

Committee of Management, Arya Nagar Inter College, Arya Nagar, Kanpur Through its Manager
and Another

Vs

Sree Kumar Tiwary and Another

Civil Appeal No. 2729 of 1997

(K. Ramaswamy, D. P. Wadhwa JJ)

31.03.1997

ORDER

1. Leave granted. We have heard learned counsel on both sides.
2. This appeal by special leave arises from the judgment of the Division Bench of the High Court of Allahabad, made on 14-8-1996 in SA No. 153 of 1996.
3. The first respondent came to be appointed as an ad hoc teacher on 1-8-1986 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 30-5-1988 w.e.f. 30-6-1988. 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.
4. 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.
5. Shri N.K. Sharma, learned counsel appearing for the appellant, contends that the first respondent came to be appointed on ad hoc basis; he continued in service on ad hoc basis till 30-6-1988. The U.P. Secondary Education Services 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 up to the date of commencement of the Third Removal of Difficulties Order. In view of the fact that he was continuing only on the basis of the interim stay granted by the High Court, it cannot be treated that he has continuously been serving the institution entitling him to avail of the benefit 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, the 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.

6. 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)(a)(i) of the U.P. Secondary Education Services Commission Act, 1982 postulates among others, regularisation of a candidate who was appointed by promotion or by direct recruitment in the certificate of teaching grade before 13-5-1989 against a short-term vacancy in accordance with para 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 30-6-1988. Consequently, the temporary vacancy was deemed to have been converted into a substantive vacancy w.e.f. 30-6-1988. But the crucial question is whether the respondent was continuously serving the institution under clause (c) of Section 33-B(i) ? Admittedly, the service of the respondent came to be terminated w.e.f. 30-6-1988. 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 30-5-1988 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 the Hon'ble High Court. Therefore, appointment is disputed."

7. 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 30-5-1988 and the Amendment Act has no application. Hence, the Division Bench was not 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.

8. 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.