

(2011) 04 AHC CK 0101
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 52366, 3549, 51538, 63773 of 2010, 16315, 11113 of 2011

Dr. Surendra Pandey and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 — Rule 13, 13(3)

Citation : (2011) 5 ADJ 643 : (2011) 5 AWC 5048

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Judgement

Arun Tandon, J.—Heard Sri Rajeev Mishra, learned Counsel for Dr. Surendra Pandey, Sri V.K. Singh and Sri Vinod Kumar Singh, learned Counsel for Shri Kisun, Sri P.N. Saxena, learned Senior Advocate, assisted by Ms. Sumati Rani Gupta, learned Counsel for the Committee of Management of the institution and learned Standing Counsel for the State.

2. Since the basic facts, relevant for decision of the dispute in all these writ petitions are more or less identical, and legal issues involved are also same, all the Writ Petitions have been clubbed and are being decided by this common judgment. Civil Misc. Writ Petition No. 52366 of 2010 be treated as the leading case.

3. These writ petitions and those already decided, as detailed in this order, are an example of the manner, in which repeated petitions are filed in the matter of appointment of Principals i.e. Heads of the institutions on recommendation made by the U.P. Secondary Education Services Selection Board. Such practice always overburdens the Court and cannot be approved off. Series of petitions, so as to oust the selected candidate placed at serial No. 1, only result in the overall interest of education being jeopardised.

4. Facts in short giving rise to these writ petitions are as follows:

D.A.V Nagar Intermediate College, Ghoghli Maharajganj (hereinafter referred to as the "institution"), is an aided and recognised institution under the provisions of U.P. Intermediate Education Act, 1921. Vacancy on the post of Principal of the institution was subject-matter of Advertisement No. 1 of 2001 by the U.P. Secondary Education Services Selection Board. Because of the pendency of the writ petitions and special appeals before the High Court culminating in the judgment of the Hon'ble Supreme Court of India in the case of Balbir Kaur and Anr. v. U.P. Secondary Education Services Selection Board, Allahabad and Ors., 2008 (3) ESC 409 (SC), select panel in pursuance to the advertisement No. 1 of 2001 for the institution could be notified only on 24th January, 2009. The select panel is as follows:

1. Dr. Surendra Pandey,
2. Daya Shankar Pandey, and
3. Sri Kishun Singh

5. After receipt of the select panel, the Committee of Management of the institution forwarded an appointment letter dated 14th June, 2009 to Dr. Surendra Pandey granting two weeks time for joining. This letter was responded to by Dr. Surendra Pandey and he prayed for a month time to join, inasmuch he was engaged as a teacher in Central School from where relieving certificate had to be obtained. Request made by Surendra Pandey was acceded to and 15 days further time was granted. He was directed to join within such period, the period whereof was to expire on 1st September, 2009.

6. On 1st September, 2009, Surendra Pandey reported before the Committee of Management for joining. He requested that his joining may be accepted without deposit of relieving certificate, as it had yet not been issued by his previous employer, namely, Central School, for the purpose, a month time may be granted. He further stated in his letter that if after joining he is not able to produce the relieving letter/certificate within one month, his appointment may be treated as cancelled automatically.

7. Despite such request of Surendra Pandey in writing within time permitted by the Committee of Management and despite his having reported for joining in the institution, the Committee of Management, for the reasons best known to it, did not permit Surendra Pandey to accept his joining, for the reason that he has not been able to produce the relieving certificate.

8. In between, Civil Misc. Writ Petition No. 23921 of 2009 was filed by Dr. Surendra Pandey seeking a writ of mandamus commanding the District Inspector of Schools to offer appointment to him on the basis of select panel dated 24th January, 2009. The writ petition was disposed of vide order dated 6th May, 2009, requiring the District Inspector of Schools, to take appropriate decision in the matter in terms of Section 17 of U.P. Act No. 5 of 1982.

9. The time so permitted by the Writ Court was not adhered to by the District Inspector of Schools, a contempt petition being Contempt Application (Civil) No. 4328 of 2009 was filed, wherein notices were issued. On 24th November, 2009, the contempt petition was dismissed.

10. Daya Shanker Pandey, empanelled at serial No. 2 in the select panel and senior most teacher of the institution, who was all along working as Ad hoc Principal, retired on 30th June, 2010.

11. On Ram Krit Pathak was directed to be appointed as ad hoc principal under the resolution of the Committee of Management dated 26/27th June, 2010. This gave rise to a writ petition being filed by Sri Kishun, the candidate empanelled at serial No. 3 of the select panel dated 24th January, 2009, being Civil Misc. Writ Petition No. 37493 of 2010 alongwith another Civil Misc. Writ Petition No. 3549 of 2010, for a writ of mandamus asking the authorities to appoint him as the Principal of the institution (this writ petition remains pending and is being decided today). Writ petition No. 37493 of 2010 was disposed of vide order dated 1st July, 2010, requiring the District Inspector of Schools to hear all the parties involved in the dispute and to pass a reasoned speaking order.

12. The District Inspector of Schools passed an order dated 16th August, 2010, holding therein that Surendra Pandey has not joined within the time permitted and therefore, he has lost his rights to be appointed. Since the candidate empanelled at serial No. 2, namely, Daya Shanker Pandey has retired, Sri Kishun empanelled at serial No. 3 be offered appointment as regular Principal of the institution.

13. Two writ petitions were filed against the said order being Civil Misc. Writ Petition No. 51538 of 2010 filed by the Committee of Management of the institution and Civil Misc. Writ Petition No. 52366 of 2010 by Surendra Pandey, wherein no interim order was granted.

14. An issue arose as to who should function as principal of the institution till regular appointment is made. Ram Krit Pathak filed Civil Misc. Writ Petition No. 54743 of 2010 seeking a right to be appointed as ad hoc principal of the institution.

This writ petition was dismissed vide order dated 22nd September, 2010, holding that Ram Krit Pathak had no right to the post.

The Court, however, made certain observations, vide its order dated 22nd September, 2010, which according to Surendra Pandey, were adverse to his interest and therefore, he filed Special Appeal Defective No. 998 of 2010. Ram Krit Pathak also filed Special Appeal No. 1615 of 2010 against the said order of the Writ Court dated 22nd September, 2010.

15. Both the appeals were clubbed together and decided under a common judgment dated 1st December, 2010. So far as the appeal filed by Surendra Pandey being special appeal defective No. 998 of 2010 is concerned, it was

clarified that any observation made by the Writ Court in the judgment dated 22nd September, 2010 shall not adversely affect the interest of Surendra Pandey in his pending writ petition. The appeal filed by Ram Krit Pathak being appeal No. 1615 of 2010 was dismissed, whereby the claim of Ram Krit Pathak came to an end.

16. Because of the aforesaid order of the High Court, again an issue arose as to who should function as ad hoc principal of the institution till regular appointment is made. This resulted in two orders being passed by the District Inspector of Schools dated 15th January, 2011 and dated 3rd February, 2011.

17. These two orders were challenged by Ram Krit Pathak being Civil Misc. Writ Petition No. 11113 of 2011. This writ petition was dismissed vide order dated 23rd February, 2011.

18. The Committee of Management, however, passed a resolution dated 28th February, 2011 appointing one Gajanand Pandey, as ad hoc principal of the institution and his signatures were attested by the District Inspector of Schools on 4th March, 2011.

19. These two orders were challenged by Sri Kishun by means of Civil Misc. Writ Petition No. 16315 of 2011, wherein an interim order was granted by the Writ Court on 29th March, 2011.

20. Against the order of the Writ Court dated 23rd February, 2011 passed in Civil Misc. Writ Petition No. 11113 of 2011, Ram Krit Pathak filed Special Appeal No. 393 of 2011. Against the interim order of the Writ Court dated 29th March, 2011 passed in Civil Misc. Writ Petition No. 16315 of 2011, Ram Krit Pathak filed Special Appeal Defective No. 351 of 2011. Both the special appeals were allowed by the Division Bench of this Court vide separate judgments and order dated 11th April, 2011. Writ Petition No. 11113 of 2011 filed by Ram Krit Pathak was directed to be restored and listed with writ petition No. 16315 of 2011 before the Writ Court. The order of the Writ Court dated 23rd February, 2011 and 29th March, 2011 were set aside after recording that Ram Krit Pathak was a necessary party to the writ proceedings.

21. All the above pending writ petitions have been heard and are being clubbed together and are being decided under this common judgment.

22. On behalf of Surendra Pandey, it has been vehemently contended that under Rule 13 (3) of U.P. Secondary Education Services Selection Board Rules, 1998 (hereinafter referred to as the "Rules, 1998"), there is a power within the Committee of Management to extend the time for joining of the selected candidate. He submits that in the facts of the present case, the power has been exercised by the Committee of Management, while passing the resolution dated 8th October, 2010 and subsequently accepting the joining of the selected candidate i.e. Surendra Pandey on 9th October, 2010. Such exercise of powers in the facts of the present case, by the Committee of Management, which had

earlier acted illegally by not permitting the candidate empanelled at serial No. 1 to join, despite his having reported for such joining within the time permitted, only because of non-production of the relieving certificate from the earlier employer, namely, Central School. Sri Rajeev Mishra, learned Counsel for Surendra Pandey points out that the Petitioner, Surendra Pandey, was always ready and willing to join the institution within the time permitted, as is apparent from the letter submitted by him and from the fact that he had actually reported for joining on 1st September, 2009. It was the Committee of Management, which had illegally insisting upon the production of the relieving certificate. He explains that there is no provision under the U.P. Secondary Education Services Selection Board Act or Rules framed thereunder, whereby the Committee of Management can refuse to accept the joining of the selected/appointed candidate on the ground that the selected candidate has not produced the relieving certificate from his earlier employer. Even otherwise, he points out that substantial justice has been done between the parties with the acceptance of his joining by the Committee of Management on 9th October, 2010 and such appointment of the candidate, who is more meritorious and was empanelled at serial No. 1 need not be interfered with by this Court.

23. Sri P.N. Saxena, learned Senior Advocate for the Committee of Management supports the contention raised on behalf of Surendra Pandey and submits that it was within the competence of the Committee of Management to accept the joining of the candidate empanelled at serial No. 1, in view of the powers vested in the Committee of Management under Rule 13 of Rules, 1998. The candidate empanelled at serial No. 3, namely, Sri Kishun, who is lower in merit than Surendra Pandey has no right to object to the joining of Surendra Pandey. All other writ petitions being filed for ad hoc appointment as principal of the institution would fall automatically, once a regular Principal is appointed.

24. The contentions so raised on behalf Surendra Pandey and the Committee of Management are opposed by Sri V.K. Singh, learned Counsel for Sri Kishun and it is contended that once an appointment letter has been issued fixing a time limit for joining, the candidate has to join within the time specified including the extended time, if any. In case he does not join within the time so permitted, he loses his right to be appointed and in that circumstances, the Committee of Management has no other option but to offer appointment to the candidate next in merit. Since the candidate empanelled at serial No. 2 has already retired, the Committee of Management is under legal obligation to offer appointment to candidate empanelled at serial No. 3, namely, Sri Kishun in the facts of the case.

25. The joining of Surendra, as accepted by the Committee of Management on 9th October, 2010, is patently illegal. It has been so done only to keep Sri Kishun out of the office of Principal.

26. Sri V.K. Singh points out that the District Inspector of Schools in his order dated 16th August, 2010 has recorded a categorical finding that Surendra Pandey had given in writing in his letter dated 1st September, 2009 that in case

he does not produce the relieving certificate within one month i.e. till 29th September, 2009, his appointment shall stand cancelled automatically. He further submits that a finding has also been recorded by the District Inspector of Schools, that despite repeated opportunities Surendra Pandey did not join the institution within the time permitted under various letters of the Committee of Management.

27. Such findings recorded by the District Inspector of Schools have not been challenged in the writ petition filed by Surendra Pandey and therefore, they are to be taken as correct. The only ground raised in the writ petition filed by Surendra Pandey being Civil Misc. Writ Petition No. 52366 of 2010 is that the order has been passed by the District Inspector of Schools in violation of principles of natural justice, which is factually incorrect. He submits that in the facts of the present case, the candidate empanelled at serial No. 3 has to be appointed as regular principal of the institution and in case such appointment is offered, all other writ petitions pertaining to ad hoc appointment as principal will fall automatically.

28. I have considered the submissions made by the learned Counsel s for the parties and have examined the records of the present writ petition.

29. Nobody is present on behalf of the persons seeking ad hoc appointment, as principal of the institution even in the revised reading of the list. Even otherwise, the controversy qua ad hoc appointment will lose all significance once the issue of regular appointment as principal of the institution between Surendra Pandey and Sri Kishun is adjudicated upon by this Court.

30. This Court finds that on receipt of letter of appointment dated 14th June, 2009, Surendra Pandey did respond and approached the Committee of Management of the institution for time being granted to join, inasmuch as the letter contained a specific recital that he must report for joining, alongwith relieving order. Since it was not possible for Surendra Pandey to obtain/submit the relieving certificate in such short duration, he prayed for extension for joining. This request was granted by the Committee of Management and it was directed that he must report for joining on or before 1st September, 2009. Surendra Pandey did report for joining in the institution on 1st September, 2009. He submitted a letter in writing (a copy whereof has been enclosed at page 63 of paper book of Civil Misc. Writ Petition No. 52366 of 2010). He categorically stated that he should be permitted to join subject to the condition that he will produce the relieving certificate within a month of joining, failing which his appointment may be treated as cancelled automatically. The Committee of Management did not accept the said joining, obviously for the reasons that Surendra Pandey had not produced the relieving certificate. However, the Committee of Management thereafter did not proceed to pass any resolution for offering regular appointment also to the candidate empanelled at serial No. 2 or to the candidate empanelled at serial No. 3. In between series of litigation has taken place, various orders have been passed by the Writ Court, which have

already been noticed above.

31. It is admitted on record that Surendra Pandey was ultimately issued the relieving certificate by the Central School on 8th October, 2010 and immediately thereafter he reported for joining in the institution, which was accepted on 9th October, 2010.

32. This Court may record that Surendra Pandey had never refused to report for joining within the time permitted by the Committee of Management, as per the letters referred to above. It was the Committee of Management, which was illegally insisting upon the production of the relieving certificate before accepting his joining. Neither the learned Counsel for Sri Kishun nor the learned Counsel for the Committee of Management nor the learned Standing Counsel could point out any provision under U.P. Act No. 5 of 1982 or Rules framed thereunder, wherein the Committee of Management could refuse the joining report of the selected candidate on the ground that he has not produced the discharge/relieving certificate of his earlier employer. Position was made worst by the Committee of Management, by not accepting the joining of Surendra Pandey on 1st September, 2009, despite his letter stating therein that if he is permitted to join, he shall ensure the production of the relieving certificate within one month. The fault, if any, in not joining of Surendra Pandey is to be attributed to the Committee of Management of the institution and not on Surendra Pandey. His right to be appointed in the institution on the strength of his having empanelled at serial No. 1 cannot be permitted to be defeated by the Committee of Management by acting arbitrary i.e. for production of relieving certificate before joining. The mistake committed by the Committee of Management earlier has been cured by accepting the joining report of Surendra Pandey on 9th October, 2010, on his production of the relieving certificate.

33. It is settled law that the candidate empanelled at serial No. 3 can have no better claim than the candidate empanelled at serial No. 1 of the select panel.

34. So far as the order passed by the District Inspector of Schools dated 16th August, 2010 is concerned, this Court may record that on simple reading of the order of the District Inspector of Schools, it is clear that the same is based on half reading of the letter of Surendra Pandey dated 1st September, 2009. It is apparent that the District Inspector of Schools has wrongly recorded in his order that Surendra Pandey had not reported for joining in the institution, when as matter of fact from the letter dated 1st September, 2009, it is clear that he had reported for joining on the said date and it was the Committee of Management, which refused to accept his joining on patently illegal ground that he has not produced the relieving certificate. The letter of the Surendra Pandey clearly records that he may be permitted to join the institution and he shall produce his relieving certificate within one month thereafter. In case he fails to produce the relieving certificate within one month, his appointment shall stand cancelled automatically. Such statement made by Surendra Pandey in his letter dated 1st September, 2009 necessarily means that this period of one month would run

from the date of joining. The clause referred to above cannot be read separately from the first clause of his joining by acceptance. Therefore, the order of the District Inspector of Schools dated 16th August, 2010 cannot be legally sustained and is hereby quashed.

35. Time and again it has been held that all Courts of law are established for furtherance of interest of substantial justice and not to obstruct the same on technicalities. Reference-- Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, wherein it has been held that if substantial justice and technicalities are pitted against each other, the cause of substantial justice should not be defeated on technicalities. No procedure in a Court of law should be allowed to defeat the cause of substantial justice on some technicalities. Reference- Ghanshyam Dass and Others Vs. Dominion of India and Others,

36. In the totality of the circumstances, as are on record, this Court has no hesitation to record that substantial justice has been done by the Committee of Management by accepting the joining report of Surendra Pandey on 9th October, 2010. Such action, which results in substantial justice, does not warrant any interference in exercise of equatable jurisdiction under Article 226 of the Constitution of India. The joining report of Surendra Pandey as principal in the institution is therefore, approved off by this Court in the facts of the case. The claim set up by Sri Kishun, who is empanelled at serial No. 3 as well as the claim raised by other persons for appointment as Ad hoc principal, have therefore, to be turned down.

37. Writ petition No. 52366 of 2010 filed Surendra Pandey is allowed. Writ petitions filed by Sri Kishun i.e. Writ Petition Nos. 3549 of 2010, 63773 of 2010 and 16315 of 2011 and writ petition filed Ram Krit Pathak seeking appointment as ad hoc principal i.e. writ petition No. 11113 of 2011 are dismissed. Writ petition 51538 of 2010 filed by the Committee of Management is disposed of.