

(2003) 01 AHC CK 0067

In the Allahabad High Court

Case No : C.M.W.P. No"s. 17048/36577 of 2001

Dr. Vijay Laxmi Agarwal

APPELLANT

Vs

Vice-Chancellor, M.J.P. Rohilkhand University and Others

RESPONDENT

Date of Decision : 27-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 2 AWC 1016 : (2003) 3 LLJ 477

Hon'ble Judges : Prakash Krishna, J;M. Katju, J

Bench : Division Bench

Advocate : Ishrat Ali, Surendra Prasad and Irshad Ali, for the Appellant; R.G. Padia, A.K. Pandey and Govind Saran, for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—Heard Sri Ishrat Ali learned counsel for the petitioner and Dr. R. G. Padia for Dr. (Smt.) Neerja Garg, respondent No. 3.

2. A counter-affidavit has been filed on behalf of respondent No. 2, the Committee of Management of S.B.D. Mahila Mahavidyala, Dhampur, district Bijnor through Dr. Awadesh Saxena.

3. The short point involved in this case is as to who is entitled to be appointed as officiating principal of the institution till the regular selection is made by the U. P. Higher Education Service Commission. Admittedly the petitioner Dr. Vijay Laxmi Agarwal is senior to Dr. Neerja Garg. Statute 11.20 of the Statutes of the Rohil Khand University states :

"11,20. When the office of the Principal of an Affiliated College falls vacant, the Management may appoint any teacher to officiate as Principal for a period of three months or until the appointment of a regular Principal, whichever is earlier. If on or before the expiry of the period of three months, any regular principal is not appointed, or such a principal does not assume office, the senior most teacher in the college , shall officiate as principal of such college until a regular

principal is appointed."

4. A perusal of the above quoted statute shows that when the post of Principal of a College falls vacant, the management can appoint any teacher as officiating principal for three months or until regular selection is made, whichever is earlier. However, if on the expiry of three months, no regularly selected principal is appointed or such a principal does not assume office, the senior-most teacher in the college shall officiate as principal until regular appointment.

5. In the present case, the permanent principal of the college Dr. Saroj Markandey retired on 30.6.2000 and hence admittedly, a vacancy had occurred. The Committee of Management appointed the petitioner as officiating principal of the college on 1.7.2000. However, thereafter by the impugned resolution dated 18.12.2000, the Committee of Management removed the petitioner from the post of Principal and appointed the respondent No. 3 as officiating principal, vide Annexure-4 to the writ petition.

6. It has been asserted in paragraphs 11 and 12 of the writ petition that no opportunity of hearing was given to the petitioner before passing the impugned order dated 20.12.2000/3.1.2001 (Annexure-4 to the writ petition).

7. The replies to paragraphs 11 and 12 of the writ petition are contained in paragraphs 27 and 28 of the counter-affidavit of the Committee of Management. The only answer contained therein is that the allegations contained in paragraph 11 and 12 of the writ petition are denied. It is settled law that if there is no specific denial of the allegations in the petition, then a mere bald denial will not do and it will be treated as an admission. In paragraphs 27 and 28 of the counter-affidavit, there is merely a bald denial and not a specific denial of the allegations contained in paragraphs 11 and 12 of the writ petition. We have, therefore, to hold that the petitioner was not given any show cause notice or opportunity of hearing before passing the impugned order.

8. It has been held by a Division Bench of this Court in Teacher Association of Sanatan Dharam (P.G.) College and others Vs. Choudhary Charan Singh University and others, following the Full Bench decision in Radha Raizada v. Committee of Management Vidyawati Darbari Girls Inter College 1994 ALJ 1077, that while ordinarily the senior-most teacher should be appointed Principal of a Degree College, till regular selection, in exceptional circumstances where it would not be in the interest of the institution to appoint the senior-most teacher, he can be superseded and the next after him in seniority can be appointed.

9. In our opinion, when it was proposed by the Committee of Management to supersede the senior-most teacher, it was incumbent on the Committee of Management to give a show cause notice to the senior-most teacher stating therein that there are some serious allegations against him and, therefore, it was proposed to supersede him/her and asking him/her to show cause within a specified period, why this action should not be taken, vide Tribhuvan Nath Mishra v. District Inspector of Schools 1992 ESC 563. No doubt, this show cause notice

need not be followed by an elaborate departmental enquiry in which oral hearing is given, including an opportunity of examination and cross-examination. The show cause notice can merely make allegations against the petitioner as to why he is proposed to be superseded and give him a short period of time; say of one week, to reply to the show cause notice, and after receiving the reply or expiry of the period for reply, the management can order supersession of the senior-most teacher after giving in brief the reasons for doing so (which need not be elaborate reasons as contained in the Judgment of a court of law).

10. In our opinion, this would avoid arbitrariness and would be sufficient compliance of the principles of natural justice. Fairness demands that a person should know why some action is being taken against him. Since ordinarily the senior-most teacher has a right to be appointed as Principal, he must at least know why the action is being taken against him and he must be given a show cause notice and opportunity of hearing (which need not be personal hearing) before taking the action.

11. Since no such notice was given to the petitioner in the present case before passing the impugned order, we quash the order dated 18.12.2000 (Annexure-4 to the writ petition) removing the petitioner from the post of Principal of the Institution and appointing Dr. Neerja Garg as Officiating Principal and we direct that the petitioner be appointed as Officiating Principal of the Institution forthwith till regular selection,

12. The petition is allowed. No order as to costs.