

(1985) 11 AHC CK 0056

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 13327 of 1985

Yogendra Prasad Chaturvedi

APPELLANT

Vs

Additional Civil Judge and Others

RESPONDENT

Date of Decision : 18-11-1985

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 14, 16(1), 16F(1), 16FF(1), 16G(7)
Uttar Pradesh Secondary Education Services Commission and Selection Boards Rules,
1985 — Rule 4

Citation : (1985) 11 AHC CK 0056

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Advocate : Ajit Kumar, for the Appellant; S.D. Misra, for the Respondent

Final Decision : Disposed Of

Judgement

B.D. Agarwal, J.—Vacancy arose for the post of the Principal in the Adarsh Inter College, Parsauna, district Gorakhpur, due to the retirement of Paras Nath Misra the permanent incumbent of the office with effect from June 30, 1985. On June 22, 1985, the Committee of Management resolved that Misra be required to hand-over charge to the Petitioner in the afternoon of June 30. The charge was accordingly taken over by the Petitioner. The Respondent No. 3 raised objection before the District Inspector of Schools, Gorakhpur, whereupon the Inspector wrote to the management on July 3, 1985, saying that the Respondent being the senior-most he should be given the charge in accordance with the provision contained in para 4(1)(a) of the U.P. Secondary Education Service Commission (Removal of Difficulties) Order 1981 (hereinafter referred to as the "Order, 1981"). The management protested against this in writing in its letter dated July 8, 1985, addressed to the Inspector pointing to deficiencies in the Respondent No. 3. The Petitioner filed Original Suit No. 1200 of 1985 in the Court of Munsif, Gorakhpur, seeking permanent injunction to restrain the Respondent No. 3 from interference. Ad interim injunction was granted by the trial court on July 15,

which, however, has been vacated in Civil Miscellaneous Appeal No. 218 of 1985 on August 1, 1985, at the instance of the Respondent No. 3. Writ Petition No. 12096 of 1985 filed by the management against the order dated July 3, 1985, was dismissed in limine on August 16, 1985. The Manager instituted Original Suit No. 1318 of 1985. In the matter, temporary injunction was granted by the trial court, but this was set aside in Miscellaneous Civil Appeal No. 243 of 1985 on August 23, 1985. A writ petition filed against this order is pending in this Court. Aggrieved against the order dated August 1, 1985, the Petitioner has approached this Court in this petition.

2. Affidavits have been exchanged between the parties and with the consent of their counsel the petition is being disposed of finally at the preliminary stage.

3. Para 2 (Chapter II) of the Regulation framed under the Intermediate Education Act reads as under:

2(1) The post of the Head of institution shall except as provided in Clause (2) be filled by direct recruitment after reference to the Selection Committee constituted Under Sub-section (1) of Section 16F or, as the case may be under Sub-section (1) of Section 16FF:

Provided that in the case of any institution not being an institution referred to in Section 16FF a temporary vacancy caused by the grant of leave to an incumbent for a period not exceeding six months or by death, retirement or suspension of an incumbent occurring during an educational session in the post of the Head of institution shall be filled by the promotion of the senior-most qualified teacher, any, in the highest grade in the institution.

4. Sri S.R. Misra, learned Counsel appearing for the Respondent No. 3, made reference at the out-set to the provision aforementioned and submitted that in terms thereof the appointment had to be of the senior-most qualified teacher to the post of the principal. In the course of arguments on both sides before me it is not disputed for purposes of this case that the Petitioner is junior to the Respondent No. 3 and the latter is the senior-most. The proviso is, to my mind, inapplicable on the facts thereof the reason being that this is not a case of temporary vacancy occurring during an education session. The vacancy arose, as mentioned above, at the end of the academic session 1984-85. Sri Misra refers to para 21 (Chapter III) of the Regulations and contends that since according to this para the retirement of the Head of the Institution is to be effective on June 30, the proviso to para 2 will be rendered redundant in relation to a matter of retirement in case this be the interpretation adoptee. Even under para 21 there is provision for the Head of the Institution on his application to seek retirement before June 30 in a particular case. This moreover does not alter the obvious intention behind the proviso, which intends filling in a temporary vacancy arising during an educational session with a view that the education does not suffer. Another reason why this proviso is not attracted to the benefit of the Respondent is that there are now in existence special provisions contained in Sections

16(1)/18(1)(b) read with Section 32 of the U.P. Secondary Education Service Commission and Selection Board Act, 1982 (hereinafter referred to as "the Act"), and as will appear presently these being inconsistent with what is contained in the aforementioned proviso, they shall be applicable in place of the proviso.

5. Para 2(b) of the U.P. Secondary Education (Removal of Difficulties) Order, 1975, dated August 18, 1975, referred to them by Sri S.R. Misra lays down that the vacancy of the Head of the Institution shall be filled in case of Intermediate College by the senior-most teacher of the institution in the lecturer's grade, provided he possesses a good record of service administrative ability. This pertains, as stated in para 2 (a) of the Order, to filling in substantive or leave vacancy or any vacancy existing or creating during the current academic session in the institution. The preamble to this Order shows that it was brought into existence to give effect to the provisions of Section 14 of the U.P. Act VI of 1974. The entire complexion has changed with the enforcement of the Act containing special provisions for filling in temporary vacancy on ad hoc basis and due to the overriding effect provided thereby by virtue of Section 32 of the Act. Consequently para 2 (b) of this Order 1975 cannot also avail the Respondent.

6. Learned Counsel for the Respondent laid emphasis upon para 4(1)(a) of the Order 1981 brought into force with effect from July 31, 1981. According to this provision every vacancy in the post to the Head of the Institution may be filled in on ad hoc by promotion in the case of an Intermediate College by the senior-most teacher of the institution in the lecturer's grade. This has to be read along side with para 2, which refers to vacancy in which ad hoc appointment can be made. In the Order 1981, as originally issued, para 2 provided that the management of an institution may appoint by promotion or by direct recruitment a teacher on purely ad hoc basis in accordance with the provisions of this Order in the case, namely:

(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.

7. Para 2 aforementioned was substituted by paragraph 5 of the U.P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981, dated 11th September, 1981, so as to read as follows:

The management of an institution may appoint by promotion or by direct recruitment, a teacher on purely ad hoc basis in accordance with the provisions of this Order in the case of a substantive vacancy caused by death, retirement, resignation, or otherwise.

8. It was argued for the Respondent that the Petitioner not being the senior-most teacher in the lecturer's grade he could not be given ad hoc appointment in view of para 4(1)(a). This over-looks that the provision contained in the Order 1981 in this behalf was intended to be availed of to fill in a vacancy existing on July 31, 1981 when the order commenced. The preamble to the Order 1981 is relevant in this connection furnishing, as it does, a clue to the interpretation of the relevant text and the object behind the same. It reads:

Whereas the Uttar Pradesh Secondary Education Services Commission and Selection Boards Ordinance, 19a 1 (U.P. Ordinance No. 8 of 1981) was promulgated on July 10, 1981 with a view to establish a Secondary Education Services Commission and six or more Secondary Education Selection Boards for selection of teachers in institution recognised under the Intermediate Education Act, 1921:

And whereas the establishment of the Commission and the Selection Boards is likely to take some time and even after the establishment of the said Commission and Boards, it is not possible to make selection of the teachers for the first few months:

And whereas a number of vacancies in the posts of teachers in various Institutions recognised under the Intermediate Education Act, 1921, exist and the failure or delay in filling up of such vacancies is likely to create difficulties;

9. The Act was preceded by the U.P. Ordinance 8 of 1981, which came into force on July 10, 1981. Section 18(1) thereof which corresponds to Section 18(1) of the Act provided:

Ad-Hoc Teachers.

18. (1) Where the management has notified a vacancy to the Commission in accordance with the provisions of this Ordinance, 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 six months 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 thereunder.

10. u/s 18(1) the management may exercise the power to appoint only if the Commission has failed to recommend within six months from the date of notification of the vacancy or the post of the teacher has actually remained vacant for more than two months. What was to happen in the event of there being a vacancy existing on July 10, 1981 itself when the Ordinance was enforced? Because of Section 16(1) of the Ordinance, which laid down that

notwithstanding anything to the contrary contained in the Intermediate Education Act every appointment of a teacher specified in the Schedule shall after the promulgation of the Ordinance be made by -the management only on the recommendation of the Commission, the management was deprived of the power to Act as it would ordinarily have u/s (16E/16F of the Intermediate Education Act). In order, therefore, that there be no vacancy created on the enforcement of the Ordinance and the vacancy existing on July 10, 1981, be not left unfilled the necessity was felt to promulgate Order, 1981 dated July 31, 1981. Significantly para 2(a) thereof specified that the provisions of this Order could be availed in the case of a substantive vacancy existing on the date of commencement of the Order and Clauses (b) and (c) refer to vacancy within a period of two months only subsequent to the date of the commencement of the Order. Section 16(1) of the Act corresponds to, it may be noted, Section 16(1) of the Ordinance and lays down that subject to the provisions of Sections 18/33 of the Act, every appointment of a teacher on or after July 10, 1981, shall be made by the management only on the recommendation of the Commission, the provisions in the Intermediate Education Act to the contrary notwithstanding. Where the post of the teacher has actually remained vacant for more than two months subsequent to the vacancy being notified, the provision contained in Section 18(1)(b) of the Act gets attracted and, in my opinion, para 4(1)(a) of the Order, 1981, cannot be so read as to take away the effect of the express provision made in the Act itself. The consistent interpretation, given to the provisions would be that for the initial period of two months the recourse to fill in the vacancy could be had to para 4(1)(a) and thereafter the management if given the power to proceed u/s 18(1) in case there is no recommendation received from the Commission. In face of Section 18(1)(b) being applicable to a case the management cannot be asked to proceed in accordance with para 4(1)(a) of the Order, 1981.

11. For the Petitioner reliance is placed by Sri S.N. Misra learned Counsel and rightly, in my view, to the provision contained in Section 18(1)(b) of the Act. The provision, as mentioned above, is that where the management has notified a vacancy to the Commission in accordance with the Act and the post of the 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 or the regulations made there under. Section 32 lays down that the provisions of the Intermediate Education Act and the regulations made there under shall continue to be in force only in so far as they are not inconsistent with the provisions of the Act or the rules or regulations made there under. It is pointed-out that on June 30, 1985, when Paras Nath Misra retired the management notified the vacancy to the Commission in accordance with the provisions of the Act. Rule 4(ii) of the Rules, 1985 framed under the Act requires that the statement of vacancy shall be sent by the management to the Inspector by 15th September of the year of

recruitment and the Inspector shall after verification forward, out of the four copies of the same, to the Deputy Director by 16th October with a copy also to the Commission. This is the mode prescribed under the Act for notifying the vacancy by the management which is not required to communicate directly with the Commission for the purpose. In the present case the statement of vacancy was submitted by the management to the Inspector on June 30, 1985, in writing and this was received by the latter on July 1, 1985, as is evident from the copy filed along with the supplementary affidavit from the Petitioner's side- For the Respondent No. 3 I am referred to letter from the Deputy Secretary to the Commission dated 16th November, 1985, stating that no requisition for the post of the Principal was received from management or the Inspector In case the Inspector has not chosen for reasons of his own to act in compliance to Rule 4(ii) and to send a copy of the letter No. 317/85-86 dated June 30, 1985, received from the management the latter is not to be blamed. It was upto the Inspector to have acted in compliance to the statutory provisions. The communication having been duly made as contemplated under the rules and there being no recommendation of the Commission forthcoming, the Committee of Management was authorised, as it contends, to resolve on August 31, 1985, u/s 18(1)(b) of the Act to appoint the Petitioner as the Principal on ad hoc basis. Copy of the resolution has been placed on the record along with the affidavit. The vacancy which arose on June 30, 1985, remained unfilled according to law and after lapse of two months there from the management was competent to act u/s 18(1)(b). Prima facie there may not be said to exist adequate basis to assume that no such resolution was passed by the management. It was urged for the Respondent No. 3 that the Petitioner does not possess the qualifications prescribed under the Intermediate Education Act. As per notification dated 23rd February, 1979, a teacher, who has secured M.A. in III Division, as the Petitioner is to have fifteen years teaching experience to be eligible and in such a case training is dispensed with. The Petitioner was appointed in the L.T. Grade with effect from December 21, 1967, as is made out also from the gradation list, which the Respondent has appended to his counter-affidavit and, thus, the Petitioner had completed fifteen years of teaching experience in the L.T. grade made himself duly qualified.

12. Sri S.R. Misra laid considerable stress then on contending that the Writ Petition No. 12096 of 1985 was dismissed on August 16, 1985, and in appeal arising out of Original Suit No. 1318 of 1985 the temporary injunction was vacated on August 23, 1985, and hence the Petitioner, it is argued, should be taken to have no case. It may not be lost sight of that the Petitioner was not a party to any of these proceedings and further the appointment given by resolution dated August 31, 1985, u/s 18(1)(b) was then not in picture. There could be no question of the management taking recourse to that provision before the expiry of two months from the date when the vacancy arose. It is true that the appointment made u/s 18(1)(b) is subsequent to the impugned order passed on August 1, 1985, but this being a subsequent development integrally related to the subject of dispute, it remains open to take the same into consideration.

13. Learned Counsel for the Respondent urged also that in view of para 4 (Chapter II) of the regulations the Petitioner could not be appointed since he is related to Ram Chandra Chaturvedi being his son and because, it is argued, Ram Chandra is the Manager of the institution. This is rebutted from the Petitioner's side pointing out that Kam Chandra had submitted his resignation on June 18, 1985, and also that this was accepted by a resolution of the Committee of Management passed on June 20, 1985. In view thereof this ground asserted for the Respondent loses weight. The Petitioner had assumed charge on June 30, 1985, in the afternoon. The Respondent was even placed under suspension by the management on July 18, 1985, though, as pointed on his behalf, this suspension became ineffective after sixty days because there was no approval given in writing by the Inspector to the suspension within this period as required u/s 16G(7) of the Intermediate Education Act.

14. Reference was made for the Respondent to the decision in Committee of Management of Sanatan Dharam Intermediate College v. District Inspector of Schools, Manipuri, 1985 Education Cases 322 where the question raised was if the salary to the teachers concerned could be withheld from July 1984 onwards keeping in view the provisions of the Order 1981 and this was answered in the negative. The precise issue raised before me, namely, as to whether in the event of vacancy having been notified and remaining unfilled for two months, the Committee of Management may make appointment on ad hoc basis availing of Section 18(1)(b) of the Act. This was not in question in that case and consequently the same, it is submitted is not an authority on this proposition.

15. For the above I find that the Committee of Management was competent to appoint the Petitioner purely on ad hoc basis under the resolution dated August 31, 1985, in exercise of power conferred by Section 18(1)(b) of the Act. It is made clear, however, that this is only in so far as the interim order is concerned and it remains open to the trial court to proceed with and decide the suit expeditiously in accordance with law. The appointment, thus, given to the Petitioner shall, in view of Section 18(3), cease to have effect when the candidate recommended by the Commission joins the post on June 30, 1985, or the decision of the suit giving rise to this proceeding whichever be the earliest. The District Inspector of Schools (Respondent No. 5) shall report the vacancy to the Commission without further loss of time, unless this has been done earlier. The Commission may proceed to make its recommendation as soon as possible. The petition succeeds accordingly and the order passed by the Additional Civil Judge, Gorakhpur, dated August 1, 1985, is set aside. There will be no order as to costs.