teaching in Sanskrit and Sociology. Copy of the letter dated 21/11/1982 received from the office of District Inspector of Schools, Allahabad is annexure No. CA2 to the counteraffidavit on this subject matter.

7. The plea of the respondent No. 5 is that he is working on ad hoc basis as Lecturer in Sociology since 9/11/1983 and getting the pay and other benefits so he is entitled to continue. He has also pleaded that provisions of the Act of 1982 and the Government Order dated 20/9/1977 be read together for appointment in case of respondent.

8. It also appears that advertisement was also sent to the Commission. This was for the filling up the vacancy which was later on cancelled.

9. Now I would refer the facts of other writ petitions. Firstly, the writ petition No. 9144 of 1988. This writ petition was filed by Sheo Shankar Pandey praying that a writ, order or direction in the nature of mandamus be issued directing the respondent (D.I.O.S., Allahabad) to make payment of salary to the petitioner of Lecturer grade since 17/1/1985 and continue to make payment till recommended candidate by the Commission does not join the college as Lecturer in Sociology.

10. Another writ petition No. 24268 of 1992 was filed by Shri Sheo Shanker

Pandey praying to regularise the service of the petitioner as Lecturer in Sociology and to quash the order dated 23/2741992 passed by the District Inspector of Schools, Allahabad.

11. Another writ petition No. 2520 of 1990 was filed by Shri Sheo Shanker Pandey commanding the respondent not to promote Vidya Prasad Shukla and regularise the service of Shri Parley as Lecturer.

12. Another writ petition was filed by Shri Sheo Shanker Pandey being No. 1310 of 1989 seeking to quash the advertisement issued by Public Service Commission dated 1181984 and to treat the petitioner as regular and confirmed Lecturer in the institution as he has been appointed in substantive capacity from 9111982 under Section 33A of the Act of 1982. It appears from the writ petition that the post was advertised for filling up regular vacancy in sociology and the petitioner has filed the writ petition.

13. Another writ petition No. 2819 of 1989 was filed by Harizan Awam Pichhada Warg Shoshit Dal, Allahabad claiming that the post be sanctioned in Sociology. This writ petition has not been passed by either of the parties at the time of arguments.

14. Writ Petition No. 14572 of 1992 was filed by Shri V.P. Shukla praying for quashing the order passed by the Authorised controller dated 531992 (Annexure No. 4). It was also prayed that a direction be issued to the District Inspector of Schools, Allahabad to send the name of the petitioner as selected candidate to the authorised controller in compliance of the intimation from the commission dated 18121991 within ten days. It was further prayed that the respondents be directed not to interfere in the functioning of the petitioner as Lecturer in Sociology. It appears that he was selected on the post of Lecturer in Sociology vide letter dated 18121991 (Annexure No. 1). The petitioner has also prayed that he be paid salary from 21121991 as a Lecturer in Sociology.

15. I have heard learned Counsel for the petitioner (S.S. Pandey) Shri G.S. Bhatt and Shri Radhey Shayam, for Shri Vidya Pandey was teaching two subjects Sanskrit and Sociology and he was selected by the Managing Committee and in view of his long service he was regularised by the Managing Committee. Shri Radhey Shayam submitted that Shri Sheo Shanker Pandey did not come to the Court with clean hands and relief should be refused.

16. I have heard the learned Counsel for the parties. I am of the view that while doing adhoc appointment the settled principle of law is that the merit and seniority of the candidate has to be considered. In my view the adhoc appointment could not be made because Sheo Shanker Pandey was junior. It appears that a vacuum was created after the upgradation of the School to Intermediate and in order to fill up the post provision was made for the interim arrangement and the legislature in its wisdom enacted Section 18 of the Act. Section 18 deals with adhoc appointment of teachers. Section 18 is quoted with advantage:

"18. Adhoc Teacher 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 recommended 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 may promotion, a teacher on purely ad hoc basis from amongst the person possessing qualifications prescribed under the Intermediate Education Act, 1921, or the regulations made thereunder.

(2) The provisions of subsection (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 "Commissions,"

(3) Every appointment of an adhoc teacher under sub section (1) of subsection (2) shall cease to have effect from the earliest of the following dates, namely

"(a) when the candidate recommended by the Commission of the Hoard, as the case may be, joins the post;

(b) when the period of one month referred to in subsection (4) of Section 11 expires;

(c) thirtieth day of June following the date of such adhoc appointment."

17. There can be no other interpretation while interpreting Section 18 subclause (3) that when the candidate selected by the Commission joins, the adhoc appointee as to make a place for him. This provision has been made to avoid ad hocism and favourtism so that the best person can be selected by the Commission and education may not suffer ultimately. But in this case by manipulation and dilatory tacticks of Management and other authorities the regular appointment was delayed for so may years. It is a very unfortunate and sad affair that the selection has taken such a long time. Some time the Managing Committee was superseded and controller came into picture and ultimately even the Commission order is not being complied with.

18. I am of the view that in future for such dilatory tactics the management and other authorities mentioned under the Act who are responsible for selection can be made accountable to the public and they have to bear the compensation for education of the children. It must be made clear that right to "education is a fundamental right and it means right to be Educated by. the qualified and duty selected persons by the Commission under Article 21 of the Constitution of India.

19. In my view, under Regulation, as quoted above, the petitioner was duly qualified and he comes under the quota of 40% and he was entitled for consideration for which there were so many pressures and pulls making hindrance in his selection. It has been argued by the Counsel for the petitioner

that U.P. Secondary Education Service Commission Act, 1981, is applicable.

20. In my view this difficulty of removal order cannot eclipse the right of regular appointment at all as I have perused this order and Section 2 of the order deals with vacancy in which ad hoc appointment can be made. Section 3 deals with duration of adhoc appointment and then Section 6 speaks of eligibility for appointment. This order cannot be utilised as a garb for direct recruitment or promotion on merit. There is a procedure laid down even the recruitment in para 5 of first removal of difficulties order regarding advertisement in the News Paper and send a requisition to local employment office. So many in built safeguards are mentioned in the order to avoid favouritism and nepotism.

21. I see no force in the argument of the Counsel appearing for Shri S.S. Pandey regarding filing of successive petitions.

22. Learned Counsel for the petitioner has relied upon AIR 1994 Allahabad 391 (M/s. Munna Industries v. State of U.P. & Ors.) and (1993) 2 CRC 1264 (Anwar Jamil v. State of U.P. & Ors.).

23. I am of the view that if any fresh development takes place during the pendency of the writ petition it can be brought to the notice of the court by way of filing of amendment application in the earlier petition under Order VI, Rule 17 or it can be placed on record with the prayer that the petitioner is bringing the subsequent event of the filing during the pendency of the writ petition. When a matter is subjudice anything which happens during the pendency of the suit is subject to the decision of the Us and the petitioner cannot be prejudiced.

24. While sitting in Division Bench for more than six months I have observed that successive petitions are filed and it is now high time to make suitable amendment in the High Court Rules by introducing a paragraph on the following lines:

"That no earlier petition has been filed on the same cause of action and subjectmatter and if filed the number of the writ petition be mentioned."

25. This practice is prevailing in most of the High Courts and also in the Apex Court. In this way the successive filing of petition increases the figures of the cases and the Courts feel difficulty in writing judgments. The petitioner succeeds in obtaining the stay orders and ultimately delaying the cases and decision on merits.

26. I allow the writ petition No. 1292 of 1984 and writ petition 14572 of 1992 by Shri V.P. Shukla and quash the order dated 29101983 with a direction to consider his for appointment from 29101983 for adhoc appointment on 40% quota and for regular appointment from the date of selection by the Commission and implement Commission's recommendation mentioned in the letter dated 18121991 and further direction is given that respondent be restrained not to cause any interference in the working of the petitioner. He is entitled to all consequential benefit.

27. The order Writ Petitions No. 9 44 of 1988 writ Petition No. 24268 of 1992, Writ Petition No. 1310 of 1989, Writ petition No. 2819 of 1989 and Writ Petition No. 2520 of 1989 are dismissed.

W.P. No. 1292/84 & 14572/92 allowed. W.P. No. 9144/88, 24268/92 1310/89 & 2819/89 dismissed.