

(2012) 01 AHC CK 0358

Allahabad High Court

Case No: Writ A No. 17760 of 2006

Ramesh Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Jan. 18, 2012

Acts Referred:

- Uttar Pradesh Intermediate Education Act, 1921 - Section 18, 33C, 33C(1), 33C(2)

Hon'ble Judges: Krishna Murari, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Krishna Murari, J.

Heard Sri Arun Kumar, learned counsel for the petitioner and learned Standing Counsel for the respondents no. 1 to 3.

2. Despite time having been allowed, the State respondents have not filed any counter affidavit.

3. Undisputed facts are that one post of Assistant Teacher in LT grade fell substantively vacant in 1992 in Dayanand Inter College, Gorakhpur which is duly aided and recognized institution governed by the provision of U.P. Intermediate Education Act, 1921, U.P. Act no. 24 of 1971 and U.P. Act No. 5 of 1982. The said vacancy was duly requisitioned to the U.P. Secondary Education Service Selection Board through the District Inspector of Schools. However, when no appointment was recommended by the Service Selection Board the District Inspector of Schools notified the same for making ad hoc appointment after following the procedure prescribed. The petitioner was selected and his name was recommended by the District Selection Committee for appointment in the institution on 23.12.1992. The District Inspector of Schools vide letter dated 23.12.1992 notified the management to issue appointment letter to the petitioner within a period of fifteen days. However, when the management did not issue any appointment letter to the

petitioner nor allowed him to join the post, another reminder dated 2.2.1993 was again issued by the District Inspector of Schools requiring the management to issue appointment letter to the petitioner and to permit him to join the post within one week. Despite repeated reminders by the District Inspector of Schools, when the committee of management failed to take any steps, the petitioner approached this Court by filing writ petition no. NIL of 1993 (Ramesh Kumar vs. State of U.P. & others). Vide order dated 2.9.1993 an interim direction was issued commanding the committee of management to permit the petitioner to join the post of Assistant Teacher LT grade and to pay current salary. In pursuance of the aforesaid directions of this Court, the petitioner was permitted to join on 10.1.1994. The petitioner continued as ad hoc LT grade teacher in the institution and was continuously being paid salary. U.P. Act no. V of 1982 came into force with effect from 20.4.1998 by introducing certain amendments including Section 33-C providing for regularization of certain appointments. The said section is quoted hereunder :

33-C. Regularisation of certain more appointments. - (1) Any teacher who -

(a) (i) was appointed by promotion or by direct recruitment on or after May 14, 1991 but not later than August 6, 1993 on ad hoc basis against substantive vacancy in accordance Section 18, in the Lecturer grade or the Trained Graduate grade.;

(ii) was appointed by promotion on or after July 31, 1988 but not later than August 6, 1993 on ad hoc basis against a substantive vacancy in the post of a Principal or Head Master in accordance with Section 18;

(b) possesses the qualification prescribed under, or is exempted from such qualification 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 Commission (Amendment) Act, 1998;

(d) has been found suitable for appointment in a substantive capacity by a Selection Committee constituted under sub-section (2);

shall be given substantive appointment by the Management.

(2) (a) For each region, there shall be a Selection Committee comprising, -

(i) Regional Joint Director of Education of that region, who shall be the Chairman;

(ii) Regional Deputy Director of Education (Secondary) who shall be member;

(iii) Regional Assistant Director of Education (Basic) who shall be a member.

In addition to above members, the District Inspector of Schools of the concerned district shall be co-opted as member while considering the cases for regularisation of that district.

(b) The Procedure of selection for substantive appointment under sub-section (1) shall be such as may be prescribed.

(3) (a) The names of the teachers shall be recommended for substantive appointment in order of seniority as determined from the date of their appointment.

(b) If two or more such teachers are appointed on the same date, the teacher who is elder in age shall be recommended first.

(4) Every teacher appointed in a substantive capacity under sub-section (1) shall be deemed to be on probation from the date of such substantive appointment.

(5) A teacher who is not found suitable under sub-section (1) and a teacher who is not eligible to get a substantive appointment under that sub-section shall cease to hold the appointment on such date as the State Government may by order specify;

(6) Nothing in this Section shall be construed to entitle any teacher to substantive appointment, if on the date of commencement of the Ordinance referred to in clause (c) of sub-section (1) such vacancy had already been filled or selection for such vacancy has already been made in accordance with this Act.

4. A bare reading of Section 33-C of the Act goes to show that all adhoc appointments either by way of promotion or direct recruitment made against a substantive vacancy not later than 6.8.1993 were entitled to be regularized and placed on probation. The aforesaid provision was introduced with effect from 20.4.1998 and it further provides that in order to obtain the benefit of regularization, the concerned teacher should have been appointed prior to 6.8.1993 and should have been continuing upto the date of introduction of the said provision in 1998.

5. Vide letter dated 7.12.1999 the management forwarded the details of such teachers including the petitioner who were entitled to be regularized u/s 33-C in prescribed format to the District Inspector of Schools. However, when no action was taken the petitioner made several representations and ultimately, he approached this Court by filing writ petition no. 41016 of 2004 which was finally disposed of vide order dated 1.10.2004 with the direction to the Regional Committee headed by the Joint Director of Education to consider and decide the representation of the petitioner by means of a reasoned and speaking order. The Regional Committee vide order dated 19.4.2005 considered the claim of the petitioner and rejected the same on the ground that since the petitioner was appointed on 10.1.1994, which is after 6.8.1993 the cut-off date provided in Section 33-C of the Act as such, he is not entitled to regularization.

6. It is submitted by learned counsel for the petitioner that the petitioner was selected and the District Inspector of Schools vide letter dated 23.12.1992 directed the committee of management to issue letter of appointment within fifteen days

and to ensure the joining within ten days thereafter. Again a reminder was issued on 2.2.1993 and when no action was taken the petitioner had to approach this Court and in pursuance of the interim direction issued by this Court the petitioner was permitted to join on 10.1.1994 and in this manner, the delay caused in actual appointment of the petitioner cannot be attributed to him. It is further submitted that in fact, if the committee of management would have issued appointment letter, for which the petitioner was legally entitled after being selected, within time, he would have joined the post prior to the cut-off date and inaction on the part of the management cannot constitute a ground to deny the benefit of regularization of the petitioner on the pretext that he had actually joined after cut-off date. In support of the contention, learned counsel for the petitioner had placed reliance on a Division Bench judgment in the case of *Firangi Prasad vs. State of U.P. & others*, reported in [2011 (1) ESC 266 (All) (DB)].

7. In reply, though no counter affidavit has been filed, but the learned Standing Counsel, in reply, has tried to justify the impugned order by saying that since the actual appointment of the petitioner was made after the cut-off date, as such, his claim for regularization has rightly been rejected.

8. I have considered the argument advanced by learned counsel for the parties and perused the record.

9. The facts narrated above in respect of the selection and actual appointment of the petitioner are undisputed. It is also not in dispute that the petitioner was selected after following due procedure prescribed by Section 18 of the Act as it then stood and the management had to perform only a ministerial act of issuing a formal appointment order, which they failed to perform and for this the legitimate claim of the petitioner cannot be defeated. The issue in consideration before me in this case is identical to the case of *Firangi Prasad (S)*, relied upon by learned counsel for the petitioner, where also the committee of management failed to issue appointment letter to the appellant therein despite selection and orders passed by the District Inspector of Schools. The relevant portion of the judgment is quoted below :

18. The Manager is obliged to issue a letter of appointment under the direction of the District Inspector of Schools, who is the competent authority under the Rules. Any unwarranted defiance and in the absence of any infirmity in the selection of the appellant, such inaction of the Management cannot be of any disadvantage to the appellant or to any such teacher belonging to this class.

19. The respondents cannot by their inaction, therefore, deprive a candidate of his or her legitimate right to claim continuance in service. It is, therefore, clear that there was a deliberate delay on the part of the Management in issuing the letter of appointment in the present case and accordingly, the right of the appellant to claim continuance under the selection order dated 18.1.1993 cannot be denied. The appellant will, therefore, be entitled to the benefits flowing out of the order dated

18.1.1993 and in such a situation, the letter of appointment will relate back prior to the cut-off date i.e. 6.8.1993.

20. This, in our opinion, would be the correct interpretation of law in relation to the candidates who have been wrongfully prevented from receiving their letters of appointment for no fault of theirs.

10. In view of the aforesaid facts and circumstances of the case and the law laid down by the Division Bench in the case of Firangi Prasad (Supra), the impugned order dated 19.4.2005 passed by the Regional Level Committee, annexure-9 to the writ petition, cannot be sustained and is hereby quashed.

11. The Regional Level Committee shall now proceed to consider regularisation of the petitioner in the light of the observations made hereinabove and the Division Bench judgement in the case Firangi Prasad (Supra) and pass appropriate orders within a period of two months from the date of production of a certified copy of this order before it.

12. The petition accordingly stands allowed.

13. However, there shall be no order as to cost.