

(1991) 09 AHC CK 0060

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 805 of 1984

Birendra Bahadur Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-09-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Intermediate Education Act, 1921 — Section 16E, 16E(10), 16E(11), 16GG

Citation : (1991) 2 AWC 259 : (1991) 2 UPLBEC 1375

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : A.K. Singh, for the Appellant; Vijai Bahadur and R.C. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

R.R.K. Trivedi, J.—Petitioner Birendra Bahadur Singh, lecturer in - Mathematics, Bapu Maha Vidyalaya Inter College, Salimpur, Deoria (hereinafter referred to as the College), has filed this writ petition praying to issue a writ of quo warranto order or direction in the nature thereof requiring Respondent No. 6 Shri Prakash Sinha to show under what authority he is occupying the office of principal of the College where Petitioner is lecturer. It has also been prayed that Respondent No. 6 be restrained from functioning as Principal of the Collage and the office of principal be declared as vacant. It has been further prayed that Respondents 1 to 5 may be directed not to allow Respondent No. 6 to hold office of principal and they may further be directed to declare the post of head of the institution as vacant and to advertise the same for appointment.

2. Case of Petitioner is that Shri Pratap Narayan Sinha (father of Respondent No. 6) Sri Prakash Sinha, was principal of the College and he was due to retire on 30-6-1976. He proceeded on leave preparatory to his retirement with effect from 9-12-1975. Same day Respondent No. 6 was appointed in his place on ad hoc

basis and same day the District Inspector of Schools approved his appointment, It has been stated that Respondent No. 6 was working as lecturer in Subhash Inter College, Bhatni, district Deoria. Teachers of the institution made a representation against appointment of Respondent No. 6 claiming that in view of the provisions contained in U.P. Secondary Education (Removal of Difficulties) Order, 1975 the senior-most teacher of the institution should be appointed to officiate as principal till permanent appointment is made. On this representation, the Deputy Director of Education VII Region, Gorakhpur, Respondent No. 3 by his order dated 2-2-1976 set aside appointment of Respondent No. 6. A copy of the order dated 2-2-1976 has been filed as Annexure I to the counter affidavit of Respondent No. 6 A perusal of the order shows that Dy. Director of Education set aside appointment of Respondent No. 6 on two grounds:

(i) that under the Removal of Difficulties Order, 1975, only senior most teacher could be appointed principal on ad-hoc basis and his claim could be ignored only when there is reliable evidence to show that he is incapable of holding the post. (It is difficult to assume that no teacher in the college in lecturer grade or L.T. grade is capable of functioning as head of the institution).

(ii) that the Respondent No. 6 was related to the head of the institution being his son and could not be legally appointed.

3. Dy. Director of Education directed the management to take immediate steps for appointment in accordance with law. This order was challenged by committee of management of the college by filing Civil Misc. Writ Petition No. 176A of 1976. On 10-2-1976 an interim order was passed to the following effect:

Issue notice.

Operation of the order dated 2-2-1976 shall remain stayed till the end of June, 1976.

4. The management, however, by another resolution dated 5-5-1976 continued the appointment of Respondent No. 6 as head of the institution until a regular candidate is selected for appointment. This resolution dated 5-5-1976 has been filed as Annexure I to the writ petition. It appears that same day it was sent to the District Inspector of Schools, Deoria, for approval. It was also mentioned in the letter that as vacancy will arise only after 30-6-1976, on retirement of principal, steps for permanent arrangement shall be taken thereafter. The District Inspector of Schools approved the resolution dated 5-5-1976 by his order dated 12-5-1976.

5. The interim order dated 10-2-1976 mentioned above was, however, modified on 7-7-1976 by this Court The order has been filed as Annexure II to the writ petition which is being reproduced below:

We have heard counsel for the parties. The interim order dated 10th February, 1976 is modified, It is directed that the Petitioner is at liberty to make any fresh ad-hoc appointment to the post of principal including that of Sri Prakash Sinha

irrespective of the impugned order dated 2nd February, 1976 passed by the Deputy Director and in case Sri Prakash Sinha is appointed as principal, the District Inspector of Schools, shall be at liberty to act according to law ignoring the order of the Deputy Director of Education under challenge in this writ petition.

6. From a perusal of the order dated 7-7-1976, it appears that this Court permitted the Committee of Management, which was Petitioner in that writ petition, to make fresh appointment on ad-hoc basis to the post of principal including that of Shri Prakash Sinha which was to be subject to the approval or disapproval of the District Inspector of Schools. Respondent No. 6 continued to occupy the post of principal. Committee of Management had already continued his appointment before the order of this Court dated 7-7-1976. In the meantime, Section 16-GG of the Uttar Pradesh Intermediate Education Act, 1921 (hereinafter referred to as the Act) was inserted by U.P. Act V of 1977 with effect from 21-4-1977. Section 16-GG of the Act contained provisions for regularisation of appointment of ad-hoc teachers appointed during 18th August, 1975 to 30th September, 1976 (both dates inclusive). The State Government framed Regulations in respect of the appointments of teachers and head of the institutions and in view of these Regulations, the Committee of Management was required by the Educational authorities to take immediate steps for permanent appointment of the head of institution according to the regulations. The committee of management then filed Writ Petition No. 1525 of 1976 in this Court and this Court by order dated 17-8-1977 passed the following order:

Heard counsel for the parties. We direct that until further order, the Respondents shall not insist that Petitioner shall hold selection for appointment of principal.

In Writ Petition No. 1525 of 1976, the case of the committee of management was that u/s 16-GG of the Act, appointment of Respondent No. 6 stands regularised and they cannot be compelled to take steps for permanent appointment for the post of head of the institution. It appears that from July, 1977 payment of salary to Respondent No. 6 was stopped by the Educational authorities as under the Removal of Difficulties II Ind Order, 1976, the appointment could be continued only up to 30-6-1976. Respondent No. 6 then filed Writ Petition No. 2056 of 1977 in this Court. In this Writ Petition case of Respondent No. 6 was that in view of the pendency of Writ Petition No. 1525 of 1976, he was working as principal in the college and interim order has been passed in his favour. In this Writ Petition filed by Respondent No. 6, District Inspector of Schools and Deputy Director of Education, Gorakhpur, were directed to file counter affidavit. The Deputy Director of Education by his order dated 3-1-1979 directed the District Inspector of Schools, Deoria to apprise him of the steps taken for filing counter affidavit. In reply of this letter the District Inspector of Schools by his letter dated 17-2-1979, which has been filed as Annexure HI to the Writ Petition, recommended that Respondent No. 6 has been regularised by the committee of management u/s 16-GG of the Act. He also said in his letter dated 17-2-1979 that u/s 16-GG, the Respondent No. 6 could be regularised. It may be mentioned at this place that in

Writ Petition No. 176A of 1976 statement was made that the writ petition has become infructuous and the writ petition was accordingly dismissed on 22-2-1979. The order has been filed as Annexure IV to the writ petition, Writ Petition No. 1525 of 1976 was dismissed on merits by a detailed order dated 27-3-1979 and it was held that Respondent No. 6 could not be regularised on the post of head of the institution u/s 16-GG of the Act. This order of the Division Bench has been filed as Annexure V to the writ petition. The Division Bench specifically held that Respondent No. 6 could not be regularised u/s 16-GG and it also upheld the validity of the regulations framed by the State Government. Writ Petition No. 2056 of 1977 filed by Respondent No. 6 for payment of salary was also got dismissed as not pressed on 20-8-1979 which has been filed as Annexure IV to the counter affidavit filed by Respondent No. 6. All the orders have become final. Petitioner's case is that in view of the dismissal of Writ Petition No. 176A of 1976 the order dated 2-2-1976 by which the appointment of Respondent No. 6 was set aside, continued in existence and Respondent No. 6 cannot be permitted to continue on the post. It has been further said that services of Respondent No. 6 could not be treated regularised u/s 16-GG of the Act and he is not entitled for salary. He is illegally occupying the office of principal and is being paid salary. It has been further said that there is great resentment amongst the teachers of the college against, this high handed action on the part of the Educational authorities and several representations have been made to the Educational authorities for action u/s 16 E of the Act for which teachers have been assured. However, no action is being taken, and the Respondent No. 6 is being allowed to continue on the post illegally. Some allegations regarding mala fides have also been made stating that Respondent No. 6 procured the orders in collusion with the District Inspector of Schools by exercising influence of his father-in-law Ram Sharan Lal Srivastava who was a member of the committee of management of the college at the time the Respondent No. 6 was appointed. It has also been said that Shri Ashok Kumar. Sinha, real brother of Respondent No. 6, was also a member of the committee of management at the time of appointment of Respondent No. 6. Petitioner has submitted that he is M.Sc. L.T., and has teaching experience of 24 years as lecturer and administrative experience of 19 years as N.C.C. Officer and, as such, he is fully qualified for being considered for the post of principal but as Respondent No. 6 is being illegally continued on the post, he is suffering irreparable loss and injury.

7. Respondent No. 6 has filed counter affidavit and has submitted that he is M.A. B.Ed, and was a permanent lecturer in Subhash Inter College, Bhatni, Deoria. As the principal of the College was to retire on 1-11-1975, but as he could not retire during the midst of the Session, he was entitled to continue till the end of Session, i.e. 30-6-1976. The principal was, however, not keeping good health and thus proceeded on leave. The management in view of the special nature of duties, which a principal of the college has to perform, did not find the senior most teacher fit for being given officiating appointment and consequently post of

principal was advertised in newspapers. Respondent No. 6 on knowing the advertisement published in newspaper "Daily Action" dated 12-11-1975, applied for the post. He was called for interview by the Selection Committee and he appeared before selection committee along with other candidates. Respondent No. 6 was found suitable and was thus appointed on 9-12-1975 and the then principal proceeded on medical leave for five months the same day. This leave was further extended up to 30-6-1976. It has been stated that the Deputy Director of Education illegally cancelled the appointment of Respondent No. 6 by order dated 2-2-1976 on representation of certain teachers without appreciating the entire matter. The order was without jurisdiction. Operation of this order was stayed in the writ petition filed by the committee of management. Respondent No. 6 was allowed to continue till permanent arrangement was made by resolution dated 5-5-1976 passed unanimously by the committee of management. This resolution dated 5-5-1976 was approved by the District Inspector of Schools vide his order dated 12-5-1976 which has been filed as Annexure II to the counter affidavit. The approval dated 12-5-1976 was until a permanent arrangement was made for the appointment of head of the institution. Respondent No. 6 has further stated that Dy. Director of Education by his order dated 25-9-1979 treated Petitioner regularised on the post and he did not raised any objection against the approval granted by the District Inspector of Schools. A copy of this order has been filed as Annexure VI to the counter affidavit. It has been stated that on passing this order the entire controversy regarding appointment of Respondent No. 6 came to an end and he is working as permanent principal in the college and thus writ petition filed against the order dated 2-2-1976 had become infructuous and was got dismissed. It has been further said that similarly writ petition filed by Respondent No. 6 for payment of salary had also become infructuous and was got dismissed as not pressed. It has been further said that post of principal is not vacant and there is no question of it being advertised. Appointment of Respondent No. 6 has been regularised u/s 16-GG of the Act. His appointment is in accordance with law. It has been further submitted that Petitioner stands at serial No. 4 in the seniority list of the lecturers of the college and he is not supposed to be in the field of eligibility for the post of principal. He is not senior-most.

8. A counter affidavit has also been filed by the Respondent No. 4 committee of management. However, the allegations made there in are identical. In para 13 of this counter affidavit, it has been stated that on 8-5-1988 the committee of management passed a resolution giving benefit of Section 16GG of the Act to the Respondent No. 6 who was appointed through direct selection and was qualified for the post. It has been said that Petitioner is not entitled for any relief as the post is not vacant and Respondent No. 6 has been appointed in accordance with law.

9. Petitioner has filed rejoinder affidavit reiterating the facts stated in the writ petition. In para 18 of the rejoinder affidavit it has been said that though he stands at serial No. 3 in order of seniority amongst lecturers of the College, but

he is the only genuine person to be appointed as Principal as the two other teachers who are senior to him are untrained and thus not qualified to be appointed as principal.

10. A supplementary counter affidavit has also been filed by Respondent No. 6 annexing therewith an order dated 27-1-1988 by the State of U.P. by which representation made u/s 16-E(10) of the Act has been rejected. I have also been informed that against this order dated 27-1-1988 Writ Petition No. 2203 of 1988 Ghan Shyam Tripathi v. State of U.P. and Ors. has been filed and the order dated 27-1-1988 has not become final.

11. I have heard at length Shri A.K. Singh, learned Counsel for Petitioner and Shri R.C. Srivastava, learned Senior Advocate assisted by Shri Vijai Bahadur Srivastava for Respondents and the learned Standing Counsel. In my opinion, the questions for determination in the present writ petition are as under:

(1) Whether Petitioner who is not senior most teacher has locus standi to question the appointment of Respondent No. 6 on the post head of the institution?

(2) Whether a writ of quo-warranto can be issued in respect of office of principal of a private institution receiving grant-in-aid from the State Government?

(3) What shall be the effect of the order dated 2-2-1976 after the writ petition No. 176-A of 1976 was dismissed as infructuous?

(4) What shall be the effect of the judgment of the Division Bench dated 27-3-1979 in Writ Petition No. 1525 of 1976 wherein it was held that the provisions of Section 16GG of the Act were not applicable to the post of the principal of the college and thus Respondent No. 6 could not be regularised nor could be deemed regularised u/s 16-GG of the Act?

(5) What should be the effect of the order dated 25-5-1979 passed by the Deputy Director of Education treating Respondent No. 6 as regularised u/s 16-GG of the Act?

(6) What shall be the effect of Respondent No. 6 continuing in service since 9-12-1975?

12. Learned Counsel for Respondents, Shri R.C. Srivastava, vehemently challenged the right of Petitioner to question appointment of Respondent No. 6 on the post of head of the institution. It has been submitted that Petitioner is not senior-most teacher and thus he is not entitled to be appointed as officiating principal and he has no locus standi to file the present writ petition Reliance has been placed on cases Krishna Kant Jaiswal v. Vice-Chancellor Banaras Hindu University, Vranasi 1984 UP LB EC 683 and Jagbir Singh v. State of U.P. 1986 UP LB EC 101.

13. Learned Counsel for Petitioner, on the other hand, submitted that though the Petitioner is not senior-most teacher and he is third in the seniority list but the

two teacher mentioned at serial Nos. 1 and 2 are not qualified to be appointed as principal. He is the only person qualified to be appointed as head of the institution. It has further been submitted that as Respondent No. 6 has been illegally regularised on the post of principal, serious prejudice has been caused to the Petitioner and other teachers of the College who could be the prospective candidates for regular selection to the post of principal on the post being advertised.

14. I have thoroughly considered the submissions of both the learned Counsel. In my opinion, the writ petition cannot be thrown out at this stage on the ground that Petitioner has no locus standi to file the present petition. Petitioner cannot be said to be a busy body or inter looper. Admittedly, he is one of the senior lecturer in the college and highly interested in the appointment of head of the institution. In the present petition the challenge is not only for officiating chance but the question of regularising Respondent No. 6 on the post of head of institution is also involved. The case of Jagbir Singh (supra) was confined to the right of officiating chance which could be claimed only by a senior teacher. Facts of the present case are entirely different similarly in case of Krishna Kant Jaiswal, the Petitioner had no requisite qualification for the post nor was he applicant and on these facts the court held that he had no locus standi to file the writ petition. In my opinion, both the cases are distinguishable and do not hold Respondent No. 6. In case of Bangalore Medical Trust v. B.A. Muddappa 1991 SC FB RC 272, Hon'ble Supreme Court has expressed regarding question of locus standi in the following words:

Locus standi to approach by way of writ petition and refusal to grant relief in equity jurisdiction are two different aspects, may be with same result. One relates to maintainability of the petition and other to exercise of discretion. Law on the former has marched much ahead. Many milestones have been covered. The restricted meaning of aggrieved person and narrow out look of specific injury has yielded in favour of broad and wide construction in wake of public interest litigation. Even in private challenge to executive or administrative action having extensive fall out the dividing line between personal injury or loss and injury of a public nature is fast vanishing. Law has veered round from genuine grievance against order affecting prejudicially to sufficient interest in the matter... .

15. In my opinion, considering the aforesaid position of law so far as the question of locus standi is concerned, the writ petition filed by Petitioner is maintainable.

16. Second objection raised by learned Counsel for Respondents was that this petition has been filed for writ of quo-warrants against office of a principal of a private institution which is not a public office and the writ petition is not legally maintainable.

17. Learned Counsel for Petitioner, however, submitted that office of the principal is a public office and writ of quo-warranto can be issued. He has placed reliance

on case; Committee of Management, Colvin Taluqdars" College and Others Vs. Chandra Mohan Asthana and Others, and Kumkum Khanna and Others Vs. The Mother Aquinas and Another, . In both the cases the reasoning given is that writ of quo warranto and mandamus can be issued against committee of management of an aided educational institution which may not be statutory body. Writs can be issued for enforcement or performance of any legal obligation or duty imposed by the statute in case of Miss Kumkum Khanna (supra), it has been held that principal of a private college affiliated to Delhi University is a public authority and writ petition is maintainable against him. In the case in hand the college receives grant-in-aid, the liability to pay salary is of the State Government and the head of the institution has to discharge many statutory obligations and duties under Intermediate Education Act, 1921 and the Regulations framed thereunder. Considering over all functions and importance of the office of principal as he deals with large number of people, there is no doubt that office of principal is a public office and writ of quo-warranto may be issued against a person illegally occupying the same, the Act and the regulations contain elaborate provisions for appointment of the head of the institution and if any person is appointed in breach of the provisions of law, his appointment can be questioned by issuing writ of quo-warranto. The procedure of quo-warranto conferred jurisdiction and authority on the judiciary to control instant action in the matter of making appointments to public offices against the relevant statutory provisions. It also protects a specific individual from being deprived of a public office to which he may have right. Thus the contention of the learned Counsel for Respondents is not tenable.

18. Questions Nos. 3, 4 and 5 are inter-connected and deal with the same question as to whether Respondent No. 6 has been legally appointed as principal of the college and whether he could be regularised under the provisions of Section 16-GG of the Act. On consideration of the entire facts and circumstances of this case, an irresistible impression is created that Respondent No. 6 has been appointed and treated regularised on the post of principal in clear breach of the statutory provisions, order passed by this Court and with a malafide intention to instal Respondent No. 6 as principal of the college in place of his father. Respondent No. 6 was appointed on 9-12-1975 when his father Shri Pratap Narain Sinha proceeded on leave. This appointment when objected to by the teachers of the college was set aside by the Deputy Director of Education on 2-2-1976. In this order one of the ground for setting aside the appointment was that Respondent No. 6 is related to the head of the institution. Writ petition filed against this order was dismissed. Thus the order remained unaffected and Respondent No. 6 could not be legally allowed to continue on the post. Learned Counsel for the Respondents, however, submitted that operation of the order passed by the Deputy Director of Education was stayed by this Court and thereafter vide order dated 7-7-1976 the management was permitted to make fresh ad-hoc appointment and thus the appointment of Respondent No. 6 under orders of this Court cannot be held to be illegal. Sri Srivastava placed reliance on

Supdt. of Taxes, Dhubri and Others Vs. Onkarmal Nathmal Trust and Others, and Mohan Lal Capoor v. State of U.P. 1984 UP LB EC 231 . The contention of learned Counsel is that even after dismissal of the writ petition the action and arrangement made under the interim orders will not be effected.

19. I have seriously considered this aspect of the case and in my opinion the contention of learned Counsel is not correct. By interim order dated 10-2-1976 operation of the order dated 2-2-1976 was stayed up till June, 1976. This order was modified on 7-7-1976 and it was directed that the Petitioner is at liberty to make any fresh adhoc appointment to the post of principal. A combined reading of both the orders shows that this Court did not accept the appointment of Respondent No. 6 as legal and valid and directed the management to make fresh appointment in accordance with law. However, the Management on 5-5-1976, i.e. much before the order passed by this Court, by a resolution extended the term of the appointment of Respondent No. 6 till a regularly selected candidate becomes available for the post. Thus the appointment and continuance of Respondent No. 6 is not on the basis of the orders passed by this Court and the cases cited by learned Counsel are not applicable. It cannot be said that appointment of Respondent No. 6 was made under the authority of this Court. In fact the order dated 22-1976 passed by the Deputy Director of Education 7th Region remained intact as the writ petition was dismissed and Respondent No. 6 could not be legally allowed to continue on the post thereafter.

20. Learned Counsel for the Respondents, however, submitted that the writ petition filed against the order dated, 2-2-1976 became infructuous as the educational authorities, namely the District Inspector of Schools and the Deputy Director of Education approved the continuance of Respondent No. 6 as principal by order dated 12-5-1976 and the Dy. Director of Education by his order dated 25-5-1979 treated Respondent No. 6 as regularised u/s 16GG of the Act. It may be recalled here that Writ Petition No. 1525 of 1976 filed by Committee of Management claiming that Respondent No. 6 stands regularised on the post of principal was dismissed on 27-3-1979. The District Inspector of Schools and Dy. Director of Education were parties to this writ petition and were bound by the order. The Committee of Management was also equally bound by this judgment. However, the committee of management as well as the aforesaid authorities ignoring the detailed judgment on merits passed by this Court on 27-3-1979, regularised Respondent No. 6 u/s 16-GG of the Act. The judgment in Writ Petition No. 1525 of 1976 became final and Respondent No. 6 could not be extended benefit of Section 16-GG of the Act as done by the Dy. Director of Education by order dated 25-9-1979. This Court in cases Ram Saran Pandey v. State of U.P. 1983 UP LB EC 451 , and Pyarelal Chaudhary v. State of U.P. 1978 ALR 503 specifically held that provisions of Section 16-GG will not be applicable in respect of the post of the head of institution. It was said that word "teacher" used in Section 16-GG does not include "principal". In view of the judgment between the parties and the view already taken by this Court in the cases mentioned above Respondent No. 6 could not be legally regularised or could be deemed

regularised u/s 16-GG of the Act. It is difficult to imagine as to how and in what circumstances Respondents Nos. 3 and 5 extended benefit of Section 16-GG to Respondent No. 6 in clear violation of law and they allowed him to continue on the post of the head of the institution for such a long time. So far as Respondent No. 6 is concerned, it is clear from the facts of the case that it was interested in retaining Respondent No. 6 on the post some how or the other, but at least the authorities like Respondent No. 3 and 5 could not be expected to act as a tool in the hands of managing committee. It is note-worthy that resolution dated 8-5-1977 regularising Respondent No. 6 u/s 16-GG of the Act was passed by the committee of management after dismissal of the writ petition filed by it on merits on 27-3-1979 and Respondents Nos. 3 and 5 accepted this resolution as legal and valid.

21. Learned Counsel for the Respondents placed much reliance on the order dated 25-5-1979 and submitted that the effect of this order would be that the earlier order passed by the same authority, dated 2-2-1976 would be deemed to be nullified. I am not impressed by the submission of the learned Counsel for the reasons that the grounds mentioned in the order dated 2-2-1976 were not considered in the order dated 25-5-1979, nor the order was itself specifically recalled. The grounds mentioned in the order dated 2-2-1976 mentioned above continued in existence, on the date of appointment, i.e. 9-12-1975 and on the date of continuing Respondent No. 6 on the post by resolution dated 5-5-1976, admittedly father of Respondent No. 6 continued as head of the institution (though on leave) and as such member of the committee of management and the appointment and regularisation of Respondent No. 6 had been done in clear defiance of the provisions contained in Clause 3(b) of Section 16-GG and Section 16-E(11) of the Act. I have no hesitation in saying that the interested persons in this case successfully set at naught the legal provisions containing appointment on the post of head of the institution in regular manner. The grievance of the Petitioner is justified in the facts and circumstances of the case.

22. Now, the last question remains as to what shall be the effect of Respondent No. 6 continuing in office of principal since 9-12-1975. Shri R.C. Srivastava, learned Counsel for the Respondents submitted that the Petitioner is guilty of laches as this petition has been filed in 1983 while Respondent No. 6 was regularised in 1979. He is qualified for the post of principal. It was also submitted that Respondent No. 8 was serving as a lecturer in another college and he had been deprived of that service also and in these facts and circumstances it is not a fit case where the Court should exercise equitable jurisdiction under Article 226 of the Constitution for ousting Respondent No. 6 out of job after such a long time.

23. Learned Counsel for Respondent has relied on the cases, Roshan Lal and Others Vs. International Airport Authority of India and Others, , Miss Shainda Hasan Vs. State of Uttar Pradesh and others, , Smt. Rani Srivastava v. State of U.P. 1990 (1) UP LB EC 425. The submission of learned Counsel on the basis of

the aforesaid cases is that after such a long time, this Court should not interfere and Respondent No. 6 should be allowed to continue as confirmed principal of the College.

24. Learned Counsel for Petitioner, on the other hand, has submitted that where case is made out for issuance of a writ of quo-warranto it cannot be refused on the ground of laches as continuance of Respondent No. 6 in the office every day gives rise to a fresh cause of action. Learned Counsel for Petitioner has cited a number of cases in support of his aforesaid submission. However, only mention of a few cases would be sufficient. In case *Maseh Ullah Shah Vs. Abdul Rehman Sufi and Others*, a Division Bench of this Court held that if the Court comes to the conclusion that Respondent is illegally occupying a public office, writ of quo warranto cannot be refused on the ground of delay or alternative remedy. Similar view has been expressed in *Baij Nath Singh Vs. The State of Uttar Pradesh and Others*, . I am in respectful agreement with the view expressed by this Court in the aforesaid cases that writ of quo-warranto cannot be refused on the ground of laches and delay as a person illegally occupying a public office cannot be permitted to continue.

25. I have thoroughly considered the cases relied on by learned Counsel for Respondent. However, in my opinion, the facts of the cases relied on are distinguishable and cannot be applied in the present case in view of the judgments of three Division Bench cases, that Respondent No. 6 could not be legally regularised as head of institution under the provisions of Section 16-GG of the Act. In fact, committee of management and educational authorities treated Respondent No. 6 as regularised on the post and passed orders in his favour ignoring the view taken by this Court in a case wherein the regularisation of Respondent No. 6 on the basis of Section 16GG was specifically questioned. In view of the aforesaid legal position, Respondent No. 6 cannot be treated as permanent or regularised as head of the institution. The reasonings given in the cases relied on by the learned Counsel for Respondents can be applied only to the extent that after such a long time the ad-hoc appointment of Respondent No. 6 shall not be allowed to be questioned though it was also in contravention of the provisions of law as noted earlier. However, since Respondent No. 6 is continuing in the office for such a long time, I do not see any harm if he is allowed to continue on the post for the period until a suitable candidate is selected or recommended for appointment in accordance with law. After enforcement of Uttar Pradesh Secondary Education Service Commission and Selection Board Act, 1982 on the post of principal only a candidate duly recommended by the Commission can be appointed. Under law the managing committee now is under a statutory obligation to intimate to the Commission that there is vacancy of the post of head of the institution and on such intimation the commission shall take necessary action for selecting a suitable candidate. Respondents Nos. 2, 3 and 5 are also under statutory obligation to see that a duly selected candidate is appointed on the post of principal of the college.

26. A supplementary counter affidavit has been filed by the Respondent No. 6 annexing therewith a copy of the order of the State Government dated 27-1-1988 by which the representation filed by one Ghan Shyam Tripathi, u/s 16-E(10) of the Act questioning appointment of Respondent No. 6 has been rejected. In my opinion, this order passed by the State Government does not in any manner improve the position of Respondent No. 6 in view of the Division Bench judgment of this Court dated 27-3-1979. Respondent No. 6 cannot be treated as permanent principal of the college as his appointment could not be legally regularised, u/s 16-GG of the Act. The legal position in this respect according to the view taken by this Court is very clear. In view of this I need not detain the decision of this petition in view of the pendency of the writ petition filed against the aforesaid order as Respondent No. 6 cannot be treated as regularly appointed principal. The statutory requirement is that office of the head of the institution should now be filled by a regularly selected candidate without any further delay.

27. For the reasons recorded above, the writ petition is partly allowed. Respondents Nos. 2, 3, 4 and 5 are directed to take steps immediately without any further delay for obtaining recommendation from the Commissioner for a suitable candidate to be appointed as permanent principal of the College. In any case the entire process of selection of suitable candidate through Commission must be completed before the closure of present academic session ending with 30th June, 1991, so that the permanent head of institution may start functioning from next session. It is expected that Uttar Pradesh Secondary Education Service Commission, though not party in this petition, shall have regard to this order and act accordingly. The office of the principal shall be treated as vacant, as the Respondent No. 6 is only allowed to discharge the functions of principal till a regularly selected candidate is recommended by the Commission. It shall be open to Petitioner and Respondent No. 6 both to apply for appointment as principal before the Commission. There will be no order as to costs.