

Court No. - 3

Case :- SPECIAL APPEAL DEFECTIVE No. - 20 of 2022

Appellant :- Krishna Mohan Tiwari

Respondent :- District Inspector Of Schools Allahabad And Another

Counsel for Appellant :- Siddharth Khare, Sr. Advocate

Counsel for Respondent :- C.S.C.

Hon'ble Surya Prakash Kesarwani, J.

Hon'ble Jayant Banerji, J.

1. Heard Shri Ashok Khare, learned Senior Advocate assisted by Shri Siddharth Khare, learned counsel for the appellant and the learned Standing Counsel appearing for the State-respondents.

2. This special appeal has been filed praying to set aside the order dated 06.10.2021 passed by a learned Single Judge in Writ-A No.13736 of 2001 (Shri Krishna Mohan Tiwari vs. D.I.O.S. Allahabad & Ors.), whereby the writ petition filed by the appellant was dismissed.

3. Undisputed facts of the present case are that one Jai Narain Vishwakarma was Lecturer in Civics who was superannuated on 30.06.1998. Thus, a substantive vacancy occurred on retirement of the aforesaid Jai Narain Vishwakarma but no requisition was made by the Committee of Management to fill up the post of Lecturer in Civics. The procedure prescribed under the provisions of the U.P. Secondary Education Services and Selection Board Act, 1982 was not followed at all by the Committee of Management and instead the Committee of Management itself advertised the post on 11.04.1998/16.04.1998 and appointed the petitioner on the post of Lecturer, who allegedly joined on 31.08.1998.

4. Learned Single Judge, while referring to various provisions of the U.P. Intermediate Education Act, 1921, particularly in view of the provisions of Section 16(2) of the U.P. Secondary Education Services and Selection Board Act, 1982, came to the conclusion that the appointment of the petitioner was void as the procedure prescribed under sub-section (1) of Section 16 of the Act of 1982 had not been followed at all.

5. Learned counsel for the petitioner-appellant has relied upon a Full Bench judgment of this Court in the case of **Santosh Kumar Singh vs. State of U.P. & Ors.** reported in **2015 (5) AWC 4719** and submits that in view of the provisions of Section 16-E of the Intermediate Education Act, 1921, the Committee of Management has power to make *ad-hoc* appointments. He also relied upon Single Bench judgment of this Court in the case of **Sushil Kumar Yadav vs. State of U.P. & Ors.** reported in **2018 (1) AWC 462**.

6. We have carefully considered the submissions of the learned counsel for the petitioner-appellant and we find no force in his submissions.

7. It has been admitted before us by learned counsel for the appellant that the petitioner-appellant was appointed by the Committee of Management against a substantive vacancy pursuant to advertisement dated 11.04.1998/16.04.1998 issued by the Committee of Management. That substantive vacancy occurred on retirement of one Jai Narain Vishwakarma on 30.06.1998. The petitioner was appointed by the Committee of Management and he joined on 31.08.1998. The provisions of Section 16(1) of the Act of 1982 were not followed at all. Thus, in terms of the procedure contained in sub-section (1) of Section 16 of the Act of 1982, the appointment of the petitioner by the Committee of Management was void.

8. The reliance placed by the learned counsel for the petitioner-appellant on the Full Bench judgment of this Court in the case of **Santosh Kumar Singh** (supra) is of no help to the petitioner. In the aforesaid judgment, the Full Bench has framed question no.(c) as under :-

"Whether under Section 16-E of the Intermediate Education Act, 1921 (Act of 1921), there is a power with the Committee of Management **to make *ad-hoc* appointment against short term vacancies** and if so then for what period."

9. The aforequoted question was answered by the Full Bench in paragraph 19 as under:-

"(c) Under Section 16-E of the Intermediate Education Act, 1921, the **Committee of Management is empowered to make an appointment against a temporary vacancy caused by the grant of leave to an incumbent for a period not exceeding six months or in the case of death, termination or otherwise, of an incumbent occurring during an educational session.** An appointment made under sub-section (11) of Section 16-E as provided in the proviso thereto shall, in any case, not continue beyond the end of educational session during which the appointment was made"

10. Thus, the Full Bench in the case of **Santosh Kumar Singh** (supra) has dealt with the situation where the *ad-hoc* appointment was to be made against a temporary vacancy caused by the grant of leave to an incumbent for a period not exceeding six months or in case of death, termination or otherwise, of an incumbent occurring during an educational session. The facts of the present case are that a substantive vacancy was occurred on the retirement of one Jai Narain Vishwakarma on 30.06.1998 and the Committee of Management, without following the statutory provisions of the Act of 1982, made advertisement on 11.04.1998/16.04.1998 and selected and appointed the petitioner who allegedly joined on 31.08.1998. Thus, the judgment of the Full Bench has no application on facts of the present case.

11. The next judgment in the case of **Sushil Kumar Yadav**

(supra) relied upon by the learned counsel for the petitioner-appellant is also of no help to the petitioner inasmuch as the facts were that two substantive vacancies occurred on 30.06.2011 and 30.06.2014 respectively and the Management sent the requisitions on 01.04.2011 and 17.06.2015 but the Selection Board did not recommend any candidate. Consequently, the Management advertised the vacancy on the aforesaid posts on 25.06.2017 for *ad-hoc* appointment. On these facts, the learned Single Judge, while referring the provisions of Section 16-E(11) of the Act of 1982, held that the substantive appointment defined in the rules framed under the Act of 1982 does not include *ad-hoc* appointment which may not exceed eleven months in academic session. Thus, the judgment of the learned Single Judge in the case of **Sushil Kumar Yadav** (supra) has no application on facts and circumstances of the present case.

12. Thus, for all the reasons stated above, we do not find any error or illegality in the impugned order passed by the learned Single Judge.

13. The special appeal lacks merit and is, therefore, **dismissed**.

Order Date :- 27.1.2022

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