

(2003) 09 AHC CK 0016
In the Allahabad High Court
Case No : C.M.W.P. No. 35090 of 2003

Dr. Dharendra Nath Awasthy

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 02-09-2003

Acts Referred:

Citation : (2003) 6 AWC 5027

Hon'ble Judges : U. Pandey, J;M. Katju, J

Bench : Division Bench

Advocate : V.C. Mishra and Vivek Mishra, for the Appellant;

Final Decision : Allowed

Judgement

M. Katju, J.—Heard learned Counsel for the parties.

2. This writ petition has been filed for quashing the impugned order dated 24.6.2003 (Annexure-1 to the petition) by which Respondent No. 2 has been given charge as officiating Principal of the M. L. N. Medical College, Allahabad. The Petitioner has also prayed for a direction to the Respondent No. 1-State of U.P., to handover charge of officiating Principal of M. L. N. Medical College, Allahabad to the Petitioner being senior most Professor in the College.

3. Admittedly, at present there is no permanent Principal in the Medical College, since the selection has to be done by the U.P. Public Service Commission. The question therefore arises as to who should be appointed ad hoc Principal when there is no permanent Principal in the Medical College. It appears that there is no statutory provision or Rule which mentions as to who should be appointed ad hoc Principal in the absence of the permanent Principal. Thus, there appears to be a legal vacuum on the point and hence that has to be filled in by judicial verdict. It is well settled that while the Judges cannot violate statutory law, they can fill in the gaps in the law, as held in several decisions of the Supreme Court e.g., Directorate of Enforcement Vs. Deepak Mahajan and another, . In that decision the Supreme Court referred to the observation of Judge Frank in Guiseppi v.

Walling which reads thus:

"The necessary generality in the wordings of many statutes, and ineptness of drafting in others frequently compels the Court, as best as they can, to fill in the gaps, an activity which no matter how one may label it, is in part legislative. Thus, the Courts in their way, as administrators perform the task of supplementing statutes. In the case of Courts, we call it "interpretation" or "filling in the gaps" ; in the case of administrators we call it "delegation" or authority to supply the details."

4. In *Rattan Chand Hira Chand Vs. Askar Nawaz Jung (Dead) by Lrs and Others*, , the Supreme Court observed:

"... The Legislature often fails to keep pace with the changing needs and values nor is it realistic to expect that it will have provided for all contingencies and eventualities. It is, therefore, not only necessary but obligatory on the Courts to step in to fill the lacuna. When courts perform this function undoubtedly they legislate judicially. But that is a kind of legislation which stands implicitly delegated to them to further the object of the legislation and to promote the goals of the society."

There appears to be a gap in this case which has to be filled by a judicial decision. This is necessary because it often happens that a regular selection and appointment is not done for months, or even years.

5. In our opinion, the only logical approach can be that ordinarily the senior most Professor (if there is no Professor then the senior most Reader) should be appointed as ad hoc Principal when there is no permanent Principal in the Medical College. In fact, this principle has been followed for appointment on the post of ad hoc Principal in Intermediate Colleges in U.P. in *Radha Raizada v. Committee of Management* 1994 ALJ 1077 and also for Degree Colleges in *Teachers Association v. Chaudhary Charan Singh University, Meerut* 2000 ALJ 1862 and in *Dr. Vijay Laxmi Agarwal Vs. Vice-Chancellor, M.J.P. Rohilkhand University and Others*, .

6. The ratio of these decisions, in our opinion, should be extended to Medical Colleges and other institutions also, because there is no other principle on which an ad hoc Principal can be appointed.

7. Hence we lay down that ordinarily the senior most Professor in the Medical College will be appointed ad hoc Principal (if there is no Professor then the seniormost Reader) until a regularly selected Principal comes to join the post.

8. Of course as held in para 9 of the decision in *Dr. Vijay Laxmi Agarwal's* case (supra), there are very serious allegations against the senior most teacher e.g., a charge of murder or dacoity, or if he is involved in embezzlement etc., then he can be superseded, but even in such a case a show cause notice has to be given to him making these allegations against him for which it is proposed to supersede him and giving him a short opportunity of filing a reply to the said

allegations, and only after considering that reply can he be superseded.

9. In our opinion, this approach should invariably be adopted to avoid any hard burning, bickering or complaint of arbitrariness or favouritism among the teachers of the Medical Colleges.

10. We make it clear that this show cause notice which has to be given before superseding the senior most teacher in the Medical College need not be followed by an elaborate inquiry in which oral hearing and opportunity of examination and cross-examination is given. The show cause notice may merely mention the allegations against the senior most teacher and state that it is proposed to supersede him and given him a short period of time, say of one week, to reply to the show cause notice, and after considering the reply the Management can order supersession of the senior most teacher giving in brief the reasons for doing so (which need not be elaborate reasons as contained in the judgment of a court of law). In our opinion, this procedure would avoid complaints of arbitrariness and favouritism and would be sufficient compliance of natural justice. Fairness demands that the person concerned should know why some action is being taken against him since ordinarily the senior most teacher has a right to be appointed as ad hoc Principal. He must at least know why he is proposed to be superseded, and he must be given a show cause notice and opportunity of hearing, which need not be a personal hearing, before taking the action.

11. Of course if the senior most Professor refuses the post of ad hoc Principal then the next in seniority should be offered the post, and if he also refuses the one next after him, and so on.

12. In the present case, it appears that Respondent No. 2 Dr. Keshav Kumar Pandey is admittedly not the senior most Professor but straight away he was appointed as ad hoc Principal. This was clearly arbitrary and illegal, and we quash the impugned order appointing him as ad hoc Principal in M. L. N. Medical College, Allahabad.

13. We direct that the senior most Professor in the Medical College will function as ad hoc Principal of the Medical College till a regularly selected Principal comes to join as the permanent Principal.

14. Petition is allowed. No order as to costs.