
(2009) 01 AHC CK 0116
In the Allahabad High Court
Case No : Special Appeal No. 35 of 2009

Anees Ahmad

APPELLANT

Vs

Ramesh Kumar Pandey And Others

RESPONDENT

Date of Decision : 15-01-2009

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 17

Citation : (2009) 01 AHC CK 0116

Hon'ble Judges : Janardan Sahai, J and S.P.Mehrotra, J

Final Decision : Disposed Of

Judgement

S.P. Mehrotra, J.—Heard the learned counsel for the appellant, Sri A.K. Yadav, learned counsel for the respondent no.3 and the learned standing counsel.

2. This is an appeal against an order of the learned single judge dated 19.12.2008 by which he has issued notice to the respondents in the writ petition and has also passed an interim order. According to the appellant he is the senior most teacher in the intermediate college and claims a right to officiate as the principal. The respondent Ramesh Kumar Pandey in this appeal on the other hand has been selected by the U.P. Secondary Education Services Selection Board, Allahabad. It appears that the appellant filed a Writ Petition No. 59995 of 2008 challenging the selection of the respondent. In that writ petition, which is pending an interim order was passed that the joining of the selected candidate shall abide by final order to be passed in the writ petition. The said order was misinterpreted by the management by its letter dated 3.12.2008 to mean that Ramesh Kumar Pandey the selected candidate would not be permitted to join. Against this letter of the management the respondent in this appeal filed the present Writ Petition No. 66302 of 2008 in which the impugned interim order has been passed by the learned single judge. The learned single judge has interpreted the order passed in the earlier writ petition to mean that no stay order was granted in favour of the appellant and all that the court had directed was that joining of the selected candidate would be made subject to the final

order to be passed in the writ petition. The learned single judge has directed that the District Inspector of Schools, Bareilly shall ensure that the respondent in this appeal shall be allowed to join as principal of the college within a week of the receipt of certified copy of the order failing which the District Inspector of Schools shall appoint an authorized controller in the college.

3. Learned counsel for the appellant submitted that the interpretation placed by the learned single judge upon the interim order dated 25.11.2008 in Writ Petition No. 59995 of 2008 is erroneous and he also submits that the learned single judge by the interim order has virtually allowed the writ petition and no final relief could be granted by the learned single judge. Section 17 of the Uttar Pradesh Secondary Education (Services Selection Boards) Act, 1982 reads as under;

"17. Inquiry by Director. (1) Where any person is entitled to be appointed as a teacher in any institution in accordance with (Chapter II), but he is not so appointed by the management within the time provided therefor, he may apply to the Director or any Officer authorized by him for a direction under subsection (2).

(2) As far as may be within one month from the date of receipt of an application under subsection (1), the Director or the officer authorized by him 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, direct

(a) The management to appoint applicant as a teacher forthwith, and to pay him salary from the date specified in the order; and

(b) The Head of the Institution 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 or the officer authorized by him, be recoverable by the Collector as arrears of land revenue from the property belonging to or vested in the society or body running the institution."

5. It is clear from the aforesaid provisions that in the event the management has failed to appoint a selected teacher the Director may issue a direction to the management to appoint him as a teacher and to pay him salary from the date specified in the order. Subsection 3 of Section 17 provides that the salary due to such teacher shall, on a certificate issued by the Director or the officer authorized by him, be recoverable by the Collector as arrears of land revenue from the property belonging to or vested in the society or body running the institution.

6. Learned counsel for the respondents however submitted that the management has already allowed the respondents to join on 26.12.2008 and as such the direction given by the learned single judge for appointment of an authorized controller in the event of the management not permitting the respondent to join is infructuous.

7. We are satisfied that the view taken by the learned single judge on the point that the respondent in this appeal is entitled to join does not suffer from any illegality. However, as regards the appointment of the authorized controller as the counsel for the respondent has himself stated that the management has already allowed the respondent to join and as the procedure to be adopted when the teacher selected by the Commission is not allowed to join is provided under Section 17 the direction for appointment of an authorized controller, which has been issued by the learned single judge without opportunity to the management is set aside. This order disposes of the writ petition filed by the respondent, namely, Writ Petition No. 66302 of 2008. However, it is made clear that the joining of the respondent would be subject to any order that may be passed in Writ Petition No. 59995 of 2008. The appeal is disposed of.