

(2009) 12 AHC CK 0026
In the Allahabad High Court
Case No : C.M.W.P. No. 63524 of 2009

Committee of Management, Shitla Devi Balika Vidyalaya
Junior High School and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-12-2009

Acts Referred:

Citation : (2010) 124 FLR 797

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : P.S. Baghel and Gautam Baghel, for the Appellant;

Judgement

A.P. Sahi, J.—Heard Shri P.S. Baghel, learned Senior Counsel for the petitioners assisted by Shri Gautam Baghel, Advocate and the learned Standing Counsel for the respondent Nos. 1,2 and 3.

2. The petitioner-Committee of Management has come up against the order passed by the District Basic Education Officer, Kaushambi allowing the respondent No. 4-Smt. Gyanwati to officiate as a Head Mistress of the institution.

3. The contention raised by Shri Baghel is that the order is without jurisdiction, inasmuch as, the Basic Education Officer could not have directly issued instructions in favour of the said respondent, the order could not have been passed without issuing any notice to the petitioners and the same could not have been done without assessing the records relating to the services of the respondent No. 4. Shri Baghel contends that such authority vests with the Committee of Management and it is not necessary that the officiating charge should be given to the senior most teacher of the institution. He contends that ordinarily the same is the law with the exception of such circumstances where the committee does not find the person to be an appropriate candidate for being given such officiating charge. The discretion can be exercised by the Committee of Management to offer charge to some other candidate. Shri Baghel has relied

on two decisions of this Court in the case of Tribhuwan Mishra v. District Inspector of Schools, Azamgarh and others 1992 (20) ALR 921, and in the case of Mahant Prasad Singh v. District Inspector of Schools, Fatehpur and others 2002 (93) FLR 495 (All.) and a decision of the Apex Court in the case of Ram Murti Singh v. District Inspector of Schools as,

4. The aforesaid decisions which have been relied upon by Shri Baghel relate to the interpretation of" the provisions of the U.P. Intermediate Education Act, 1921 and do not in any way relate to the appointment on officiating basis of a Head Master in a basic school. As a matter of fact, there is no such provision similar to that as found under the U.P. Intermediate Education Act, 1921, which may confer any power on the Committee of Management to eliminate the line of seniority in order to give or not to give charge to the senior most teacher of the institution.

5. This dispute between the management and the respondent No. 6 is continuing for more than 5 years. It commenced when the respondent No. 4 started claiming charge to officiate as a Head Mistress and the matter travelled up to this Court. The signatures of the respondent No. 4 were attested on 6.11.2003 after a long drawn battle before this Court where after she started functioning as a Head Mistress. The management proceeded to make a permanent selection on the said post and the charge of the Head of the institution was allegedly taken away from her on 7.11.2005. This was done after one Shri Akhilesh Kumar Pandey was selected as a Head of the institution and his appointment was approved. The said appointment and selection of Shri Akhilesh Kumar Pandey was challenged before this Court in Civil Misc. Writ Petition No. 71218 of 2005, which was decided on 12th August, 2009 and the learned Single Judge while allowing the writ petition held that the selection and appointment of Shri Akhilesh Kumar Pandey is not valid as he did not possess the minimum qualification. The respondent No. 4-Smt. Gyanwati was the petitioner in the said writ petition and a special appeal was filed questioning the legality of the judgment of the learned Single Judge by Shri Akhilesh Kumar Pandey, which was dismissed on 4th September, 2009. While proceeding to decide the said dispute the following facts were taken notice of by the Division Bench:

The respondent-writ petitioner Smt. Gyanwati Devi claiming herself to be the senior most teacher of the institution and holding charge of Head Mistress contends that the then Manager of the institution Devendra Kumar Shukla, who has also contested the matter before the learned Single Judge, appointed his own sister Smt. Urmila Devi on the said post in spite of the fact that it was the respondent-writ petitioner who was entitled to hold charge. The said claim was decided by this Court by a Division Bench in special appeal and the Basic Education Officer ultimately attested the signature of the respondent-petitioner as the Head Mistress on 6.11.2003. On 7.11.2005 the said charge of the Head Mistress was forcibly taken from the writ petitioner and handed over to appellant No. 1 Akhilesh Kumar Pandey who claimed regular appointment on the post in question. Aggrieved the respondent-petitioner preferred the petition giving rise

to this appeal, challenging the order of the Basic Education Officer dated 15.9.2005 whereby the appellant No. 1 Akhilesh Kumar Pandey was approved as the Head of the Institution as well as the consequential order of appointment issued by the management on 19.9.2005.

6. Shri Baghel contends that against the said judgment a SLP has been preferred before the Apex Court, which is pending consideration but there is no interim order. He, however, submits that in a similar matter which was decided, on which reliance has been placed by the Division Bench, was subjected to a SLP before the Apex Court in which there is a stay order. A copy of the said stay order dated 20.7.2009 has been filed as Annexure-2 to the writ petition.

7. I have perused the impugned order which indicates the reference of the judgment of this Court. The Basic Education Officer appears to have proceeded to pass the order in view of the fact that the appointment of Shri Akhilesh Kumar Pandey had been annulled and that the respondent No. 4 was the senior most teacher of the institution. The Basic Education Officer, however, before proceeding to have pass the said order does not appear to have given any opportunity of hearing to the Committee of Management. The Basic Education Officer seems to have presumed that once the appointment of Shri Akhilesh Kumar Pandey has been set aside then the respondent No. 4 is the only person in the institution to officiate as the Head of the institution. The aforesaid presumption of the Basic Education Officer may be correct in view of the past history of the litigation, yet in the opinion of the Court, the Basic Education Officer ought to have considered any objection to be filed by the Committee of Management.

8. In view of this, Shri Baghel contends that the prayer made in the writ petition be treated to be modified and the petitioners would be satisfied in the event a direction is issued to the Basic Education Officer to pass an order after hearing on the objections of the Committee of Management.

9. Accordingly, the writ petition is disposed of with liberty to the petitioners to file objections if any before the Basic Education Officer. The said respondent shall proceed to pass an appropriate order after putting the respondent No. 4 to notice within a period of two months from the date of presentation of a certified copy of this order before him.