

(2001) 08 AHC CK 0098

In the Allahabad High Court

Case No : C.M.W.P. No's. 16532 of 1994 and 17510 of 1995

Brij Raj Swarup Bhatnagar

APPELLANT

Vs

District Inspector of Schools, Ghaziabad and Another

RESPONDENT

Date of Decision : 17-08-2001

Acts Referred:

Penal Code, 1860 (IPC) — Section 419, 420, 467, 468, 471
Uttar Pradesh High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) (Amendment) Act, 1982 — Section 21
Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 4
Uttar Pradesh Intermediate Education Act, 1921 — Section 16E(10)

Citation : (2001) 4 AWC 2773 : (2001) 3 UPLBEC 2681

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : Raj Kumar Jain and Rahul Jain, for the Appellant; S.C., R.G. Padia, P. Padia, Arun Kumar and S. Chatterjee, for the Respondent

Final Decision : Disposed Of

Judgement

Ashok Bhushan, J.—These two writ petitions involve common question of facts and law hence are being decided together. In both the writ petitions counter and rejoinder-affidavits have been exchanged and with the consent of the parties the writ petitions are being finally decided.

2. Facts of the case as emerge from the pleadings of both the parties in above two writ petitions are as follows : There is a recognised institution, namely, Chandi Vidyalaya Intermediate College, Pilkhuwa, district Ghaziabad. The said institution is receiving grant-in-aid from the State Government and governed by the U. P. Act No. 24 of 1971. Petitioner who has described himself as Brij Raj Swarup Bhatnagar in the first writ petition (16532 of 1994) and as Brij Swarup Bhatnagar in second writ petition (17510 of 1995) claimed to be appointed as lecturer Biology on 12.7.1971 in the college. Post of Principal fell vacant due to retirement of permanent incumbent. Sri C.L. Goyal was officiating as Principal

who retired on 30.6.1992 and thereafter the charge was given to one Sri Ram Singh, Sri Ram Singh expressed his inability to work as officiating Principal on which Committee of Management passed resolution on 24.12.1992 accepting his resignation and appointing the petitioner as officiating Principal. Petitioner claims that he took charge as officiating Principal on 25.12.1992 and started working. Petitioner stated in the writ petition that one Bramha Jeet Singh Raghav was working as L..T. Grade teacher, on account of personal bias, made a complaint vide his letter dated 5.11.1993 to the Manager alleging that educational certificates of the petitioner are forged. The District Inspector of Schools directed the petitioner to produce his original certificates in person on which petitioner claims that he personally went to the District Inspector of Schools and produced his original certificates. Petitioner also filed his affidavit before the District Inspector of Schools that the certificates are genuine. Sri Bramha Jeet Singh Raghav lodged a first information report against the petitioner under Sections 419, 420, 467, 468 and 471, I.P.C. which was registered at the police station Pilkhuwa, district Ghaziabad. The District Inspector of Schools passed an order dated 16.3.1994 directing the Manager of the Committee of Management that petitioner be removed from the office of the Principal and senior most teacher be given the charge of officiating Principal. The District Inspector of Schools in his order stated that a criminal case has been registered against the petitioner on the basis of which case is pending in the Court against the petitioner due to which petitioner cannot be allowed to function on the post of Principal which is a prestigious office. The first writ petition has been filed by the petitioner challenging the said order dated 16.3.1994 passed by the District Inspector of Schools and a further prayer has been made praying for a direction to the respondents that they may not remove the petitioner from the post of officiating Principal and permit the petitioner to continue.

3. After passing of the order dated 16.3.1994 by the District Inspector of Schools, he appointed Ram Singh lecturer as Central Superintendent for conducting Board examination. A letter was issued on 3.4.1994 to the officiating Principal for handing over charge to Ram Singh. The District Inspector of Schools again issued a letter on 11.5.1994 to the Manager directing that the charge be not given to Ram Singh since he was once given charge but he declined. It was directed that next lecturer in the seniority after Brij Raj Swarup Bhatnagar be given the charge. On 13.6.1994 the District Inspector of Schools again directed the Manager to give charge to Madan Pal Singh Sisodia as officiating Principal. Petitioner has further alleged in second writ petition that inquiry was conducted by a sub- committee regarding educational certificates of the petitioner and which committee submitted report and the Committee of Management approved the said report in its meeting dated 11.7.1994. The District Inspector of Schools again wrote to the Manager on 19.11.1994 that the Manager has not conducted any inquiry regarding Post Graduate Degree and residence of the petitioner. It was stated by the District Inspector of Schools that if the Manager does not hold inquiry, action will be taken in accordance with the Intermediate Education Act.

Management send letter dated 21.11.1994 to the District Inspector of Schools referring to the interim order passed in the Writ Petition No. 16532 of 1994 dated 12.5.1994 and submitted the sub-committee's report. In the meantime, police of police station Pilkhuwa completed the inquiry and sent a report to the District Inspector of Schools. The District Inspector of Schools again wrote on 8.12.1994 to the Management for taking action against the petitioner. A further order was issued on 26.12.1994 by the District Inspector of Schools in which it was mentioned that the police report dated 17.11.1994 proves that Sri Brij Raj Swarup Bhatnagar who is working as officiating Principal of college is not Sri Brij Raj Swarup Bhatnagar and he has obtained appointment on the basis of certificate of one Sri Brij Raj Swarup Bhatnagar who is working at B.S. Mehta Post Graduate College of Science Bharwari, district Allahabad. It was further stated that the petitioner is a fictitious person and withdrawal of his salary from the Government treasury is illegal. The District Inspector of Schools again threatened the Management to take action under the Intermediate Education Act if the management do not take the stern administrative action, it was stated that action will be taken u/s 4 of the U. P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 against the management. The Manager thereafter issued a letter dated 26.12.1994 to the petitioner to hand over charge to Madan Pal Singh Sisodia. The District Inspector of Schools on 24-1-1995 again wrote to the Manager reiterating the contents of his earlier letter dated 26.12.1994 along with the letter District Inspector of Schools also sent a copy of the police report dated 17.11.1994 of the police station Pilkhuwa in which the petitioner was said to be a fictitious person. The Manager issued a letter on 16.5.1995 for stopping salary to the petitioner in view of the letter of the District Inspector of Schools dated 24.1.1995. The letter of the Manager further stated that salary of the petitioner be stopped till Sri Brij Raj Swarup Bhatnagar is not acquitted from the criminal charge by the Court. Petitioner filed second writ petition challenging the order dated 16.5.1995 and 24.1.1995. Annexures-25 and 26 to the writ petition.

4. In first writ petition, counter-affidavit have been filed by the District Inspector of Schools as well as one Madan Pal Sharma as respondent No. 3. In second writ petition, counter-affidavits have been filed by the District Inspector of Schools, Committee of Management and by Sri Bramha Jeet Singh Raghav. Petitioner has filed rejoinder-affidavits in both the writ petitions.

5. In the counter-affidavit filed by the District Inspector of Schools in both the writ petitions, it has been stated that a criminal case is pending against the petitioner on the basis of the police report dated 17.11.1994 under Sections 419, 420, 467, 468 and 471, I.P.C. In the police report dated 17.11.1994 which was also sent to the District Inspector of Schools, it was stated that Sri Brij Raj Swarup Bhatnagar is working in B.S. Mehta Post Graduate College of Science, Bharwari, Allahabad whose educational documents were lost in December, 1967 in train. The person of the name of Sri Brij Raj Swarup Bhatnagar working as officiating Principal in Chandi Intermediate College, Pilkhuwa, Ghaziabad is a

fictitious person whose real name is Ramesh Chandra Tiwari alias Raju son of Shankar Dayal, resident of Khersa (Bidhunu) district Kanpur. Charge-sheet was submitted by the police on the basis of which a Criminal Trial No. 10 of 1995 under Sections 419, 420, 467, 468 and 471. I.P.C. is pending in the Court of the A.C.J.M., Hapur. In the counter-affidavit, it has been further stated that the petitioner has produced certificates belonging to Sri Brij Raj Swarup Bhatnagar who is teaching at Bharwari. It has further been stated that the petitioner has not given correct permanent address.

6. The Committee of Management filed counter-affidavit in the second writ petition. The Committee of Management in its counter-affidavit has stated that the certificates which have been filed by the petitioner belong to real Sri Brij Raj Swarup Bhatnagar son of Maharaj Swarup Bhatnagar who is working at B.S. Mehta, Post Graduate College of Science, Bharwari, District Allahabad. It has further been stated that M. Sc. Degree which has been filed by the petitioner is forged document. Management reiterated the fact of pending of Criminal Case No. 10 of 1995 against the petitioner in the Court of C.J.M., Ghaziabad. The management has stated that police after investigation has found prima facie charge against the petitioner. It has been stated that Madan Pal Singh Sisodia has been selected as Principal by the U. P. Secondary Education Commission and Selection Board and he has joined the post with effect from 23.1.1999. It was stated that the petitioner is a cheater whose real name is Ramesh Chandra Tiwari. In paragraph 22 of the counter-affidavit it has been stated that the petitioner has been dismissed from service by the Committee of Management and papers have been sent to the District Inspector of Schools for approval.

7. In the rejoinder-affidavits filed by the petitioner, he has reiterated his allegations of the writ petitions.

8. I have heard Sri R.K. Jain, senior advocate appearing for the petitioner and Sri Arun Kumar appearing for the Committee of Management, Sri S. Chatterjee appearing for Sri Bramha Jeet Singh Raghav and the learned standing counsel. Counsel for the petitioner submitted that till date petitioner's services have not been terminated nor he has been dismissed in accordance with law. The counsel for the petitioner in view of joining of regular Principal selected by the U. P. Secondary Education Commission and Selection Board has not laid his claim to function on the post of Principal. However, he has submitted that he is entitled to function as lecturer in the college and receive his salary. Counsel for the petitioner further contended that the petitioner is not aware of the resolution of the Committee of Management dismissing him from service and in any view of the matter said resolution having not been approved by the U. P. Secondary Education Commission and Selection Board no interference can be caused by the respondent in his functioning as lecturer. Refuting the submissions of the petitioner learned standing counsel has submitted that it having been prima facie established that petitioner is not real Sri Brij Raj Swarup Bhatnagar on whose certificates he was appointed, is not entitled for any salary. Learned standing

counsel has submitted that criminal case is already proceeding against the petitioner for criminal trial and he is not entitled to work or to receive salary. Counsel for the Committee of Management and counsel for Sri Bramha Jeet Singh Raghav made similar submissions. The facts of the present case give out a very peculiar situation. With regard to the claim of the petitioner to function on the post of Principal, the matter has not been agitated in view of the regular selection having been made by the U. P. Secondary Education Commission and Selection Board, hence the petitioner's claim to function as Principal comes to an end.

9. The main issue which is being canvassed in the writ petition is as to whether the District Inspector of Schools and the Committee of Management was justified in directing that the petitioner be not paid salary and he should not be permitted to function as officiating Principal. There is no difficulty in disposing of issue regarding claim to function as officiating Principal. A person against whom charge-sheet has been submitted in criminal court that he is a fictitious person and the certificates on the basis of which he has sought employment belong to another person, cannot claim to function on the post of officiating Principal. Post of Principal is a post of pivotal importance in running of an educational institution. A person facing a criminal charge of above nature has rightly not been permitted to function as officiating Principal in an educational institution.

10. The next submission of the counsel for the petitioner needs to be considered in some detail. The direction of the District Inspector of Schools which has been issued in the second writ petition is to the effect that administrative action be taken against the petitioner who has been held prima facie guilty in police report dated 17.11.1994 and is illegal drawing salary from the Government Treasury. Whether in the aforesaid circumstances, the District Inspector of Schools has any power to stop payment of salary of a teacher is a question which requires consideration.

11. Chapter II, Regulation 19 of the U. P. Intermediate Education Act gives power to the District Inspector of Schools to decline to pay salary to a person whose appointment or promotion is made in contravention of the Chapter II. Chapter II, Regulation 19 is quoted below :

"19. Where any person is appointed as, or any promotion is made on any post of head of institution or teacher in contravention of the provisions of this Chapter or against any post other than a sanctioned post of the Inspector shall decline to pay salary and other allowances, if any to such person where the institution is covered by the provisions of the U. P. High School and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971, and in other cases shall decline to give any grant for the salary and allowances in respect of such person."

12. A plain reading of Regulation 19 as quoted above, gives power to the District Inspector of Schools to decline payment of salary to any person whose

appointment or promotion on post of a teacher is made in contravention of provision of this Chapter. Regulation I of Chapter II provides minimum qualification for appointment as Head of the Institution are given in Appendix "A". Appendix "A" provides for possession of qualification for appointment on the post of teacher. The post of lecturer Biology provides for qualification of M. Sc. Botany or Zoology, trained with other qualification. The petitioner has claimed his appointment on the basis of his Post Graduate Degree of M. Sc. Zoology from the University of Allahabad of the year 1967. If a person does not possess a qualification prescribed under regulations framed in Chapter II, he is not entitled for appointment. Chapter II. Regulation 19 gives power to Inspector to refuse to pay salary in the circumstances mentioned in the Regulation 19. The Inspector under Regulation 19 although cannot invalidate any appointment but he has enough power to stop payment of salary in the circumstances mentioned in Regulation 19. The salary to teachers is paid by the State Government and the District Inspector of Schools as representative of State Government has been invested with this power to stop the salary in a situation where the appointment of any person is in contravention of Chapter II. To read above power in the District Inspector of Schools is also in the interest of education and State exchequer. In view of this, there was no infirmity in the order of the District Inspector of Schools dated 16.3.1994 when he directed that the petitioner be removed from the office of the officiating principal and subsequent direction dated 26.12.1994 directing the management to take immediate action. The U. P. High School and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 also gives power to the District Inspector of Schools to issue direction to the management with regard to payment of salaries to its teachers. In a situation like the present case, the District Inspector of Schools could have also invoked powers u/s 4 of the U. P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971.

13. The argument of the counsel for the petitioner that the petitioner continues in service since no order of dismissal or termination has been passed, his salary cannot be stopped, has substance. The appointment of any person who has been appointed in contravention of provision of the U. P. Intermediate Education Act can be cancelled u/s 16E (10) of the U. P. Intermediate Education Act. 1921 or a teacher can be dismissed from service after obtaining approval of U. P. Secondary Education Service Commission and Selection Board u/s 21 of U. P. Act 5 of 1982. Although the Committee of Management has stated in the counter-affidavit that the Committee of Management has passed resolution dismissing the petitioner from service but no fact has come on record which may prove that any approval has been granted by the competent authority, i.e., U. P. Secondary Education Service Commission and Selection Board. Only allegation in the counter-affidavit is that resolution has been sent to the District Inspector of Schools for approval. The District Inspector of Schools is not the competent authority to approve the proposal of dismissal. If he has received the resolution, he can forward it to the U. P. Secondary Education Service Commission and

Selection Board. Sri R.K. Jain, counsel for the petitioner is right in his submission that the petitioner continuous in service as lecturer. The question which arises is as to what relief can be granted to the petitioner who though continuous in service but is not being paid salary. As held above, the District Inspector of Schools is vested with enough power to stop salary in a case in which appointment has been made in contravention of provisions of Chapter II of the U. P. Intermediate Education Act but the power to stop salary cannot be exercised for an indefinite period. The respondent cannot be permitted to keep the matter of the petitioner lingering without deciding the same, the criminal trial which is going on against the petitioner may take long time and the respondents may not be justified in waiting for criminal trial without taking any proceeding. It has not come on record that the management at any point of time has taken any decision to suspend the petitioner on account of pendency of criminal trial.

14. In view of the peculiar facts and circumstances of the case, the ends of justice will meet if the present writ petitions are disposed of by issuing following directions :

(1) The District Inspector of Schools. Ghaziabad is directed to forward the resolution of the Committee of Management dismissing the petitioner from service as stated in the counter-affidavit of the Committee of Management of the U. P. Secondary Education Service Commission and Selection Board within a period of one month from the date of receipt of a certified copy of this order. In the event of District Inspector of Schools forwarding the resolution of the Committee of Management to the U. P. Secondary Education Service Commission and Selection Board, the U. P. Secondary Education Service Commission and Selection Board is directed to consider and take decision on the resolution within a period of three months from the date of receipt of papers from the District Inspector of Schools.

(2) To resolve the controversy raised In the case, the Director of Education, U. P. Allahabad, is commanded to initiate proceedings u/s 16E (10) of the U. P. Intermediate Education Act, 1921 and after affording opportunity to the petitioner may take a decision within a period of four months from the receipt of the certified copy of this order.

(3) It is further directed that in the event of U. P. Secondary Education Service Commission and Selection Board disapproves the resolution of the Committee of Management or proceedings u/s 16E (10) terminating in favour of the petitioner he will be entitled for his salary and allowances.

15. With the aforesaid directions both the writ petitions are finally disposed of.