

(1997) 07 AHC CK 0215

Allahabad High Court

Case No: C.M.W.P. No. 10853 of 1980

Smt. Urmila Devi Singh

APPELLANT

Vs

Regional Inspectress of Schools
and Others

RESPONDENT

Date of Decision: July 24, 1997

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

Bench: Single Bench

Advocate: Swaraj Prakash and P.N. Rai, for the Appellant; M.P. Singh and S.C., for the Respondent

Final Decision: Allowed

Judgement

D.K. Seth, J.

On account of substantive vacancy in certain posts, advertisement was issued pursuant to which the Petitioner was selected. Though, she was not trained Graduate yet she was given appointment with the approval of Regional Inspectress of Schools, 7th Region, Gorakhpur w.e.f. 7.9.1974. It appears that the appointment was given only for the year 1974-75. Subsequently by an order dated 7.11.1975, she was again given appointment for a period of six months and her appointment was subsequently extended upto 15.11.1976. All these appointments and extensions were granted with the approvals of the Regional Inspectress of Girls Schools as is apparent from the different annexures annexed in the writ petition as well as counter-affidavits filed on behalf of the Committee of Management and that of the State. Thus, the fact remains that the Petitioner was appointed before 30.6.1975 and continued till 15.11.1976. Sri P.N. Roy, learned Counsel for the Petitioner relying on the U.P. Secondary Education Laws (Removal of Difficulties) Order (Fifth), 1976 contends that by reason of para 3 of the said order, the Petitioner is entitled to be appointed in substantive capacity. Therefore, by no means her services could be dispensed with as has been sought to be done since 16.11.1976. Since then she has not been paid her salary. Upon the writ petition being moved by an order dated

22.1.1981, the Respondents were directed to pay her salary and it was open to the Respondents not to take work from the Petitioner. The said interim order is sought to be vacated but by an order dated 12.11.1981, the interim order was not vacated. The learned Counsel for the Petitioner contends that she has been paid her salary pursuant to the said interim order since then. But she has not been allowed to work in the school. The said situation has been allowed to continue till today.

2. The delay in moving the writ petition in 1980 has been explained by the learned Counsel for the Petitioner that several representations were being moved by her and she was expecting an order on the basis thereof. But the first representation, which is Annexure 1 to the writ petition, appears to have been made on 8.4.1980 and the next one was 21.10.1980. On the basis of said representations, the report was submitted on 3.5.1980, which is Annexure 4 to the writ petition, wherein the Regional Inspectress of Girls Schools has pointed out that the Petitioner should have been treated to have been substantively appointed for the year 1975-76, her salary should have been paid after 15.11.1976, therefore, appropriate steps may be taken in that regard.

3. Though, it appears that the Petitioner did not take steps right from 1976 till April, 1980, but the Respondents themselves by its own report contained in Annexure 4, which is dated 3.5.1980, had accepted the contention of the Petitioner. Therefore, on the ground of delay, laches or negligence, the writ petition cannot be thrown away.

4. Para 3 of the 5 Removal of Difficulties Order, 1976 relied upon by the counsel for the Petitioner specifies as follows:

3. Where any person was appointed by the Committee of Management as a teacher on or before June 30, 1975 for any period as a temporary measure with the approval or permission of the Inspector and such person has worked thereafter upto November 15, 1976, he shall be deemed to have been appointed in a substantive capacity:

(a) in case the appointment was initially made in a clear vacancy, from the date of appointment;

(b) in case the appointment was initially made in a leave vacancy or a vacancy occurring for a part of the session or otherwise then in clear vacancy, from the date when such vacancy assumed the character of clear vacancy;

(c) in case the appointment was initially made on a post, the creation of which was sanctioned subsequently by a competent authority In that behalf from the date of such sanction;

(d) in case he did not possess the prescribed training qualifications at the time of initial appointment from the date of acquisition of such training qualification:

Provided that in cases referred to in Sub-clauses (a), (b) and (c), such person possesses the prescribed qualification or has been exempted from the requirements of minimum qualifications and was duly selected and appointed in accordance with law for the time being in force.

Explanation. -- The period during which any such teacher has, between the date of his appointment and November 15, 1976, ceased to work for any reason not arising out of his own request shall not constitute a break into service for purposes of this clause.

5. A reading of the said para clearly indicates that person appointed by the Committee of Management as teacher with the permission of the Inspectress of Girls Schools on or before 30.6.1975 for any period even as temporary measure and if such person has worked thereafter till 15.11.1976, then such person shall be deemed to have been appointed in a substantive capacity and the date of such appointments shall be the date on which, if such person is untrained, he acquires such training/qualifications. Though, it is alleged that the Petitioner did not work continuously and there were never breaks in her service but by the reason of the explanation given above such breaks having not been due to the Petitioner's own request, do not constitute break of the service for the purpose of para 3.

6. Now in the present case, the Petitioner was appointed before June 30, 1975. The breaks were not due to the request of the Petitioner, it is also not the case made out in the counter-affidavit. Ultimately the Petitioner continued till 15.11.1976. She had not continued after 16.11.1976. Therefore, she satisfied the test and the ingredients as laid down made in para 3 of the said Fifth Removal of Difficulties Order, 1976 read with the explanation referred to above.

7. Admittedly, the Petitioner was not trained graduate. The learned Counsel for the Petitioner contends that she has undergone training and acquired qualifications of a trained graduate subsequently. By reason of Clause (d) of para 3 of the said Removal of Difficulties Order (Fifth), the Petitioner should be deemed to have been appointed in substantive capacity from the date when she had acquired the qualifications of training.

8. The contention of Sri Sabhajeet Yadav, learned standing counsel that the Petitioner having been granted appointment for limited period for service came to an end on the expiry of time limited by the appointment cannot be accepted in view of the specific provisions in para 3 of the 5th order aforesaid read with explanation given. Because this para 3 uses the expression "for any period. Therefore, even if the period is limited, would not stand in the way. Any period may include a period limited by time. The only criteria is that such appointment is made before 30.6.1975 and thereafter had continued till 15.11.1976 and the breaks were not due to her own request. Therefore, the question of the period limited by time cannot be a ground to disqualify the Petitioner for being "deemed to have been appointed in

substantive capacity".

9. For all these reasons, the writ petition succeeds The Petitioner is declared to be deemed to have been appointed in substantive capacity from the date of her acquisition of qualification or training in terms of para 3 clause (d) of the Fifth Removal of Difficulties Order, 1976 read with explanation and as such is entitled to all service benefits attached to the said substantive appointment. In the circumstances, a writ of mandamus be issued directing the Respondents to treat the Petitioner to have been appointed in substantive capacity as observed above and make available all service benefits as are admissible under the law to the Petitioner. Subject to adjustment of whatever is paid to the Petitioner in the meantime in terms of the interim order passed in this writ petition. The writ petition is thus finally disposed of. No costs.