

**(1991) 03 AHC CK 0124**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ No. 12212 of 1989

Yogendra Nath Singh

APPELLANT

Vs

The District Inspector of Schools and Another

RESPONDENT

**Date of Decision :** 12-03-1991

**Acts Referred:**

**Citation :** (1991) 1 AWC 562

**Hon'ble Judges :** Om Prakash, J

**Bench :** Single Bench

**Advocate :** Ashok Bhusan, for the Appellant; Ganga Parsad, for the Respondent

**Final Decision :** Allowed

## Judgement

Om Prakash, J.—By this petition the Petitioner, a Physical Training teacher in the Inter College, Machhlisahar, district Jaunpur, in L.T. grade, seeks quashing of the order dated 3-4-1989 (Annexure "4" to the writ petition) passed by the District Inspector of Schools, Jaunpur, Respondent No. 1, disapproving the resolution of the Committee of Management dated 24-2-1989, whereby the Petitioner was promoted as a lecturer in Civics. The Committee of Management, Respondent No. 2, made the appointment of the Petitioner as lecturer in Civics in the aforesaid institution on the ground that he was senior-most teacher in L.T. grade in the institution and forwarded the papers relating to such appointment of the Petitioner to the Respondent No. 1 for approval. While refusing to accord approval to the resolution of the Committee of Management, the Respondent No. 1 observed that the appointment of the Petitioner as lecturer in Civics was contrary to the rules on the grounds:

(i) that the appointment of the Petitioner was beyond the sanctioned strength of lecturers in the College;

(ii) that whereas vacancy on account of the retirement of Sri Krishna Lal Vaishya arose in the year 1981, the Petitioner passed M.A. in Political Science in the year 1987 and, therefore, he was not qualified when the vacancy arose;

(iii) that the vacancy having not been filled in within the period of three months, the post had lapsed and no appointment could be made thereon unless the post is sanctioned afresh; and

(iv) that the Petitioner being a Physical Training teacher could not be promoted as a lecturer in Civics.

2. Chief point for consideration in this case is whether a senior-most Physical Training teacher can stake claim for ad hoc promotion u/s 18(1)(b) of the U.P. Secondary Education Services Commission and Selection Boards Act, 1982 (briefly "the Act 1982"). It is not disputed that on the retirement of Sri Krishna Lal Vaishya, a lecturer in Civics, in the year 1981, a substantive vacancy arose, which was notified to the commission and no appointment having been made within the stipulated time by the commission, the said vacancy was filled up by the Committee of Management by having appointed the Petitioner by resolution dated 24-2-1989 (Annexure "2" to the writ petition). Also there is no dispute that the Petitioner was senior-most teacher in L.T. grade on the date of appointment and that he was M.A. in Political Science on that date. The Respondent No. 1, however, said that the Petitioner having passed M.A. much after the date of occurrence of the vacancy could not be said to be qualified for being appointed as lecturer. The vacancy arose in the year 1981 and the Petitioner, who was appointed by the resolution dated 24-2-1989, passed M.A. in the year 1987. So the other question is whether the Petitioner could be said to be qualified to the post of lecturer.

3. Section 18(1)(b) of the Act, 1982, states that where the Management has notified a vacancy of the Commission in accordance with the provisions of the Act and 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 purely on ad hoc basis from amongst the persons possessing qualifications prescribed under the Intermediate Education Act, 1921, or the Regulations framed thereunder. From this provision it is manifest that when a vacancy is notified to the Commission, which is not filled in for more than, two months by the commission, then the Management acquire a right to make ad hoc appointment either by direct recruitment or promotion. A plain reading of Clause (b) of Section 18(1) of the Act, 1982, gives an impression as if an option is given to the Management either to make the ad hoc appointment by direct recruitment or by promotion, but looking to the legislative background of the Act and other provisions of the Statute, legal position that arises is that it is not pure and simple a choice of the Management to resort to either mode, but there is sufficient guide line as to how the two modes of making ad hoc appointment u/s 18(1)(b) of the Act are to be pressed into service. This question came up for consideration in Charu Chandra Tiwari Vs. District Inspector of Schools and Others, , in which this Court advertng to the U.P. Secondary Education (Removal of Difficulties) Order, 1975 and other ancillary provisions held that senior-most teacher qualified to the post should be promoted on ad hoc basis u/s 18(1)(b)

and direct recruitment could be resorted to only when a qualified senior-most teacher is not available. Seniority of the Petitioner not being in doubt, the question remains whether he was qualified for the post of lecturer. It is not in dispute that the qualification for a lecturer is M.A. as prescribed in Appendix "A", read with Regulation 1 Chapter II of the Regulations framed u/s 15 of the U.P. Intermediate Education Act, 1921. The only controversy is whether a claimant should be qualified when the vacancy arose or when he is considered for promotion. This question is also not reintegrated in so far as this Court in *Hans Raj Singh v. U.P. Secondary Education Service Commission Allahabad* 1990 AWC 1426 : (1990) 2 UP LB EC 1127 ruled down that the date on which the Management after expiry of more than two months from the date of vacancy decides to make ad hoc appointment u/s 18(1)(b) is the relevant date for the purpose of considering the eligibility of a teacher for promotion. So the qualification of a given teacher, who claims promotion, is to be seen with reference to the date when the Management decides to make ad hoc appointment u/s 18(1)(b) of the Act, 1982. In the instant case the Management held a meeting to decide the question of ad hoc appointment on 24-2-1989 when the resolution (Annexure "2" to the writ petition) was passed and on that date the Petitioner was fully qualified, inasmuch as he had passed M.A. in the year 1987. Therefore, he was fully qualified for being considered for ad hoc promotion u/s 18(1)(b).

4. No doubt it strikes odd or may be even unprecedented whether the Management should appoint a Physical Training teacher as a lecturer in Civics. But in view of the ratio in *Charu Chandra Tiwari* (supra) ad hoc appointment, so long as a qualified senior-most teacher is available, has to be made by promotion only. The Petitioner being the senior-most teacher and fully qualified on the date when the Management decided to make ad hoc appointment cannot be denied ad hoc promotion.

5. The question whether a Physical Training teacher wholly inexperienced in teaching work can deliver the goods is wholly academic, in so far as teaching experience is no more a condition precedent even for a regular appointment let alone the ad hoc appointment. The Commission u/s 9 of the U.P. Secondary Education Service Commission Rules, 1983 is enjoined upon to consider the names of all the teachers who possess the minimum qualification and have put in at least five years continuous service as teacher on the date of occurrence of the vacancy. So the requirements for regular promotion are that one should possess minimum qualification and should have put in at least five years continuous service as teacher on the date of occurrence of vacancy. Sub-rule (2) of Rule 9 says that criterion for promotion should be seniority subject to the rejection of unfit. When teaching experience is not required under Sub-rule (1) of Rule 9, rejection on that ground is not possible but unfitness can be judged only on other grounds. So when teaching experience is not necessary for a regular promotion to be made by the commission and when a candidate cannot be rendered unfit for lack of teaching experience even by the commission while making a regular

promotion, how can a teacher possessing requisite qualification and the seniority can be said to be ineligible for ad hoc appointment. Therefore, the order of the Respondent No. 1 that a Physical Training teacher possessing qualification on the date of deciding the question of appointment cannot be given ad hoc promotion as lecturer in Civics, cannot be sustained.

6. Having dealt with the major points, I turn to the minor objections being raised by the Respondent No. 1.

7. One of the objections is that the appointment of the Petitioner was beyond sanctioned strength of lecturers. When the vacancy of Sri Krishna Lal Vaishya is yet to be filled in, it is difficult to apprehend as to how the Petitioner's appointment is beyond sanctioned strength. Substantive vacancy has to be filled in by the commission and that having not been done, the vacancy will continue and that cannot be deemed to have been filled in otherwise.

8. Another objection is that this vacancy lapsed within the meaning of Regulation 20 of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921. Regulation 20 states that where the Committee of Management has failed to advertise any sanctioned post, which has fallen vacant, in accordance with the Regulations within a period of three months from the date of occurrence of the vacancy, such posts shall be deemed to have been surrendered and shall not be filled up, unless its creation is sanctioned afresh by the Director. No sanction having been obtained from the Director, the Respondent No. 1 stated in the impugned order that the post would be deemed to have been surrendered. This was the position before the Act, 1982, became operative. But after the enforcement of the Act, 1982, every vacancy has to be filled in only by the commission and ad hoc appointment can be made by the Management Committee only in the circumstances as contained in Section 18(1)(b). Petitioner's appointment cannot be impugned on that ground.

9. In the result, the writ petition succeeds and is allowed and the impugned order dated 1/3-4-1989 passed by the Respondent No. 1 (Annexure "4" to the writ petition) is quashed and the District Inspector of Schools, Respondent No. 1, is directed to accord financial approval in regard to the payment of salary to the Petitioner as admissible under the rules.