

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.

24. Exemptions to minority Institutions.—Notwithstanding anything contained in this Act, the management of any college established by a minority based on religion or language which the minority has the right to administer, shall be entitled to appoint, dismiss, remove, terminate the services of or reduce in rank a teacher or take other disciplinary measures subject only to the approval of the Commission and of the University concerned.

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 provision 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 incharge 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 of 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 for 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 lie against any person for anything which is in goodfaith 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) The 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 this Act.

(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 called 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].¹

[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.

(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.

(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 of 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

1, Inserted by U. P. Act No. 9 of 1982 (w.c.f. 4 December, 1981).

in the Explanation to section 20 of the Uttar Pradesh State Universities Act, 1973”].¹

NOTES

The Hon'ble Supreme Court in *S. L. P. (Civil) No. 9516 of 1986 U. P. Mahavidyalaya Tadarth Shikshak Niyamitikaran Abhiyan Samiti Varanasi v. State of U.P.* and others decided on dt. 12.11.1986. has upheld the constitutional validity of the section 31 (B) of the Act.

It has been held in the following cases that the *ad hoc* teachers appointed after the appointed day i.e. dt. 3.2.1984 are not entitled to the benefit of regularisation under the section 31-(B).

(1) *S. L. P. (Civil) No. 9516 of 1986 U. P. Mahavidyalaya Tadarth Shikshak Niyamitikaran Abhiyan Samiti Varanasi v. State of U. P.* and others decided on dt. 12.11.1986 by Hon. Supreme Court.

(2) Writ Petition No. 526 of 1986 *Dr. Parma Nand Ram v. U.P.H.E. S. C. and others* decided by Allahabad High Court on dt. 8.1.1986.

In Writ Petition No. 5325 of 1984 *Sri Arun Kumar Tripathi and others v. U. P.H. E. S. C. and others* decided by Allahabad High Court on dt. 11.4.1985 it was held that the Rule of Promissory estoppel is not founded upon any right, statutory or contractual, but on the other hand it is founded upon the equity. It is settled that there can be no estoppel against law requiring a certain provision for appointment and no appointment could be made in contravention of the same.

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

THE UTTAR PRADESH HIGHER EDUCATION SERVICES COMMISSION RULES, 1981

[Framed in exercise of the powers under section 32 of the Uttar Pradesh Higher Education Services Commission Act, 1980 (U. P. Act No. 16 of 1980), the Governor : *vide* notification No. 2866/XV-10-81-15 (85)-79] *Dated Lucknow, June, 10 1981*].

PART I

Preliminary

1. Short titles.—These rules may be called the Uttar Pradesh Higher Education Services Commission Rules, 1981.

2. Definitions.—In these rules, unless the context otherwise requires :

- (a) “Form” means a form given in the Appendix to these rules ;
- (b) “Secretary” means Secretary of Uttar Pradesh Higher Education Services Commission.

¹. Inserted by U. P. Act No. 22 of 1985 (w.e.f. 22nd June, 1985).