

The State Of Uttar Pradesh vs Rachna Hills on 27 April, 2023

Bench: Pamidighantam Sri Narasimha, Dhananjaya Y Chandrachud

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 1882 of 2023

The State of Uttar Pradesh & Ors.Appellant(s)

Versus

Rachna Hills & Ors.Respondent(s)

WITH

CIVIL APPEAL No. 1883 of 2023

The State of Uttar Pradesh & Ors.Appellant(s)

Versus

Rachna Hills & Ors.Respondent(s)

WITH

CIVIL APPEAL No. 1884 of 2023

The State of Uttar Pradesh & Ors.Appellant(s)

Versus

Anjali & Anr. ...Respondent(s)

JUDGMENT

PAMIDIGHANTAM SRI NARASIMHA, J.

1. Schools and intermediate educational institutions in the State of Uttar Pradesh are governed by the Uttar Pradesh Reason:

Intermediate Education Act, 1921, Rules and Regulations made thereunder. The procedure for the selection and appointment of Heads of Institutions and Teachers in minority institutions is provided in Section 16-FF of the Act and Regulation 17 of the Regulations². While the detailed procedure for selection is laid down in Regulation 17, sub-section (3) of Section 16-FF of the Act mandates that no person selected as a Teacher shall be appointed unless the proposal for appointment is approved by the District Inspector of Schools³.

2. In the present case, two minority institutions initiated the process of selection of Teachers and forwarded their proposals to the DIOS for approval. Before the requisite approval was granted, the Government amended Regulation 17, prescribing a new procedure for selection. Consequently, the DIOS returned the proposal for compliance with the new procedure. The institutions challenged the DIOS' decision requiring the Management to follow the new Rules by filing writ petitions under Article 226 of the Constitution.

1 hereinafter 'the Act'.

2 Regulations under the Intermediate Education Act 1921, Chapter II, Regulation 17; hereinafter 'Regulation 17'.

3 U.P. Intermediate Education Act 1921, section 16-FF(3) read with section 2(bb); hereinafter 'DIOS'.

3. By the orders impugned before us, the High Court held that, once the Management forwards the names for approval of the DIOS, the selection process concludes and the proposed candidates acquire a vested right to be appointed. The High Court also referred to and relied on a principle that vacancies that arise prior to the amendment of Rules have to be governed by the Rules that existed at the time such vacancies arose. The State of U.P. is in appeal before us. Supporting the decisions of the High Court, the Respondents also argued before us that the Regulations contemplate a 'deemed appointment' if the DIOS does not confirm the appointment within 15 days of receiving the proposal. We have answered all the three questions.

4. Allowing State's appeals, we have held that the selection process concludes only after the mandatory approval of the DIOS is granted. Having examined the statutory regime along with the subordinate legislation, we found that there is no place for a deemed appointment. We have also clarified that the principle relied on by the High Court for applying old rules for past vacancies is neither applicable to the facts of the present cases nor good law in view of recent decisions of this Court.

5. We will now refer to the necessary facts before recording submissions of the parties, followed by reasons and our decision.

6. Facts in Civil Appeal Nos. 1882 and 1883 of 2023: Rakha Balika Inter College, Fatehgarh, Farrukabad, U.P., hereinafter referred to as the Respondent College, is a recognized aided minority institution, imparting education up to the level of intermediate. On 04.10.2017, the College issued an advertisement inviting applications for the selection and appointment to three posts of Assistant Teachers. The Selection Committee constituted by the College processed the applications and, by its proceedings dated 17.01.2018, shortlisted and recommended the names of Respondents nos. 1 to 3 to the College Management.

7. The Management accepted the recommendation and by its letter dated 10.02.2018 sought the approval of the DIOS, Farrukabad, for the appointment of Respondent nos. 1 to 3 as Assistant

Teachers. The DIOS, by his letter dated 08.03.2018, informed the Management that the proposal for approval is incomplete and therefore suggested that necessary information with supporting documents may be furnished for the grant of approval.

8. Before the Respondent College could send the necessary information, the Regulations prescribing the process of appointment were amended. The amended provisions came into force w.e.f. 12.03.2018. Consequently, the DIOS, by its letter dated 14.03.2018, returned the applications to the Respondent College with a request to process the proposal as per the amended Regulations.

9. The Respondent-candidates challenged the above-referred decision of the DIOS by filing writ petition before the High Court of Judicature at Allahabad⁴. The learned Single Judge, by an order dated 07.05.2018, set aside the decision and directed the DIOS to reconsider the decision, on the ground that the amended Regulations would not apply as the selection process had attained finality.

10. Following the directions of the Single Judge, the DIOS reconsidered the matter and passed an order on 11.10.2018, stating that the selection process did not culminate in the grant of approval under Section 16-FF of the Act and as such the selection is not final. The DIOS observed that before the appointment of Respondents could be approved, the Regulations stood amended, necessitating compliance with the new procedure for selection. This decision of the DIOS was again challenged by the Respondent- candidates in a writ petition⁵. The learned Single Judge held that the order of the DIOS dated 11.10.2018 was in contravention of the earlier direction of the Court dated 07.05.2018 and therefore directed the personal presence of the DIOS, Farrukabad. On a subsequent day, i.e., on 16.01.2019, the Single Judge directed the DIOS to comply with the original direction of the Court dated 07.05.2018.

11. The State of Uttar Pradesh filed a writ appeal against the original order of the Single Judge dated 07.05.2018⁶. By the order impugned herein, the Division Bench of the High Court dismissed the writ appeal on the ground of delay as well as on the merits of the dispute. On merits, the Division Bench held that the selection process with respect to vacancies which arose prior to the amendment of the Regulations would be governed by the unamended Regulations. Accordingly, it noted that the amendment of Regulation 17 would have no bearing on the request 6 Special Appeal Defective No. 42 of 2019.

for approval by the DIOS. It is against this order dated 16.01.2019 that the State of Uttar Pradesh filed the first Civil Appeal No. 1882 of 2023. The connected Civil Appeal No. 1883 of 2023 arises out of the subsequent order of the Single Judge dated 16.01.2019, directing the DIOS to comply with the original directions under order dated 07.05.2018⁷.

12. Facts in Civil Appeal No. 1884 of 2023: M/s Farrukabad City Girls Inter College is a recognized aided minority institution. This College issued an advertisement on 04.12.2017 inviting applications for selection to the post of Assistant Teacher. In a similar turn of events, before the DIOS could consider granting approval, the amended Regulations came into force on 12.03.2018. Consequently, the DIOS, by an order dated 19.03.2018, directed the College to resend the proposal for approval after conducting the selection process in terms of the amended Regulations. The recommended

candidates filed a writ petition⁸, which was allowed by the Learned Single Judge of the High Court on 01.11.2018. State's writ appeal⁹ against the said order was dismissed by the Division Bench on 18.01.2019 by simply following the decision in 9 Special Appeal Defective No. 38 of 2019.

the first case, Smt. Rachna Hills case¹⁰. The third Civil Appeal No. 1884 of 2023 is filed by the State against this decision of the Division Bench.

13. Submissions by the Parties: Additional Solicitor General, Shri Vikramjit Banerjee and Shri VK Shukla, Senior Advocate assisted by Shri Harish Pandey, AOR appeared for the State of U.P. They have submitted that the Single Judge, as well as the Division Bench, committed a serious error in assuming that the selection process was complete before the amendment dated 12.03.2018 had come into force. As the approval of DIOS was not granted, no vested right of appointment was created in favour of the Respondents. Consequently, they submitted that the selection process would have to be governed by the new amended Regulations. They have also contended that as the legality of amended Regulations dated 12.03.2018 was not challenged by the Respondents, the orders of the DIOS dated 14.03.2018, 11.10.2018 and 19.03.2018 are in full compliance with the statute as well as the Regulations.

10 Special Appeal Defective No. 42 of 2019.

14. On the other hand, Shri Shankey Agrawal, Shri Vikash Singh, Ms. Jaikriti S Jadeja, Shri Shreyans Raniwala, learned Advocates, appearing on behalf of the Respondents in Civil Appeal Nos. 1882 and 1883 of 2023 and Shri Gaurav Agarwal, Ms. Shristi Gupta, and Shri Abhishek Sharma, learned Advocates appearing on behalf of the Respondents in Civil Appeal No. 1884 of 2023, supported the decisions of the High Court. They contended that the selection process should be deemed to have been completed the moment the Committee of Management proposed the names for approval to the DIOS. They further submitted that under sub-section (4) of Section 16-FF of the Act, the DIOS does not have the authority to withhold the approval except in cases where the selected candidates do not possess minimum qualifications. They rely on Regulation 18 to contend that the authorities are duty bound to grant approval within 15 days of the receipt of the recommendation of the Selection Committee, failing which there shall be a deemed appointment. They also relied on certain decisions of this Court to contend that Rules existing as on the date on which the vacancy arose will govern the selection process. They would, therefore, submit that amendment of the Regulations cannot adversely impact the appointment of the present Respondents.

15. Issues: The following issues arise for consideration:

(i) Whether the selection process concluded, and the candidates acquired a vested right to be appointed before the amendment of the Regulations?

(ii) Whether the Act, read with the Rules and Regulations made thereunder, contemplates 'deemed appointment' if the approval of the DIOS is not given within a period of 15 days?

(iii) Whether the posts of teachers could be filled as per the Rules and Regulations that existed when the vacancies arose and not as per the amended Regulations?

16. Educational institutions like the Respondent Colleges are conducted through a Committee of Management, recognised under Section 16-A of the Act¹¹. The Management is empowered to appoint Teachers as well as the Head of the Institution¹² as per the procedure prescribed in the Act, and the Regulations made thereunder. In the case of institutions established and 11 hereinafter 'the Management'.

12 U.P. Intermediate Education Act 1921, section 16-E. administered by minorities, the Management constitutes a five- member Selection Committee to shortlist and recommend candidates for appointments to the Management¹³. After receiving the recommendations of the Selection Committee, the Management proposes the names to the DIOS for approval.

17. On 12.03.2018, the Government of Uttar Pradesh notified amendments to Chapter II of the Regulations, including Regulation 17, which now prescribes a written examination for the selection of Teachers in minority institutions. Re issue no. 1: Whether the selection process concluded, and the candidates acquired a vested right to be appointed before the amendment of Regulations?

18. To consider the submissions of the Respondents that the candidates whose names are recommended by the Management for approval by the DIOS acquire a vested right to be appointed as Teachers, it is necessary to examine Section 16-FF:

16-FF. Savings as to minority institutions

(1) Notwithstanding anything in sub-section (4) of section 16-E, and section 16-F, the Selection Committee for the appointment of a Head of Institution or a teacher of an institution established and administered by a minority referred to in clause (I) of Article 30 of the Constitution shall consist of five 13 U.P. Intermediate Education Act 1921, section 16-E read with proviso to section 16-FF(1).

members (including its Chairman),
nominated by the Committee of
Management:
Provided that one of the members of the
Selection Committee shall –

(a) in the case of appointment of the Head of an Institution, be an expert selected by the Committee of Management from a panel of experts prepared by the Director;

(b) in the case of appointment of a teacher be the Head of the Institution concerned.

(2) The procedure to be followed by the Selection Committee referred to in sub-section (1) shall be such as may be prescribed.

(3) No person selected under this section shall be appointed, unless —

(a) in the case of the Head of an Institution the proposal of appointment has been approved by the Regional Deputy Director of Education; and

(b) in the case of a teacher such proposal has been approved by the Inspector.

(4) The Regional Deputy Director of Education or the Inspector, as the case may be, shall not withhold approval for the selection made under this section where the person selected possesses the minimum qualifications prescribed and is otherwise eligible.

(5) Where the Regional Deputy Director of Education or the Inspector, as the case may be, does not approve of a candidate selected under this section, the Committee of Management may, within three weeks from the date of receipt of such disapproval, make a representation to the Director in the case of the Head of Institution, and to the Regional Deputy Director of Education in the case of a teacher.

(6) Every order passed by the Director or the Regional Deputy Director of Education on a representation under sub-section (5) shall be final.” (emphasis supplied)

19. Sub-section (3) of section 16-FF of the Act provides that no person selected and proposed to be appointed as a teacher by the Management shall be appointed till the proposal is approved by the DIOS. If the expressions ‘no person’, ‘shall be appointed’, and ‘unless’ employed in sub-section (3) are given their ordinary meaning, which is the foremost of the linguistic canons of construction of legislation, we have no hesitation in holding that appointment is subject to the mandatory approval of DIOS. The process of appointment cannot be said to have been concluded without obtaining the mandatory approval of the DIOS, and as such, there is no right, much less a vested right, of the candidate to be appointed.

20. This Court had the occasion to examine the effect of approval by the DIOS in *Raj Kumari Cecil (Smt.) v. Managing Committee of Laxmi Narain Bhagwati Devi Vidya Mandir Girls' High School 14*, while holding that the appointment of the petitioner therein was unsustainable and incomplete, as the statutory pre-condition for the appointment, i.e., approval from the DIOS, was not obtained, it was observed:

“4. There is no dispute that the appellant did not possess the qualifications for being appointed as a Principal of the Higher Secondary School. It is also not disputed that the appointment is subject to approval of the competent authority under the Intermediate Education Act. It is correct that the competent authority has power to relax the qualification but then again it is not disputed that the competent authority did not relax the qualification for the appointment of the appellant as Principal of the Higher Secondary School of the respondent....

....

13. ... The appellant ceased to be Headmistress on upgradation of school of the respondent to the Higher Secondary School as the post was upgraded. She did not possess qualifications to be appointed as Principal of the Higher Secondary School.

Her qualifications were not relaxed. The competent authority under the Intermediate Education Act did not grant approval for her appointment as a Principal which is a precondition under the law. Since the appointment itself was not approved it was not necessary for the Managing Committee of the school to get consent of the authority 14 (1998) 2 SCC 461.

concerned for the termination of her services as a Principal.” (emphasis supplied)

21. In view of the clear statutory mandate under Section 16-FF(3) of the Act, we are of the opinion that the High Court has committed an error in coming to the conclusion that the Respondent nos. 1 to 3 have acquired a vested right to be appointed. Re issue no. 2: Whether the Act, read with the Rules and Regulations made thereunder, contemplates ‘deemed appointment’ if the approval of the DIOS is not given within a period of 15 days?

22. Respondents have relied on Regulation 1815 to argue that if the DIOS fails to grant his approval within 15 days of the proposal made by the Management, the proposed candidates shall be deemed to have been appointed. Regulation 18, is as under:

“(1) Within fifteen days of the receipt of the recommendation of the Selection Committee constituted under sub-section (1) or (2) of Section 16-F, and in case of an institution referred to in Section 16-FF, the approval of the authority specified therein, the Manager shall, on authorisation under resolution of the Committee of Management, issue an order of appointment by Registered Post to the candidate in the form given in Appendix 'B' requiring the candidate to join duty within ten days of the receipt of such order, failing which 15 Regulations under the Intermediate Education Act, 1921, Chapter II, Regulation 18;

hereinafter ‘Regulation 18’.

the appointment of the candidate will be liable to cancellation.

(2) In case of promotions and ad hoc appointments also a formal order of promotion or appointment in the form as near as possible to the form referred to in Clause (1) shall be issued to the person concerned under the signature of the Manager.

(3) A copy of every order referred to in Clauses (1) and (2) shall be sent to the Inspector and in case of appointment of the head of institution, a copy thereof shall also be sent to the Regional Deputy Director of Education.”

23. We have noticed that appointments are to be made under Section 16-E of the Act. Section 16-F of the Act provides for the constitution and recommendation of Selection Committees and Section

16-FF therein specifically relates to minority institutions. Regulation 18(1) provides for the time within which an order of appointment is to be issued by a Manager to the selected candidate. According to which, where the recommendation is made by a Selection Committee constituted under sub-section (1) or (2) of Section 16-F of the Act, an order of appointment is to be issued within 15 days of the receipt of the recommendation of the Selection Committee. Whereas, in the case of an institution referred to in Section 16-FF of the Act, i.e., a minority institution, as in the instant case, it is to be issued within 15 days of the receipt of the approval of the authority specified therein. Neither Section 16-FF of the Act nor Regulation 18 provides the period within which approval is to be accorded. Further, neither of the two provisions provide for deemed appointment in the event of delay in granting approval. Therefore, unless the approval contemplated under Section 16-FF(3) is accorded, no appointment could take place.

24. In any case, when the relevant statutory provision, i.e. Section 16-FF(3) itself makes approval by DIOS mandatory for appointment to the post of teacher, a Regulation made under the Act could not have provided for a 'deemed appointment'. Subordinate legislation cannot transcend the prescription of a statutory provision.

25. Additionally, sub-section (4) of Section 16-FF of the Act has to be read in conjunction with Section 16-FF(2) therein, which provides that "[t]he procedure to be followed by the Selection Committee referred to in sub-section (1) shall be such as may be prescribed". It is only in the cases where the selection procedure, as prescribed in the Regulations, is followed, that there cannot be a disapproval unless there is a lack of requisite eligibility and qualifications. Thus, the question of deemed appointment does not arise under section 16-FF(4) of the Act.

26. If the statutory provisions read with relevant Regulations were to provide for 'deemed appointment', there would not have been a further remedy against an order of disapproval by the DIOS. Sub-section (5) of section 16-FF provides the remedy to the College Management in the event the DIOS does not grant an approval. As per this, the Management can within three weeks from the date of receipt of disapproval, make a representation to the Regional Deputy Director of Education.

27. In view of the legal provision as obtained under Section 16- FF of the Act, read with Regulation 18, we reject the submissions of the Respondents' that there is a 'deemed appointment' of selection under Regulation 18.

Re issue no. 3 : Whether the posts of teachers could be filled as per the Rules and Regulations that existed when the vacancies arose and not as per the amended Regulations?

28. The Division Bench, as well as the Single Judge of the High Court, accepted the submission of the selected candidates that the vacancies to the post of teachers could be filled only as per the Rules and Regulations that operated when the vacancies arose and not as per the Regulations that came to be amended thereafter.

29. We have already held that approval of DIOS is mandatory and that the Act injuncts the appointment of a Teacher without such approval. We have also held that the legal regime

concerning the appointment of Teachers does not contemplate any concept of deemed appointment if the DIOS does not decide upon the proposal within 15 days. Under these circumstances, the reference to and reliance on the principle that Rules that existed at the time when vacancies arose will govern the appointments is misplaced.

30. In any event, it is now a settled principle of law that a candidate has a right to be considered in the light of existing Rules, which implies Rules in force as on the date of consideration. This principle is affirmed by this Court in *Deepak Agarwal and Anr. v. State of U.P. and Ors.*¹⁶, as below:

“26. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the “rule in force” on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old 16 (2011) 6 SCC 725.

vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in *Y.V.Rangaiah* case lays down any particular time-frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants has been taken away by the amendment.”

31. While reaffirming the above referred principle, in a subsequent case of *Rajasthan State Sports Council and Anr. v. Uma Dadhich and Anr.*¹⁷, (in which one of us was a member Dr. D.Y. Chandrachud, J., as he then was). This Court noted:

“5. There is merit in the submission which has been urged on behalf of the appellants that the respondent had no vested right to promotion but only a right to be considered in accordance with the rules as they existed on the date when the case for promotion was taken up. This principle has been reiterated in several decisions of this Court. (See *H.S. Grewal v. Union of India*, *Deepak Agarwal v. State of U.P.*, *State of Tripura v. Nikhil Ranjan Chakraborty* and *Union of India v. Krishna Kumar.*” (emphasis supplied) 17 (2019) 4 SCC 316.

32. In a recent decision, in *State of Himachal Pradesh and Ors. v. Raj Kumar and Ors.*¹⁸, after reviewing a number of decisions on the same subject, this Court formulated the following principles:

“70. A review of the fifteen cases that have distinguished *Rangaiah* would demonstrate that this Court has been consistently carving out exceptions to the broad proposition formulated in *Rangaiah*. The findings in these judgments, that have a direct bearing on the proposition formulated by *Rangaiah* are as under:

1. There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, Rangaiah's case must be understood in the context of the rules involved therein.

2. It is now a settled proposition of law that a candidate has a right to be considered in the light of the existed rules, which implies the “rule in force” as on the date consideration takes place.

The right to be considered for promotion occurs on the date of consideration of the eligible candidates.

3. The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. The employee does not acquire any vested right to being considered for promotion in accordance with the repealed rules in view of the policy decision taken by the Government.

There is no obligation for the Government to make appointments as per the old 18 2022 SCC OnLine SC 680.

rules in the event of restructuring of the cadre is intended for efficient working of the unit. The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of Article 14.

4. The principle in Rangaiah need not be applied merely because posts were created, as it is not obligatory for the appointing authority to fill up the posts immediately.

5. When there is no statutory duty cast upon the State to consider appointments to vacancies that existed prior to the amendment, the State cannot be directed to consider the cases.” (emphasis supplied)

33. In view of the clear enunciation of the law, we have no hesitation in rejecting the submission made by the learned counsels for the Respondents, that the vacancies that existed prior to the amendment of Regulation 17 of Chapter II, must be governed by unamended rules.

34. For the reasons stated above, Civil Appeal No. 1882 of 2023, Civil Appeal No. 1883 of 2023, and Civil Appeal No. 1884 of 2023 are allowed. Accordingly, the following judgments of the High Court of Judicature at Allahabad are set aside: judgment dated 16.01.2019 in Special Appeal Defective No. 42 of 2019; judgment dated 16.01.2019 in Writ Appeal No. 27341 of 2018; judgment dated 18.01.2019 in Special Appeal Defective No. 38 of 2019.

35. No order as to costs.

.....CJI. [Dr Dhananjaya Y Chandrachud]J.
[Pamidighantam Sri Narasimha] New Delhi;

April 27, 2023