

Udai Bhan Rai vs State Of U.P. And Others on 25 January, 1994

Equivalent citations: AIR1994SC1603, [1994(68)FLR450], JT1994(1)SC157, 1994(1)SCALE184, 1994SUPP(3)SCC401, 1994(2)SLJ1(SC), 1994(1)UJ471(SC), (1994)1UPLBEC210, AIR 1994 SUPREME COURT 1603, 1994 AIR SCW 1318, 1994 (3) SCC(SUPP) 401, (1994) 1 JT 157 (SC), 1994 SCC (SUPP) 3 401, 1994 (1) UPLBEC 210, 1994 (1) UJ (SC) 471, 1994 (1) JT 157, (1994) 1 SCT 718, 1995 SCC (L&S) 53, (1994) 1 CURLR 366, (1994) 1 UPLBEC 210, (1994) 28 ATC 420, (1994) 68 FACLR 450, (1994) 1 SERVLR 491, (1994) 2 ALL WC 926

Bench: A.M. Ahmadi, N. Venkatachala

ORDER

1. This appeal by special leave is directed against the judgment and order of the Allahabad High Court dated August 17, 1983, in Civil Misc. Writ No. 1251 of 1976. The brief facts leading to the filing of the said Writ Petition before the High Court are as under:

2. The appellant herein was respondent No. 5 in the Writ Petition before the High Court and the present respondent No. 5 was the original petitioner. He was appointed as a teacher in the C.T. Grade on July 12, 1971, in the Moti Lai Nehru Samarak Inter College, Azamgarh, which was then a high school. This institution was raised to the level of an Intermediate College sometime in July, 1974. Thereafter on February 9, 1975, a Selection Committee drew up a panel of three persons for appointment as a lecturer in Hindi in the said Intermediate College. The appellant was one of the three persons constituting the panel. The respondent No. 5 herein was not in the picture. The District inspector of Schools was informed about the selection on April 12, 1975. However, on May 1, 1975, the District Inspector replied that there was no question of according approval since no post was created for the appointment of a lecturer in Hindi. Thereupon, the Director of Education was moved who accorded approval to the creation of two posts of lecturers in the institution and further directed that the appointments be made in conformity with the relevant regulations and after obtaining the approval of the District Inspector of Schools. Pursuant to the approval so granted by the letter of July 2, 1975, the Managing Committee of the Intermediate College resolved on August 12, 1975, to appoint respondent No. 5 as lecturer in Hindi.

3. On the coming into force of the U.P. Amendment Act XXVI, 1975, the Managing Committee of the Intermediate College passed a resolution on September 20, 1975, to let the appointments referred to above continue on an adhoc basis. The District Inspector of Schools was moved to accord approval which he did by his order dated November 25, 1975 clarifying that the duration of appointment will be for six months only. Against this limitation placed in the order, in Managing Committee preferred an appeal to the Deputy Director of Education on December 2, 1975. However, the appeal was rejected by the order of July 16, 1975 as not maintainable with the further observation that the appellant, herein be deemed to be approved as a permanent lecturer in Hindi on the basis of the

recommendation made by the Selection Committee on February 9, 1975. Against these two orders of November 25, 1975 and July 16, 1976, respondent No. 5 herein approached the High Court under Article 226 of the Constitution.

4. The U.P. Intermediate Education Act, 1921 (U.P. Act No. 2 of 1921) hereinafter called 'the Act' provided prior to its amendment by U.P. Act No. XXVI of 1976 for the Constitution of a Selection Committee for the purpose of appointment of teachers to the institution. The qualifications for appointment "as teacher were prescribed under the said Act. The appointment of a teacher to be made on the recommendation of the Selection Committee needed the approval of the Inspector of Schools. The regulations framed under the said Act prescribe the minimum qualification for a Hindi teacher for intermediate (classes XIth and XIIth) as M.A. in Hindi. The appellant was an M.A., B.Ed, and was appointed as a teacher in C.T. Grade with effect from August, 1, 1973, and since July 1974 he was teaching Hindi to the students of XIth and XIIth classes. Respondent NO. 5 herein was a B.A., B.Ed, and appointed as a teacher in C.T. Grade on July 12, 1971. The U.P. Secondary Education (Removal of Difficulties) Order 1975 came into effect from August 18, 1975. Clause 2(a) of the said order permits the Managing Committee to make an adhoc appointment of a teacher for a period not exceeding six months to fill up any substantive or leave vacancy or a vacancy existing or occurring during the current academic session, notwithstanding anything contained in the Act. Clause 2(c) posits that the vacancy of a teacher in the lecturer Grade or C.T. Grade shall be filled in by the seniormost teacher of the institution in that Grade. The respondent No. 5 herein who had been appointed earlier in point of time as a teacher in C.T. Grade was indisputably senior to the appellant in that grade. It is, however, true that he did not possess the post-graduate qualification in arts which the appellant admittedly possessed. The appellant was also teaching Hindi in classes XIth and XIIth since July, 1974. That was the point of time when the institution was upgraded to the level of an Intermediate College by the order of the U.P. Board. One of the conditions attached to the order was that six trained lecturers including one for Hindi shall be appointed to the institution. This order was conveyed by the Inspector of Schools by his letter dated September 19, 1974. It is the case of the appellant that four out of the six sanctioned posts were filled in by selection with the approval of the Inspector of Schools while the two remaining posts one meant for Hindi and the other for Sociology existed on the date of the advertisement issued in August, 1974. Since the appellant alone was eligible and qualified for appointment as a lecturer in Hindi, he applied for the said post along with others belonging to different institutions. Respondent No. 5 herein could not apply for the said post since he did not possess the qualification of M.A. in Hindi. The Selection Committee selected the appellant for the post of lecturer in Hindi on February 9, 1975 whereupon the Managing Committee of the institution sent the proposal on April 12, 1975 for approval to appoint the appellant on the vacant post. The appellant contends that the Inspector of Schools in total disregard of his previous order dated September 19, 1974, refused to accord approval on the ground that the posts were not created and hence a regular appointment of a substantive nature could not be made. Immediately thereafter, the Director of Education was moved who accorded approval to the creation of two posts of lecturers in the institution. The case of the appellant is that there already existed two vacancies as six posts of lecturers had been created in the institution, but by putting forth a wrong reason the Inspector of Schools had refused approval. The management of the institution thought it wise by way of extra caution to move for creation of the posts which was done as stated above. Soon thereafter, it is the case of the appellant that the Principal in collusion with the Manager proposed

the appointment of the respondent No. 5 herein as a lecturer in Hindi on an adhoc basis even though he was not qualified for appointment, ignoring the selection of the appellant on February 9, 1975 by a duly appointed Selection Committee. The appellant, therefore, contends that the appointment of respondent No. 5 by the Principal of the institution in collusion with the Manager without even convening the meeting of the Managing Committee was clearly contrary to the regulations. When the members of the Managing Committee learnt about the same, they objected to the appointment whereupon the Manager by his letter dated October 25, 1975 requested the Inspector of Schools to approve the appointment on an adhoc basis which the latter did by his order dated November 25, 1975 limiting the appointment to six months. In this manner, contends the appellant, his selection by a duly appointed Selection Committee made on February 9, 1975 was set at naught and his rightful claim for appointment was by-passed.

5. It appears that against the order dated November 25, 1975, both the appellant and the managing committee filed appeals to the Government. The latter by the order dated May 24, 1976, disposed of the appeals and communicated the decision to the Director of Education Dr. Mehrotra on the same day. In paragraph 2 of the said letter it was mentioned that he should examine the claims and counter claims of the management and the appellant herein and thereafter issue proper orders. The letter then proceeds to point out certain serious flaws demanding further enquiry in the matter. These are the observations found in paragraph 3 thereof:

The approval of the appointment of Shri Jharkhandey Pandey, teacher of the said College was really made in the C.T. Grade but due to mistake of the DIOS Azamgarh (which was done ignorantly or deliberately) it was sown in L.T. Grade in the concerned order. The officers of the institution deliberately withheld this fact and gave undue advantage of the L.T. Grade to Sri Pandey. This is serious matter and it appears necessary that through enquiry be done about such irregularities done by the office of the Inspector and it should be eradicated and action be also taken against the guilty person. The additional payment which was made to Pandey the question of its recovery is also ponderable. In this regard it appears immediate necessity of taking proper action, (ii) the teachers of Basic Shiksha Parishad who had given application directly for the post of lecturer in Hindi in the said college by violating the rules, there is necessity of taking proper action against them.

Pursuant to the above directive, the Deputy Director of Education made an enquiry and communicated his decision to the management of the Intermediate College by his letter dated July 16, 1976 as under:

After holding enquiry from the level of the Government in disputed matter the direction is received from the Government that since approval proceeding regarding the lecturer (Hindi) post of Shri Udai Bhan Rai is of prior to the enforcement of amending ordinance, 1975. Hence it would be deemed approved. As such Shri Udai Bhan Rai, M.A. (Hindi), B.Ed. would be deemed approved on the post of lecturer in Hindi as permanent according to the letter dated 12.4.75 sent by your principal to the DIOS, Azamgarh. Please take action immediately and send the information of the

action taken to this office and the DIOS, Azamgarh.

6. From the facts set out above, it appears that respondent No. 5 was selected at the meeting of the Selection Committee held on July 11, 1971, and was placed in the C.T. Grade. However, while communicating the approval of the District Inspector of Schools, the management stated "your appointment has been approved to the post of Assistant Teacher in the L.T. Grade on year's probation". It will thus be seen that although his appointment was in C.T. Grade, it was by mistake stated to be in L.T. Grade by the management while communicating the approval by the letter dated January 21, 1972. When this mistake came to light, the District Inspector of Schools, Azamgarh, by his letter dated July 30, 1976, informed the management that the mistake had been corrected by substituting C.T. Grade for L.T. Grade. Respondent No. 5 herein was also informed about the amendment by the management's letter dated September 27, 1976. That is the mistake to which a pointed reference was made in the portion extracted from the letter dated May 24, 1976, addressed to Dr. Mehrotra. But before the amendment was effected, respondent No. 5 was appointed as lecturer in Hindi by the communication dated August 12, 1975. It was only while hearing the appeal that the State Government noticed the mistake and communicated the same by the letter of May 24, 1976. The extracted portion gives the impression that the Education Department suspected some mischief and, therefore, directed an enquiry with a view to bringing the guilty to book. After the mistake was detected and the Director of Education was advised by the letter of May 24, 1976, to re-examine the entire matter afresh that the appeal was allowed as communicated by the letter dated July 16, 1976. It was thereafter that respondent No. 5 moved the High'-Court under Article 226 of the Constitution.

7. It must also be realised that the appellant was selected by the Selection Committee on February 9, 1975. However, his appointment was not approved on the plea that there was no post on the establishment. However, it is significant to note that in paragraph 9 of the counter filed by the Deputy Director of Education it was expressly averred "in fact, the post was in existence in July, 1974, since the institution was raised to an Intermediate College." In paragraph 12 it was further stated "the post of lecturer in Hindi and Sociology was already created in July, 1974 when the institution was raised to an Intermediate College." It would, therefore, appeal that the refusal to accord approval was based on an erroneous premise. The High Court has placed reliance on the letter of May 1, 1975, which is itself based on a misunderstanding. The subsequent creation of two posts was the consequence of that mistake and cannot be read to support the mistake.

8. The appellant, being M.A. (Hindi), B.Ed., was better qualified than the present respondent No. 5 who was a B.A., B.Ed. Pursuant to the advertisement of July, 1974, the Selection Committee interviewed candidates including the appellant and empanelled three persons including the appellant. Since the first two could not be appointed for their failure to secure discharge certificates from their employers, the appellant was appointed to the post in question. This selection was set at naught on the erroneous premise that the posts were not 'created' on the establishment. Besides, under Section 16E of the Act before its amendment by the XXVIth Amendment, M.A. in Hindi was the educational qualification prescribed under the regulations for Hindi Teachers for Intermediate (Classes XIth & XIIth) which the appellant possessed but not the respondent No. 5 herein. Therefore, the latter had not applied pursuant to the July, 1974, advertisement since he knew he was

not qualified. Once it is found that the selection and appointment of the appellant on February 9, 1975, was legal and valid and that on that day respondent No. 5 herein was nowhere in the picture and on being further found that the refusal of the approval was on a wholly erroneous premise, there can be no doubt that the subsequent exercise in its entirety leading to the appointment of respondent No. 5 has to be brushed aside as futile. We are inclined to think that the flaws referred to in paragraph 3 of the letter dated May 24, 1976, are quite serious and the impression gathered by the officer who made the observations extracted earlier cannot be said to be unfounded or unwarranted. We are not told of the outcome of the enquiry, if any, or as very often happens in such cases no enquiry may have been initiated on the ground that the matter is sub-judice and now after so many years the idea will be dropped as stale or infructuous.

9. Be that as it may, we are of the opinion that the appellant was rightly selected as a lecturer on February 9, 1975, and he was entitled to appointment on a regular basis on the said post since the approval was refused on an erroneous premise. The High Court was, therefore, clearly wrong in the view that it took. We, therefore, set aside the High Court order by allowing this appeal but remit the matter to the High Court to work out the other equities. As the matter is old, we direct that the papers be placed before the learned Chief Justice of the High Court on 7.2.1994 for directions. Parties and their counsel have been informed to appear before the learned Chief Justice on that date. We do hope the High Court will work out the equities in the light of our order within three months from that date. Appeal will stand so disposed of. No order as to costs.