

SMT. RAM SAKHI DEVI ETC.
v.
STATE OF U.P. AND ORS. ETC.

MARCH 20, 1997

[K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.]

Service Law :

U.P. Intermediate Education Act, 1921/U.P. Secondary Education (Service Commission) Act, 1982 :

S.16-E/s.10—Junior High School—Upgraded as High School—Appointment of Head Master—Managing Committee advertised the post and selected the appellant, the Headmistress of the erstwhile Junior High School—District Inspector of Schools did not accord ratification—Writ petition by appellant—Dismissed by High Court—Held, though High Court may not be correct in following its earlier judgment in dismissing the writ petition, the selection of appellant by Managing Committee cannot be sustained—Under s.10 of the 1982 Act every institution is enjoined to notify to Commission the vacancies and the Commission will give vide publicity and invite applications from all qualified candidates so that talented candidate is selected—After the 1985 Amendment, the power of the Management to constitute a Selection Committee u/s. 16-E has been taken away—Appellant could not be regularised under s.33-A of the Regulations made u/s. 16-E of the Act—Recourse to s.33-A of the Regulations should be made sparingly and not as a routine.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 472 of 1986 Etc.

From the Judgment and Order dated 6.11.85 of the Allahabad High Court in C.M.W.P. No. 10982 of 1985.

T.N. Singh, B.M. Sharma and S.N. Singh for the Appellants.

R.C. Verma for R.B. Misra, (Pramod Swarup) (NP) and Mrs. Rani Chhabra for the Respondents.

The following Order of the Court was delivered :

A C.A. No. 472/86 :

This appeal by special leave arises from the judgment of the Division Bench of the Allahabad High Court, made on November 6, 1985 in Civil Miscellaneous Writ Petition No. 10982/85.

B The admitted facts are that the appellant was appointed as Headmistress of a Junior High School, Kamla Nehru Kanya Vidyalaya, Shiv Shankari Dham Pachewara Chunal Mirzapur which was upgraded in July, 1982 as High School. The Managing Committee advertised through newspaper under the U.P. Intermediate Education Act, 1921 for selection of the candidates, obviously, under Section 16-E. The Committee had selected the appellant on December 17, 1983 and the appellant was sought to be retired. Since the ratification was not accorded by the District Inspector, the appellant had approached the High Court. The High Court relying upon its earlier decision in *Jai Prakash Sharma v. State of U.P. & Ors.* WP (No. 174/85) dismissed the writ petition. Thus, this appeal by special leave.

E Though the High Court may not be correct in following its judgment in dismissing the writ petition, on facts we find that there is no substantial difference in the result. The admitted position is that the U.P. Secondary Education (Services Commission) Act, 1982, had come into force with effect from July 14, 1981. Section 10 of the Act specifies the purpose of making appointment to the posts of teachers specified in the Schedule. It postulates thus :

F "(1) For the purpose of making appointment of a teacher specified in the Schedule, the management shall notify the vacancy to the Commission in such manner and through such office or authority as may be prescribed.

G (2) The procedure of selection of candidates for appointment to the posts of such teachers shall be such as may be prescribed :

Provided that the Commission shall, with a view to inviting talented persons, give wide publicity in the State to the vacancies notified under sub-section (1)".

H It is, thus, clear that Section 10 envisages two steps, namely, every

institution is enjoined to notify to the Commission the vacancies through such officer or authority as may be prescribed. The Service Commission, before selection, will give wide publicity by inviting applications from all qualified candidates so that talented candidates would apply for get selected to the post. Though this Section has been amended by Amendment Act 12 of 1985, the same is not relevant and has no application to this case. It reads as under :

"Notwithstanding anything to the contrary contained in the Intermediate Education Act, 1921 or the Regulations made thereunder but subject to the provisions of Sections 18, 21-B, 21-C, 21-D, 33 and 33-A on or after July 10, 1981 be made by the management only on the recommendation of the Commission;

(b) every appointment of a teacher specified in the Schedule, shall, on or after July 1, 1981, be made by the management only on the recommendation of the Board."

Thus, it could be seen that after coming into force of the said Amendment Act, the power of the Management to constitute a Selection Committee under Section 16-E of the U.P. Intermediate Act has been taken away. Instead the selection has to be made only through the Commission under the Act and the selected candidate shall be appointed on its recommendation and in no other manner. The selection by the School under Intermediate Education Act, 1921 is illegal.

Learned counsel for the appellant has sought to place reliance on Section 33-A of the Regulation made under Section 16-E of the U.P. Intermediate Act to regularise such *ad hoc* appointments. Undoubtedly, every teacher directly appointed before the commencement of the Act, in other words, on *ad hoc* basis, against the substantive vacancy may be regularised under Section 33-A; but it cannot be used as a routine. It is mandatory for the management to notify to the Commission and in case the Commission is unable to recommend the selected candidates within a reasonable time, any candidate appointed on *ad hoc* basis will be deemed to have been appointed in substantive capacity. The recourse to Section 33-A should be made sparingly and not as a routine. If Section 33-A route is adopted as a routine, the entire process of selection contemplated under the Act would be given a decent burial and illegal appointments would gain

- A legitimacy. Under these circumstances, we do not think that the counsel is right in contending that the appellant could be regularised under Section 33-A of the Regulation.

The appeal is accordingly dismissed. No costs.

- B *CA No. 1825/86:*

The appeal having become infructuous, is dismissed. No. costs.

R.P.

Appeals dismissed.