
(1996) 04 AHC CK 0141
In the Allahabad High Court
Case No : C.M.W.P. No 14248 of 1996

Darshan Singh	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 22-04-1996

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 16

Citation : (1996) 04 AHC CK 0141

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

Bench : Single Bench

Advocate : R.G. Padia and P.C. Misra, for the Appellant; S.C., Ashok Khare and Haidar Zaidi, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Singh, J.—Heard Sri R. G. Padia for the Petitioner, Shri Ashok Khare for Respondent No. 7 and Sri Haider Zaidi for Respondent No. 2,

2. Herein the Petitioner challenges the order of transfer of Respondent No. 7 to fill up the post of Principal in Rashtriya Higher Secondary School. Jinhera, Etah which was lying vacant since 1992.

3. The contention of the Petitioner is that the Government notification amending the Rules relating to transfer of teachers in intermediate colleges governed by U.P. Intermediate Act and U.P. Secondary Education Services Commission Act are ultra vires in view of the fact that mutuality of the consent of the two managing committees involved in the transfer of teacher has been done away with.

4. The second contention of the learned Counsel for the Petitioner is that once the post has been advertised and applications have been invited for making direct appointment, resort to the method of filling up the post by way of transfer cannot be taken in so far as the senior-most teacher of the institution is deprived of his vested right of promotion on the post of Principal if the post is filled up by

transfer.

5. Contention of the learned Counsel for the Petitioner, in my view, is not acceptable as it has no legal backing. Petitioner being a senior-most teacher has a right of being considered for selection on the post of Principal in case appointment is to be made by way of direct recruitment through the Commission. Section 16 of the Commission Act postulates appointment also by way of transfer. In case, however, the post has been advertised but could not be filled up by way of selection for long time for one or the other reason, in that event, filling up the post by taking resort to transfer cannot be excluded simply because the senior-most teacher who has a right of being considered for appointment on that post shall be deprived of his being considered for appointment on that post. Right to be considered for appointment is available if the appointment is to be made by direct recruitment and not otherwise. Issue of advertisement and calling applications for filling a vacancy by direct recruitment will not disentitle the Commission to fill the post in any other permissible mode. The Act does not make any distinction in respect of the situation as to when a post can be filled up by way of transfer or by way of direct recruitment. Therefore, it is for the Commission to decide the mode in which the post can be suitably filled up without there being any suggestion of mala fide decision of the Commission to fill up the post by way transfer cannot be questioned only * because earlier the same post was advertised. The contention of the learned Counsel is, therefore, rejected.

6. The second contention that the managing committees' consent has illegally been done away with too cannot be a cause of grievance of the Petitioner inasmuch as he has no role to play in the matter. Grievance of this nature can at the most be raised by the managing committee concerned whose consent in the matter has been done away with. It is, however, clarified that the provisions of taking consent was made under the pre-existing rules if those provisions have been amended for doing away with the consent of the two managing committees, no exception to that rule can be taken as there is no vested right even with the managing committee to force their consent for the purpose of transfer specially so when in the new scheme, a very limited power of issuing order of appointment alone is left with the Managing Committee in the field of making appointment and filling of the vacancy. Except for issuing order of appointment on the recommendation of the Commission in favour of the candidate selected by it, no role is left to the Managing Committee to play. In these circumstances, even the Managing Committee can hardly question the validity of the rules on that ground.

7. In the light of the above discussion, the writ petition has no merit which is accordingly dismissed in limine.