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**Chandra Bhan Kanaujiya Vs Joint Director of Education and VIth Region,  
Lucknow**

**Service Single No. 2484 of 2002**

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**Court:** Allahabad High Court (Lucknow Bench)

**Date of Decision:** Feb. 10, 2010

**Acts Referred:**

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 &”  
Section 18(1)(b)

**Hon'ble Judges:** Sunil Ambwani, J

**Final Decision:** Allowed

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**Judgement**

Sunil Ambwani, J.

Heard learned counsel for the petitioners. Learned Standing Counsel appears for the State respondents.

By this writ petition, all the seven writ petitioners, appointed as Assistant Teachers in Vishwa Bandhu Shiksha Niketan Junior High School,

recognised by Basic Shiksha Adhikari, Hardoi upgraded as Junior High School on 9.12.1981 w.e.f. 1.7.1981, and thereafter as High School on

5.12.1984, and then Intermediate College, by an order of the Secretary, Madhyamik Shiksha Parishad, Allahabad on 9.12.1989, have prayed for

quashing the order dated 28.9.2001 passed by the Director of Education (Secondary) U.P. Lucknow rejecting their representation dated

24.3.2001 in pursuance to the directions passed by this Court on 28.2.2001 in Writ Petition No. 1102/2001 Rajendra Singh and others vs. Joint

Director of Education, VIIIth Region, Lucknow and others.

The Director of Education (Secondary) U.P. Lucknow has rejected the representation on the grounds that the approval orders dated 2.3.1996 of

the appointments of petitioner nos. 3, 4, 5 and 6, and dated 13.2.2998 of the appointments of petitioner nos. 1, 2 and 7 as Assistant Teachers by

the District Inspector of Schools, Hardoi, are not in accordance with the Rules. The State Government had imposed a ban on the appointment in

July, 1991 after which no appointments could be made by the Committee of Management on adhoc basis. The Joint Director of Education did not

commit any error in rejecting petitioner"s representation on 20.2.2000 for payment of salaries w.e.f. 1.12.1998, when the College was given grant

in aid.

The admitted facts giving rise to this writ petition are that the College was given affiliation upon the High School level by the Secretary, Education

Board, U.P. Allahabad on 5.12.1984, and was brought in the grantinaid list on 1.12.1998. The Deputy Director of Education, VIIIth Region,

Lucknow by his order dated 15.2.1994 had sanctioned 22 posts in the College. These posts included 01 post of Principal (High School), 02 posts

of Assistant Teachers L.T. Grade, 13 posts of Assistant Teachers C.T. Grade, 01 Clerk and 05 Class IV employees. On the day, when the

College was brought in grantinaid list, there were 21 teachers/nonteaching staff working in the College. The Regional Director of Education,

Lucknow did not approve the payment of salary of the seven petitioners on the ground that they were appointed by the Committee of Management

on various dates after the College has received recognition as High School. There was a ban imposed by the State Government on adhoc

appointments under Section 18 of the U.P. Secondary Education Services Commission and Selection Boards Act, 1982. The Committee of

Management of the College did not have authority to appoint petitioners on adhoc basis even after notifying the vacancies to the U.P. Secondary

Education Service Commission and waiting for two months for appointment in accordance with the scheme of the Act of 1982.

Learned counsel appearing for the petitioners would submit that there is no provision under the Act of 1982 or under the U.P. Intermediate

Education Act, 1921 for placing a ban on the appointments. When a College is given recognition as High School, and there are sanctioned posts of

the teachers in accordance with the students teachers ratio, the petitioners" appointment, even if made by the Committee of Management, could

not be treated to be illegal. Shri Rajendra Singh and Shri Mohd. Saeed petitioner nos. 3 and 4 were appointed by the Committee of Management

on 1.7.1988. Their appointment was approved by the District Inspector of Schools, Hardoi on 2.3.1996. Shri Anurag Singh and Shri Prem

Chandra Kushwaha petitioner nos. 5 and 6 were appointed by the Committee of Management on 1.7.1991. Their appointments were also

approved by the same letter of the District Inspector of Schools dated 2.3.1996. Shri Chandra Bhan Kanaujia, Shri SaleemUddeen Siddiqui and

Shri Bhagwan Deen, petitioner nos. 1, 2 and 7 were appointed by the Committee of Management on 21.11.1994 and that their appointments

were approved by the District Inspector of Schools on 13.2.1998. All the petitioners were eligible to be appointed as Assistant Teachers and that

their appointments were made after the vacancies were notified to the U.P. Secondary Education Service Commission.

Learned counsel for petitioners has relied upon a judgment in Kumari Prabhabati Dikshit vs. U.P. Madhyamic Siksha Sewa Ayog, Allahabad

(1992) 1 UPLBEC 582, in which Hon"ble M. Katju, J (as he then was) held that there was no provision by which a ban can be made to stop

selections of Lectures and L.T. Grade teachers. He held:

4. I have not been shown any provision under which such a general ban can be issued for stopping selection of lecturers and L.T. grade teachers.

There is no such provision in the U.P. Secondary Education Services Commission and Selection Board Act, 1982. In fact, the Government orders

dated 22.9.1989 and 30.7.1991 are contrary to the provisions of the U.P. Secondary Education Services Commission Act. A bare perusal of the

provisions of the said Act shows that appointments have to be made only on the recommendation of the Commission except as provided in

Section 18, subsection 4 (B) to (D) to Section 33 and 33A. There is no power conferred by the said Act on the State Government which permits

the State Government to ban selections by the Commission. The State Government has no power to stop the Commission from performing its

functions which have been entrusted to it by the legislature. Hence the Government orders dated 22.9.1989 and 30.7.1991 are illegal and ultra

vires.

5. The Government orders dated 22.9.1989 and 30.7.1991 are also, in my opinion, arbitrary, and hence violative of Article 14 of the Constitution.

It is wholly unreasonable to ban ad hoc appointments of teachers in High Schools and Intermediate Colleges, particularly since it is well known that

the Secondary Education Commission often does not select regular teachers even long after the vacancy is notified. Hence, unless ad hoc

appointments are made the teaching work will suffer. To ban such appointments is, therefore, clearly arbitrary.

6. For these reasons, the Government orders dated 22.9.1989 and 30.7.1991 are declared illegal arbitrary and are hereby quashed. The

Commission shall now consider the case of the petitioner and give its decision within six weeks of production of a certified copy of this judgment

before it.

Learned Standing Counsel submits that the petitioners were appointed in the years 1988, 1991 and 1994, by the Committee of Management

without any advertisement, on adhoc basis in violation of the ban imposed by the State Government on such adhoc appointments by Government

orders dated 22.9.1989 and 30.7.1991. He, relying upon the letter of the Director of Education dated 31.8.1991, annexed to the counter affidavit,

referring to the telex of the Personnel Department of the State Government dated 29.6.1991, Government order dated 17.7.1991, Government

Order dated 30.7.1991 suspending the process of appointment of Principals, Lecturers and L.T. Grade teachers in Government aided secondary

schools and had issued a direction to U.P. Secondary Education Service Commission to suspend the process by Government Order dated

30.9.1991. Any appointments made after the decision of the State Government were illegal and inoperative and thus the petitioners' services could

not be approved for payment of salary. Learned Standing Counsel would further submit that no procedure for adhoc appointment was followed by

the Committee of Management and thus no directions be given to pay salaries to the petitioners.

By the interim order dated 3.5.2002, a direction was issued by the Court that since the petitioners' services were approved on 2.3.1996 and

13.2.1998, the opposite parties shall pay salary to the petitioners from January, 2002.

The demiofficial letter dated August 31, 1991 of the Director of Education, U.P. has referred to the telex of the State Government dated

29.6.1991 and the Government orders dated 17.7.1991 and 30.7.1991 placing a ban on the appointments. The grounds for placing such ban are

given in the opening paragraph of the letter. It is stated by the Director of Education that several complaints have been received that many aided

secondary schools have made appointments beyond the posts sanctioned in their Colleges and that taking advantage of Section 18 (1) (b) of the

Act, 1982 they are making attempts to get financial approval of their services. The information has been received from many places, that the

District Inspector of Schools have relaxed the conditions of financial approval under the U.P. High School and Intermediate (Teachers and

Employees) Payment of Salaries Act, 1971 and thus efforts should be made to ensure that the provisions of payment of salaries are strictly

followed and for that purpose the District Inspector of Schools are made personally responsible.

The U.P. Secondary Education Service Selection Board Act, 1982 (UP Act No. 5 of 1982) came into force on 26.2.1982 to provide for free and

fair method of selection of teachers for appointment in secondary institutions recognised by the Board of High School and Intermediate Education

and for other matters such as regulating the disciplinary action against the teachers in these institutions. The Act replaced the U.P. Ordinance No.

8/1981, which had come into effect earlier from July 10, 1980. The establishment of the Commission for selection of teachers was not made for a

longer time and therefore, in order to overcome the restrictions on appointments under Section 16 of the Act, Section 18 provided for adhoc

appointments by the Committee of Managements. The State Government, in order to overcome the difficulties arising on account of delay in

constitution of the services selection board, issued various removal of difficulties orders providing for procedure for making adhoc appointments.

The Removal of Difficulties Order, 1975 provided for filling up leave vacancies on adhoc basis for six months. These appointments were to be

notified to the District Inspector of Schools. The Second Removal of Difficulties Order, 1976, and thereafter Third, Fourth, Fifth, Sixth, Seventh

orders issued from time to time upto August 16, 1977 provided for regulating the adhoc appointments. The Removal of Difficulties Order, 1981

provided for adhoc appointments on substantive vacancies and leave vacancies for a period of six months or until a regularly selected candidate by

the Commission joins. Para6 provided for eligibility for appointment. The Removal of Difficulties Order continued to be issued upto the Fourth

Order of 1982 dated 14.4.1982 and the Fifth Order of 1983 provided for regularization of certain appointments.

In the impugned order or in the counter affidavit the respondents have not denied that the petitioners are eligible or that they were not appointed

after following the process of appointment prescribed in the aforereferred Removal of Difficulties Orders. The District Inspector of Schools had

approved the appointments of petitioner nos. 3 to 6 on 2.3.1996 and the appointments of petitioner nos. 1, 2 and 7 on 13.2.1998, from which it

can be safely inferred that the the District Inspector of Schools must have ensured that the petitioners are eligible and were appointed after

following the procedure prescribed for adhoc appointments under the various Removal of Difficulties Orders. It is also not denied that the

petitioners were appointed on the posts, which were sanctioned by the Deputy Director of Education, VIIIth Region, Lucknow by his order dated

15.2.1994. There were two posts in L.T. Grade and 13 posts in C.T. Grade. The petitioners no. 3 and 4 were appointed on 1.7.1988, and the

petitioner nos. 5, and 6 were appointed on 1.7.1991. The petitioners no. 1, 2 and 7 were appointed on 21.11.1994. The petitioner nos. 3, 4, 5

and 6 were therefore appointed prior to the sanction of the posts and the petitioner nos. 1, 2 and 7 were appointed after the posts were

sanctioned. They, however, were appointed and are working on the sanctioned posts. Their appointments were notified to the Commission and

were approved by the District Inspector of Schools.

In Kumari Prabhabati Dikshit (supra) this Court held, as long ago as on 18.2.1992, that there is no power with the State Government to have

banned the adhoc appointments and that the decision taken by the Government only to avoid the mischief of appointments beyond the sanctioned

posts and for relaxation to the Payment of Salaries Act, 1971 was arbitrary, unreasonable and violative of Article 14 of the Constitution of India.

All the petitioners are teaching in the institution since the dates of their appointments and were expecting the payment of regular salary w.e.f.

1.12.1998, when the College was given grantinaid.

From the aforesaid discussions, I find that the Deputy Director of Education and thereafter the Director of Education by his order dated 28.9.2001

committed gross error of law in rejecting petitioners" representation for payment of salary. The District Inspector of Schools approved the

appointments of petitioner nos. 3 to 6 on 2.3.1996, and of petitioner nos. 1, 2 and 7 on 13.2.1998. The orders of approval have not been set

aside and are still valide and operative.

The writ petition is allowed. The order dated 28.9.2001 passed by the Director of Education (Secondary) U.P. Lucknow is set aside. The

appointments of all the seven petitioners from the date, when they were appointed, are held to be valid appointments. They are entitled for

payment of salary in the regular pay scale and allowances w.e.f. 1.12.1998, when the College was given grant-in-aid. The Committee of

Management will prepare and forward the bills to the District Inspector of Schools for arrears of their salaries. The respondents are directed to

pay the entire arrears and to pay current salaries within a period of three months from the date a certified copy of the order is produced before the

respondents.