

(1996) 11 AHC CK 0136

Allahabad High Court

Case No: C.M.W.P. No. 10059 of 1988

Girish Dhar Dwivedi

APPELLANT

Vs

U.P. Secondary Education
Services Commission and
Selection Board and Others

RESPONDENT

Date of Decision: Nov. 4, 1996

Acts Referred:

- Uttar Pradesh Intermediate Education Act, 1921 - Section 16, 16(1), 16G(1), 16G(2), 17
- Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 - Section 15, 15(1), 15A, 15A(1), 15A(1)
- Uttar Pradesh Secondary Education Services Commission and Selection Boards Rules, 1983 - Rule 4, 5, 7, 7(1), 7(2)

Citation: (1996) 4 UPLBEC 2484

Hon'ble Judges: D.K. Seth, J

Bench: Single Bench

Advocate: S.R. Misra and A.K. Misra, for the Appellant; K.S. Shukla, Public Prosecutor Chaudhary, A.K. Singh and S.C., for the Respondent

Final Decision: Dismissed

Judgement

D.K. Seth, J.

The short point urged by Mr. Misra, learned Counsel for the Petitioner, related to interpretation of Regulation 7 by which the panel prepared and recommended by the U.P. Secondary Education Services Commission was made valid for a period of one year. According to Mr. Misra, as soon the person recommended in the appeal is appointed, the panel is given effect to. In case the incumbent so appointed leaves the service or for any other reason, the post becomes vacant, the period between the appointment and the occurring of vacancy is to be excluded for the purpose of calculating the period of one year and the panel shall remain valid for a period of one year to be calculated excluding the said period.

2. In order to appreciate the situation, a brief resume of facts is necessary. On 20th February, 1986, the panel prepared and recommended by the Commission was notified. Pursuant to the said notification, the incumbent in Sl. No. 1 Sri Gorakh Nath Singh was given appointment and had joined as Principal, Ratan Sen Inter College, Bansi, Basti. The name of the Petitioner figured in Sl. No. 2 of the said panel. The appointment of the said Gorakh Nath Singh was cancelled by an order dated 11th November, 1987 by the Respondent No. 1 in exercise of power under Rule 8 (iii) and Rules 4 and 5 of the Rules framed under the U.P. Secondary Education Services Commission and Selection Board Act. Consequent upon the order of cancellation, the District Inspector of Schools ("D.I.O.S." for short by an order dated 18th July, 1988 directed the Committee of Management to issue appointment letter to the Petitioner as Principal of the said College (Annexure "1"). Though the Petitioner reported for joining, the Committee of Management did not allow him to join despite his approach to the D.I.O.S. and the Respondent No. 1. On 22nd April, 1988 when the Petitioner had been to the office of the Commission, he came across an order dated 13th April, 1987 (Annexure "2") by which fresh step was directed for filling up the vacancy of the Principal in the said Ratan Sen Inter College. It is this order which has been challenged by means of the present writ petition on the ground that the period between the date of joining of Gorakh Nath Singh and 11th November, 1987 is to be excluded for the purpose of calculating the period of one year during which the panel remains valid. In support of his case, the Petitioner had referred to the case of Jai Prakash Singh and Nizamuddin Khan, candidates Nos. 1 and 2 respectively for the post of Principal in Neta Subhas Krishi Sainik Inter College, Banki Vinod Nagar, Maula Ganj, Gorakhpur wherein the appointment of Jai Prakash Singh having been cancelled by an order dated 30th July, 1987, Nizamuddin Khan at Sl. No. 2 was asked to join as Principal by Respondent No. 1 by an order dated 3rd August, 1988 (Annexure "3").

3. In the counter-affidavit filed on behalf of the Committee of Management in paragraph 13, it has been contended that the said order dated 3rd August, 1988 was later on cancelled. However, unless the validity of the panel is interpreted, according to the contention of Mr. Misra, the said fact cannot help the Petitioner. Inasmuch as if the said order is contrary to law, then the same order would be a wrong one. Article 14 cannot be attracted to plead discrimination on the basis of an illegal order seeking to compel the Respondent to pass similar illegal order in favour of the Petitioner. No legal right can flow on the basis of an illegal order and the principle of discrimination cannot be attracted in a case which would lead to passing another illegal order. The Court cannot be a party to such a wrong order. In exercise of writ jurisdiction, the High Court cannot direct passing of an illegal order.

4. In order to appreciate the question, reference may be made to Section 15A of the U.P. Secondary Education Services Selection Boards Act, 1982, hereinafter referred to as "the said Act" which runs as follows:

15A. Panel of candidates selected by Board.--

(1) The Board shall, as soon as possible, after the notification of vacancies u/s 15, hold interview of the candidates and prepare and forward to the officer or authority referred to in Sub-section (1) of Section 15 in the prescribed manner, a panel of those found suitable for appointment.

(2) On receipt of such panel the officer or authority concerned shall, in the prescribed manner, intimate the Management of the Institution, in respect of which the vacancy was notified the name of the selected candidate.

(3) The Management shall, within a period of one month from the date of receipt of such intimation, issue appointment letter to such selected candidate.

(4) Where such selected candidate fails to join the post in such Institution within the time allowed in the appointment letter or within such extended time as the Management may allow in this behalf, or where such candidate is otherwise not available for appointment, the officer or the authority concerned may, on the request of the Management, intimate in the prescribed manner, fresh name or names from the panel forwarded by the Board under Sub-section (1).

(5) The panel prepared under Sub-section (1) shall remain in force for one year.

5. It appears that the validity of the panel has been provided in Sub-section (5) of Section 15A of the said Act as to remain in force for one year. Such panel is to be prepared in the manner prescribed in Sub-section (1) of Section 15A of the said Act. Sub-section (1) requires the commission to forward the panel to the officer or authority referred to in Sub-section (1) of Section 15. Sub-section (2) provides that such authority on receipt of the panel shall intimate the Management of the Institution the name of the selected candidates in the prescribed manner. According to Sub-section (3) the Management on receipt of such intimation is required to issue the appointment letter within a period of one month from receipt. Sub-section (4) makes it clear that while issuing such appointment letter time is to be allowed to the candidate for joining the post which is subject to extension by the Management. In case where the candidate is not available for appointment, the Management should intimate the same to the authority concerned and on the request of the Management, fresh name or names from the panel may be forwarded by the Board under Sub-section (1).

6. Section 16 of the said Act provides 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 21B, 21C, 21D, 33, 33A and 33B, every appointment of a teacher, shall, on or after the date of commencement of the Uttar Pradesh Secondary Education Services Commission and Selection Boards (Amendment) Act, 1922, be made by the

Management only on the recommendation of the Board:

Provided that in respect of retrenched employees, the provisions of Section 16E 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 the regulations made under Clause (c) of Sub-section (2) of Section 16G of the Intermediate Education Act, 1921.

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

7. Section 16 makes it clear that the appointment has to be made only on the recommendation of the Services Commission and any appointment made in contravention of Sub-section (1) shall be void. Section 17 of the said Act provides as follows:

17. Inquiry by Director.--

(1) Where any person is entitled to be appointed as a teacher in any institution in accordance with Chapter III but he is not so appointed by the Management within the time provided therefore, he may apply to the Director or any officer authorised by him for a direction under Sub-section (2).

(2) As far as may be within one month from the date of receipt of an application under Sub-section (1), the Director or the Officer authorised by him may hold an inquiry, and if he is satisfied that the Management has failed to appoint the applicant as a teacher, in contravention of the provisions of this Act, he may, by order, direct:

(a) the Management to appoint the applicant as a teacher forthwith and to pay him salary from the date specified in the order; and

(b) the Head of the Institution concerned to take work from him as a teacher.

(3) The amount of salary, if any, due to such teacher shall, on a certificate issued by the Director or the officer authorised by him, be recoverable by the Collector as arrears of land revenue from the property belonging to or vested in the society or body running the institution.

8. Section 17 makes it clear that if the appointment letter is not issued within one month from the date of receipt of intimation by the Management, the candidate is entitled to take advantage of Sub-section (1) of Section 15. Sub-section (2) provides that within one month from the receipt of such application, an enquiry has to be held and the Management is to be directed to appoint the applicant forthwith and to pay salary from the date specified in the order and such salary if not paid is recoverable as arrears of land revenue from the Society or the Board running the Institution.

9. The entire scheme of the provision laid down indicates that the exercises are made time bound. All this time has been stipulated in Section 15A (3) and (4) and Section 17 (1) and (2) only to keep the time frame within the ambit of Sub-section (5) of Section 15A. The said section provides for each exercise to be carried on in the manner prescribed which we find, so far as the preparation of panel is concerned, in Rules 7 and 8 of the Rules, Rule 7 prescribed:

7. Preparation of panel.-

(1) The Commission shall prepare an institution-wise panel of those found most suitable for appointment and arrange them in order of merit, inter alia mentioning:

(i) the name of the institution and where it is situate;

(ii) the subject in which vacancy existed and selection made:

(iii) names of selected persons in order of merit and with due regard to their preference for appointment in a particular institution.

(2) The panel, prepared under sub rule (1), shall hold good for one year from the date of its notification by the Commission.

10. The Commission is required to prepare Institution-wise panel of those found most suitable for appointment and arrange them in order of merit with due regard to their preference for appointment in a particular Institution. Sub-rule (2) makes it clear that such panel shall hold good for one year from the date of its notification by the Commission. Sub-section (5) of Section 15A prescribes that the panel prepared shall remain in force for one year and the same has been incorporated under Sub-rule (2) of Rule 7 only with the addition of date from which the said one year is to be reckoned.

11. Rule 8 of the said rule provides as follows:

8. Notification of selected candidate.--

(1)The Commission shall forward the panel, referred to in Rule 7, in quadruplicate, to the Deputy Director and shall also notify the same on its notice board and publish it in such other manner as it may consider proper.

(2) Within fifteen days of the receipt of the panel by him, the Deputy Director shall notify it on his notice board and send two copies thereof to the Inspector.

(3) Within ten days of the receipt of the panel by him, the Inspector shall:

(i) notify it on the notice board;

(ii) intimate the name of selected candidates standing first in order of merit, and, where there are more than one vacancies, as many names in order of merit as there are vacancies, to the Manager of the concerned institution with directions that, no authorisation under resolution of the Management, an order of appointment, in the

proforma given in Appendix "B" be issued to the candidate by registered post, within one month of the receipt of intimation, requiring him to join duty within ten days of receipt of the order or within such extended time, as may be allowed to him by the Management, and also intimating, him that, on his failure to join within the specified time, his appointment will be liable to be cancelled;

(iii) send an intimation to the candidate, referred to in Clause (ii) with directions to report to the Manager within ten days of the receipt of the order of appointment by him from the Manager or within such extended time as may be allowed to him. by the Management.

(4) The Manager shall comply with the directions, given under Sub-rule (3), and report compliance to the Commission through the Inspector.

(5) When the candidate, referred to in Sub-rule (3), fails to join the post within the time allowed in the letter of appointment or within such extended time as the Management may allow in this behalf or where such candidate is not available for appointment, the Inspector may on the request of the Management, send fresh name or names standing next in order of merit on the panel, under intimation to the Deputy Director and the Commission, and the provisions of Sub-rules (3) and (4) shall mutatis mutandis apply.

12. It appears from the above provision contained in Rule 8 that the Commission shall forward the panel to the Deputy Director who shall notify the same on its notice board and publish it in such other manner as he may consider proper. The notification made by the Deputy Director is meant the notification by the Commission is incorporated in Rule 7 (2). Now the Deputy Director has to notify the panel within 15 days of receipt by him in the notice board while sending two copies thereof by the Inspector who in his turn within 10 days of the receipt shall notify the same on the notice board and intimate the name of the selected candidate to the Committee of Management in order of merit together with direction to the Manager to issue an order of appointment for which no authorisation and resolution of Management would be necessary. The Manager thereupon shall issue the appointment letter within one month of receipt of intimation to the candidate requiring him to join duty within 10 days of the receipt of the order. The said 10 days may, however, be extended by the Management. The Management is also required to intimate the candidate that on his failure to join within the specified time, the appointment shall be liable to be cancelled. The Inspector shall also send an intimation to the candidate with direction to report to the Manager within 10 days of the receipt of the order of appointment by him from the Manager. Sub-rule (3) of Rule 8 requires the Inspector to intimate the name of selected candidates standing first in order of merit. He is not required to intimate the name of the other candidate in the panel below the first. Therefore, the panel remains with the Inspector. Under Sub-rule (4) the Manager has to report compliance to the Commission through the Inspector. According to Sub-rule (5) If the candidate failed

to join within the time or as extended by the Management or if he is unavailable, the Inspector on the request of the Management may send fresh name next in order of merit on the panel under intimation to the Deputy Director and the Commission. In such case also, the provisions of Sub-rules (3) and (4) shall apply mutatis mutandis. This implies that within 10 days from the request made by the Management, the Inspector has to intimate the name of the candidate next in order of merit and the self same limitation as provided in Clauses (ii) and (Hi) of Sub-rule (3) would be applicable. In the case of the failure of the second candidate, if there are any other candidate in the panel in order of merit, in that event the whole exercise would be reported in the same manner in view of Sub-rule (5).

13. Sub-section (5) of Section 15A of the Act uses the expression "panel prepared under Sub-section (1) shall remain in force for one year". It does not qualify "one year" by any proviso. The plain and simple meaning that can be arrived at is that the panel would lapse after one year. Since Sub-rule (2) of Rule 7 provides the time since when the said period would start to run while providing that the panel prepared "shall hold good for one year from the date of its notification by the Commission". Therefore, the life of the panel which has been limited for one year starts running from the date of notification by the Commission. On the same analogy when limitation once starts running, the same cannot be stopped due to any disability, the life of the panel once notified by the Commission starts running which cannot be stopped by any contingency simply by implication. It is the life of the panel which has been limited by one year despite specification of the time schedule incorporated in Section 15A and Section 17 read with Rule 8, when provision of Section 15A (1) incorporating consequences of failure of the candidate to Join or is becoming unavailable read with Sub-rule (5) of Rule 8 incorporating similar provision without providing that the life of the panel could be extended despite specific provision contained in Sub-section (5) of Section 15A read with Sub-rule (2) of Rule 7 were introduced. If the Legislature had intended to prescribe an extended life of the panel beyond the limitation provided, it definitely would have hinted at some thing in Sub-section (4) of Section 15A or Sub-rule (5) of Rule 8, as the case may be. In view of the specific provision contained in Section 15A (4) and Rule 8 (5), it is very difficult to interpret in the manner Mr. Misra wanted to interpret Sub-rule (2) of Rule 7. When the Legislature has expressly limited the life of the panel, in Section 15A (5) and Rule 7 (2), it reiterated the same with specific date on which the said limitation would run in clear and unambiguous terms and the interpretation sought to be made by Mr. Misra cannot be accepted. Inasmuch as the provisions concerning the matter does not brook any scope of imagining extension of life of panel in any contingency. If there is no scope of any implied extension in the absence of any provision resulting in any such implication, it would amount to adding words in the statute which is otherwise absent therein. If such an interpretation is given, in that event, it would be adding something to the statute which the Legislature had omitted and had never intended. Had the Legislature intended to mean as has been sought to be made out

on behalf of the Petitioner, in that event, some indication should have been found some where in the provisions of the Act and Rules which despite extensive scrutiny, I have not been able to find out. On the other hand, limitation has been provided to circumscribe the process of repetition contemplated in Sub-rule (5) of Rule 8 so as to save it from the vice of the rule of perpetuity or vagueness or indefiniteness limiting the process of repetition within the life of the panel.

14. Here in the present case, the appointment of Gorakh Nath Singh having been cancelled long after one year from the date of the notification of the panel by the Commission, there is no scope for application of Sub-section (4) of Section 15A read with Sub-rule (5) of Rule 8 because of the specific time frame mentioned in the said sub-section read with the said rule. Then again Section 15A (4) read with Rule 8 (5) makes it clear that on the request of the Management when the candidate fails to join or is not available for appointment within the time mentioned in Rule 8 (3), the Inspector may send fresh names standing next in Order of merit on the panel. In the present case, it appears that the Inspector had intimated the name of the next in order of merit in the panel on its own motion without being requested by the Management.

15. As contended by the learned Counsel for the Petitioner that the panel having been given effect to by appointment of Gorakh Nath Singh remained in suspended animation on account of its compliance. If Gorakh Nath Singh's appointment was never cancelled, the same would have lost his life and the question of one year's duration would not have arisen. But the moment the appointment is cancelled, the panel revives because of the reason that the selection of Gorakh Nath Singh was wrong and the Petitioner would have been placed in Sl. No. 1 and, therefore, he would have got the benefit of the said panel and, therefore, the question of running of limitation would start only from the date Gorakh Nath Singh's appointment was cancelled, namely, on 11th November, 1987. Such an interpretation is counter productive. Inasmuch as once the panel is given effect to and if the appointment of Gorakh Nath Singh was not cancelled, then it would have come to an end. Once it had come to an end, the same could not have been revived for whatsoever account the vacancy might have been occurred. The panel revives only because of Section 15A (5) read with Rule 7 (2) which makes the panel valid for one year and in the eventuality of vacancy occurring during the said period, the panel would revive even though given effect to because of Section 15A (4) read with Rule 8 (5) which are also subject to the time frame as mentioned in Section 15A and Section 17 read with Rule 8. Then again the same would have an disastrous effect contrary to the provision expressly provided in Section 15A (5) read with Rule 7 (2). Inasmuch as on account of arising of vacancy by reason of any eventuality, namely, death, resignation, disability, termination of service or for whatsoever reason after one year from the notification of the panel would seek to revive the life of the panel which has been expressly provided to be on limited duration and claims to be lodged in time after one year without any outer limit. Such claim might have been made even after 5-6

years or 10-20 years who knows. The Legislature in its wisdom have expressly provided panel to survive for a period of one year. The same cannot be infused for long to survive beyond what is expressed by the Legislature and such an interpretation would amount to legislation and not interpretation. The Constitution has not empowered the Court with the power of legislation which would be an encroachment in the domain of the Legislature not permitted. While interpreting Statutes the Court has to reconcile the various provisions and given a meaning workable and will further the object of the Statute.

16. The learned Counsel for the Petitioner relied on a clarification issued by the Government clarifying Rule 7 which is dated 4th May, 1984 where it has been provided that in case the person first in order of merit leaves the service after joining within one year from the date of the notification of the panel by the Commission or the post becomes vacant within the said period for any other reason, then the next in order of merit shall be given appointment and similarly the same would apply to the next in order. The learned Counsel for the Petitioner intended to interpret the same to mean that the said one year qualifies only the joining and not the leaving or occurrence of vacancy. Such an interpretation cannot be accepted simply for the reason (1) that the said clarification is an Executive instruction which can never supersede the express provision contained in the Statute; (2) that the said one year qualifies the period of the survival of the panel. All the happenings as referred to in the said clarification have to be taken place during the life of the panel. As translated at the bar, the said clarification means that if after joining, the first candidate leaves the service or for some other reason the post becomes vacant during the period of one year from the date of notification of the panel by the Commission, in that event, the next in order of merit would be given appointment and then it would be commensurate with Section 15A (4) read with Rule 8 (5). A different interpretation would be wholly perverse inasmuch as in that event the limitation would be one year for the person in number one and the other for the person in number two and then another year for number three thereby extending the life of the panel to three years or may be more which cannot be conceived of by reason of Section 15A read with Rule 7 (2).

17. Therefore, the letter dated 18th January, 1988 is wholly beyond the competence of the Respondent No. 1 and, as such, was void ab initio. If the order is void at its inception, the same cannot be recognised. Therefore, there is no illegality in issuing an order contained in Annexure "3" initiating the process for fresh election.

18. In that view of the matter, the writ petition fails and is accordingly dismissed. There will, however, be no order as to costs.