

Kuldeep Kumar Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: Sept. 30, 2003

Acts Referred: Constitution of India, 1950 & Article 226

Citation: (2004) 1 UPLBEC 168

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Advocate: Somesh Khare, for the Appellant;

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.

Heard Counsel for the parties and perused the record.

2. Sri Veer Singh Inter College, Babina, District Jalaun is a recognized by the provisions of U.P. Intermediate Education Act, 1921, U.P. Act No.

5 of 1982 and U.P. Act No. 24 of 1971. The institution from Class I to XII is run in single premises by single Committee of Management.

3. The petitioner has challenged the order dated 15.11.1997 passed by the District Inspector of Schools, Jalaun at Orai by which the DIOS has

not given approval to the appointment of the petitioner in view of ban imposed by G.O. dated 20/1/91-Ka-2/97, dated 3.11.1997 and has

informed that only the regional selection committee has power to make ad hoc appointment and the papers of the petitioner for approval have been

returned.

4. An advertisement dated 28.9.1997 was issued by the Manager of this institution in Dainik ""Lok Sarthi"" said to have wide circulation in the area,

for appointment of one L.T. Grade Teacher on ad hoc basis. He submits that an interview was held on 15.10.1997 and on the basis of quality

points of ""Gunak Chart"" prepared by the Principal; the petitioner was selected and appointed by letter-dated 17.10.1997 in short term on the post

of Assistant Teachers in L.T. Grade. The letter of appointment was issued in pursuance of the resolution-dated 16.10.1997 passed by the

Committee of Management; the petitioner joined his services on 21.10.1997.

5. The appointment of the petitioner was on short-term vacancy. According to certificate dated 6.1.1998 issued by the Principal the petitioner was

to continue up to regularly selected candidates by U.P. Secondary Education Commission joins the post.

6. The papers of the petitioner were sent to the DIOS for approval, which has not been granted by the impugned order in the writ petition. The

order passed by the DIOS is assailed on the ground that it is based on non-application of mind and has been passed in arbitrary and discriminatory

manner violating the Article 14 of the Constitution of India.

7. It is submitted by the petitioner that the Committee of Management has been empowered under the provisions of U.P. Intermediate Education

Act, 1951 and various removal of difficulties to grant appointment on short term vacancies and the selection made by the Committee has to be

consistent with the aforesaid provisions of the Act. It is further submitted that even in case whether the short term vacancies converted into

substantive vacancies then ad hoc appointee is entitled to continue till the regular selected candidates join the institution and the order impugned is

cryptic.

8. No interim order was granted in favour of the petitioner at the time of admission and he has not take steps for service on respondent No. 4.

9. It appears that thereafter the petitioner moved an application-dated 25.8.1998 for condonation of delay in taking steps and annexed therewith

copies of notices. The application for condonation of delay was rejected for not taking steps as provided in the High Court Rules, Standing

Counsel was granted time for filing of the counter affidavit as far back on 5.5.1998 and by order dated 30.10.2000 time was allowed for filing

counter affidavit annexing the G.O. dated 30.11.1997 as mentioned in the impugned order dated 5.11.1997. No counter affidavit has been filed.

10. The Counsel for the petitioner relies upon Mukesh Kumar v. State of U.P.; Smt. Shashi Saxena v. Deputy Director of Education 2000 (3)

ESC 1990, Sudhir Kumar Rai v. DIOS, Gorakhpur 2002 (4) ESC 45.

11. In the case the Court relying upon Radha Raizada v. Committee of Management (1994) 3 UPLBEC 1551, held that the procedure for filling

up short term vacancies which are not in the substantive capacity remained the same as prior to the management which was enforced with effect

from 14-7-1992 and in view of this, the management has power to fill up short term vacancies and there is no requirement of prior

permission/approval from the District Inspector of Schools or any other authority for filling up such vacancies in non-substantive capacity.

12. In case of Smt. Shashi Saxena v. Deputy Director of Education 2000 (3) ESC 1990 (Division Bench), the petitioner claimed a writ of

mandamus against the respondent to allow her to continue on the post of Assistant Teacher in L.T. Grade in the college, though she was initially

appointed on short term vacancy as Assistant Teacher in C.T. Grade and was held not entitled to be appointed against the post of Assistant

Teacher in L.T. Grade fallen vacant subsequently on ad hoc basis, who worked irrespective of the order of Deputy Director, of Education dated

29th June, 1996 in favour of Smt. Kusum Singh. Thus the facts of the case of Smt. Shashi Saxena are different with the case of Shashi Saxena

pertains to promotion in a vacant post of ad hoc appointment.

13. In Sudhir Kumar Rai v. DIOS, Gorakhpur 2002 (4) ESC 45, the question was whether the appointment on short-term vacancies becoming a

substantive in future would automatically cease.

14. The aforesaid cases cited by the Counsel for the petitioner are of no help and are not applicable as they are clearly distinguishable from the

facts of the instant case.

15. The advertisement in the newspaper ""Lok Saarthi"" was not bonafide as it is not a newspaper having wide circulation. The term ""wide

circulation"" means a national newspaper generally having circulation all over India like ""Dainik Jagran"", ""Amar Ujala"", ""Hindustan Times"", ""Times of

India"" etc. The petitioner has also not given any evidence regarding selection having taken place in accordance with the rules. Admittedly the

petitioner was selected in short-term vacancies and not in substantive vacancies. The Second Removal of Difficulties Order has ceased to remain in

force after 25-1-1998. There being no evidence or averment in the writ petition that short term vacancies has become substantive in future, the

ratio laid down in the cases of Sudhir Kumar Rai and Smt. Shashi Saxena (supra) would not apply. Admittedly the District Inspector of Schools

was not satisfied with the procedure and appointment of the petitioner and had returned the papers sent to him for approval. The instant case is a

case in which the appointment was made against the ban imposed by the G.O. dated 3-11-1997 which the facts of Radha Raizada and Mukesh

Kumar etc. were different.

16. For these reason it is not a fit case for interference under Article 226 of the Constitution.

17. The writ petition is/accordingly dismissed.