(1997) 12 AHC CK 0142

Allahabad High Court

Case No: Special Appeal No. 528 of 1992

Savindra Kumar Singh		APPELLANT
	Vs	
Raj Deo Pal and Others		RESPONDENT

Date of Decision: Dec. 10, 1997

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 - Section 18

Citation: (1997) AWC 637 Supp

Hon'ble Judges: S. Rafat Alam, J; R.A. Sharma, J

Bench: Division Bench

Advocate: Indra Raj Singh, for the Appellant; Namwar Singh, for the Respondent

Final Decision: Dismissed

Judgement

S. Rafat Alam, J.
This Special Appeal arises out of the judgment dated 12.11.1992 of the learned single Judge rendered in Civil Misc. Writ Petition No. 10404 of 1990.

2. The short question that falls for our determination is as to whether the Committee of Management of a recognised Intermediate College receiving grant-in-aid from the State of U.P., can make appointment on ad hoc basis by direct recruitment as provided u/s 18 of the U.P. Secondary Education Services Commission and Selection Boards Act, 1982, (hereinafter referred to as the Act of 1982).

3. This question is no more res integra and has been concluded by a Division Bench judgment of this Court in the case of Charu Chandra Tewari v. District Inspector of Schools, Deoria and Ors. 1990 (1) UPLBEC 160, wherein it has been held that the vacancy u/s 18 of the Act should be filled up by promotion and the method of direct recruitment should be adopted only if the teachers for promotion are not available. This

view of the Division Bench has also been affirmed by a Full Bench of this Court in the case of Km. Radha Raizada v. Committee of Management, Vidyawati Darbari Balika Inter College, Allahabad and Ors. 1994 (3) UPLBEC 1551 . The Full Bench decision has been approved by the Hon"ble Supreme Court in Prabhat Kumar Sharma and others Vs. State of U.P. and others, .

4. Admitted facts of the case, in short, are that the Public Intermediate College, Kerakat, district Jaunpur, (hereinafter referred to as the institution), is a recognised institution receiving grant-in-aid from the State of U.P. and is governed by the provisions of U.P. Intermediate Education Act, 1921, (hereinafter referred to as the Act of 1921). In the said institution, one post of Lecturer in Economics and one post of Lecturer in Psychology fell vacant on 30.6.1989 on account of retirement of the incumbents. The Committee of Management notified the post of Lecturer in Psychology to be filled up by promotion under 40% quota as provided under the Act of 1921 and, accordingly, proposed the name of Sri Lalta Prasad Maurya, who was found to be eligible for the promotion to the post of Lecturer, whereas the post of Lecturer in Economics was notified to the Commission for recommending the name of suitable candidate. When the Commission failed to recommend the name of any suitable candidate for being appointed within one year from the date of notification and the post remained vacant for more than two months, the Committee of Management decided to fill the post by ad hoc appointment through direct recruitment. Consequently, the Appellant was appointed as ad hoc Lecturer in Economics by direct recruitment.

5. Being aggrieved by the aforesaid decision of the Committee of Management, the Respondent No. 1 made a representation before the authorities of the Education Department and also approached this Court by filing Civil Misc. Writ Petition No. 10404 of 1990 which was allowed by a learned single Judge of this Court by the impugned judgment dated 12.11.1992 on the ground that Respondent No. 1 (writ Petitioner), being seniormost L. T. Grade teacher in Economics, was entitled to be promoted on ad hoc basis as Lecturer in Economics in view of the Division Bench judgment of this Court in the case of Charu Chandra Tewari v. District Inspector of Schools, Deoria (supra). It has also been held that the Committee of Management was not justified in filing the aforesaid vacancy by direct appointment and, therefore, the appointment of the Appellant (Respondent No. 6 to the writ petition), was quashed and a direction was issued to promote Respondent No. 1 (writ Petitioner), as Lecturer in Economics on ad hoc basis forthwith and allow him to continue until regular selection was made by the Commission. Against the aforesaid order of the learned single Judge, the present Special Appeal has been filed.

6. We have heard Sri Indra Raj Singh, learned Counsel for the Appellant, Sri S. C. Budhwar, learned senior counsel appearing on behalf of the Committee of Management, Sri Namwar Singh and the learned standing counsel for the other Respondents. It was contended on behalf of the Appellant, as well as on behalf of the Committee of Management, that Respondent No. 1 was not found suitable by the Committee of

Management to be promoted as Lecturer and, thus, it was not a fit case where the discretion under Article 226 of the Constitution of India should have been exercised in favour of Respondent No. 1.

7. Our attention has been drawn to the resolution of the Committee of Management dated 17.9.1989 and it was contended that the Committee of Management considered the case of Respondent No. 1 for promotion, but it did not find him fit for such promotion, and as such it was decided to fill up the aforesaid vacancy by direct recruitment. From a perusal of the aforesaid resolution, it is apparent that the Committee of Management proceeded on the assumption that out of two posts, only one post is to be filled up by promotion on ad hoc basis in view of the quota prescribed for promotees and, therefore, while considering the case of Respondent No. 1. vis-a-vis with other teacher, Sri Lalta Prasad Maurya, Respondent No. 7, considered the latter to be suitable and found the writ Petitioner unsuitable. Sri Lalta Prasad Maurya was being considered for the post of Lecturer in Psychology, whereas Respondent No. 1 was claiming promotion on the post of Lecturer in Economics. Therefore, it was not correct to adjudge the suitability of Respondent No. 1, vis-a-vis, Respondent No. 7. Furthermore, as per law laid down by a Full Bench of this Court in the case of Km. Radha Raizada v. Committee of Management and Ors. (supra), it is mandatory on the part of the Committee of Management to first fill up the vacancy by promotion on the basis of seniority alone and so long the post can be filled up by promotion, it is not open to the Committee of Management to take resort to the power to appoint ad hoc teacher by direct recruitment.

8. That apart, there is nothing on the record to show that the Appellant was appointed after following the procedure prescribed in para 5 of the First Removal of Difficulties Order for making ad hoc. appointment by direct recruitment. In the case of Prabhat Kumar Sharma and Ors. (supra), the Supreme Court while approving the Full Bench judgment of this Court in Km. Radha Raizada''s case (supra), held that any appointment made in contravention of the procedure prescribed in para 5 of the First Removal of Difficulties Order is illegal appointment and the same is void and confers no right on the appointee. Therefore, the Committee of Management can adopt the procedure to make direct appointment of ad hoc teachers only when preconditions mentioned in Section 18 of the Act are satisfied, the vacancy is substantive vacancy and it cannot be filled up by promotion. Since admittedly, Respondent No. 1 was having requisite qualification for being promoted as Lecturer, in our view, the Committee of Management was not justified in filing up the vacancy in question by direct recruitment.

9. Having considered the submissions and in the facts and circumstances of the case, we are of the view that the controversy involved in the present case is squarely covered by a Division Bench judgment of this Court in the case of Charu Chandra Tewari v. District Inspector of Schools and Ors. (supra), and Full Bench judgment of this Court in the case of Km. Radha Raizada v. Committee of Management and Ors. (supra), which has been approved by the Hon''ble Supreme Court in Prabhat Kumar Sharma and Ors. (supra). The learned single Judge has rightly allowed the writ petition.

10. In the result, there is no merit in the appeal and it is, accordingly, dismissed.