

PETITIONER:
COMMITTEE OF MANAGEMENT, ARYA NAGAR INTER COLLEGE, ARYA

Vs.

RESPONDENT:
SREE KUMAR TIWARY & ANR.

DATE OF JUDGMENT: 31/03/1997

BENCH:
K. RAMASWAMY, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted. We have heard learned counsel on both sides.

This appeal by special leave arises from the judgment of the Division Bench of the High Court of Allahabad, made on August 14, 1996 in SA No.153/96.

The first respondent came to be appointed as an ad hoc teacher on July 1, 1986 against a short term vacancy caused by promotion of the incumbent on ad hoc basis to the next higher post. His appointment came to be terminated on May 30, 1988 w.e.f. June 30, 1988. The respondent challenged the order of termination in a writ petition. Pending writ petition, an interim order of stay though vacated by the learned single Judge, the same was granted by the Division Bench.

The learned single Judge on merits dismissed the writ petition. On appeal, the Division Bench in the impugned order has held that since, pending writ petition, the services of the first respondent came to be regularised, he would be entitled to continue in service. However, on consideration of the entire matter, we make it clear that the impugned judgment/order of the learned Single Judge will not stand on the continuation in service of the appellant (respondent herein) in pursuance of the order dated 27.10.1995 of the District Inspector of Schools regularising his services, till an order to the contrary is passed by the competent authority in accordance with law. The said order is now the subject matter of the appeal.

Shri N.K. Sharma, learned counsel appearing for the appellant, contends that the first respondent came to be appointed on ad hoc basis; the continued in service on ad hoc basis till June 30, 1988. The U.P. Secondary Education Service Commission (Removal of Difficulties) Order, 1981, as amended by Third Order, introducing Section 33-B of the Act has no application for two reasons, namely, that the temporary service of the ad hoc employee should continue in a vacancy in accordance with Section 2 of the U.P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981; and he has been continuously serving the institution from the date of such appointment upto the

date of commencement of the Third Removal of Difficulties Order. On the other hand, Shri Sudhir K.Gupta, learned counsel for the respondent, contended that pursuant to the recommendation made by the Committee for regularising the services, matter was placed before a Committee constituted for regularisation and his name came to be regularised. The High Court, therefore, was right in stating that subject to an order being passed by the competent authority in that behalf, the respondent would continue as a regularised candidate. This aspect of the matter has been dealt with in the rejoinder filed by the appellant stating that it is being adjudicated in another pending case; therefore, the appeal no longer survives.

In view of the respective contentions, the question that arises for consideration is; whether the respondent is entitled to the benefit of the Third Removal of Difficulties Order as indicated hereinbefore? Section 33-B(1)(i) of U.P. Secondary Education Service Commission Act, 1982 postulates among others, regulation of a candidate who was appointed by promotion or by direct recruitment in the certificate of teaching grade before May 13, 1989 against a short term vacancy in accordance with paragraph 2 of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981 and such vacancy was subsequently converted into a substantive vacancy. It is seen that the regular incumbent retired from service on June 30, 1988. Consequently, the temporary vacancy was deemed to have been converted into a substantive vacancy w.e.f. June 30, 1988. But the crucial question is ; whether the respondent was continuously serving the institution under clause (c) of Section 33-B(1)? Admittedly, the service of the respondent came to be terminated w.e.f June 30, 1988. Though he had obtained the stay order and continued to be in service, it was not by virtue of his own right under an order of appointment, he continued in the office with permission of the management. In fact, in the recommendation made before the Selection Committee, they have stated as under:

"Ad hoc appointment of Shri Sri Kumar Tiwari was made on 1.8.1986 L.T. Grade and vide notice dated 30.5.88 his services were terminated. ON the basis of the above order Shri Sri Kumar Tiwari obtained stay order No.13565 dated 29.7.1988 from Hon'ble High Court. Therefore, appointment is disputed."

In fact, the regularisation order passed by the District Inspector of Schools also says that it was subject to the result in the writ petition. The appeal being the continuation of the writ petition, the question arises: whether the respondent is entitled to claim the benefit of Section 33-B(1)(a)(i) of the U.P. Secondary Education Services Commission Act, 1982. We have seen that his services came to be terminated on May 30, 1988 and the Amendment Act has no application. Hence, the Division Bench was right in giving direction that his regularisation will be subject to the further orders since the regularisation order itself means that it was subject to the result of the writ petition.

The appeal is accordingly allowed, the writ petition stands dismissed, but in the circumstances, without costs, If there is provision for further appointment according to rules, the bar of age may be relaxed appropriately.

JUDIS