
(1998) 09 AHC CK 0013
In the Allahabad High Court
Case No : C.M.W.P. No. 1665 of 1998

Bhagwan Singh Sisodia

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 04-09-1998

Acts Referred:

Citation : (1998) 3 AWC 2114

Hon'ble Judges : M. Katju, J

Bench : Single Bench

Advocate : Ashok Khare, for the Appellant;

Judgement

M. Katju, J.—This writ petition has been filed for quashing order dated 31.12.97 Annexure-14 to the petition and order dated 2.1.97 Annexure-15 as well as order 7.1.97 Annexure-5 to the writ petition and for a mandamus directing the respondents not to interfere with the functioning of the petitioner as officiating Principal of the College in question.

2. The dispute in this case is regarding the question as to who is entitled to officiate as the Principal of the College till a regular selection. It appears that the U. P. Secondary Education Service Commission prepared a panel of three names for appointment on the post of Principal of D. N. College and A. K. School, Tirwa, Kannauj vide Annexure-3 to the petition. In this panel, Mohd. Nairn is at Serial No. 1 and Chandresh Nath Singh Baghel is at serial No. 2 and Ram Chandra is at serial No. 3. This select list was prepared on 3.8.96 and accordingly Mohd. Nairn was appointed as Principal on 4.8.96 and he worked till 30.6.97 when he retired. The claim of respondent No. 8 Chandresh Nath Singh Baghel is that he should be appointed as permanent Principal since he is at serial No. 2 in the select list. On the other hand, the case of the petitioner is that the select list stood exhausted on the appointment of Mohd. Nairn.

3. The respondents have appointed Chandresh Nath Singh Baghel as Principal on the reasoning that he was at serial No. 2 in the select list and hence he had the

right to be appointed. The question is whether the select list dated 3.8.96 stood exhausted or not after the appointment of Mohd. Nairn as Principal.

4. The learned counsel for the petitioner has relied on the decision of this Court in *Dr. Chandra Deo Pandey v. Chancellor. Allahabad University* 1989 (1) UPLBEC 727 and the decision in *Adam Malik Khan and others v. Aligarh Muslim University, Aligarh and others*. 1997 (1) ESC 331 . On the other hand, learned counsel for respondent No. 8 relied on the decision in *Kishori Raman Shiksha Samiti and Others Vs. Regional Depnty Director of Education and Others*, . *Kishori Roman Shiksha Samitf, Mathura v. Regional Inspectress of Girls Schools, Agra*, 1997 (2) ALR 34 ; *Girish Dhan Dwiuedi v. U. P. S, E. S. Commission and Dr. Uma Kant v. Dr. Bhika Lal Jain and others* 1992 (1) SCO 105.

5. I have carefully gone through these decisions and have considered the arguments of learned counsel for the parties. In my opinion since Mohd. Nairn had joined in August, 1996 and he actually worked till 30.6.97, i.e., for about 11 months the select list stood exhausted. The position may have been different if Mohd. Nairn had not joined, or after Joining within a few days thereafter, he had resigned or had died or had abandoned his duty. If a person does not Join, or he resigned or died within a few days after joining, then of course it could be argued that the list did not stand exhausted, as that would be a practical approach. But if he joins and functions for a considerable period of time, the select list stands exhausted.

6. in the decision in *Kishori Roman Shiksha Samiti, Mat.hu.ra a. R.I.G.S., Agra (supra)*, relied upon by the learned counsel for respondents, the person who was first in the panel died five days after joining as Principal. In my opinion, this decision is distinguishable because in the present case Mohd. Nairn had worked for 11 months as Principal and then he retired. In my opinion, in this situation a fresh selection had to be held by the Commission or Board (which now stands substituted for the Commission).

7. In the circumstances, this writ petition is allowed. The impugned orders are quashed, and the respondents are directed not to interfere with the petitioner's functioning as officiating Principal of the institution in question.