

(2008) 12 AHC CK 0392
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 41128 of 2004 and 757 of 2007

Bharti Chauhan

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 04-12-2008

Acts Referred:

Citation : (2008) 12 AHC CK 0392

Hon'ble Judges : S.U.Khan, J

Final Decision : Disposed Of

Judgement

S.U. Khan, J.—The petitioners of both these writ petitions are fighting with utmost tenacity for the post of Headmistress in Braham Rishi Girls Junior High School, Etah. The role of the Management as well as of the office of Basic Shiksha Adhikari is also highly objectionable. On 19.1.2005 Hon''ble V.K. Shukla, passed an order in the first writ petition directing B.S.A., Etah to be personally present along with relevant records in relation to selection and appointment of the two petitioners and one Smt. Kumkum Gupta. On the next date i.e. 9.2.2005 a detailed order was passed by the same Hon''ble Judge recording that irrelevant records had been produced and requisite records had not been produced. In the said order it was also observed that two letters brought on record appeared to be manufactured and Manoj Jain, a clerk in the office of B.S.A. was brotherinlaw of the manager of the institution. It was also found that Saurabh Jain son of Manager and Pankaj Jain real brother of Manoj Jain were also employees in the office of B.S.A. hence possibility of manipulation could not be ruled out. Ultimately Secretary, Basic Education (U.P.) at Lucknow was directed to make inquiry in respect of misplacement of records and manner in which the selection proceedings had been conducted.

2. Smt. Bharti Chauhan petitioner of the first writ petition had been suspended by the Management on 21.2.2004. Operation of the said order was stayed in the first writ petition on 6.10.2004.

3. The Secretary has filed his report, severely indicting the then B.S.A. and the

other employees of the office of the B.S.A. It has been stated at the bar that the services of the previous B.S.A. have been terminated.

4. Shri K.C. Shukla, learned counsel represents Smt. Bharti Chauhan, Shri Rahul Jain, learned counsel represents the Manager and Shri R.M. Saggi and Sri R.K. Jain, learned counsel represent Smt. Nirmala Saxena.

5. Admittedly, Smt. Bharti Chauhan is neither teaching nor working as Headmistress still she is receiving full salary under interim order of this Court. Learned counsel for the Management stated that about 150 letters were written to her to come and join but she was not attending the School. On the other hand according to the learned counsel for Smt. Bharti Chauhan, she wrote about 150 letters to the Management to let her join but of no avail. However, this fact is admitted that practically she is not attending the School but receiving the salary. On repeated, precise inquiry from the Court it was admitted by the learned counsel for both the parties that management was ready to let her work only as teacher while she was not willing to join except as headmistress.

6. The dual control of private management and State Government is playing havoc with the institutions privately managed but funded by the State. The main causality of this confusion is the education (more precisely, the students). A sizable number of teachers of such institutions in Uttar Pradesh is getting salary from the State Government without teaching. Some times genuine teachers also suffer due to high handedness of the management. There may hardly be any such privately managed and Government funded institution in Uttar Pradesh, teachers and nonteaching employees of which may not be involved in some litigation in the High Court.

7. Shri Rahul Jain, learned counsel for the Committee of Management at one stage raised the argument that the Institution in question was a minority Institution. Learned counsel for the petitioner in the first writ petition at once interjected and refuted the argument. Thereupon Shri Rahul Jain, learned counsel for the management categorically stated that he was not raising this point qua the present dispute. Accordingly, these writ petitions are being decided treating the Institution not to be minority institution. However, this question, as to whether this institution is or is not minority institution is left open to be decided in some other case, if occasion arises, which may not be connected with the dispute involved in these two writ petitions.

8. According to the case of Smt. Nirmala Saxena (as fully supported by the management) she was selected and appointed as Headmistress in the school in question on 26.6.1998 and started working as Headmistress with effect from 1.7.1998. Learned counsel for the parties have stated that prior to that she was teacher in the school in question. However, learned counsel for Smt. Nirmala Saxena and the management stated that her appointment as Headmistress was not dependent upon the fact that she was also teacher in the same institution. Thereafter, Smt. Nirmala Saxena did a very strange thing. She wrote a letter on

6.4.1999 to the Manager, copy of which is Annexure5 to the writ petition. According to the said letter she was having some family problem which could not be disclosed in the letter/application, hence she was unable to perform the duties of Headmistress in future. Accordingly, it was requested that the responsibility of Headmistress could be given to some other person. It was further stated that as soon as circumstances became favourable she would again resume the responsibility of the Headmistress.

9. It is admitted to all the parties that after the said letter dated 6.4.1999, Smt. Nirmala Saxena did network as Headmistress however, she continued to work as teacher and received the salary of teacher. Thereafter, Smt. Bharti Chauhan was appointed as Headmistress on 1.7.1999.

10. Smt. Nirmala Saxena gave another letter on 14.1.2004 Annexure6 to the second writ petition stating therein that her family problems were over hence she should be given back the charge of the Headmistress; and from here the dispute starts. Smt. Bharti Chauhan started asserting that she was duly selected and regularly appointed Headmistress hence she could not be ousted in such a manner merely because Smt. Nirmala Saxena had given the letter dated 14.1.2004. Smt. Nirmala Saxena and the management both asserted that the appointment of Smt. Bharti Chauhan dated 1.7.1999 on the post of Headmistress was only in the officiating capacity and not as regular Headmistress hence she should make way for Smt. Nirmala Saxena.

11. I am of the opinion that claim of both of them is utterly baseless.

12. As far as Smt. Nirmala Saxena is concerned, her letter dated 6.4.1999 requesting for being spared from performing the duties of Headmistress due to family problems but her continuance to work as Assistant teacher is something unknown in the annals of service jurisprudence. It is inconceivable that a person would be fully fit to teach but not perform the duties of Headmistress of a Junior High School which by no stretch of imagination can be said to be too strenuous. For five years i.e. from 1999 till 2004 Smt. Nirmala Saxena continued to teach. If her family problems were serious then she would not have even taught. If it is so then she cannot justify receiving of salary for this period even of teacher. Moreover there is no provision under the Act, Rules or administrative instructions under which a Headmistress may indefinitely refuse to work as Headmistress even though she/he is not on leave. For what real purpose this arrangement for five years was made is not understandable. None of the parties have brought the real purpose of this arrangement on record. However, as under no provision of law such type of arrangement is permissible hence Smt. Nirmala Saxena cannot be permitted to resume as Headmistress after a gap of five years while for all these five years she allegedly continued to come to school for teaching.

13. On the other hand, Smt. Bharti Chauhan also could not show that her appointment was regular. For regular appointment on the post of Headmistress in recognized Junior High School procedure is prescribed under U.P. Recognized

Basic Schools (Junior High School) (Recruitment and Conditions of Services of Teachers) Rules, 1978. In Rule 7 it is mentioned that vacancy shall be filled after advertisement in at least two newspapers one of whom must have adequate circulation all over the State and the other in a locality where the school is situate. Under Rule 9 constitution of the selection committee is provided. Under Rule 10 procedure for selection is provided.

14. Smt. Bharti Chauhan could not show that the post of Headmistress was advertised in any newspaper. She could not even produce call letter which must have been issued to her for appearing in the interview. She could not produce any appointment letter. Her learned counsel stated that appointment letter was not issued to her. On repeated enquiry by the Court learned counsel of Smt. Bharti Chauhan admitted that Smt. Chauhan was in possession of the appointment letter issued to her when she was appointed as teacher. However, absolutely no reason could be given for not being issued the appointment letter appointing her as Headmistress. The entire emphasis of learned counsel for Smt. Chauhan was that all these documents must be produced by Basic Shiksha Adhikari. It is the duty of the petitioner and petitioner alone to file documents in support of his/her case. Only such documents may be directed to be produced by the respondents which cannot be in possession of the petitioner. The three documents i.e. the newspaper cutting, call letter and appointment letter must be in possession of the petitioner. If she cannot produce them then she cannot get any relief from the Court. The only inference which may be drawn in such situation is that the allegation of the management that Smt. Chauhan was appointed on officiating basis is correct.

15. In view of the above finding, the post of Headmistress in the school in question requires to be filled up by fresh appointment. Until fresh appointment, neither Smt. Bharti Chauhan nor Smt. Nirmala Saxena deserve to continue as Headmistress. Both have behaved in unprincipled (or unprincipled) manner. Accordingly, till regular selection is made and selected Headmistress takes charge, the teacher at SI. No. 3 shall be handed over the charge of Headmistress. Learned counsel for all the parties on enquiry from the Court stated that Smt. Sudha Kulshrestha was at SI. No. 3 of seniority.

16. Accordingly, charge of Headmistress shall immediately be handed over to her. Any laxity in this regard particularly on the part of present B.S.A. and present management will not be appreciated by this Court in the least. Whatever salary has been paid till date to Smt. Bharti Chauhan and Smt. Nirmala Saxena shall not be refundable. However, they shall not be entitled to any further salary for the period till date apart from the salary which has already been paid. Both must realise that enough is enough and from today onward they must teach properly. From today onward they shall teach and be paid the salary of teachers.

17. On 25.11.2008, when this matter was heard, since morning it was mentioned several times that the case might be taken up. At each occasion there was a very clear indication that B.S.A. who was present in pursuance of earlier order was

not so much assisting the learned standing counsel as the learned counsel for the management. Learned counsel for the management was also virtually holding brief for the B.S.A. and at two or three occasions the learned counsel for the management had made the mention that as B.S.A. had come hence matter might be heard. The B.S.A. is directed to act impartially and not to take side with any one. The present B.S.A. must remember the fate of the earlier B.S.A. who was severally criticized by the Secretary in his report filed along with affidavit on 19.5.2005. Let the process of selection of new Headmistress start by advertisement in the daily Hindi newspapers Dainik Jagran and Amar Ujala within two months from today. However, it is clarified that both Smt. Bharti Chauhan and Smt. Nirmala Saxena be permitted to apply against advertisement.

18. Both the writ petitions are disposed of accordingly.