

(2006) 11 AHC CK 0183

Allahabad High Court

Case No: None

Ishwar Chand

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Nov. 14, 2006

Acts Referred:

- Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 - Section 16

Citation: (2007) 1 ADJ 118

Hon'ble Judges: Arun Tandon, J

Bench: Single Bench

Final Decision: Disposed Of

Judgement

Arun Tandon, J.

Learned Standing Counsel represents respondent Nos. 1,3 and 4. Sri R.P. Dubey, Advocate has accepted notice on behalf of respondent No. 2 and Sri P.S. Baghel, Advocate has accepted notice on behalf of respondent No. 6.

2. Issue notice to respondent No. 5 fixing 14th December, 2006 as the date for appearance.

3. Petitioner to take steps by 4th December, 2006.

4. All the respondents may file counter affidavit by the next date fixed.

5. Since serious legal and factual issues have been raised in respect of the disposal of the interim application filed along with this writ petition, this Court feels it proper to record reasons in support of the order to be passed on the interim application.

6. Petitioner Ishwar Chand, who has been selected for the post of Lecturer in subject of Psychology in Baba Barua Das Inter College, Paruliya Ashram, Ambedkar Nagar by the U.P. Secondary Education Services Selection Board at Allahabad, has filed this

petition for a writ of mandamus commanding the respondents to appoint the petitioner accordingly. An application for interim direction has also been filed.

7. This appointment of petitioner is objected to by respondent No. 6, Rajendra Prasad Verma who claims to have been appointed on Ad-hoc basis against the same vacancy of Lecturer (Psychology) by the Committee of Management of the institution on 31st August, 1998.

8. On specific query being made to Sri P.S. Baghel, who represents respondent No. 6, namely, Sri Rajendra Prasad Venma, about statutory provisions under which he has been offered ad-hoc appointment by Committee of Management, learned Counsel for respondent No. 6 has refused to answer the same, and has taken a stand, that this Court has no jurisdiction to enter into the aforesaid dispute, inasmuch as:

(a) two writ petitions have been filed by respondent No. 6 before the Lucknow Bench of this Court being Writ Petition No. 6482 (S/S) of 1999 and Writ Petition No. 3920 (S/S) of 2006. In the first writ petition an interim order has been granted by the Lucknow Bench of this Court on 17th December, 1999 while in second writ petition an another interim order has been granted by the Lucknow Bench of this Court on 3rd May, 2006.

(b) the institution in respect whereof the petitioner claims appointment and the respondent No. 6 is already working on ad hoc basis is situate within the territorial jurisdiction of Lucknow Bench.

9. For the purposes of adjudication upon the aforesaid objections raised by Sri P.S. Baghel, learned Counsel for respondent No. 6 it would be necessary to reproduce the relevant facts, as are admitted to respondent No. 6. In paragraph Nos. 3,4, 7 and 9 of his writ petition No. 6482 (S/S) of 1999 (hereinafter referred to as the first writ petition) filed before the Lucknow Bench of this Court, it has been stated as follows:

3. That the petitioner was initially appointed on the post of Psychology lecturer on 31-8-1998 in Baba Barua Das Inter College, Paruliya Ashram, District Ambedkar Nagar (hereinafter mentioned as College) on adhoc basis against the sanctioned post. The copy of appointment letter dated 31-8-1998 is being annexed herewith as ANNEXURE NO.1 to this writ petition.

4. That the petitioner joined on 1-9-1998 in pursuance of appointment letter in the College on the post of lecturer of Psychology and since then he has ben continuously working in the College with good and efficient servicer. Nothing adverse ever has been communicated against the petitioner. The copy of the joining letter dated 1-9-1998 is being annexed herewith as ANNEXURE No. 2 to this writ petition.

7. That the post of lecturer of the Psychology was occurred due to the death of Shiv Shanker Upadhvav regular lecturer of College on 15-2-1998. The work and the post

is available. The petitioner has been appointed against the sanctioned and duly created post. The petitioner is entitled for payment of salary under the provision of Salary Act, 1971.

9. That the Selection Committee was duly constituted and total ten candidates had participated in the interview for want of selection as per the advertisement and the petitioner has been awarded the highest quality marks and he has been selected and recommended as first candidate. The Selection Committee recommended the name of the petitioner for want of appointment on the post of lecturer of Psychology and in pursuance of the recommendation of the Committee of Management. the Manager of College issued appointment letter to the petitioner and the Principal of College provided the joining to the petitioner. The copy of the chart of quality points is being annexed herewith as the ANNEXURE No. 5 to this writ petition.

10. It may be recorded that in writ petition No. 6482 (S/S) of 1999 an interim order has been granted by the Lucknow Bench of this Court dated 17th December, 1999 in favour of respondent No. 6, which reads as follows:

In the meantime the opposite parties shall allow the petitioner to draw the salary of a lecturer as admissible under rules if he is a duly appointed Lecturer in accordance with the prescribed regulations until a regularly selected candidate is available.

11. Respondent No. 6 initiated contempt proceedings before the Lucknow Bench of this Court being Crl. Misc. Case No. 1338 (C) of 2000, for enforcing the said interim order wherein following order was passed by the Lucknow Bench of this Court on 10th January, 2001:

Learned standing counsel appearing on behalf of the opposite parties requests for three weeks" time to file counter affidavit The prayer is granted. List on 19.2.2001. The opposite parties are directed to ensure the compliance of the court"s order, if appointments similar to that of the petitioner"s have been given effect to.

12. So far as the subsequent writ petition being Writ Petition No. 3920 (S/S) of 2006 filed before the Lucknow Bench of this Court is concerned (hereinafter referred to as the second writ pettiion), suffice it to record that this second writ petition is dependent upon the first writ petition filed in the year 1999, reference paragraph Nos. 6,7,8,9 and 10 of the second writ petition which read as follows:

6. That the petitioner was appointed on the post of Lecturer (Psychology) on 31.8.98 by the selection committee constituted by the Committee of Management after due process against the sanctioned and vacant post. A Photocopy of the appointment letter dated 31.8.98 is being annexed herewith as Annexure No. 2 to this writ petition.

It is also relevant to mention here that post of Lecturer (Psychology) occurred on 15.2.98 due to death of Sri Shiv Shankar Upadhyay who was working on the post of

Lecturer (Sociology).

7. That in respect of the appointment letter dated 31.8.98 the petitioner joined his duty on the post of Lecturer (Psychology) on 31.8.98 and since the date of joining the petitioner is discharging his duties on the aforesaid post with the full satisfaction of the authorities concerned. A Photocopy of the joining letter dated 31.8.98 is being annexed herewith as Annexure No. 3 to this writ petition.

8. That on 21.12.98, the Committee of Management submitted details in respect of the financial approval in favour of the petitioner but District Inspector of Schools, Ambedkar Nagar but the District Inspector of Schools neither approved nor disapproved the appointment of the petitioner.

9. That feeling aggrieved due to non payment of salary, the petitioner filed writ petition bearing No. 6482 (SS) of 1999 before this Hon"ble Court and this Hon"ble Court after considering all the facts and circumstances pleased to pass an order directing the Opposite Parties to pay the salary tot he petitioner for the post of Lecturer (Psychology). The Photocopy of the order dated 17.12.99 passed by this Hon"ble Court, is being annexed herewith as Annexure No. 4 to this writ petition.

10. That in compliance of the order dated 17.12.99 passed by this Hon"ble Court, the District Inspector of Schools, Ambedkar Nagar released the salary in favour of the petitioner and since then the petitioner is getting salary for the post of Lecturer (Psychology) and is discharging his duties on the post of Lecturer (Psychology). A Photocopy of the order dated 14.1.03 passed by the District Inspector of Schools, is being annexed herewith as Annexure No. 5 to this writ petition.

13. In writ petition No. 3920 (S/S) of 2006 an interim order has also been granted by the Lucknow Bench of this Court dated 3rd May, 2006 in favour of respondent No. 6, which reads as follows:

Heard Sri Mahendra Singh Rathore, learned Counsel for the petitioner and the learned Chief Standing Counsel for opposite parties No. 1 to 3. Notice on behalf of opposite party no A has been accepted by Sri H. S. Jain.

Issue notice to opposite "parties No. 5 and 6.

Let the counter affidavit be filed by the opposite parties within a period of six weeks and the petitioner may file rejoinder affidavit within two weeks thereafter.

List in the second week of July, 2006 for hearing/admission.

The grievance of the petitioner is that he was appointed as Lecturer (Psychology) in Baba Barua Das Inter College, Paruliya Ashram, Ambedkar Nagar on 31.8.1998 and is discharging duties, functions and responsibilities of the post

The grievance of the petitioner is that opposite party No. 6, Ishwar Chand has been appointed on the post held by the petitioner. The learned Counsel for the petitioner

has further submitted that the opposite party No. 6 has not joined the post and the petitioner is still working as Lecturer (Psychology) in the institution.

In view of above, it is provided that the petitioner shall be allowed to continue on the post of Lecturer (Psychology) in Baba Barua Das Inter College, Paruliya Ashram, Ambedkar Nagar, till further orders of this Court.

14. From the aforesaid facts it is admitted on record that respondent No. 6 was appointed on ad hoc basis against a substantive vacancy which was caused in the institution due to death of the permanent Lecturer, namely, Shiv Shanker on 15th February, 1998. On the relevant date, on which substantive vacancy was caused in the recognised Intermediate College, there was no authority with the Committee of Management of the institution to offer any ad-hoc appointment. Power to make ad hoc appointments against substantive vacancies was with the Deputy Director of Education under Rule 15 of the U.P. Secondary Education Services Selection Board Rules, 1995 and subsequent to it under the U.P. Secondary Education Services Selection Board Rules, 1998. Rule 15 of 1995 Rules, which is more or less para materia to Rule 15 of Rules of 1998 reads as follows:

15. Procedure for ad hoc appointment by direct recruitment.(1) (a) Where ad hoc appointment of the teachers in respect of the vacancies to be filled in by direct recruitment are to be made u/s 18 of the Act, the Deputy Director shall advertise the vacancies subjectwise, for lecturers grade and groupwise for trained graduates (L.T.) grade, along with the number of vacancies to be reserved for the candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes of citizens in at least two newspapers one of which having wide circulation in the district and the other in the State, and invite applications for ad hoc appointment in the pro forma given in Appendix "F. Such advertisement shall, inter alia, mention the pay and allowances admissible to the posts, minimum academic qualifications for appointment and such other things as may be considered necessary. The candidates shall be required to give the choice of not more than three districts in order of preference, where, if selected, he may wish to be appointed. Where a candidate wishes to be considered for any particular district and for no other district, he may mention the fact in his application.

15. It is thus apparent from the relevant facts admitted that the ad hoc appointment claimed by respondent No. 6 is de hors the aforesaid statutory provisions, made by an Authority having no jurisdiction to do so. It has to be treated as nullity in view of Section-16 of the U.P. Secondary Education Services Selection Board Act, 1982, which reads as follows:

16. Appointment to be made only on the recommendation of the Board.-(1) Notwithstanding anything to the contrary contained in the Intermediate Education Act, 1921 or the regulations made thereunder, but subject to the provisions of Sections 12,18,21-B, 21-C, 21-D, 33,33-A, 33-B, 33-C, 33-D and 33-F, every

appointment of a teacher shall, on or after the date of commencement of the Uttar Pradesh Secondary Education Services Selection Board (Amendment) Act, 2001 be made by the management only on the recommendation of the Board:

Provided that in respect of retrenched employees, the provisions of Section 16-EE of the Intermediate Education Act, 1921 shall mutatis mutandis apply:

Provided further that the appointment of a teacher by transfer from one institution to another may be made in accordance with regulations made under Clause (c) of Sub-section (2) of Section 16-G of the Intermediate Education Act, 1921:

Provided also that the dependent of a teacher or other employee of an institution dying in harness who possesses the qualifications prescribed under the Intermediate Education Act, 1921 may be appointed as teacher in Trained Graduates' Grade in accordance with regulations made under Sub-section 94) of Section 9 of the said Act.

(2) Any appointment made in contravention of the provisions of Sub-section (1) shall be void.

16. The interim order passed by the Lucknow Bench of this Court, in the first writ petition in favour of respondent No. 6 permitted him to continue as Lecturer (Psychology) provided that he was appointed in accordance with law, only for the period till the regularly selected candidate becomes available.

17. It is also apparent that the Lucknow Bench of this Court provided that respondent No. 6 shall be paid salary only if he has been validly appointed in accordance with the rules/regulations applicable and only till regularly selected candidate becomes available.

18. The interim order passed in second writ petition fails to take note of the interim order passed in first writ petition as also of the fact that respondent No. 6 in fact claimed ad hoc appointment only and such ad hoc appointees cannot in any way obstruct the appointment of regularly selected candidates, inasmuch as their appointment itself has been made in the contingency till regularly selected candidate is appointed. Such ad hoc appointments have a contingent right to continue only till the period regularly selected candidate becomes available. Substantial justice requires that the regularly selected candidate should not be asked to wait at the fence while the ad hoc appointee like respondent No. 6, is permitted to continue in the institution.

19. Learned Counsel for respondent No. 6 has not answered the the query made by this Court, the reason is obvious. Learned Counsel knows that there is no provision under which the ad hoc appointment of respondent No. 6 can be sustained, nor could he refer to any statutory provisions under which ad hoc appointment against the substantive vacancy in the year 1998, could be made the Committee of Management of the institution. He has succeeded in misleading the authorities for

obtaining payment of salary, despite the specific directions of the Lucknow Bench of this Court under order dated 17th December, 1999 for which appropriate action may have to be recommended against the District Inspector of Schools, who has released the salary in favour of respondent No. 6 at the time of final disposal of the writ petition.

20. As noticed herein above, respondent No. 6 has not been appointed in accordance with the Statutory provisions applicable and therefore, also he has no legal right to object to the legal appointment of the petitioner who has been selected in accordance with Statutory provisions.

21. With regard to the second objection this Court has no hesitation to record that this Court has every jurisdiction to entertain the present writ petition, which has been filed for ensuring appointment being offered to a candidate selected by the U.P. Secondary Education Services Selection Board, at Allahabad, as part of cause of action has arisen at Allahabad.

22. In such circumstances both the objections raised by learned Counsel for respondent no6 are hereby rejected.

23. From the aforesaid, it is apparent that petitioner has a prima facie case in his favour, an ad hoc appointee (who has been appointed by an Authority having no jurisdiction to offer such appointment) must give way to the regularly selected candidate. The petitioner, is therefore, entitled to following interim order.

24. The District Inspector of Schools, Ambedkar Nagar who is present in the Court today is directed to ensure that the petitioner is permitted to join in the institution as Lecturer (Psychology) within a week from the date a certified copy of this order is filed before him. This appointment shall be subject to the final orders to be passed in this petition.

25. Put up on 14th December, 2006 as unlisted matter.

26. In order to avoid conflicting judgments being passed in the writ petitions filed by respondent No. 6 namely, Rajendra Prasad Verma before the Lucknow Bench of this Court, being Writ Petition No. 6482 (S/S) of 1999 and Writ Petition No. 3920 (S/S) of 2006 and the present writ petition filed before this Court, it is desirable that The Hon'ble The Chief Justice may consider the transfer of the writ petitions filed before the Lucknow Bench of this Court being Writ Petition No. 6482 (S/S) of 1999 and Writ Petition No. 3920 (S/S) of 2006 to the Allahabad High Court and the same may be tagged along with this writ petition.