

(2002) 10 AHC CK 0190
In the Allahabad High Court
Case No : C.M.W.P. No. 15449 of 2001

Dr. Prakash Chandra Srivastava

APPELLANT

Vs

Director of Higher Education and Another

RESPONDENT

Date of Decision : 25-10-2002

Acts Referred:

Uttar Pradesh Higher Education Services Commission Act, 1980 — Section 12(4),
13(3), 14(1)

Citation : (2003) 1 AWC 142

Hon'ble Judges : N.K. Mehrotra, J;G.P. Mathur, J

Bench : Division Bench

Advocate : U.N. Sharma, for the Appellant;

Final Decision : Allowed

Judgement

G.P. Mathur, J.—This writ petition under Article 226 of the Constitution has been filed praying that a writ of mandamus be issued commanding the Director of Higher Education, U. P. to pass a placement order for appointing the petitioner as Principal of Lala Laxmi Narain Degree College, Sirsa, Allahabad.

2. There is a degree college known as Lala Laxmi Narain Degree College at Sirsa in the district of Allahabad. The regular Principal of the college retired from service in February, 1994, after attaining the age of superannuation and the petitioner was appointed as officiating Principal on 8.3.1994. The management of the college intimated the vacancy to the Director of Higher Education, U. P., in accordance with Section 12(2) of the U. P. Higher Education Services Commission Act, 1980 (hereinafter referred to as the Act). The Director then notified the vacancy to U. P. Higher Education Services Commission (hereinafter referred to as the Commission) in accordance with Section 12 (3) of the Act. The Higher Education Services Commission issued Advertisement No. 25 for making selection on the post of Principals of several degree colleges and postgraduate colleges in the whole of the State. The petitioner applied for the post of Principal of a degree college and indicated his first preference for the institution in

question, namely, Lala Laxmi Narain Degree College, Sirsa, Allahabad. The Commission declared the result of the selection on 18.4.2001 for various degree colleges and postgraduate colleges. Amongst the persons selected for the post of Principal of a degree college, the petitioner's name appeared at SI. No. 28, and, thus, he became entitled to be appointed as Principal of a degree college.

3. It is averred in the writ petition that the petitioner had joined the Lala Laxmi Narain Degree College, Sirsa, Allahabad, as lecturer when the institution was established on 4.10.1971. He was promoted as reader in August, 1988, and since March, 1994, he started functioning as officiating Principal of the college with the approval of the Vice-Chancellor of Kanpur University. The college made commendable progress and B.Sc. (Biology and Mathematics groups) and B.Ed, classes were started after the petitioner took over as officiating Principal of the College. In the academic session 2000-2001, 2,300 students (both boys and girls) were studying in the college. After the result had been declared by the Commission and it was known that the petitioner had been selected for the post of Principal of a degree college, Sri Omkar Nath Agarwal, the Manager of the college, sent a letter to the Director of Higher Education, U. P. on 20.4.2001 requesting him that a placement order be issued in favour of the petitioner for his appointment as Principal of the college.

4. In the counter-affidavit filed by Dr. R. K. Baslas, Director of Higher Education, U. P., it is stated that appointment on the post of Lecturer and Principal in an affiliated college (other than a Government college) is made in accordance with Higher Education Services Commission Act and the procedure for making appointment is given in Section 12 of the said Act. It is averred that the Director of Higher Education, U. P., is not bound to make a placement order according to the choice of the candidate and the same has to be done in a prescribed manner by taking into consideration the roster made in accordance with U. P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Backward Classes) Act, 1994. It is admitted that the petitioner has been selected for the post of Principal and his name finds place at SI. No. 28 in the merit list of the selected candidates of general category. It is also admitted that the petitioner had given his first preference for placement in the institution In question, namely, Lala Laxmi Narain Degree College, Sirsa, Allahabad. However, the stand taken is that another candidate, namely, Dr. Sadhu Singh Chauhan, whose name finds place at SI. No. 13 in the list prepared on the basis of roster had also given his preference for the same Institution. The specific plea taken in paragraph 3 (h) of the counter-affidavit is that as another candidate, whose name happens to be higher than the petitioner in the list prepared according to the roster, has already given preference for the institution in question, it is not possible to recommend the name of the petitioner for his appointment as Principal of the institution as his position in the merit list is lower,

5. In the rejoinder-affidavit filed by the petitioner, it is averred that the institution in question was the fourth choice of Dr. Sadhu Singh Chauhan in order

of preference. A placement order had been passed in his favour by the Director of Higher Education, U. P., for his appointment as Principal of Sahkari Snatakottar Mahavidyalaya, Mehrawan, Jaunpur and he has already joined there. It is further averred that most of the selected candidates had already been given placement orders and even amongst those who have been left, no one had given his first preference for the Institution in question.

6. We have heard learned counsel for the parties and have perused the record,

7. The second proviso to Section 12 (4) of the Act reads as follows ;

"Provided further that the candidates shall be required to Indicate their order of preference for the various college vacancies which have been advertised."

Section 13 (3) of the Act reads as follows :

"The Director shall, having due regard, in the prescribed manner, to the order of preference, if any, indicated by the candidates under the second proviso to Sub-section (4) of Section 12, intimate to the management the name of a candidate from the list referred to in Sub-section (1) for being appointed in the vacancy intimated under Sub-section (2) of Section 12."

Sub-section (1) of Section 14 reads as follows :

"The management shall, within a period of one month from the date of receipt of Intimation under Sub-section (3) or Subsection (4) or Sub-section (5) of Section 13, issue appointment letter to the person whose name has been intimated."

8. The provisions referred to above show that a candidate applying in pursuance of an advertisement issued for making selection on the post of Principal in various colleges has to Indicate his order of preference for the colleges whose vacancies have been advertised. The Director of Higher Education while making a placement order under Sub-section (3) of Section 13 is required to give due regard to the order of preference indicated by the candidates. The management is bound to issue an appointment order to the person whose name has been intimated by the Director under Sub-section (3) of Section 13 of the Act.

9. It is not In dispute that Dr. Sadhu Singh Chauhan had given his fourth preference for the institution in question while it is the first preference of the petitioner. A placement order was issued in favour of Dr. Sadhu Singh Chauhan for his appointment as Principal of Sahkari Snatakottar Mahavidyalaya, Jaunpur and he has already Joined there. The result of selection made by the Higher Education Service Commission was declared nearly one and half years back on 18.4,2001. Placement orders have already been passed for most of the selected candidates. None of the selected candidates who have not yet been given a placement order, have indicated their choice for the institution in question. The petitioner has given his first preference for the institution. In these circumstances, we see no Justification why a placement order should not be made in favour of the petitioner for his appointment as Principal of the college In

question.

10. Sirsa is a small town and is situate at a distance of about 60 kms from Allahabad city. It is not even a tehsil headquarters. Not many selected candidates would be keen for their placement in the Institution in question. The petitioner is working in the institution since October, 1971, when the same was established. He was promoted as reader in August, 1998 and, thereafter, he is officiating as Principal since March, 1994. The material on record shows that it is during this period, when the petitioner became the officiating Principal, that B.Sc. (Biology and Mathematics groups) and B.Ed, classes have started in the college. Having put in 31 years in the institution, he must be fully familiar with the teaching and other staff working there. The Manager of the college has also written to the Director of Higher Education that a placement order be issued for appointing the petitioner as Principal of the institution as during his tenure, the institution has made considerable progress. It is apparent that the management wants the petitioner to be appointed as regular Principal of the institution and his appointment there would not create any kind of problem or dispute between the Principal and the management, which sometimes takes place when the management is forced to issue an appointment order in favour of a person against its wishes. The post of Principal is not transferable and one has to spend his entire career in the institution where he has joined. Not many are, therefore, keen to Join in an institution which is in rural area and those from far off places are quite reluctant to do so. Thrusting an unwilling Principal on an unwilling management is not in the interest of the institution. On overall consideration of the matter, the appointment of the petitioner as Principal of the institution will be eminently just and proper.

11. For the reasons indicated, the writ petition is allowed. The Director of Higher Education, U. P. (respondent No. 1) is directed to pass a placement order u/s 13 (3) of the Act for appointment of the petitioner as Principal of Lala Laxmi Narain Degree College, Sirsa, Allahabad.