

(2006) 07 AHC CK 0091

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 36758 of 2006

Krishna Pal Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-07-2006

Acts Referred:

General Clauses Act, 1897 — Section 19A
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 18(1), 18(2)

Citation : (2006) 6 AWC 6522

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Vinod Sinha and S.P. Singh, for the Appellant; Ashok Khare and Mohd. Arif and S.C., for the Respondent

Judgement

Tarun Agarwala, J.—Heard Sri Vinod Sinha, the learned Counsel for the petitioner and Sri Ashok Khare, the learned Senior Counsel appearing for the respondent No. 5. As agreed between the parties, the writ petition is disposed of at the admission stage itself without calling for a counter affidavit.

2. The Committee of Management by a resolution dated 30.6.2006 resolved to appoint the petitioner as the adhoc Principal in the institution. The papers were forwarded to the District Inspector of Schools for attestation of the signatures of the petitioner as the adhoc Principal of the institution. The District Inspector of Schools by an order dated 6.7.2006 refused to attest the signatures of the petitioner on the ground that the respondent No. 5 was senior to the petitioner. The District Inspector of Schools held that the petitioner was wrongly shown as senior to respondent No. 5 in the seniority list and that the seniority of the petitioner had wrongly been calculated.

3. In the opinion of the Court, the District Inspector of Schools, Saharanpur had no jurisdiction to pass the impugned order or decide the question of seniority interse between the petitioner and the respondent No. 5.

4. Sri Ashok Khare, the learned Senior counsel for the respondent No. 5 urged that the District Inspector of Schools, Saharanpur has the power to consider the question of seniority while attesting the signatures of the Principal under the provisions of Section 18[2] of the U.P. Secondary Education Services Selection Board Act, 1982 read with Section 19A of the General Clauses Act. Section 18 [2] of the Act is quoted hereunder:

18.[2] where the management fails to promote the senior most teacher under Sub-section [1] the inspector shall himself issue the order of promotion of such teacher and the teacher concerned shall be entitled to get his salary as the Principal or the Headmaster, as the case may be, from the date he joins such post in pursuance of such order of promotion.

5. In my opinion, the said provision is not applicable, inasmuch as Sub clause [2] of Section 18 would only be applicable at a stage where the Committee of management fails to promote a teacher on the post of adhoc Principal or the Head Master as the case may be. In the present case, the Committee of Management had issued a resolution dated 30.6,2006 resolving to appoint the petitioner as an adhoc Principal. This order was passed in consonance with the provisions of Section 18[1] of the Act of 1982. Once an order under Sub-section [1] is passed, the question of considering the seniority u/s 18[2] of the said Act by the District Inspector of Schools does not arise. Consequently, if any dispute arises with regard to the seniority between the petitioner and the respondent No. 5 or with any other teaching staff of the institution, the adjudication of such dispute would fall under Chapter II Regulation [3] of the Regulations framed under the Intermediate Education Act, 1921.

6. In view of the aforesaid, this Court is of the opinion that the District Inspector of Schools had no jurisdiction to pass such an order. The impugned order dated 6.7.2006 is quashed and the writ petition is allowed. Since there is a dispute with regard to the seniority between the petitioner and the respondent No. 5, this Court directs the petitioner as well as the respondent No. 5 to file their respective claim before the Joint Director of Education under Chapter II Regulation 3 [f] of the Regulations framed under the Intermediate Education Act 1921 within two weeks from the date of the production of a certified copy of this order. Upon receipt of the claim, the Joint Director of Education shall hear the parties including the Committee of Management and shall pass a reasoned and speaking order within a period of one month from the receipt of the claim.