
(2014) 08 AHC CK 0071
In the Allahabad High Court
Case No : C.M.W.P. No. 3847 (S/S) of 2014

Abhay Kumar Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16E, 16E(10)

Citation : (2015) 1 AWC 310

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : Manjive Shukla, Advocates for the Appellant; Anurag Srivastava, Advocates for the Respondent

Judgement

B. Amit Sthalekar, J.—Supplementary-affidavit filed today is taken on record. Sri R.C. Rastogi has put in appearance alongwith counter-affidavit on behalf of respondent No. 5. Same is taken on record.

2. I have heard Sri Manjive Shukla, learned counsel for the petitioner, Sri Anurag Srivastava, learned counsel for the respondents No. 2, 3 and 4, learned standing counsel for the respondent No. 1 and Sri R.C. Rastogi, learned counsel for the respondent No. 5.

3. The petitioner in this writ petition is aggrieved by order dated 16.5.2014 (Annexure-1 to the writ petition), which is in the nature of a notice, which has been issued to the petitioner calling upon him to appear before the U.P. Secondary Education Service Selection Board (hereinafter referred to as "the Board on 27.5.2014 alongwith original testimonials. It is, however, informed by the learned counsel that this date has now been extended upto 7.8.2014. This notice has been issued by the Board on a complaint made by the Secondary Education Teachers Association, Unit Jai Narain Inter College Lucknow, respondent No. 5 wherein certain allegations have been made that the petitioner does not fulfil requisite qualification and eligibility for the post of Principal. The complaint dated 4.9.2013 has been addressed to the Principal Secretary

(Secondary Education), U.P., Lucknow.

4. The matter is stated to be still pending before the State Government, therefore, it is not necessary for this Court to express any opinion on the allegations contained in the complaint.

5. A preliminary objection has been raised by Sri Anurag Srivastava that in view of the show cause notice dated 16.5.2014 the present writ petition is premature and is not maintainable and the petitioner should first submit his reply to the show cause notice.

6. Sri Manjive Shukla, learned counsel for the petitioner submits that the Board has no jurisdiction to issue notice dated 16.5.2014 inasmuch under Section 16E(10) of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as "the Act, 1921") the appropriate authority in any matter relating to the appointment of Head of Institution is the State Government or, as the case may be, the Director, in the case of a teacher, who may pass necessary order if it is found that appointment of the Head of the Institution or teacher is in contravention of the provisions of the Act, 1921.

Section 16E(10) of the Act, 1921 reads as follows:

"(10) Where the State Government, in cases of the appointment of Head of Institution, and the Director in the case of appointment of teacher of an institution, is satisfied that any person has been appointed as Head of Institution or teacher, as the case may be, in contravention of the provisions of this Act, the State Government or, as the case may be, the Director may, after affording an opportunity of being heard to such person, conceal such appointment and pass such consequential order as may be necessary."

7. Rebutting the submissions of the learned counsel for the petitioner, Sri Anurag Srivastava, learned counsel for the respondents submits that the Board has the power to interfere with the matter relating to the appointment of the Head of the Institution and this power flows from the provisions of Section 9 of the U.P. Secondary Education Service Selection Board Act, 1982 (hereinafter referred to as the Act, 1982). Particularly sub-clause (e) of Section 9 of the Act, 1982 reads as follows:

"9. (e) to advise the Management in matters relating to dismissal removal or reduction in rank of teachers; "

8. The submission of Sri Anurag Srivastava is that the Act, 1982 confers the power upon the Board coupled with certain duties and sub-clause (e) of Section 9 of the Act, 1982 provides that it is the duty of the Board to advise the Management in matters relating to dismissal, removal or reduction in rank of teachers and therefore, it is open for the Board to hold its own independent enquiry on the receipt of the complaint to elucidate the facts as to whether appointment of the Head of the Institution has not been made in contravention of the provisions of the Act, 1921 or the provisions of the Act, 1982.

9. This writ petition is being decided at the admission stage itself with the consent of all the learned counsel for the parties.

10. Section 16E(10) of the Act, 1921 exclusively provides that where the State Government in cases of the appointment of Head of Institution and Director in the case of appointment of Teachers of an Institution, is satisfied that any person has been appointed as Head of the Institution or Teacher, as the case may be, in contravention of the provisions of this Act, the State Government or the Director, as the case may be, after affording an opportunity of being heard to such person, cancel his appointment and pass such consequential order if necessary.

11. Thus, what emerges from the provision of Section 16E(10) of the Act, 1921 is that in the matter of appointment of Head of an Institution as in the present case the power lies exclusively within the domain of the State Government to examine as to whether such appointment is or is not in contravention of the provisions of the Act, 1921. In case it is found that any such appointment of a head of the Institution is in contravention of the provisions of Act, 1921 it is the State Government alone, which is vested with the powers to take appropriate action in the matter after giving an opportunity of hearing to such Head of the Institution and pass necessary consequential orders.

12. The power which flows from Section 9(e) of the Act, 1982 is to advise the Management in the matter relating to dismissal, removal or reduction in rank of teachers. Section 9 itself does not provide any mechanism with regard to the procedure to be adopted for taking action against a teacher whose case is before it for consideration of an order of dismissal, removal or reduction in rank. Thus from a reading of Clause (e) of Section 9 of the Act, 1982 it is clear beyond doubt that the powers and duties of the Board as conferred by Clause (e) of Section 9 of the Act, 1982 are purely advisory and come into play only after an order of dismissal, removal or reduction in rank has been passed and such advise also is to the Management, therefore, the powers under Clause (e) of Section 9 of the Act, 1982 cannot be equated with the powers conferred upon the State Government under the provisions of Section 16E(10) of the Act, 1921.

13. In the present case, the undisputed facts are that the petitioner was appointed as Principal in the Brajrani Inter College Hardoi by the U.P. Secondary Education Service Selection Board on 13.10.2010. Subsequently he was transferred to Jai Narain Inter College, Lucknow on the same post of Principal. Thereafter, after about three years of his working on the post, a complaint was made by the U.P. Madhyamik Shikshak Sangh on 23.9.2013 (Annexure-1 to the counter-affidavit) filed on behalf of respondent No. 5. This complaint is also addressed to the Principal Secretary, (Secondary Education) U.P. Lucknow. A complaint was also made by the said U.P. Madhyamik Shikshak Sangh to the U.P. Secondary Education Service Selection Board on 4.9.2013 (Annexure-11 to the writ petition), which has triggered the impugned show cause notice to the petitioner dated 16.5.2014.

14. However, in view of the proposition of law stated above that the power to hold any enquiry against the Head of the Institution, in the present case, the Principal, vests exclusively in the State Government in view of the provisions of sub-section (10) of Section 16E of the Act, 1921, in my opinion, the U.P. Secondary Education Service Selection Board has no power to issue any show cause notice to the petitioner and such powers cannot be usurped by the Board under the garb of its advisory powers under Section 9(e) of the Act, 1982. Any enquiry that may have to be conducted will be conducted exclusively by the State Government.

15. So far as the preliminary objection made by Sri Anurag Srivastava that in view of the show cause notice dated 16.5.2014 the present writ petition is premature and is not maintainable, such objection has been raised only to be rejected. Once this Court has come to the conclusion that the Board has no jurisdiction to issue any show cause notice, the very survival of the show cause notice is under a cloud and the petitioner cannot, therefore, be compelled to suffer himself to appear before the Secondary Education Board in any enquiry, which is beyond the pale jurisdiction of the Board.

16. In this view of the matter, the impugned show cause notice dated 16.5.2014 is absolutely illegal or without jurisdiction and is accordingly quashed. The writ petition is allowed.