
(2001) 03 AHC CK 0001

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 6314 of 2001

Harihar Prasad Kushwaha

APPELLANT

Vs

Director of Education (Secondary) and Others

RESPONDENT

Date of Decision : 12-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 2 UPLBEC 1708

Hon'ble Judges : R.K. Agrawal, J

Bench : Single Bench

Advocate : Ashok Khare, for the Appellant; R.G. Padia, Prakash Padia and V.K. Shukla, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Agrawal, J.—Civil Misc. Writ Petition No. 35135 of 2000 has been filed by the petitioner Harihar Prasad Kushwaha seeking a writ of mandamus directing the respondents to regularize the services of the petitioner on the post of Principal in Mahatma Gandhi Inter College, Sakhwawa, district Kushinagar and directing the respondents not to disturb in peaceful functioning of the petitioner as Principal of the Institution. A further writ of mandamus has been prayed for directing the respondents to include the petitioner in the interview of candidates alongwith other the candidates before the Service Selection Board, whereas Writ Petition No. 6314 of 2001 has been filed by him seeking a writ, order or direction in the nature of certiorari quashing the impugned order dated 25.1.2001, passed by the Director of Education (Secondary), U.P., Lucknow, contained in Annexure 3 to the said petition.

2. Since both these petitions have been filed by one and same person and involve common question of law and fact, hence they are being decided by a common order.

3. Briefly stated facts of the case are that there is an Institution known as

Mahatma Gandhi Inter College situate at Sakhwawa in the district of Kushinagar, (hereinafter referred to as the "College") which is a recognized institution under the provisions of U.P. Intermediate Education Act, 1921 (hereinafter referred to as the Act).

4. It appears that the petitioner was appointed on the post of lecturer in the said College on 1.1.1966. He is the senior most lecturer in the College. One Dr. Jagdish Pandey who was working as Principal in the Institution, had retired on 30.6.2000. He handed over the charge of officiating Principal to the petitioner. The District Inspector of Schools had attested the signatures of the petitioner as Acting Principal. Ram Ashray Singh the contesting respondent in this case, who is also a lecturer in the College claims that the petitioner is not qualified for being appointed on the post of Principal and, therefore, he being senior most lecturer and qualified to be appointed on the post of Principal ought to have been handed over the charge of the Principal.

5. In Writ Petition No. 35136 of 2000 it has been stated that the District Inspector of Schools had not decided the matter regarding the Principal of the College himself and had referred it to the Joint Director of Education for necessary directions. The petitioner further submits that if the post of the Principal is to be filled up by U.P. Secondary Education Service Selection Board, Allahabad (hereinafter referred to as the Board) then the petitioner being the senior most lecturer in the College and his name should be included for the post of Principal.

6. While entertaining the Writ Petition No. 35136 of 2000 this Court had directed that the petitioner be permitted to continue on the post of adhoc Principal in the College vide order dated 15.8.2000.

7. In the second petition, the petitioner has challenged the order dated 25.1.2001 passed by the Director of Education (Secondary), UP., Lucknow whereby he has held that the petitioner is not qualified to hold the post of Principal. It may be mentioned that the said order has been passed pursuant to the judgment and order dated 28.9.2000 passed in Civil Misc. Writ Petition No. 42043 of 2000, Ram Ashray Singh v. Director of Education (Secondary), U.P., Lucknow and Ors..

8. I have heard Shri Ashok Khare learned Sr. Counsel on behalf of the petitioner in both the writ petition, Shri V. K. Shukla learned Counsel for the respondent No. 6 in Writ Petition No. 35136 of 2000 and Shri Prakash Padia learned Counsel for the respondent No. 5 in Civil Misc. Writ Petition No. 6314 of 2001 and the learned Standing Counsel on behalf of the State of U.P.

9. Shri Khare, submitted that Writ Petition No. 42043 of 2000 was filed by Ram Ashray Singh before this Court without impleading the petitioner and without affording any opportunity of hearing, this Court had directed the Director of Education (Secondary) to decide the representation as such the said order would not give any jurisdiction to the Director of Education to decide the matter. Even

otherwise, the Director of Education is not the appropriate authority to decide the matter as to who should be handed over the charge of officiating/acting Principal of the College and merely because this Court had directed the Joint Director of Education to decide the matter, the order passed by the Director of Education being wholly without jurisdiction cannot be given effect to. In support of this plea, he relied upon the decisions of Division Bench of this Court rendered in the case of *Dltaramvir Singh Tyagi v. The Deputy Director of Education and Ors.*, reported in 1981 UPLBEC 511, and *Udit Narain Kshetria High School Society, Padrauna. district Deoria and Anr. v. District Magistrate, Deoria*, reported in 1993 HVD IV 241.

10. In the case of *Dharamvir Singh Tyagi* (supra) this Court has held as under:

"17. Learned Counsel appearing for the respondent, committee of management, urged that whenever an employee resigns and the resignation is accepted by the committee of management, the only consequence is the termination of services of the employee and as such the act amounts to termination of services within the meaning of Section 16-G(3) of the Act and the order of the District Inspector of Schools amounted to an order of disapproval of the termination of the petitioner's services under clause (b) of Sub-sections (3) of Section 16-G of the Act and hence becomes appealable under clause (c) thereof. In our opinion, there is no merit in this contention. A mere reading of clause (a) of Sub-section (3) of Section 16-G discloses that the notice of termination of services envisaged by that provision is one which is a result of initiative taken by the committee of management itself. It is true that even a resignation by the emplyyee does result in shaping the relationship of master and servant between the Committee of Management and the teacher concerned, none the less, it is not termination of services of the nature envisaged by Sub-section 3(a) of Section 16-G of the Act. Section 16-G(b) envisages an order of approval or disapproval by the District Inspector of Schools of a notice of termination of the teacher's service which is brought about at the initiative of the Management just as an order of dismissal or removal is. It is only in such cases that an appeal lies against an order of District Inspector of Schools u/s 16-G(3)(c). The order of the District Inspector of Schools, already held above, was passed under the implied powers possessed by him and as such was not appealable under any provision of U.P. Intermediate Education Act. As held by the Supreme Court in *Soorajmull Nagarmull Vs. Commissioner of Income Tax, Calcutta*, , an appeal is a creature of the statute against an order passed by a statutory authority in exercise of either express or implied powers, an appeal does not lie unless provided for by statute. In the instant case, we have already held that no statutory provision exists justifying the Deputy Director of Education entertaining an appeal against the order of the District Inspector of Schools.

18. An attempt was made before us to contend that since the High Court while allowing Writ Petition No. 2354 of 1979 had directed the Deputy Director of Education to decide the appeal which at that time was pending before him, was

no longer open to the petitioner to contend that the order of the Deputy Director of Education was without jurisdiction and that he had no power to entertain the appeal against the order of the District Inspector of Schools, his contention, in our opinion, is without any substance. A perusal of the judgment recorded by this Ccsurt in Civil Misc. Writ Petition No. 2354 of 1979 discloses that when it was brought to the notice of the Bench hearing the writ petition that an appeal against the order of the District Inspector of Schools had already been filed by the Committee of Management before the Deputy Director of Education, the learned Judges merely observed that "the Deputy Director of Education will decide the appeal in accordance with law."

The direction of this Court that the Deputy Director will decide the appeal in accordance with law necessarily meant that he would also decide the question as to whether the appeal lay against the order impugned before him at all. There was no mandate contained in the judgment of this Court which disentitled the Deputy Director of Education to take a view that the appeal was not maintainable and that he was required to decide the appeal on merits even if no appeal was maintainable."

11. In the case of Udit Narain Kshetriya High School Society, Padrauna, district Deoria & another (supra), this Court has held as under:

"10.....Our attention has not been drawn to any law conferring jurisdiction upon either the Deputy Director of Education or Vice- Chancellor to decide dispute of the nature involved in the present case. Reference of the said dispute to the said two authorities, in our opinion, was, therefore, unwarranted. If the learned Single Judge was of the opinion that the dispute involved in the writ petition could not be conveniently decided in proceedings under Article 226 of the Constitution, he could have relegated the parties to the forum available under the ordinary law. It is not suggested that no other forum was available except the forum of the Court under Article 226 of the Constitution."

12. He further submitted that the petitioner has done Post Graduate Diploma in Science from recognized University and has teaching experience of more than 15 years and, therefore, he possess necessary qualification prescribed in Appendix "A". He relied upon certain circular issued by the Director of Education vide letter dated 24.12.1988 in which it has been stated that the person who have P.G. Diploma have been exempted from training and, therefore, the petitioner is entitled for being appointed as Acting Principal being senior most lecturer in the Institution. He also relied upon the order dated 29.3.2000, contained in Annexure 3, passed by the Joint Director of Education, 7th Region, Gorakhpur in the case of the Principal of Janta Inter College, Ram Kola, Kushi Nagar, wherein person who was having simply Post Graduate with requisite experience was allowed to be handed over the charge of Acting Principal.

13. Shri V. K. Shukla and Shri Prakash Padia, however, submitted that the petitioner was not trained P.G. Diploma Holder but simply P.G. diploma holder,

and therefore, he did not fulfil the requisite qualification as given in Appendix "A". It is also submitted that by executive instructions, the qualification prescribed in Appendix "A" cannot be relaxed. In support of this plea reliance has placed upon the decision rendered in the Civil Misc. Writ Petition No. 12527 of 2000, Deena Nath Singh v. Joint Director of Education, XIV Region, Azamgarh and Ors., decided on 25.5.2000. They further relied upon the decision rendered in the case of Bansh Lal Singh Sengar v. District Inspector of Schools, Kanpur Dehat and Ors., reported in (1989) 1 UPLBEC 425 wherein this Court has held that for appointment of adhoc Principal in Intermediate College, person claiming for appointment should be trained Post Graduate. Diploma holder in Science and training appears to be one of the necessary qualification for being appointed as Principal. On the question of jurisdiction of the Director of Education to decide the matter they submitted that this Court vide judgment and order dated 28.9.2000 passed in. Writ Petition No. 42043 of 2000 had directed the Director of Education to decide the matter, therefore, the order passed by him cannot be said to be wholly without jurisdiction. They submitted that in any event, legal position regarding the qualification for the appointment of Principal had been settled long back in the year 1989 itself and in this view of the matter the petitioner is not entitled to invoke equitable jurisdiction under Article 226 of the Constitution, as the order passed by the Director of Education is in conformity with the legal position settled by this Court.

14. Having heard the learned counsel for the parties, I find that the petitioner is not a trained Post Graduate Diploma Holder in Science. He is simply a Post Graduate Diploma Holder. The word "training" has been defined in Appendix "A" in Part I. Under it in reference to prescribed qualification the word "trained" means post graduate training qualification such as L.T., B.T., B.Ed. S.C. or M.Ed, of any University or institution as specified in earlier para or any equivalent (Degree or Diploma). It also includes departmental A.T.C. and C.T. with minimum teaching experience of five years.

15. The Post Graduate diploma in Science which the petitioner holds does not fulfil the requirement mentioned in para 2 referred to above. It is also not the case of the petitioner that diploma which he holds is equivalent to other qualification referred to above. Thus, the petitioner does not possess the requisite qualification of training Post Graduate Diploma. So far as the order dated 29.3.2000 passed by the Joint Director of Education in the case of Janta Inter College, Kushi Nagar is concerned, the said order is contrary to the law laid down by this Court in the Case of Bansh Lal Singh Sengar (supra) and cannot be of any help to the petitioner.

16. It may be mentioned here that this Court as far back in the year 1989 had settled the legal position regarding the qualification for the post of Principal and if the State Government was of the view that only the P.G. Diploma in Science would be sufficient, then it ought to have taken steps to amend Appendix "A" suitably. It cannot be done by executive orders as held by this Court in the case

of Deena Nath Singh (supra). Thus, the circular issued by the Director of Education of no help to the petitioner.

17. So far as the question of the jurisdiction of the Director of Education in deciding the matter is concerned even though he may not have the jurisdiction to decide the matter vet, the said order is not liable to be interfered with in exercise of powers under Article 226 of the Constitution as the said order is in conformity with the settled legal position. The setting aside of this order, passed by the Director of Education would mean to perpetuate the order of the Committee of Management and District Inspector of Schools by attesting the signature of the petitioner on the post of Acting Principle who was not qualified under law.

18. In view of foregoing discussions, both these petitions are devoid of merit and are dismissed. However, there shall be no order as to costs.