

**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.

---

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

(2) For the purpose of making appointment of a teacher under sub-section (1), the management shall notify the vacancy to the Commission.

(3) The manner of selection of persons for appointment to the posts 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 under sub-section (2).

(4) The provisions of this section shall not apply to the appointment of a teacher, vacancy in respect whereof has been advertised in accordance with sub-section (10) of Section 31 of the Uttar Pradesh State Universities Act, 1973 at any time before the commencement of this Act.

(5) Every appointment made in contravention of the provisions of this section shall be void.

#### NOTES

In the case of *Raghvendra Nath Misra v. U.P.H.E.S.G.* and others reported in 1985 U.P.L.B.E.C. 555 it has been held that the selection of principals for post-graduate colleges made by the Commission in pursuance of advertisement issued and placement made in various Post-Graduate Colleges is wrong being not in accordance with law as the Commission failed to follow the law laid down by the High Court. The Commission was thus directed to re-adjust the placement list after taking into account the necessary factual aspects.

In the case of *Rajesh Kumar Shukla v. Dr. S. S. Dubey* and others reported in 1984 U.P. L.B.E.C.—268 it has been held that though section 12 lays down that no appointment shall be made except in accordance with the provisions of the Act; Sub-section (4) of section 12 lays down that the provisions of section 12 shall not apply to the appointment of a teacher, vacancy in respect where of had been advertised in accordance with sub-section (10) of section 31 of the U.P. State Universities Act, 1973 at anytime before the commencement of this Act. the U.P. Higher Education Service Commission Act, 1980 was promulgated on 3.10.1980 whereas the advertisement for the appointment to the post of lecturers had been issued in 1976. The selection was held in 1977 when the applicant was found suitable for appointment. The only thing left was the issue of appointment later which was a ministerial act. In these circumstances Section 12 could not make the order of appointment void.

In S.L.P. (Civil) No. 9516 of 1986 decided by Hon. Supreme Court on dt. 12.11.1986 *U. P. Mahavidyalaya Tadarath Shikshak Niyamitikan Abhiyan Samiti, Varanasi v. State of U. P.* and others it has been held that no ad-hoc appointments could be made by the management after dt. 3.1.1984 except in accordance with section 16.

**13. Recommendation of the Commission.**—(1) The Commission shall, as soon as possible, after the notification of vacancy under sub-section (2) of section 12, hold interview (with or without examination) of the candidates, and recommend the names of not more than three candidates for appointment to every post of a teacher, such names shall be arranged in order of preference.

(2) Where the candidates referred to in sub-section (1) fail to join the post or where they are otherwise not available for appointment, the Commission may, on the request of the management recommend up to two more names of persons found suitable on the basis of the examination or interview held under the said sub-section.

(3) Every recommendation of the Commission under sub-section (1) or sub-section (2) shall be valid for a period of one year from the date of such recommendation.

**14. Duty to make appointments.**—(1) The management shall, within a period of one month from the date of receipt of recommendation of the

Commission under section 13 issue appointment letter to the candidate whose name appears on the top in the order of preference.

(2) Where the candidate 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 candidate is otherwise not available for appointment, the management shall within a reasonable period issue appointment letter to the next candidate recommended by the Commission and the process shall be repeated till the names of the candidates so recommended are exhausted.

**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. Appointment of ad-hoc teachers.**—(1) Where the management has notified a vacancy to the Commission in accordance with sub-section (2) of section 12, and the Commission fails to recommend the names of suitable candidates in accordance with sub-section (1) of that section within three months from the date of such notification, the management may appoint a teacher on purely *ad hoc* basis from amongst the persons holding qualification prescribed therefor.

(2) Every appointment of an *ad hoc* teacher under sub-section (1) shall cease with effect from the earliest of the following dates, namely—

- (a) when the candidate recommended by the Commission joins the post;
- (b) where the period of two months from the date of receipt of the recommendation of the Commission under sub-section (1) of Section 12 expires;
- (c) thirtieth day of June following the date of such *ad hoc* appointment.

**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.

## 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 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 Generals' (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.