

**(2002) 09 AHC CK 0172**

**Allahabad High Court**

**Case No:** C.M.W.P. No. 13984 of 1993

Dev Raj Singh

APPELLANT

Vs

District Inspector of Schools,  
Ghaziabad and Others

RESPONDENT

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**Date of Decision:** Sept. 18, 2002

**Acts Referred:**

- Constitution of India, 1950 - Article 14
- Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 - Section 18, 33(1A)

**Citation:** (2002) 5 AWC 4360

**Hon'ble Judges:** Rakesh Tiwari, J

**Bench:** Single Bench

**Advocate:** Ashok Khare, Samar Singh and V.K. Singh, for the Appellant;

**Final Decision:** Dismissed

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**Judgement**

Rakesh Tiwari, J.

Heard the learned Counsel for the parties and perused the records.

2. This writ petition has been filed praying for the writ of certiorari quashing the order dated 6/18.3.1993 passed by the District Inspector of Schools, Ghaziabad, which is appended as Annexure-12 to the writ petition.

3. By the impugned order, the District Inspector of Schools has held that the appointment of the Petitioner was made during the period 31.8.1991 to 14.7.1992 is illegal as it has been made in violation of the ban on appointment imposed by the State Government during the aforesaid period and that his appointment is against Section 18 of the Madhyamik Shiksha Adhiniyam and reservation policy prescribed under the G.O. dated 26.9.1991. He declined to grant any financial sanction for the appointment of the Petitioner.

4. The brief facts of the case are that Shri Krishan Inter College, Niwari district Ghaziabad, is a recognised institution, hereinafter referred to as the institution. One Shri Suraj Pal Sharma was a permanent lecturer in Hindi in the said college and he retired from service on 30.6.1990, thereby giving rise to a substantive vacancy of lecturer in Hindi.

5. Mere perusal of Annexure-4 to the writ petition shows that the said vacancy was advertised on the notice board and was not advertised in two newspapers having wide circulation. The vacancy of the lecturer in Hindi was reserved for Scheduled Caste candidate. It was further provided in the notice that in case of non-availability of Scheduled Caste candidates, candidature of general candidates may also be considered. It is alleged that this condition is in accordance with the Government order providing for reservation in private aided institutions which permits the management to make appointment of general candidate, in case no person belonging to reserve category has applied. It is further alleged that in the selection, no candidate belonging to reserve category had applied for appointment as the Petitioner who was a general candidate had been selected and had been appointed.

6. According to the averments made in the writ petition, a requisition in respect of the aforesaid vacancy was sent on 24.9.1990 to the U.P. Education Service Commission through the District Inspector of Schools, Ghaziabad, for regular selection, but no selection was made by the Commission. As the vacancy continued, the management of the college decided to make ad hoc appointment on the post of lecturer in Hindi and invited applications by notice dated 25.6.1992. The Petitioner also applied against the vacancy and was selected. The Committee of Management by its resolution dated 5.7.1992, Annexure-5 to the writ petition, approved the appointment and issued appointment letter on that date.

7. The Petitioner joined the institution in pursuance of the appointment letter and states that he is working since then as lecturer in Hindi. The District Inspector of Schools did not grant any approval to the appointment of the Petitioner. The Manager of the institution by letter dated 14.9.1992 informed the Petitioner that the District Inspector of Schools had not granted approval to his ad hoc appointment and as such the appointment of the Petitioner is being cancelled. Aggrieved by the order dated 14.9.1992, the Petitioner filed Writ Petition No. Nil of 1992, Dev Raj Singh v. District Inspector of Schools, Ghaziabad, in which an interim order granted on 4.11.1992 is as follows :

The Petitioner shall serve Respondent No. 3 personally. Steps shall be taken in this regard within one week. Service be made returnable within one month. Service affidavit shall be filed thereafter. For Respondent Nos. 1 and 2 the standing counsel is present. He is allowed four weeks time to file C.A.

In case the Petitioner's appointment is made u/s 18 of the U.P. Secondary Commission and Selection Board Act of 1982, the operation of the order dated

14.9.1992, passed by the Manager of the institution, contained in Annexure-5 to the writ petition, shall remain stayed and he shall be paid salary as admissible to him under rules from the date from which it has not been paid to him.

8. The Petitioner alleges that inspite of service of the certified copy of the aforesaid order, no payment was made to him and on the contrary, the impugned order dated 4/18.3.1993, has been passed by the District Inspector of Schools, Ghaziabad, disapproving the ad hoc appointment of the Petitioner. The impugned order has been assailed on the following grounds :

"(i) It has been passed in violation of the principles of natural justice on misconceived and non-existing ground and is arbitrary in violation of Article 14 of the Constitution of India.

(ii) The recital in the impugned order that the requisition to the Commission the District Inspector of Schools was not submitted, is incorrect and against the record as requisition letter dated 24.9.1990 was sent by the Manager in regard to notifying vacancy.

(iii) The District Inspector of Schools, Ghaziabad, has failed to take notice of the fact that though the vacancy was a reserve vacancy for the Scheduled Caste candidate but no Scheduled Caste candidate had applied, hence the Petitioner was appointed according to the G.O. on this subject and has wrongly disapproved the appointment of the Petitioner. The ban placed on ad hoc appointment and the Telex of the State Government dated 29.6.1991 read with Government Orders dated 17.7.1991 and 30.7.1991 and the Circular Letter of the Director of Education dated 30.8.1991 are misconceived as they have been repeatedly considered by this Court and it has been held that the said ban was illegal and was withdrawn by means of the Government Order dated 26.9.1991."

9. The Petitioner has relied upon the judgment of this Court dated 1.12.2001 in *Ajay Attrey v. District Inspector of Schools, Ghaziabad and others*. This case was filed for the relief of payment of salary. The Petitioner aforesaid in this case was appointed as assistant teacher in L.T. grade after taking permission from the District Inspector of Schools against the reserve post. An interim mandamus was issued by this Court in pursuance of which the Petitioner was appointed subject to final order passed in the writ petition. Subsequently, the writ petition was dismissed on 27.8.1998, as infructuous. An application was filed by the Petitioner and the order was recalled. Counsel for the Petitioner stated that thereafter the salary has been stopped. The Petitioner had claimed that according to the provisions of Section 33 (1A) of the U.P. Secondary Education Service Commission Act, 1982, the Petitioner became entitled for regularisation as he fulfilled all the conditions. He further states that his case has been forwarded to the Selection Committee for regularisation, but it has not been considered.

10. In the aforesaid circumstances, the writ petition was disposed of with the observations that the case of regularisation of the Petitioner on the post of ssistant teacher in L.T. grade shall be considered by the Selection Committee set up in accordance with the provisions of U.P. Secondary Education Service Commission Act, 1982, and until the Committee considers and decides the question of regularisation of the Petitioner, he shall continue to get salary month to month.

11. From the facts, it is evident that the vacancy for appointment on the post of Lecturer in Hindi was not advertised in vide circulated newspapers, but the same is said to have been published on the notice board on 25.6.1992, which is reproduced below :

otherlanguage

12. Since the vacancy was not advertised in the newspapers in accordance with law laid down by this Court, the appointment of the Petitioner was itself invalid and void ab initio. As such the appointment of the Petitioner amounts to an appointment by back door entry, cannot be sustained. The facts of the case of Ajay Attrey v. District Inspector of Schools and Ors. Writ Petition No. 12377 of 1991, are thus different. The Petitioner has failed to establish any legal right of the appointment on which he is working under the interim order of this Court.

13. In view of the above the writ petition fails and is dismissed. The interim order is vacated. No order as to costs.