
(2013) 10 AHC CK 0177

Allahabad High Court

Case No: Special Appeal No. 113 of 2000

State of U.P. and Others

APPELLANT

Vs

Ram Babu Katiyar and Others

RESPONDENT

Date of Decision: Oct. 4, 2013

Acts Referred:

- Uttar Pradesh Secondary Education Service Commission Act, 1982 - Section 18

Citation: (2013) 9 ADJ 444 : (2013) 101 ALR 324 : (2013) 6 AWC 6077 : (2014) 140 FLR 75 : (2013) 4 UPLBEC 3074

Hon'ble Judges: Satya Poot Mehrotra, J; Pankaj Mithal, J

Bench: Division Bench

Advocate: A.K. Shukla and A.H. Shukla, for the Respondent

Final Decision: Dismissed

Judgement

1. Heard Shri Rajnikant, learned Standing counsel and Shri A.K. Shukla, learned counsel for respondent No. 1. This Special Appeal under Rule 5 of Chapter VIII of the High Court Rules has been preferred by the State of U.P. and the Deputy Inspector of Schools (in short DIOS) concern against the judgment and order dated 13.8.1999 of the learned Single Judge allowing writ petition No. 8576 of 1997 (Ram Babu Katiyar v. State of U.P. and others) directing for according approval to the appointment of respondent No. 1 as an ad hoc teacher in the institution Ram Prasad Sarva Janki Inter college, Roora, Kanpur Dehat.

2. Ram Babu Katiyar respondent No. 1 in this appeal had filed the above writ petition for quashing of the order of DIOS dated 25.2.1997 refusing to grant approval to his ad hoc appointment as a Lecturer, Commerce in the institution. The DIOS by the order impugned in the writ petition elaborately discussed the procedure followed by the Committee of Management in selecting the petitioner for his appointment as an ad hoc Lecturer. It records that the substantive vacancy of the post of Lecturer, Commerce at the institution was meant to be filled up by promotion but as the only

qualified teacher in the institution, Surendra Babu Mishra was not eligible for being promoted as he had not completed 5 years of continuous service, the post was left open to be filled up by direct recruitment. The complete procedure right from notifying the post to the Commission, advertising it in the newspaper and selection through a duly constituted Selection Committee was adopted. There was no discrepancy in the procedure adopted for selection and appointment of the petitioner but as there was a ban imposed on appointments w.e.f. 31st August 1991, it is not possible to accord approval. Therefore, the approval to the appointment was refused only for the reason that there was a ban on appointments w.e.f. 31st August 1991.

3. The learned Single Judge in his judgment and order dated 13.8.1999 records that it is not disputed by the learned counsel for the parties that the ban was lifted on 26.9.1991 and since the petitioner was appointed subsequently i.e. on 5.9.1992 his appointment was not affected by the ban order. He accordingly allowed the writ petition and directed for granting approval.

4. The only argument of learned Standing counsel is that in view of the ban vide D.O. dated 31.8.1992 no selection/appointment could have been made and therefore, the direction to accord approval is not justified.

5. In reply it has been submitted that the appointment was not made during the period of ban. The appointment has now been approved. Therefore, in the absence any error in the selection process, the appointment of the respondent No. 1 is not liable to be disturbed.

6. Respondent No. 1 has filed a supplementary-affidavit on 6.1.2011 and has brought on record the order of the DIOS dated 8.2.2000 whereby pursuant to the directions by the learned Single Judge; approval has been granted to the appointment of the petitioner. The aforesaid affidavit or the order of approval is not disputed. It is also not disputed that the petitioner is working ever since his appointment and is getting salary.

7. The above approval though subject to decision of this writ petition has not been faulted with. It has not been challenged. At the same time, in the earlier order of the DIOS dated 25.2.1997 which was impugned in the writ petition it had been held that the appointment of the petitioner was in accordance with law and the entire procedure for selection and appointment was followed which means that the selection and appointment of respondent No. 1 is in order. Thus, there is no reason to disturb the selection and appointment of respondent No. 1.

8. In the counter-affidavit filed in the writ petition the only stand taken by the State/DIOS was that the State Government had imposed ban on the appointments w.e.f. 31.8.1991 and in this view of the matter, the Committee of Management of the institution could not have given ad hoc appointment to the petitioner on the post of Lecturer in Commerce.

9. The vacancy of the post of Lecturer fell vacant on 30.6.1991. It was notified to the Commission and was advertised on 18.7.1991. The Selection Committee took the interviews on 10.8.1991 and the result thereof was declared on 4.9.1992 pursuant to the directions of this Court in a writ petition filed by respondent No. 1. He was appointed on 5.9.1992.

10. The State Government had imposed ban on appointments in the State of U.P. vide Telex dated 29.6.1991 and the Government order dated 17th July 1991 as well as notification No. 30th July 1991 in pursuance of which the Director of Education U.P., vide D.O. No. 31853-953/1991-92 dated 31st August 1991 issued directions and it has been decided not to make appointment of any Principal, Headmaster, Lecturer or Assistant Teacher by direct recruitment including short term and ad hoc appointment in any private Government aided recognised higher secondary schools. The aforesaid ban was lifted on 26.9.1991.

11. The procedure for selection/appointment on the post of Lecturer, Commerce at the institution was initiated and the interviews were completed prior to the imposition of the above ban. The result was declared on 4.9.1992 and the appointment was made on 5.9.1992, after the ban was lifted. In this way neither the selection nor the appointment of the petitioner was made during the period of ban. No part of the selection process was carried out during the period in which the said ban had remained operative.

12. Learned Standing counsel next argued that the appointment of the petitioner was not in accordance with Section 18 of the U.P. Secondary Education Service Commission Act, 1982.

13. The submission is completely misconceived as at the relevant time the power to make ad hoc appointment on substantive post u/s 18 of the Act vested with the Committee of Management.

14. Learned Standing counsel is relying upon the amended provisions of Section 18 of the Act which have come into force subsequently but the same would not be applicable as the provisions of the Act which existed at the relevant time has to be applied.

15. Therefore, in view of the above facts and circumstances, the appointment being in accordance with law particularly the subsequent approval granted coupled with the fact that the respondent No. 1 has been working at the institution since 1992, there is no justification to disturb the arrangement which had been prevailing. There are ample precedents which dissuade us from interfering with the order impugned even though the learned Single Judge may not be justified in directing the DIOS to grant approval to the appointment of respondent No. 1 while allowing the writ petition, as the matter of approval or disapproval was solely within the domain of the DIOS. Accordingly, when there is no flaw in the selection, the appointment is not hit by the ban order and the consideration of approval was a mere formality, we

are of the opinion that no jurisdictional error was committed in issuing such direction. In view of the aforesaid facts and circumstances, we find no merit in this Special Appeal and the same is dismissed with no order as to costs.