
(2010) 10 AHC CK 0155

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 34274 of 2009

Hriday Kant Tiwari

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 22-10-2010

Acts Referred:

Citation : (2010) 10 AHC CK 0155

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Shukla, J.—Civil Misc. Writ Petition No. 34274 of 2009 has been filed by Hriday Kant Tiwari, officiating/adhoc Principal of Amar Shaheed Bhagat Singh Inter College, Rasra, Ballia, questioning the validity of action taken transferring Ramayan Singh as Principal of Amar Shaheed Bhagat Singh Inter College, Rasra, Ballia. Civil Misc. Writ Petition No. 62578 of 2009 has been filed by Ramayan Singh, questioning the validity of order dated 10.11.2009 passed by Additional Director of Education (Secondary) cancelling the transfer of Ramayan Singh as Principal of Amar Shaheed Bhagat Singh Inter College, Rasra, Ballia. Civil Misc. Writ Petition No. 12480 of 2010 has been filed by Ramayan Singh, requesting therein for ensuring his salary as Principal.

2. Brief background of the case, as is reflected from the record, is that advertisement No. 1 of 2002 was issued by the U.P. Secondary Education Service Selection Board, Allahabad, for making selection and appointment on the post of Principals in recognized institutions. Select panel was notified on 24.12.2002, wherein names of Ramayan Singh, Ashwani Kumar Upadhyaya and Sahajanand Singh were empaneled at serial Nos. 1,2 and 3 respectively, for the post of Principal at Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia. The District Inspector of Schools on 18.01.2003 asked the Manager of the Committee of Management of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia, to issue appointment letter and to ensure joining of Ramayan Singh as

Principal in his institution, and said appointment was to abide by the outcome of Special Appeal pending in this Court. As per Ramayan Singh, the Manager of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia was not at all interested in his joining in his institution, as such he apprised this fact to the District Inspector of Schools, and the District Inspector of Schools again on 05.03.2003 asked the Manager of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia to ensure compliance of the earlier order. Said letter was duly received by Management on 17.04.2003, but the directives issued therein were not complied with; same was followed by yet another letter dated 03.05.2003. Ramayan Singh's grievance is that the Manager of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia was bent upon not to comply with the orders passed by the District Inspector of Schools, Ballia and the District Inspector of Schools had been giving repeated directions in this regard, and ultimately when nothing was done, then on 14.05.2003, the District Inspector of Schools passed order attaching Ramayan Singh at his Office as Principal of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia. Pursuant to the said order Ramayan Singh reported his joining at the office of the District Inspector of Schools as Principal of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia, on account of non-co-operating attitude of the Manager of the said institution. Thereafter two letters dated 11.05.2003 and 20.05.2003, purported to have been issued by the Manager of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia, were received by the Petitioner on 30.06.2003, whereby Ramayan Singh was asked to produce his educational testimonials. Ramayan Singh submits that mala fides of the Manager of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia were clearly reflective from his conduct that on 20.06.2003, he permitted Ashwani Kumar Upadhyaya, who was empaneled at serial No. 2 in the select panel dated 24.12.2002, to join the institution as its Principal. Ramayan Singh submits that when he acquired knowledge of this activity of the Manager of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia, he made complaint to the Joint Director of Education and requested for cancelling the order dated 20.06.2003. Thereafter, the Joint Director of Education made queries and on 23.07.2003 proceeded to cancel the said illegal joining of Ashwani Kumar Upadhyaya as Principal of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia. Against the said order of the Joint Director of Education dated 23.07.2003, Ashwani Kumar Upadhyaya preferred writ petition and the same was dismissed by this Court on 29.10.2003. Aggrieved by the said judgment of this Court, Ashwani Kumar preferred SLP No. 3778 of 2004 before Hon"ble Apex Court, and the Hon"ble Apex Court on 27.02.2004 passed an order for maintaining status-quo, and the said SLP was connected with other Special Leave Petitions, including the case of Balbir Kaur, wherein entire selection on the post of Principals had been cancelled by Division Bench of this Court and the matter was pending before Hon"ble Apex Court. Ramayan Singh also filed SLP No. 2334 of 2002, wherein order of status-quo was passed on 18.12.2003. It appears that Ramayan Singh, whose attachment was continuing with the office of the District Inspector of Schools, Ballia, approached the authorities and the

authorities on 26.06.2004 passed an order for accommodating Ramayan Singh in another institution, viz. Shri Yanuna Prasad Inter College Vidya Bahawan, Narainpur, Ballia. This adjustment of Ramayan Singh was questioned by the senior-most lecturer, Sri Rama Kant Singh by preferring writ petition before this Court, and the same was ultimately allowed on 04.02.2005, holding that there was no occasion for adjustment of Ramayan Singh, as there was already status-quo order passed by Hon"ble Apex Court dated 18.12.2003. Against the order dated 04.02.2005, Ramayan Singh preferred Special Appeal No. 174 of 2005, but the same was dismissed On 21.02.2005, and thereafter SLP was preferred before Hon"ble Apex Court and the same was numbered as SLP No. 6094 of 2005, and ultimately dismissed on 09.04.2005. Ramayan Singh claims that thereafter, he continued to remain attached at the office of the District Inspector of Schools, Ballia and received salary month by month. He further submits that on 06.06.2008 his signatures were attested by the District Inspector of Schools as Principal of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia, and thereafter, on 02.06.2009 he moved an application for his transfer from Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia to Amar Shaheed Bhagat Singh Inter College, Rasra, Ballia, and there was consent of Manager of Committees of Management and Prabandh Sanchalak of both the institutions. Thereafter, on 29.06.2009 order of transfer was passed and Ramayan Singh on 01.07.2009 joined as Principal at Amar Shaheed Bhagat Singh Inter College, Rasra, Ballia. Ramayan Singh submits that thereafter, on 03.09.2009 in writ petition No. 34274 of 2009 explanation had been called, in response to which instead of filing counter affidavit, without providing opportunity of hearing to the Petitioner, Ramayan Singh, order of his transfer had been cancelled on 10.11.2009, which is under challenge in writ petition No. 62578 of 2009.

3. In both the writ petitions, viz. Writ petition No. 34274 of 2009 and writ petition No. 62578 of 2009 pleadings inter se parties have been exchanged, and thereafter, Ramayan Singh has preferred writ petition No. 12480 of 2010 praying for payment of his salary. As two writ petitions were pending and engaging attention of this Court, as such writ petition No. 12480 of 2010 was also directed to be connected with the same. This is how that all these three writ petitions have come up before this bench for hearing and disposal. Original record has also been summoned; same has been perused by the parties concerned and thereafter with the consent of the parties, all these three writ petitions have been heard together and are being decided by a common judgment.

4. Sri Rajeev Mishra, Advocate, representing Hridaya Kant Tiwari, Petitioner of writ petition No. 34274 of 2009, contended with vehemence that once Ramayan Singh had not been validly appointed as Principal of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia, and on admitted fact once no orders in black or white had been passed u/s 17 of U.P. Act No. 5 of 1982, then by no stretch of imagination, he could have been transferred to the Petitioner's institution under Regulations 55 to 62 of the regulations framed under Chapter III of U.P. Act No. 2 of 1921, and in such a situation and in this background

transfer of Ramayan Singh as Principal to Amar Shaheed Bhagat Singh Inter College, Rasra, Ballia is a nullity and no credibility could be attached to the same.

5. Sri Ashok Khare, Senior Advocate, assisted by Sri V.K. Singh, Advocate, representing Ramayan Singh, Petitioner of writ petition No. 62578 of 2009, contended with vehemence that Ramayan Singh is duly selected Principal by the U.P. Secondary Education Service Selection Board, Allahabad and sequence of events available on record would narrate in detail the arbitrary treatment which has been meted to him qua his joining and functioning as Principal and here in the present case, Committee of Management of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia had passed resolution in favour of Ramayan Singh and had recommended for his transfer; and Authorized Controller of Amar Shaheed Bhagat Singh Inter College, Bairia, Ballia had agreed to the same; in such a situation and in this background, once approval of transfer was there and transfer had been validly made, then writ petition as has been framed and drawn by Hriday Kant Tiwari deserves to be dismissed, as transfer is one of the accepted modes of appointment. Learned Counsel representing Ramayan Singh further submits that the order cancelling the transfer order is unjustifiable order, for the simple reason as the same has been passed without affording opportunity of hearing to Ramayan Singh.

6. Sri H.N. Singh, Advocate, appearing for the Manager of the Committee of Management of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia, contended with vehemence that records are here and whatever inference are to be drawn, same may be drawn from the record. Stand to the similar effect has been taken by learned standing counsel also.

7. After respective arguments have been advanced, factual position, which emerges and to which there is no dispute, is that Ramayan Singh had been duly recommended by the U.P. Secondary Education Service Selection Board, Allahabad for being appointed as Principal of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia, pursuant to select panel which was notified on 24.12.2002. The District Inspector of Schools had been writing repeated letters to the Manager of the Committee of Management of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia, but the Manager of the said College at no point of time proceeded ahead to ensure joining of Ramayan Singh. The fact of the matter is that District Inspector of Schools had been repeatedly writing letters on 05.03.2003, 18.03.2003 and 03.05.2003 to the Manager of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia for ensuring joining of Ramayan Singh as Principal, and on 17.05.2003 when he felt that the Committee of Management of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia was bent upon not to comply with the directives issued by him, the District Inspector of Schools passed order attaching Ramayan Singh to his office on 14.05.2003 and same was acted upon on 17.05.2003 and in exercise of authority u/s 3(3) of U.P. Act No. 24 of 1971 salary has been ensured to him in Principal's Grade. The mala fides on the part of the Manager of Baba Laxman Das Dwaba

Rashtriya Inter College, Bairia, Ballia are fully reflected from the fact that the candidate who was empaneled at serial No. 1 in the select panel was not issued appointment letter and to the contrary one Ashwani Kumar Upadhyaya, who was empaneled at serial No. 2 in the select panel, appointment letter was sought to be issued in his favour on 20.06.2003, and Ramayan Singh in his turn opposed the same by approaching the Joint Director of Education and the joint Director of Education intervened in the matter and cancelled the said illegal action of the Committee of Management of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia vide order dated 23.07.2003, wherein present order was passed for ensuring joining of Ramayan Singh as Principal of the institution and for ensuring salary in favour of Ramayan Singh. Pursuant thereto District Inspector of Schools, Balia addressed letter dated 06.08.2003, to Manager, Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia, giving directives to ensure joining within one week and even said directive was not complied with by the Committee of Management. Against order dated 23.07.2003 Ashwani Kumar Upadhyaya preferred writ petition, which was dismissed on 29.10.2003. Division Bench of this Court proceeded to cancel the selection made qua the Principals, against the same Ramayan Singh preferred SLP No. 2334 of 2002, wherein order of status-quo was passed on 18.12.2003. Ashwani Kumar Upadhyaya against order dated 29.10.2003, passed by this Court also preferred SLP No. 3778 of 2004 before Hon"ble Apex Court and the Hon"ble Apex Court on 27.02.2004 passed order of status-quo, and net effect of the said order was that Ramayan Singh continued to remain attached with the office of the District Inspector of Schools in the capacity of Principal of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia and was being paid salary. Ashwani Kumar Upadhyaya at no point of time had been paid salary of the post of Principal.

8. Ramayan Singh, it appears, was not comfortable with the situation, he wanted to get rid of the Committee of Management of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia, as such he ventured to get himself adjusted to some other institution; in this direction the authorities also proceeded to accommodate him as Principal of Shri Yanuna Prasad Inter College Vidya Bahawan, Narainpur, Ballia, by passing order dated 26.06.2004. Thereafter, there was second round of litigation, when said order was subject matter of challenge in writ petition No. 34722 of 2004 before this Court and the same was allowed on 04.02.2005. Aggrieved Ramayan Singh preferred Special Appeal No. 174 of 2005, and the same was dismissed on 05.02.2005. SLP preferred against the said order was also dismissed by Hon"ble Apex Court. This Court while passing order dated 04.02.2005 had observed that once status-quo order was there of the Hon"ble Apex Court in S.L.P No. 2334 of 2003, then the same ought to have been maintained and order of adjustment could not have been passed. Ramayan Singh continued to remain attached at the office of the District Inspector of Schools and was being paid salary except for the period when he had been adjusted in another institution with effect from 25.07.2004 to 31.03.2005; at Yamuna Prasad Inter College. All the S.L.Ps., including SLP No.

2334 of 2003 connected with the SLP of Balbir Kaur (supra) were dismissed. Record in question reflects that the District Inspector of Schools attested the signatures of Ramayan Singh by passing a detailed order on 7/13.06.2008. Said order in question at no point of time had ever been questioned and the same attained finality.

9. In reference to teacher, entitled to be appointed as teacher in any institution in accordance with Chapter II of U.P. Act No. V of 1982, in case is not appointed by the Management within time provided for, then such teacher has not been left remediless. Said teacher u/s 17 of the said Act can approach the Director of Education. The Director of Education by a general order dated 13.06.1996 has authorized the District Inspector of Schools of every district to exercise authority vested u/s 17 of the Act. On an application received, enquiry is to be made, and on said application being recorded that management has failed to make appointment in contravention of the provision of the Act, then order can be passed asking the Management to appoint forthwith and to pay him salary from the date specified in the order. Sub-section (3) of Section 17 qua salary due, if any, authorises recovery by way of land revenue. The authority of the District Inspector of Schools to exercise authority u/s 17 of U.P. Act No. V of 1982 is not disputed. This much has come on record, and is fully reflected from the order passed by District Inspector of Schools, that he was informed that the management was not at all interested in ensuring joining of Ramayan Singh as Principal, and the District Inspector of Schools has been continuously writing for ensuring his joining and District Inspector of Schools, in the facts of the case, satisfied itself that Management has failed to appoint Ramayan Singh in spite of specific directives, sensing that Management will not ensure joining of Ramayan Singh, asked Ramayan Singh to give his joining at his office, and after joining was given salary has also been ensured u/s 3(3) of U.P. Act No. 24 of 1971. Section 17 is for the benefit and advantage of selected teacher. Section 17 is completely silent on the score, if Management fails to comply with the directions issued for issuance of appointment letter then what should be the further course of action. Once Section 17 is silent, and Section 21-D is not specifically applicable but same deals with the situation, when there is default on the part of Management, the District Inspector of Schools is entitled to issue appointment letter and also ensure salary. Here, District Inspector of Schools, qua duly selected candidate found that Management was bent upon not to ensure joining, ensured joining and as institution was governed by U.P. Act No. 24 of 1971, also ensured salary. In pith and substance once order had been passed in the past and lastly on 13.06.2008 attesting signatures of Ramayan Singh and the authority u/s 17 of U.P. Act No. 5 of 1982 has been delegated to the District inspector of Schools, then the contention that no orders were passed u/s 17 of the Act cannot be accepted in the facts of the case, inasmuch as the District Inspector of Schools has noted the background of the case and the way and manner in which Ramayan Singh has been harassed and victimized by the Manager of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia. The

District Inspector of Schools has also noted in detail the conduct of the Manager of the said College and then signatures of Ramayan Singh have been attested by him on 7/13.06.2008 and salary has also been ensured to him. Thus, there exists positive order in black and white in favour of Ramayan Singh in respect of his joining and attestation of signatures. Qua any decision taken in transgression/excess of authority u/s 17 of U.P. Act No. 5 of 1982, it is the Managing Committee of the institution entitled to question the validity of the same, and the Managing committee never questioned the validity of the said order, and to the contrary acquiesced to the same, as such even otherwise collateral challenge at the behest of Hriday Kant Tiwari cannot be entertained.

10. Record in question further reflects that the Committee of Management of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia was conscious of this fact that by no stretch of imagination they can bypass the appointment of Ramayan Singh, who is duly selected candidate by the U.P. Secondary Education Service Selection Board, Allahabad, as such they proceeded to pass resolution in favour of Ramayan Singh and consent was given by the Authorized Controller of Amar Shaheed Bhagat Singh Inter College, Rasra, Ballia, and thereafter, Additional Director of Education proceeded to pass order of transfer in the facts of the case. Thus, it is established from the record that Ramayan Singh had been appointed as Principal of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia and his signatures had been attested under the orders of the District Inspector of Schools on 13.06.2008 lastly and he was even being paid salary. In such a situation and in this background transfer has been made of a duly selected candidate with the concurrence of both the Committees of Management of the institutions concerned and with the tacit approval of the authorities concerned, then the officiating/adhoc Principal has no authority to question the validity of said transfer order, which has been made strictly in accordance with law. This Court in the case of Laxmi Shankar Bajpai v. Additional Director 2008 (4) ESC has taken the view that officiating Principal has no locus to challenge validity of transfer of Principal In such a situation and in this background writ petition No. 34274 of 2009 filed by Hridya Kant Tiwari is dismissed.

11. After valid transfer had been made, challenge was made to the same and on account of various queries being made, said transfer order had been canceled on 11.10.2009, which is subject matter of challenge in W.P. No. 62578 of 2009. This is accepted position that the transfer order has been cancelled without providing opportunity of hearing to Ramayan Singh. Once transfer had been made in accordance with law, following statutory provisions, and in case it was to be cancelled on any ground whatsoever, the opportunity of hearing was a condition precedent, and as the order dated 11.10.2009 had been passed without affording opportunity of hearing, same is not being approved of.

12. In the counter affidavit filed on behalf of the State as well as the Committee of Management of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia,

Ballia, serious averments have been mentioned that entire documents are forged and fabricated in respect of joining of Ramayan Singh and transfer. On account of said statement of fact being mentioned, original record in question had been directed to be produced, and once original record is there before the Court, at the point of time when when hearing took place, such an issue has not at all been raised either on behalf of State or on behalf of the Committee of Management of Baba Laxman Das Dwaba Rashtriya Inter College, Bairia, Ballia. Once such an issue has not been pressed and it is writ apparent that on account of specific queries being made by this Court, instead of answering the said issues, comments were asked for from the District Inspector of Schools and based on the same orders were passed, such decision cannot be approved of. Decision making process is faulty on the face of it, being in violation of principles of natural justice and to evade specific queries raised by this Court. Consequently, writ petition No. 62578 of 2009 filed by Ramayan Singh is allowed. The order dated 11.10.2009 is hereby quashed and set aside.

13. As far as writ petition No. 12480 of 2010 is concerned, since writ petition No. 62578 of 2009 has been allowed, and Ramayn Singh had been illegally prevented from discharging duties on account of illegal order, as such Ramayan Singh is entitled to salary in the Principal's Grade, for the period mentioned therein. Consequently, writ petition No. 12480 of 2010 also stands allowed.