

Writ Petition No. 3172 (S/S)/2001

Gajendra Singh Negi ..Petitioner.

Vs.

District Inspector of Schools

Pauri Garhwal and others ..Respondents.

AND

Writ Petition No. 3173(S/S)/2001

Prahlad Singh Rawat ..Petitioner.

Vs.

District Inspector of Schools

Pauri Garhwal and others ..Respondents.

AND

Writ Petition No. 3174(S/S)/2001

Birendra Singh Rawat ..Petitioner.

Vs.

District Inspector of Schools

Pauri Garhwal and others ..Respondents.

AND

Writ Petition No. 1291(S/S)/2001

Ramesh Chandra Gairola ..Petitioner.

Vs.

District Inspector of Schools

Pauri Garhwal and others ..Respondents.

AND

Writ Petition No. 1292(S/S)/2001

Dinesh Kumar Manjeara ..Petitioner.

Vs.

District Inspector of Schools,

Pauri Garhwal and others ..Respondents.

Hon'ble Irshad Hussain, J.

In all these writ petitions questions which arise for determination and answer are common and these were, therefore, taken up together for decision.

(2) By means of these writ petitions the petitioners prayed for their regularization as Lecturers/L.T Grade Teachers with effect from the date of their initial appointments and also for a direction to pay their salary as well as the arrears and further direction to pay the same month by month as and when their salary fall due for payment.

(3) The status of the petitioners along with relevant data is given in a chart as below:-

Writ petition No.	Name of petitioner	Date of birth	Initial appointment by Management	Date of appointment purported u/s18, against substantive vacancy	Status	Subject	Name of collegeNon-Govt. Aided.	Whether possessed qualification prescribed
3172 (S/S)/2001	Gajendra Singh Negi	12.6.66	-	27-7-93	Lecturer	Biology	Inter college Pokhari Khet Pauri, Garhwal	Yes
3173 (S/S)/2001	Prahlad Singh Rawat	9.10.69	-	27-7-93	L.T. Grade	English	-do-	Yes
3174 (S/S)/2001	Birendra Singh Rawat	23.5.66	-	27-7-93	Lecturer	Chemistry	-do-	Yes
1291 (S/S)/2001	Ramesh Chandra Gairola	12.6.68	21.7.89	17-7-93	Lecturer	Chemistry	Inter College Kingodi Khal Pauri, Garhwal	Yes
1292 (S/S)/2001	Dinesh Kumar Manjeera	19.4.68	24.9.91	17-7-93	L.T. Grade	Math	-do-	Yes

(4). Heard Sri B.C. Mishra Senior Advocate and Sri S.K.Posti Advocate, learned counsel for the petitioners and Sri K.P.Upadhyaya learned Standing Counsel for the respondent Nos. 1 to 4.

(5). The submissions of the learned counsel for the parties give rise to following points for consideration in these writ petitions:-

(1)Whether the petitioners were appointed teachers on ad hoc basis against the substantive vacancies in accordance with the section -18 of U.P. Secondary Education (Service Selection Boards) Act, 1982 (hereinafter referred as 'the Act') as then applicable ?.

(2)Whether the petitioners are entitled to be considered for regularization in view of the provision of section 33-C inserted in section-33 of the said Act by U.P. Secondary Education Services Commission(Amendment) Act, 1998?.

(3)Whether the petitioners are not entitled to the benefit of the above provision of section 33-C in view of the bar created by G.O. dated 30.7.1991?.

(4)Whether the petitioners will be entitled to the salary from the date of their initial appointments in the event of they being found entitled to and regularized under above provision?.

(6) **Point No.1:** It is not in dispute that the petitioners were appointed against the substantive vacancies on the dates as given in the chart above and that each of five petitioners possessed required academic qualification for being appointed as Lecturers/L.T. Grade Teacher of their respective

subjects. Annexure- S.R.S.-7 to the supplementary rejoinder affidavit in the first mentioned three writ petitions is the copy of the letter dated 6-4-1996 sent by the District Inspector of Schools, Pauri Garhwal to the Director Education, Uttar Pradesh. This letter was in response to queries made by the Director Education in regard to the regularization claim of the Lecturers/L.T. Grade Teachers appointed in non- government aided institutions. The District Inspector of School vide this letter sent required information along with a complete chart of the teachers as an annexure indicating the appointments made in the years 1991 and 1993 under section 18 of the Act. In the annexed chart the names of the petitioners find place at serial Nos. 1, 2, 5, 6 and 7 with complete detail which almost been reproduced above. Annexure S.R.A.-9 is the copy of the letter dated 5.1.2000 sent by Director Education, Madhyamik to Joint Secretary, Government of U.P., Education Deptt., Lucknow to accord financial sanction for the Lecturers/L.T. Grade Teachers appointed in the district of Pauri Garhwal. This letter has reference to earlier communications and exchange of letters among the concerned authorities as well as the government and it further specifically mentioned that these appointments have been made on ad hoc basis under section 18 of the Act. In the counter affidavit filed in three writ petitions as aforesaid, the fact of appointments under section 18 of the Act, has been admitted with the reservation that there was a ban on such appointments by G.O. dated 30.7.1991. Considering the material on record it is established that the petitioners were given appointments on ad hoc basis under section 18 of the Act by the management committees of the colleges and they have in pursuant to his exercise sought sanction of financial grant regarding the salary to be paid to these incumbents (petitioners) as well as others in the said district. Considering the stand taken by the respondents as referred above that the appointments were made under section 18 of the Act, the point No.1 is answered in affirmative and in favour of the petitioners.

(7). **Point Nos. 2 and 3:** Learned counsel for the petitioners persuasively argued that the petitioners having been appointed under section 18 of the Act are entitled to get benefit of the provisions of section 33-C of the Act. On the other hand the gist of the argument of the learned Standing Counsel is that in view of the ban on appointments, by the management committee, created by the G.O. dated 30-7-1991 the petitioners can not be extended benefit of

regularization under the said provision also. At the out set it will be advantageous to reproduce section 33-C which was inserted by U.P. Act No. 25 of 1998 in the principal Act. It reads as below:-

“33-C Regulation of certain more appointments. - (1) Any teacher who:

(a) (i) was appointed by promotion or by direct recruitment on or after May 14, 1991 but not later than August 16, 1993 on ad hoc basis against substantive vacancy in accordance with Section 18, in the Lecturer grade or Trained Graduate grade;

(ii) was appointed by promotion on or after July 31, 1988 but not later than August 6, 1993 on ad hoc basis against a substantive vacancy in the post of a Principal or Headmaster in accordance with Section 18;

(b) possesses the qualifications prescribed under, or is exempted from such qualifications in accordance with, the provisions of the Intermediate Education Act, 1921;

(c) has been continuously serving the institution from the date of such a appointment up to the date of the commencement of the Uttar Pradesh Secondary Education Services Commission (Amendment) Act, 1998;

(d) has been found suitable for appointment in a substantive capacity by a Selection Committee consulted under sub-section (2);

Shall be given substantive appointment by the Management.”

(8) To get the benefit of the above provision an incumbent should have been appointed as Lecturer/L.T. Grade Teacher on ad hoc basis against substantive vacancy in accordance with section 18 on or after May 14, 1991 but not later than August 16, 1993. It is not in dispute that all the five petitioners got their appointments in the interregnum, to be precisely, on two dates i.e. 27-7-1993 and 17-7-1993 and in view of the stand taken by the respondents that the appointment was under section 18 of the Act the petitioners are entitled to the benefit of the said amended provision in the statute.

(9). So far as the ban created by Government Order dated 30-7-1991 is concerned, it is to be noted that respondents have not brought on record copy of the said G.O. to support their objection raised in paragraph No. 4 of the counter affidavit referred above. However notice of the said G.O. to avoid any future controversy may be taken from the reported decision of the Division Bench of the Allahabad High Court in the matter of *Durgesh Kumari Vs. State of U.P. and others* (1995) 3 U.P. L.B.E.C. 1387 pressed into service by the learned counsel for the respondents 1 to 4. In the reported case the import of G.O. dated 30-7-1991 imposing ban on appointment under section 18 of

the Act was considered. The reported case pertain to the period before the above provision of section 33-C was inserted in the Act in the year 1998. There can be no doubt that by the Amending Act the intention of the Legislature was to give benefit to the incumbents who got their ad hoc appointments in the interregnum period so that they may be given regularization in their appointments. The Legislative exercise was no doubt beneficial and equitable considering the hardship which the appointees were facing. When the Legislature had inserted the above provision in the statute the ban imposed by G.O. dated 30-7-1991 was given a go by or in other words by the statutory provision the effect of the said G.O. got nullified in relation to the appointments made in the said interregnum period.. consequently in the application of the provision of section 33-C the G.O. dated 30-7-1991 has had no effect whatsoever and therefore the submission of the learned counsel for the respondents 1 to 4 is out of reckoning.

(10). Both these points are also therefore answered accordingly and in favour of the petitioners.

(11) **Point No.4;-** In view of the findings aforesaid and the fact that the provision of section 33-C of the Act [The U.P. Secondary Education (Services Selection Boards) Act, 1982] is applicable in the case of the petitioners, they are entitled to be considered for regularization by the respondents 1 to 4 and to pass the consequential order within a period of two months from the date of receipt of the copy of this order by the District Inspector of Schools, Pauri Garhwal respondent No.1. In the event of order of regularization of their appointments against substantive vacancies the petitioners will be entitled for the salary from the date of their appointments against substantive vacancies and continue to receive the same, month by month and the any amount towards salary, if received by any of these petitioners by virtue of interim order, will be adjusted against their claim.

(11). All the petitions are disposed of accordingly. No order as to costs.

Irshad Hussain.J.

Dated: 30-9-2003

ISB

