

Uttar Pradesh Mahavidyalaya Tadarth Shikshak Niyamitikan Abhiyan Samiti, Varanasi

Vs

State of U. P. and Others

Special Leave Petition (Civil) No. 9516 of 1986

(A. P. Sen, S. Natarajan JJ)

12.11.1986

ORDER

1. Having heard learned counsel for the parties at quite some length, we are satisfied that no interference with the judgment of the High Court upholding the constitutional validity of Section 31-B of the U.P. Higher Educational Services Commission Act, 1980 is called for. Two main contentions have been raised by Shri Kacker, learned counsel for the petitioners, who are all ad hoc teachers appointed after January 3, 1984, namely : (1) The adoption of the cut-off date in Section 31-B of the Act as January 3, 1984 for purposes of regularisation of the services of ad-hoc teachers appointed by the management of the affiliated colleges was arbitrary and irrational and violative of article 14 of the constitution, inasmuch as equals have been treated unequally. It is said that all teachers appointed by the Management of the affiliated colleges before the cut off date January 3, 1984 and after that date were similarly situate, some of them being merit scholars and others having doctorates and were therefore eligible for appointment and section 31-B which makes discrimination against a class within a class offends against Article 14 as there was no reasonable nexus with the object sought to be achieved. (2) The legislature could not arbitrarily adopt January 3, 1984 as the cut-off date for regularisation of the services of ad-hoc teachers merely because that was the date on which the U. P. Higher Educational Services Commission (Removal of Difficulties) Order, 1983 expired. It is pointed out that the cut-off date for regularisation of services of ad-hoc University teachers appointed in excess of the requirement under Section 2 of the U.P. state Universities (Validation of Appointments) Act, 1984 which appointed August 10, 1984 i.e. the date of promulgation of the relative ordinance, and also the cut-off date for purpose of regularisation of ad-hoc teachers appointed in Higher Secondary Schools under Section 33-A of the U.P. Secondary Educational Services Commission and Selection Boards (Amendment) Act, 1985, was again the date of promulgation of the ordinance. It is said that the legislature could not have made the cut off date in section 31-B relatable to January 3, 1984 which after all being the date of expiry of the Second Removal of Difficulties Order, was nothing but result of executive action. We are afraid, neither of the two contentions can prevail.

2. We agree with the High Court that fixation of the date January 3, 1984 for purposes of regularisation was not arbitrary or irrational but had a reasonable nexus with the object sought to be achieved. The whole object of enacting Section 31-B was to regularise the services of ad-hoc teachers appointed under the provisions of the two U.P. Higher Educational Services Commission (Removal of Difficulties) Orders, 1982 and 1983 which remained in operation till January 3, 1984. In view of the proviso to Section 31-A, the State Government had no power to issue any fresh Removal of Difficulties Order as it was available only for a period of two years from the date of commencement of the Act. It follows that the Management of the affiliated colleges had no power after January 3, 1984 to make any ad-hoc appointments under the provisions of the said Removal of

Difficulties Orders. Under Section 12(1) of the act, no such appointments could be made by the Management after that date except under Section 31-A i.e. where the Management had notified a vacancy to the Commission in accordance with section 12(2) and the Commission failed to recommend the names of suitable candidates as required by sub-section (1) thereof within three months from the date of such notification.

3. Admittedly, the petitioners were all appointed as ad-hoc teachers after the appointed day i.e. after January 3, 1984 and therefore were not entitled to the benefit of regularisation under Section 31-A. On the contrary, their appointments were subject to the prohibition contained in Section 12(5) and therefore void. It is quite clear upon the terms of Section 12(1) of the Act, as amended, that no such appointments could at all be made after January 3, 1984 by the Management of affiliated colleges except in accordance with Section 16. Furthermore, the petitioners were appointed on condition that they would continue in service till such time as the vacancies in the posts of teachers were filled by the Commission by direct recruitment under Section 12 (1) of the Act. We are satisfied that adoption of January 3, 1984 as the date for regularisation of services of ad-hoc teachers under Section 31-B of the Act was not arbitrary or irrational. It is quite clear that the cut-off date January 3, 1984 is relatable to the ad-hoc appointments made by the Management under the Second Removal of Difficulties Order which expired on that date. It was clearly not in public interest to allow the Management of affiliated colleges to continue making such ad-hoc appointments indefinitely and a line had to be drawn somewhere. The legislature therefore adopted January 3, 1984 as the cut-off date, that being the date of expiry of the Second Removal of Difficulties Order. It became necessary to introduce Sections 31-A and 31-B to regularise the services of ad-hoc teachers appointed prior to that date.

4. We are not impressed with the submission that there was no basis for the legislature to have adopted a different pattern for purposes of regularisation of ad-hoc teachers. The object underlying Section 31-B is to regularise the services of ad-hoc teachers appointed under the Removal of Difficulties Order i.e. appointed till January 3, 1984. The legislature therefore had to adopt that as the basis for purposes of regularisation of their services under Section 31-B. There can be no doubt that the appointment of such ad-hoc teachers prior to January 3, 1984 had legal sanction and therefore they constituted a distinct class. The legislature could not have adopted any other basis for purposes of regularisation. The provisions relating to regularisation in the aforesaid two Acts related to the date of promulgation of the ordinance.

5. Unlike the case of the present ad-hoc teachers of affiliated colleges appointed by the Management after January 3, 1984, there was no legal impediment against the making of University teachers in excess of the requirement of ad-hoc teachers in Higher Secondary Schools, and hence any comparison with the regularisation of the services of ad-hoc University teachers and teachers in Higher Secondary Schools cannot be of any avail.

6. There is no basis for the submission of the learned counsel that the Commission was not functional till July 27, 1985 and therefore the legislature could not have adopted a different pattern in fixing the cut-off date in Section 31-B of the Act. It is true that the Commission on July 27, 1985 issued the impugned notification advertising 373 posts for filling up by direct recruitment, but that does not imply that the Commission was not functioning. On the contrary, we find that the Commission had issued two earlier notifications, one dated August 27, 1983 and the other dated September 25, 1983.

7. In all fairness to Shri Kacker, learned counsel for the petitioners, we do not doubt that the points

raised concern the future of the petitioners and therefore we heard him at considerable length. We also heard Shri Upadhyaya, learned counsel appearing for the respondent. In the view that we take, we feel that no grounds exist for granting special leave. We also feel that the grant of such leave would not be in public interest. It would not be fair to keep the selected candidates who have now been recruited by the Commission to wait indefinitely.

8. Although we decline to interfere, we cannot help observing that some of the petitioners who apparently are highly qualified persons, would be faced with unemployment. We hope and trust that the State Government would sympathetically consider their case for suitable employment commensurate with their experience and qualifications within three months from today, in case the petitioners make a representation for such employment.

9. Stay granted by this Court's order dated September 9, 1986 shall continue till November 30, 1986.

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