

- (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.

#### NOTES

In Writ petition No. 1473 of 1986 (Lucknow—Bench) Allahabad. *R. P. Singh v. U.P. H.E.S.C.* and others decided on dt. 11.3.1986 by Allahabad High Court. it has been held that the appointment of purely ad-hoc teacher under section 31 (3) (a) of the U.P. State Universities Act being not in accordance with sub-clause 4 (a) of section 31 of the Universities Act does not oust the jurisdiction of the commission Act by virtue of sub-clause (a) of section 2 of the Commission Act.

In Writ petition no. 1050 of 1986 *Dr. Anil KumarSingh v. State of U. P.* and others decided by Allahabad High Court on dt. 16.1.1986 it has been held that neither clause (a) of sub-section 3 of section 31 of U. P. State Universities Act is applicable as the same is confined to officiating appointments in a vacancy caused by grant of leave to the incumbent for a period not exceeding ten months. In the present case the petitioner was appointed in a leave vacancy, the leave granted to the incumbent being admittedly for more than ten months. Clause (b) of sub-section 3 is also not attracted as the post against which the petitioner was appointed was not a temporary post which may have been converted into a permanent post as contemplated under the provision. Thus Sub-section 3 of section 31, will not be applicable to the petitioners case at all. That being so, the commission was fully empowered to make the recommendation.

## CHAPTER II

### Establishment of the Commission

3. <sup>1</sup>[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 four other members to be appointed by the State Government.

(2) No person shall be qualified for appointment as Chairman or Member unless he is or has been—

- (a) a person occupying, in the opinion of the State Government, a position of eminence in public life or in judicial or administrative service ; or
- (b) a Vice-Chancellor of any University ; or
- (c) a Professor in any University ; or
- (d) a Principal of a college for a period of not less than ten years ; or
- (e) a teacher of a college for a period of not less than fifteen years].<sup>2</sup>

1. "The U.P. Higher Education Commission was established w. c. f. 1.11.1982 (vide Notification No. 5004/15-10-82-15 (95)/81 dated 23.10.1982)."

2. Sub-section (2) of section 4 was *Substituted* by U.P. Act No. 9 of 1982 (w. c. f. 4th December, 1981). It read prior to the substitution as under:

(2) Of the members, one shall be a person who occupies, or has occupied, in the opinion of the State Government, a position of eminence in public life or in Judicial or Administrative Services others shall have teaching experience as:

- (a) Professor of any University ; or
- (b) Principal of a college for a period of not less than ten years ; or
- (c) Teacher of a college for a period of not less than fifteen years,

(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 service conditions of 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 three 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 as a member of the Commission, if he has attained the age of sixty-two years.

**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.

*Explanation.*—Where a member becomes in any way concerned or interested in any contract or agreement made by or on behalf of any University or College or participate in any way in the profits thereof or in any benefit or emolument arising therefrom, otherwise than as a member, he shall, for the purpose of clause (c) be deemed to be guilty of misconduct.

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

(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.

**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 matters 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;
- (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.

**12. Management to make appointments etc. only on the recommendations of Commission.**—(1) Notwithstanding anything to the contrary contained in the Uttar Pradesh State Universities Act, 1973 or in the Statutes made thereunder, (but subject to the provisions of sections 16, 31-A, and 31-B),<sup>1</sup> every appointment as a teacher of any college shall, after the date notified under sub-section (1) of Section 3, be made by the management only on the recommendation of the Commission.

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1. Inserted by U.P. Act 22 of 1985 (w.e. f. 22.6.1985)