

PART-III

## Higher Education

### THE UTTAR PRADESH HIGHER EDUCATION SERVICES COMMISSION ACT, 1980

(U.P. Act No. 16 of 1980)

(As passed by the Uttar Pradesh Legislature)

An Act to establish a Service Commission for the selection of teachers for appointment to the colleges affiliated to or recognised by and University, and for matters connected therewith or incidental thereto.

No. 2753(2)/XVII-V-1-71-80

Dated Lucknow, October 3, 1980

In pursuance of the provisions of Clause (3) of Article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of the Uttar Pradesh Uchcharat Shiksha Sewa Ayog Adhiniyam, 1980 (Uttar Pradesh Adhiniyam Sankhya 16 of 1980) as passed by the Uttar Pradesh Legislature and assented to by the Governor on October 1, 1980 :

It is hereby enacted in the Thirty-first Year of the Republic of India, as follows :

#### CHAPTER I

#### PRELIMINARY

**1. Short title and commencement.**—(1) This Act may be called, the Uttar Pradesh Higher Education Services Commission Act, 1980.

(2) It shall come into force on such date as the State Government may, by notification, appoint in this behalf.

**2. Definitions.**—In this Act—

1["(a) 'Appointment' in relation to a teacher means the appointment of a person to a sanctioned post described under Section 60-E of the Uttar Pradesh State Universities Act, 1973, excluding the appointment in a grant-in-aid college established and administered by a minority referred to in clause (1) of Article 30 of the Constitution or a college exclusively maintained by the State Government.".

(b) 'Chairman' means the Chairman of the Commission and includes any other person performing, in the absence of the Chairman for the time being the functions of the Chairman;

1["(c) 'College' means an affiliated or associated college to which the privilege of affiliation has been granted by a University governed by the Uttar Pradesh State Universities Act, 1973, excluding a college established and administered by a minority referred to in clause (1) of Article 30 of the Constitution or a college exclusively maintained by the State Government or a college running self-finance course as defined in clause (18) of Section 2 of the Uttar Pradesh State University Act, 1973.".

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.. Clause (a) & clause (c) Subs. by U.P. Act No. 30 of 2004, published in U.P. Gazette Extra Part I Section (Ka) Dated 6 December, 2004 (w.e.f. 11-10-2004).

- (d) Commission means the Higher Services Commission established under Section 3.
- (e) 'Director' means the Director of Education (Higher Education) and includes Joint Director of Education or Deputy Director of Education authorised by him in this behalf.
- (f) 'Member' means a member of the Commission and includes its Chairman.
- (g) other words used and not defined in this Act but defined in the Uttar Pradesh State Universities Act, 1973, shall have the meanings respectively assigned to them in that Act.

#### CHAPTER II

##### ESTABLISHMENT OF THE COMMISSION

3. **Establishment of the Commission.**—(1) With effect from such date as the State Government may, by notification appoint in this behalf, there shall be established a Commission to be called the "Uttar Pradesh Higher Education Services Commission".

(2) The Commission shall be a body corporate.

4. **Composition of the Commission.**—(1) The Commission shall consist of a Chairman and not less than two and (not more than six other members) to be appointed by the State Government.

2(2) No person shall be qualified for appointment as Chairman unless he—

- (a) is or has been a member of Uttar Pradesh Higher Judicial Service who has held the post of District Judge or any other post equivalent thereto; or
- (b) is or has been a member of the Indian Administrative Service who has held the post of a Secretary to the State Government or any other post under the State Government equivalent thereto; or
- (c) is or has been a Vice-Chancellor of any University, or
- (d) is or has been a Professor in any University; or
- (e) is in the opinion of the State Government an eminent person having made valuable contribution in the field of education.

2(2-a) No person shall be qualified for appointment as member unless he—

- (a) is or has been a member of Uttar Pradesh Higher Judicial Service who has held the post of District Judge or any other post equivalent thereto; or
- (b) is or has been a member of the Indian Administrative Service who has held the post of a Secretary to the State Government or any other post under the State Government equivalent thereto; or

1. Sub-section (1) for the words "or more than four other members" the words "not more than six other members" substituted by U.P. ordinance No. 19 of 2007. Published in U.P. Gazette Extra Part 2 Series (I) Vol. dated 7 August, 2007 (w.e.f. 15.6.2007).

2. Sub-section (2) and (2-a) substituted by U.P. Act No. 24 of 2004, published in the U.P. Gazette Extra Part 1 Series (I) Vol. dated 17th August, 2004 (w.e.f. 28 May, 2004).

- (c) is or has been a Vice-Chancellor of any University, or
- (d) is or has been a Professor in any University, or
- (e) is or has been a Principal of a Post Graduate College for a period of not less than five years, or
- (f) is or has been a Principal of Degree College for a period of not less than ten years, or
- (g) is in the opinion of the State Government an eminent person having made valuable contribution in the field of education.

(3) Every appointment under this section shall take effect from the date on which it is notified by the State Government.

5. **Terms of office and conditions of service members.**—(1) Every member shall, unless he becomes disqualified for continuing as such under the rules that may be made under this Act hold office for a term of [five years].

(2) No person shall be a member of the Commission for more than two consecutive terms.

(3) A member of the Commission may resign his office by writing under his hand addressed to the State Government, but he shall continue in office until his resignation is accepted by the State Government.

(4) The office of the members shall be whole-time and the terms and conditions of their service shall be such as the State Government may, by order direct.

(5) Notwithstanding anything contained in this Section, no person, shall be appointed or continue—

- (a) as Chairman of the Commission if he has attained the age of sixty-eight years, or
- (b) as a member of the Commission, if he has attained the age of sixty-five years.

(6) The provisions of sub-section (1) as amended by the Uttar Pradesh Higher Education Services Commission (Second Amendment) Act, 2014 shall apply also to every member including the Chairman holding office immediately before the commencement of the said Act.

6. **Powers of the State Government to remove the member.**—(1) The State Government may, by order, remove from office any member, if he—

- (a) is adjudged an insolvent; or
- (b) engages, during his term of office, in any paid employment outside the duties of his office; or
- (c) is in the opinion of the State Government unfit to continue in office by reason of infirmity of mind or body or of proved misconduct.

1] . . . ]

(2) The procedure for the investigation and proof of misconduct under this Section shall be such as may be prescribed.

1. Sub-section (1) for the words "two years" the words "five years" and by U. P. Act No. 12 of 2014. Published in U. P. Gazette, Extra Part I, Sec. 3(Kat), dated 18 Nov. 2014.

2. Sub-section (5) and (6) substituted by U. P. Act No. 12 of 2014. Published in U. P. Gazette, Extra Part I, Section-3(Kat), dated 18 Nov., 2014.

3. Expression inserted by U. P. Act No. 25 of 1984 (w. e. f. 25.11.84).

(3) The State Government may suspend from office any member in respect of whom any action is contemplated under this Section.

7. **Power to associate.**—The Commission may associate with itself, in such manner and for such purposes as may be determined by regulations made under Section 31, any person whose assistance or advice it may desire to have in carrying out any of the provisions of this Act.

8. **Proceedings of the Commission not to be invalidated.**—No act or proceeding of the Commission shall be deemed to be invalid merely on the ground of—

- (a) any vacancy or defect in the constitution of the Commission; or
- (b) any defect or irregularity in the appointment of a person acting as a member thereof; or
- (c) any defect or irregularity in such act or proceeding not affecting the substance.

9. **Staff of the Commission.**—(1) The Secretary of the Commission shall be appointed by the State Government on deputation for a term not exceeding five years, and other conditions of his service shall be such as the State Government may, from time to time, determine.

(2) Subject to such directions as may be issued by the State Government in this behalf, the Commission may appoint such other employees as it may think necessary for the efficient performance of its functions under this Act, and on such terms and conditions of service as the Commission thinks fit.

#### COMMENTS

If it is assumed that the selection suffered from any infirmity, same could have been assailed in proper Court of Law, but under the provisions contained in Section 2 of the Corporation Act, neither the process of selection could be stopped by the State Government, nor any enquiry in the matter of selection could be initiated by the State Government, because no such power has been vested to the State Government.

The State Government was vested with the power to stop the statutory function of the Commission, nor can interfere into the manner in which the selection was made by the Commission and it has unnecessarily dragged on the appointment of the petitioners without any justifiable reasons.<sup>1</sup>

10. **Authentication of the orders of the Commission.**—All orders and decisions of the Commission shall be authenticated by the signature of the Secretary, or any other officer authorised by the Commission in this behalf.

#### CHAPTER III

##### FUNCTIONS OF THE COMMISSION

11. **Powers and duties.**—The Commission shall have the following powers and duties, namely—

- (a) to prepare guidelines on matter relating to the method of recruitment of teachers in colleges;
- (b) to conduct examinations where considered necessary, hold interviews and make selection of candidates for being appointed as such teachers;

<sup>1</sup> *Supra* note 1, *State of P. v. State of U.P.* (2001) 119 JCL 1101 (All)

- (c) to select and invite experts and to appoint examiners for the purposes specified in clause (b)
- (d) to make recommendation to the management regarding the appointment of selected candidates,
- (e) to obtain periodical returns or other informations from colleges regarding strength of the teaching staffs and the appointment, dismissal, removal, termination or reduction in rank of teachers therein;
- (f) to fix the emoluments and travelling and other allowance of the experts and examiners;
- (g) to administer the funds placed at the disposal of the Commission;
- (h) to perform such other duties and exercise such other powers as may be prescribed or as may be incidental or conducive to the discharge of the above functions

¶11. **Additional Powers and duties of the Commission.**—The Commission shall also have Powers and duties of the Selection of Candidates for appointment to the Posts of librarians of the College and with respect to the selection of Candidates for appointment to the Post of Librarians of the Colleges the provisions of Section 11, sub-section(1) [excluding the proviso], sub-sections (2), (3) and (4) of Section 12, Section 13, Section 14, Section 15, Section 17, and Section 18 shall *mutatis mutandis* apply.]

¶12. **Procedure for appointment of teachers.**—(1) Every appointment as a teacher of any college shall be made by the management in accordance with the provisions of this Act and every appointment made in contravention thereof shall be void.

¶[Provided that a permanent teacher of an affiliated or associated college, who has been appointed in accordance with the provisions of this Act and has completed "[five years]" service as such and who wishes to be transferred to any other college, may be transferred in the manner prescribed by rules from one college to another, only when the respective management of the colleges concerned give their consents in writing.]

¶[(1-a) Notwithstanding any Decree or order of a court, a teacher who has been appointed as such by transfer from one college to another in pursuance of the Government Orders No. 429 Shukha Montri/Sattar-6-98-15-95, dated August 17, 1998 or No. 393/Sattar-1-99-15[6]-99, dated October 28, 1999 shall be deemed to have been validly appointed as if the provisions of the principal Act as amended by the Uttar Pradesh Higher Education Services Commission (Second Amendment) Act, 2004 were in force at all material times.]

1 Section 11-A inserted by U.P. Act No. 12 of 2015, published in U.P. Gazette Extra, Part I, Section (K) dated 9 September, 2015.

2 Subj. by U.P. Higher Education Services Commission (Amendment) Act, 1992, (U.P. Act No. 2 of 1992) w.e.f. November 22, 1992.

3 Proviso & sub-section (1-a), U.P. by U.P. Act No. 10 of 2004 published in U.P. Gazette, Extra, Part I, Section (K), dated 4 December, 2004 w.e.f. 11 October, 2004.

4 Subj. by U.P. Act No. 14 of 2004 published in U.P. Gazette Extra, Part I, Section (K) dated 14 May, 2004.

(2) The management shall intimate the existing vacancies and the vacancies likely to be caused during the course of the ensuing academic year, to the Director at such time and in such manner, as may be prescribed.

*Explanation*—The expression "academic year" means the period of 12 months commencing on July 1.

(3) The Director shall notify to the Commission at such time and in such manner as may be prescribed, a subject-wise consolidated list of vacancies intimated to him from all colleges.

(4) The manner of selection of persons for appointment to the post of teachers of a college shall be such, as may be determined by regulations:

Provided that the Commission shall with a view to inviting talented persons give wide publicity in the State to the vacancies notified to it under sub-section (3):

Provided further that the candidates shall be required to indicate their order of preference for the various colleges vacancies wherein have been advertised.

#### COMMENTS

The Statutes framed under the Universities Act were amended on 13th January, 1995. By means of which those candidates who have been awarded Ph.D. on 31st of December, 1993 and M. Phil. on 31st of December, 1992, were exempted from the eligibility test meaning thereby that they would be eligible for being considered for selection on the post of lecturer. Similarly, the amended Regulation framed by the University Grant Commission came into force on 21st June, 1995 by means of which the candidates who have submitted Ph.D. Thesis or passed the M. Phil. Examination by 31st of December, 1993 come within the eligibility criteria as they were exempted from eligibility test but the question which is relevant for consideration before this Court is that as to whether at the last date of submission of Form the petitioner came within the eligibility criteria or not Court is of the view that on the last date of submission of the Form the petitioner did not fulfil the eligibility criteria of minimum qualification. Any amendment in the Statute or Regulation by the State Government of the Regulation framed by U.G.C. subsequent to the last date of the submission of the form which are prospective in nature have no application<sup>1</sup>

It is true that normally it is expected that reserved categories cannot exceed 50% of the quota as decided in various decisions of the High Court and the rest must go to merit candidates. But on the peculiar facts of the case relating to the Andaman and Nicobar Islands, the present classification and quota cannot be said to be offending the said principle. The impugned order dated 30-5-96 refers to the statistics from 1992-93 and shows that though 20% quota was reserved for the Tribals, the said quota was never fully utilised. Therefore, it was specifically provided that the unutilised quota of the 20% for tribals would go to merit candidates. A provision was made in respect of the merit candidates amongst the pre-1942 and post 1942 categories by providing a sub-classification in which 1/3 of 50% would go to such merit candidates and unutilised quota was to go to the general merit candidates. Even in respect of the 10% quota for Central Government employees and deputationists and the 20% quota for the Ten years education group, it was directed that the unutilised quota would go to the merit candidates. Having regard to rather special facts obtaining in the Islands, the High

<sup>1</sup> *Kirpa Shanker Yadav v. State of U.P.*, (1999) 1 U.P.L.B.C. (Sum) 3.

Court held that it cannot be said that adequate provision has not been made in favour of merit candidates.<sup>1</sup>

Section 3(1) of the U.P. Act No. 4 of 1994 visualises that in "Public Services and Posts" there shall be reservation at the stage of direct recruitment to the extent of given percentage of vacancies to which recruitments are to be made in accordance with the roster referred to in sub-section (5) in favour of the persons belonging to SC/ST & OBC. The expression "Public Services and Posts" means the services and posts in connection with the affairs of the State and includes among others. Services and Posts "in an educational institutions owned and controlled by the State Government or which receives grants-in-aid from the State Government including a University established by or under a Uttar Pradesh Act except an institution established and administered by minority referred to in Clause (1) of Article 30 of the Constitution". The plain language employed by the legislature in Section 2(c)(iv) and Section 3 of the U.P. Act No. 4 of 1994 makes it abundantly clear that the services and posts in a University established by or under a Uttar Pradesh Act are covered by U.P. Act No. 4 of 1994. Therefore, the post of Professor cannot be excluded from the purview of the Act except on pains of violating the Statute the validity of which is not under challenge.<sup>2</sup>

Petitioner cannot claim to be of scheduled caste because she married to a scheduled caste person. However, if she secures marks for appointment with other criteria to the post and there are no other meritorious candidates of scheduled caste about her. She is to be considered for appointment.<sup>3</sup>

Posts advertised on 10-1-1990 with last date for application on 30-1-1990. There was no provision for reservation in the concerned Act. Provision of reservation introduced on 22-8-1993 hence it could not have been made applicable in respects of posts already advertised for which process of recruitment had been initiated. Order of High Court set aside holding that reservation policy will not apply to the present case.<sup>4</sup>

Appellant contended that respondent No. 5 was selected on post of Reader without requisite qualification and experience. Report of Screening Committee not reflected true position and original file not placed before single Judge, held not proper. If on ground of misplaced sympathy person has been selected without having requisite qualification and experience he cannot be allowed to continue merely because litigation has taken some time. Directed to re-advertise the post and selection by made from qualified persons.<sup>5</sup>

Reservation of two posts, one of Professor and other of Director, for Scheduled Castes and Tribes. Both posts belong to single cadre posts. Reservation of both posts amounts to 100% reservation hence held bad and illegal. Advertisement quashed. University to re-advertise the posts in the light of observation, Petition allowed.<sup>6</sup>

**7[13. Recommendation of Commission—(1)** The Commission shall, as soon as possible, after the notification of vacancies to it under

1. *Parents Association v. Union of India*, (2000)2 UPLBEC 1525 (All).

2. *Dr. Jagdamba Singh v. Vice-Chancellor, University of Allahabad*, (2000)2 UPLBEC 1822 (All).

3. *Dr. Rajeswari v. Vice-Chancellor-cum-Chairman, Sree Venkateswara University, Selection Committee Tirupathi and others*, 1999(2) SLR 126 (AP).

4. *Mohan Kumar Law v. Vinoba Bhave Uni. and others* (2000(5) SLR 416 (SC)

5. *Shiva Kumar Vyas v. Indra Gandhi National Open University and others*, 2000(5) SLR 105 (Delhi)

6. *Dr. S. Ganesan v. The Registrar, Alagappa University, Karaikudi*, 2000(2) SLR 225 (Mad).

7. Subs. by U.P. Higher Education Services Commission, Amendment Act, 1992 (U.P. Act No. 2 of 1992) w.e.f. November 22, 1991).

sub-section (3) of Section 12, (hold written examination and interview of the candidates) and sent to the Director a list recommending such number of names of candidates found most suitable in each subject as may be, so far as practicable, twenty-five per cent more than the number of vacancies in that subject. Such names shall be arranged in order of merit shown in the interview, or in the examination and interview if an examination is held.

(2) The list sent by the Commission shall be valid till the receipt of a new list from the Commission.

(3) The Director shall having due regard to the prescribed manner, to the order of preference if any indicated by the candidates under the second proviso to sub-section (4) of Section 12, intimate to the management the name of a candidate from the list referred to in sub-section (1) for being appointed in the vacancy intimated under sub-section (2) of Section 12.

(4) Where a vacancy occurs due to death, resignation or otherwise during the period of validity of the list referred to in sub-section (2), and such vacancy has not been notified to the Commission under sub-section (3) of Section 12 the Director may intimate to the management, the name of a candidate from such list for appointment in such vacancy.

(5) Notwithstanding anything in the preceding provisions, where abolition of any post of teacher in any college, services of the person substantively appointed to such post is terminated the State Government may make suitable order for his appointment in suitable vacancy, whether notified under sub-section (3) of Section 12 or not, in any other college, and thereupon the Director shall intimate to the Management accordingly.

(6) The Director shall send a copy of the intimation made under sub-section (4) or sub-section (5) or sub-section (6) to the candidate concerned.]

#### COMMENTS

Sub-section (4) of Section 13 of the U.P. Higher Education Service Commission Act, 1980, will be attracted where a vacancy occurs due to death, resignation or otherwise during the period of validity of the list referred to in sub-section (2) and such vacancy has not been notified to the Commission.

The select-list prepared and sent to the Director of Education (Higher Education) under Section 13(1) of the Act shall be valid till the receipt of a new list from the Commission:

The list referred to in sub-section (1) of Section 13 will lapse only upon a new list being drawn in the manner prescribed by law, i.e., in the manner indicated in sub-section (1) of Section 13 read with Section 12 of the Act and related provisions contained in the U.P. Higher Education Service Commission Regulations, 1983. This necessarily follows that if the unforeseen vacancy referred to in sub-section (4) was not included in any subsequent advertisement on the basis of which a new list is drawn, it would not be taken as new list for the purpose of sub-section (2) of Section 13:

Notwithstanding the validity of the list till receipt of a new-list, it will be unavailing in respect of an unforeseen vacancy referred to in sub-section (4)



which has been notified to the Commission in accordance with Section 12 of the Act and the provisions contained in the Regulation, and

The view taken by the Division Bench in the case of *Dr. Yogesh Kumar Gupta* that the list prepared under sub-section (1) of Section 12 will be "continued in the academic year" and the supporting reasons that "continuing the old list beyond one academic year, would be permitting to include the second or many subsequent academic years which will be clearly in violation of Section 12 of the Act" have been implicitly reversed by the observations of their Lordships of the Supreme Court that the list would not "come to an end after a period of one year."

So long as all the selected candidates of the list prepared under sub-section (1) are not appointed, the list would remain valid for the purpose of Section 13(4) of the Act unless the unforeseen vacancy occurring due to death, resignation or otherwise is notified to the Commission before invoking the power under Section 13(4) of the Act.

The circumstances visualized by sub-section (4) of Section 13 are firstly, that the vacancy occurs for the unforeseen reason of death or resignation or otherwise; secondly that such vacancy must occur during the period of validity of the list referred to in Section 13(2); and thirdly, such vacancy has to be notified to the Commission under sub-section (3) of Section 12. The Validity of the list, as held by the Supreme Court is not confined to the particular academic year. The word used "otherwise" in Section 13(4) of the Act has to be read as "quodam generis", i.e., in group similar to death, resignation, long leave vacancy, invalidation or person not joining after being duly selected.<sup>1</sup>

The regulation which would result in all vacancies of Class III post being made available to dependants of those who die in harness and others will be excluded because such a construction will be violative of the right to equality.<sup>2</sup>

A committee of management does not become defunct merely for the reason that its term has expired. The petitioner has not become defunct on 3-9-1999. It will continue till new committee of management takes charge of the A.K. Society.<sup>3</sup>

No order for single operation can be passed without affording any opportunity to the committee of management and no opportunity was given to the petitioner before passing this order. The order of the Director dated 14-10-1999 and the consequential order of the DDO, dated 27-10-1999 are illegal.<sup>4</sup>

The term of a Governing Body (Committee of Management) of a society starts from the date when it gets charge of that society. In a society, if elections take place before expiry of period, then its committee of management may get charge of the society after the term of the earlier one is over or on the same day and in any other case on the same day. It varies from case to case. The Societies Registration Act governs the A.K. Society. The term of the petitioner is of five years. It should start from the day the petitioner took charge of the A.K. Society.<sup>5</sup>

The effect of Statute 12.05 is only this that there are few other *ex officio* members. This difference, between an Intermediate College and a Degree College as material bearing so far as the terms and other consequences relating to their committees of management are concerned, there is one committee of management for both of them.<sup>6</sup>

No factual controversy is involved and facts are admitted; the contenting respondents have not chosen to file any counter affidavit. Same question of law

<sup>1</sup> *Dr. M.C. Yadav v. Director of Education (Higher Education) U.P. State Coll. & Univer. Board*, 2001(2) AWC 1424 (SC)

<sup>2</sup> *Anand Prasad Singh v. State of U.P.*, (1997) 1 UPJ 1100, (Supr) 12

<sup>3</sup> *Committee of Management A.K. College Sakinaka v. State of U.P.*, (2000) 1 UPJ 1100 (SC)

on the basis of same facts are to be argued and when one writ petition is proper, then there is no justification to dismiss this writ petition on the ground of alternative remedy.<sup>1</sup>

Neither the Registrar is a party in the writ petition, nor any such relief is asked for. The Registrar is an officer of the State and the High Court has heard the Standing Council for the State of Uttar Pradesh, a party in the writ petition. This Council has come to its knowledge and it would be failing in its duty if it does not bring it to the notice of the Registrar, who should proceed in accordance with law.<sup>2</sup>

**14. Duty of Management—**(1) The Management shall within a period of one month from the date of receipt of intimation under sub-section (3) or sub-section (4) or sub-section (5) of Section 11, issue appointment letter to the person whose name has been intimated.

(2) Where the person referred to in sub-section (1) fails to join the post within the time allowed in the appointment letter or within such extended time as the Management may allow in this behalf, or where such person is otherwise not available for appointment, the Director shall on the request of the Management intimate fresh name from the list sent by the Commission under sub-section (1) of Section 13 in the manner prescribed.]

**15. Inquiry by Director—**(1) Where any person is entitled to be appointed as a teacher in any college in accordance with Sections 12 to 14, but he is not so appointed by the Management within the time provided therefor, he may apply to the Director for a direction under sub-section (2).

(2) On receipt of an application under sub-section (1), the Director may hold an inquiry, and if he is satisfied that the Management has failed to appoint the applicant as a teacher in contravention of the provisions of this Act, he may by order, require

- (a) the Management to appoint the applicant as a teacher forthwith and to pay him salary from the date specified in the order; and
- (b) the Principal of the College concerned to take work from him as a teacher.

(3) The amount of salary, if any, due to such teacher shall, on a certificate issued by the Director, be recoverable by the Collector as arrears of land revenue.

#### 16. [ \* \* ]

**17. Power to call for information—**The Commission may require the Management of any college to submit such information or return regarding the matters referred to in Section 11 as it thinks fit, and the Management shall be bound to comply with the same.

**18. Power to inspect records, register etc.—**The Secretary or any other officer authorised by the Commission shall have access to every record, register or document in possession of the Management and he may enter at any reasonable time, any premises where he believes such record, register or document to be, and may inspect and take copies of relevant records or documents.

1. *Committee of Management v. A. College, Varanasi State of U.P.*, (2008) 1 PLS 191, 177 (41)

2. *Sudh v. U.P. Higher Education Services Commission, AIR 1971 P. A.C. No. 1 of 1971 at November 22, 1971*

## CHAPTER IV ANNUAL REPORTS AND ACCOUNTS

**19. Payment to the Commission**—The State Government may, after due appropriation made by law in this behalf, pay to the Commission in each financial year such sum as may be considered necessary for the performance of the functions of the Commission under this Act.

**20. Fund of the Commission**—(1) The Commission shall have its own Fund, and all sums paid to it by the State Government and all receipts of the Commission shall be carried to the Fund and all payments by the Commission shall be made therefrom.

(2) All moneys belonging to the Fund shall be deposited in such banks or invested in such manner as may, subject to the approval of the State Government, be decided by the Commission.

(3) The Commission may spend such sums as it thinks fit for performing its functions under this Act, and such sums shall be treated as expenditure payable out of the fund of the Commission.

**21. Annual Reports**—The Commission shall prepare, once every year, in such form and at such time as may be prescribed, an annual report giving a true and full account of its activities during the previous year, and copies thereof shall be forwarded to the State Government, and the State Government shall cause the same to be laid before both the Houses of the State Legislature.

**22. Accounts and Audit**—(1) The Commission shall cause to be maintained such books of accounts and other books in relation to its account, in such form and in such manner as the State Government may, by general or special order direct.

(2) The Commission shall as soon as may be after closing its annual accounts, prepare, statement of accounts in such form and forward the same to the Accountant General, by such date as the State Government may, in consultation with the Accountant General determine, for audit under Section 14 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1941.

(3) The annual accounts of the Commission together with the audit report thereon shall be forwarded to the State Government and the Government shall cause the same to be laid before both Houses of the State Legislature.

## CHAPTER V MISCELLANEOUS

**23. Delegation**—The Commission may, by regulations made under Section 31, delegate to its Chairman or any of its members or officers, its power of general superintendence and direction over the business transacted by, or in, the Commission including the powers with regard to the expenditure incurred in connection with the maintenance of the office and internal administration of the Commission.

**[24. Exemptions to minority institutions**—Notwithstanding anything to the contrary contained in any other law for the time being in

\* Section 24 Subs. by U.P. Act No. 39 of 2004, published in U.P. Gazette Extra. Part 3, Section (Ka), dated 6 December, 2004 (w.e.f. 11 October, 2004)

force, no appointment of a teacher in a college established and maintained by a Minority based on religion or language made otherwise than in accordance with the provisions of this section as it was in force immediately before the commencement of the Uttar Pradesh Higher Education Services Commission (Second Amendment) Act, 2004 shall be deemed to be invalid or ever to have become invalid merely on the ground that such appointment was not made in accordance with the provisions of this section, as it was in force immediately before the commencement of the said Act as if the provisions of this Act as amended by the said Act were in force at all material times.

**25. Punishment for contravention of the provisions of the Act**—Any person who fails to comply with the recommendations of the Commission or with the orders of the Director made in accordance with the provisions of this Act, or appoints a teacher in contravention of the provisions of this Act shall, on conviction, be punished with imprisonment for a term which may extend to three years or with fine which may extend to five thousand rupees or with both.

**26. Punishment for failure to furnish information or wilful obstruction**—If any person—

- (a) wilfully withholds or fails to furnish any return or information lawfully required by the Commission within the time allowed therefor;
- (b) wilfully obstructs any person from duly carrying out all or any of the provisions of this Act, shall, on conviction, be punished with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

**27. Offences by societies**—(1) If the person committing the offence under Section 25 or Section 26 is a society registered under the Societies Registration Act, 1860, the society as well as every person in charge of and responsible to the Society for the conduct of its business at the time of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub section (1), where any offence under this Act has been committed by a registered society and it is proved that the offence has been committed with the consent or connivance of, or that the commission of offence is attributable to any neglect on the part of any member or the society, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**28. Bar against prosecution**—No prosecution of the offence under this Act shall be instituted except with the previous sanction of the Director or such officer or authority as the State Government may, by general or special orders, specify in this behalf.

**29. Protection of action taken in good faith.** No suit, prosecution or other proceeding shall be against any person for anything which is in good faith done or intended to be done under this Act.

**30. Act to have overriding effect.** The provisions of this Act, shall have effect notwithstanding to the contrary contained in the Uttar Pradesh State Universities Act, 1973 or the Statutes or Ordinances made thereunder.

**31. Power to make regulations.** (1) Commission may, with the previous approval of the State Government, make regulations prescribing fees for holding selections, conducting examinations where necessary, holding interviews and laying down the procedure to be followed by the Commission for discharging its duties and performing its functions under this Act.

(2) The regulations made under sub-section (1) shall not be inconsistent with the provisions of this Act or the rules made under Section 32.

**[31-A. Power to remove difficulties.** (1) The State Government may, for the purposes of removing any difficulty, by a notified order direct that the provisions of this Act shall, during such period as may be specified in the order, have effect subject to such adaptations, whether by way of modification, addition or omission, as it may deem to be necessary or expedient.

Provided that no such order shall be made after the expiry of two years from the date of commencement of the Uttar Pradesh Higher Education Service Commission (Amendment) Act, 1992].

(2) Every order made under sub-section (1) shall be laid before both Houses of the State Legislature.

(3) No order under sub section (1) shall be call in question in any Court on the ground that no difficulty, as is referred to in sub-section (1), existed or required to be removed.]

**[31-B. Regularisation of certain *ad hoc* appointments.** (1) Every teacher, other than a Principal, directly appointed on or before January 3, 1984, on *ad hoc* basis, against a substantive vacancy in accordance with the provisions of the Uttar Pradesh Higher Education Services Commission (Removal of Difficulties) Order, 1982 or the Uttar Pradesh Higher Education Services Commission (Removal of Difficulties) Order, 1983, who possesses the qualifications prescribed under, or is exempted from such qualifications in accordance with the provisions of the concerned Statutes, shall with effect from the date of commencement of the Uttar Pradesh Higher Education Services Commission (Amendment) Act, 1985, be deemed to have been appointed in a substantive capacity provided that such teacher has been continuously serving the College from the date of such *ad hoc* appointment up to the date of such commencement.

1. Ins. by U.P. Act No. 9 of 1982, w.e.f. December 4, 1982.

2. Subs. by U.P. Act No. 2 of 1992 (w.e.f. 22.11.1992).

3. Ins. by U.P. Higher Education Services Commission Amendment Act, 1985 (U.P. Act No. 22 of 1985 w.e.f. 22-4-1985).

(2) Every teacher deemed to have been appointed in substantive capacity under sub-section (1) shall be deemed to be on probation from the date of such commencement.

¶(2-A) A teacher other than a Principal directly appointed on or before January 3, 1984 on *ad hoc* basis in a vacancy referred to in clause (iv) or clause (v) of sub-para (1) of paragraph 2 of the Uttar Pradesh Higher Education Services Commission (Removal of Difficulties) Order, 1982 or in clause (iv) or clause (v) of sub-para (1) of paragraph 2 of the Uttar Pradesh Higher Education Services Commission (Removal of Difficulties) Order, 1983 in accordance with the provisions of such orders and continuously serving the college from the date of such *ad hoc* appointment till September 2, 1989, who possesses the qualifications prescribed under, or is exempted from such qualifications in accordance with the provisions of the concerned Statutes, may be given substantive appointment by the Management of the college, if—

(a) any substantive vacancy of the same cadre and grade in the same departments is available on September 2, 1989; and

(b) the work and conduct of the teacher is found satisfactory.]

(3) Nothing in this section shall be construed to entitle any teacher to substantive appointment if—

(a) on the date of such commencement, such post had already been filled, or selection for such post had already been made, in accordance with the provisions of this Act, or

(b) such teacher was related to any member of the Management or the Principal of the College concerned.

*Explanation*—For the purpose of this sub-section a person shall be deemed to be related to another if they are related in the manner mentioned in the Explanation to Section 20 of the Uttar Pradesh State Universities Act, 1973.

¶31-C. Regularisation of other *ad hoc* appointments—(1) Any teacher, other than a Principal who—

(a) was appointed on *ad hoc* basis after January 3, 1984 but not later than [November 22, 1991] on a post—

(i) which after its due creation was never filled earlier, or

(ii) which after its due creation was filled earlier and after its filling vacant, permission to fill it was obtained from the Director, or

(iii) which came into being in pursuance of the terms of new affiliation or recognition granted to the College and has been continuously serving the college from the date of such *ad hoc* appointment up to the date of commencement of the

1. Subs. by U.P. Act No. 26 of 1989, dated October 6, 1989.

2. Act by U.P. Higher Education Services Commission, Amendment (U.P. Act No. 2 of 1992) w.e.f. November 22, 1991.

3. Subs. by U.P. Act No. 10 of 1992 (w.e.f. 26.3.1992).

Uttar Pradesh Higher Education Services Commission  
[Amendment] Act, 1992;

[(b) was appointed on *ad hoc* basis under sub-section (1) of Section 16 as it stood before its omission by the Act referred to in Clause (a), whether or not the vacancy was notified to the Commission.]

(c) possessed on the date of such commencement, the qualifications required [or was given relaxation from such qualifications] under the provisions of the relevant statutes in force on the date of such *ad hoc* appointment;

[(d) [\* \* \*]]

(e) has been found suitable for regular appointment by a Selection Committee constituted under sub-section (2) ;

may be given substantive appointment by the management of the college, if any substantive vacancy of the same cadre and grade in the same department is available on the date of commencement of the Act referred to in Clause (a)

(2) The Selection Committee consisting, the following members namely—

(a) a member of the Commission nominated by the Government who shall be the Chairman;

(b) an officer not below the rank of Special Secretary, to be nominated by the Secretary to the Government of Uttar Pradesh in the Higher Education Department;

(c) the Director;

shall consider the cases of every such *ad hoc* teacher and on being satisfied about his eligibility in view of the provisions of sub-section (1), and his work and conduct on the basis of his record, recommend his name to the management of the college for appointment under sub-section (1).

(3) Where a person recommended by the Commission under Section 13 before the commencement of the Act referred to in sub-section (1) does not get an appointment because of the appointment of another person under sub-section (1) in the vacancy for which he was so recommended, the State Government shall make suitable order for his appointment in a suitable vacancy in any college and the provisions of sub-sections (5) and (6) of Section 13 and Section 14 shall *mutatis mutandis* apply.

(4) A teacher appointed on *ad hoc* basis referred to in sub-section (1) who does not get a substantive appointment under that sub-section and a teacher appointed on *ad hoc* basis who is not eligible to get a substantive appointment under sub-section (1) shall cease to hold the *ad hoc* appointment after [June 30, 1992].

1. Subs. by U.P. Act No. 10 of 1997 (w.e.f. 26-5-1997)

2. Am. by U.P. Act No. 10 of 1997 (w.e.f. 26-5-1997)

3. Clause (d) omitted by U.P. Act No. 10 of 1997 (w.e.f. 26-5-1997)

4. Subs. by U.P. Act No. 2 of 1992 (w.e.f. 30th June, 1992)

<sup>1</sup>[(5) Notwithstanding anything to the contrary in sub-section (4), the Selection committee constituted under sub-section (2), shall in view of the amendments made in Clauses (b) to (d) of sub-section (1), of the Uttar Pradesh Higher Education Services Commission (Amendment) Act, 1997 reconsider the case of every teacher who ceased to hold appointment under sub-section (4) and if as a result of reconsideration any such teacher is found suitable for substantive appointment, he may be given substantive appointment as provided in sub-section (1), and shall be deemed never to have ceased to hold appointment.]

<sup>2</sup>**31-D. (1) Any person who,—**

- (a) was engaged to teach in the B.Ed. course of study under self-finance course in a grant-in-aid college and the said course has been taken on grant-in-aid; and
- (b) has been engaged on or before August 31, 2003 and continuously serving the college up to the date of commencement of the Uttar Pradesh Higher Education Services Commission (Third Amendment) Act, 2006 and possesses the qualifications determined by the State Government on the date of consideration by the selection committee constituted under sub-section (2); and
- (c) has been found suitable for regular appointment by the Selection Committee constituted under sub-section (2);

may be given substantive appointment by the management of the college to the post created by the State Government.

(2) The Selection Committee referred to in sub-section (1) shall consist of,—

- (a) a member of the Commission nominated by the State Government who shall be the Chairman;
- (b) an officer not below the rank of Special Secretary, to be nominated by the Secretary to the Government of Uttar Pradesh in the Higher Education Department;
- (c) the Director.

(3) The Selection Committee constituted under sub-section (2) shall consider the case of each candidate and on being satisfied about his eligibility in view of the provisions of sub-section (1), recommend his name to the management of the college for appointment.

**31-E. Absorption of teacher on honorarium—**(1) Subject to the provisions contained in Sections 12 and 13, if any vacancy exists, which <sup>3</sup>[could not be] filled under the provisions of said sections, a teacher on honorarium shall be absorbed in the manner prescribed under sub-section (2), who is working in grant-in-aid college, possessing educational qualifications determined by the State Government,

1. Sub-section (5) Ins. by U.P. Act No. 10 of 1997 (w.e.f. 26-5-1997).

2. Section 31-D and 31-E *subs.* by U.P. Act No. 42 of 2006. Published in U.P. Gazette, Extra., Part-I, Section (ka), dated 28 December, 2006

3. *Subs.* by U.P. Ordinance No. 8 of 2014 (Amendment) (Second) Ordinance 2014. Published in U.P. Gazette, Extra., Part II, Section (ka), dated 30th July, 2014 (w.e.f. 26-5-2014)



receiving honorarium, thereby working for a minimum period of three academic sessions and has been working till the date of commencement of the Uttar Pradesh Higher Education Services Commission (Third Amendment) Act, 2006.

(2) Where any substantive vacancy in the post of a teacher in a grant-in-aid college is to be filled by direct recruitment, such post shall, at the instance of the Director, be offered by the management to teacher on honorarium referred to in sub-section (1).

(3) Where any teacher on honorarium who has been offered appointment in accordance with the provisions of sub-section (2) fails to join the post within the time allowed, which shall not be less than fifteen days, his further claim shall cease automatically.

*Explanation.*—For the purposes of this section—

“teacher on honorarium” means a person working in grant-in-aid college and is engaged in teaching a course of study and receiving payment from the Funds of State aid on a fixed honorarium appointed on a contractual basis with the prior approval of the Director.

(4) Where the Management fails to offer any post to a teacher on honorarium in accordance with the provisions of sub-section (2) within the time specified by the Director, the Director, may himself issue the letter of appointment to such teacher on honorarium and the teacher on honorarium concerned shall be entitled to get his salary as teacher, from the date, he joins the post in pursuance of such letter of appointment.

#### COMMENTS

The post of Principal is specifically excluded in the provision for granting benefit of regularization. Held that there have been several cases coming before the Court where person is selected as Principal by the Higher Education Service Commission but the Management of the Institution does not permit him to join the institution for which he has been selected. Held that it is wholly illegal because if the selected person is not allowed to join as Principal of the institution then the very purpose of the Commission becomes redundant.

The Allahabad High Court issued a general mandamus that if a person has been selected as Principal of a Degree College by the U.P. Higher Education Service Commission, he must be appointed as Principal within one month of production of the recommendation by him before the Manager of the Institution concerned unless the non-appointment can be justified by the Management on some legal grounds and the violation of this mandamus will make Manager or other person controlling the institution liable to contempt proceedings.<sup>1</sup>

**32. Power to make Rules**—The State Government may, by notification, make rules for carrying out the purposes of this Act.

#### COMMENTS

Rule framed under Article 309 of the Constitution of India are a piece of Legislation. No legislation can be challenged on the ground of *mala fide*.<sup>2</sup>

1. *Indra Pal Singh v. State of Uttar Pradesh*, 1993 LCD 40.

2. *Captain R. D. Gupta v. State of U.P.*, 1990(5) SLR 304 (SC).

The administrative instructions may fill in the gaps where statutory are silent. The administrative instructions cannot supercede, curtail or impugn upon the scope and ambit of statutory rules.<sup>1</sup>

In 1991(1) SLR P&H 236, it was held that the competent authority has the power to frame rules to regulate, the conditions of service under Article 309 of the Constitution of India, but such retrospective operation must satisfy the tests of Article 14 of the Constitution.

The executive powers of the State are co-terminus with its Legislature forms but it is not necessary for finding of the State Government in respect of a matter that there be a law in existence relating to that subject.<sup>2</sup>

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