

**(2010) 11 AHC CK 0098**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 40670 of 2010**

Kunwar Pal Singh

APPELLANT

Vs

State of U.P. and others

RESPONDENT

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**Date of Decision :** 19-11-2010

**Acts Referred:**

**Citation :** (2010) 11 AHC CK 0098

**Hon'ble Judges :** Arun Tandon, J

**Bench :** Single Bench

**Advocate :** M.M. Sahai, for the Appellant;

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## Judgement

Arun Tandon, J.—Heard counsel for the parties. In paragraphs 4 to 6 of the writ petition, it has been stated that the petitioner was appointed as teacher and promoted as Principal in Brahmdat Saraswati Vidya Mandir, Bilaspur, District Rampur. It appears that he was posted as Principal of Saraswati Vidya Mandir, Dankur, District Gautam Budh Nagar from where he was transferred to Saraswati Vidya Mandir, Ghasipura, District Muzaffar Nagar on the post of Principal vide order dated 22nd June. 2006 and that his signatures were attested by the District Inspector of Schools vide order dated 1st September, 2009.

2. On the strength of such allegations, petitioner seeks to challenge the order of the Authorized Controller dated 1st April, 2010. whereunder it has been directed that the persons appointed by the earlier Committee of Management shall cease to function in view of the order of the Writ Court dated 29th January. 2010. According to the petitioner, the order dated 29.1.2010 is in a petition pertaining to inter se dispute of the Committee of Management. Therefore, the same would not affect the transfer of the petitioner.

3. The contention so simply stated appears to be attractive. however, on the examination of the records this Court finds that the petitioner has been transferred to a recognized intermediate college on 22nd June, 2006. The order of transfer has been enclosed as Annexure-2 to the writ petition, which is a letter

of the Pradesh Nirikshak. Bhartiya Shiksha Samiti Parishad, U.P. Ghaziabad.

4. It is not in dispute that the petitioner has been transferred from a recognised Intermediate College to another recognised Intermediate College. Such transfer can be made in accordance with Regulations 55 to 62 of Chapter III of the Regulations framed under the U.P. Intermediate Education Act, 1921. It is admitted on record that such procedure prescribed by the statutory provisions has not been followed. There is no order on record approving the said transfer by the competent statutory authority required under the said regulations.

5. I am of the considered opinion that such transfer of the petitioner to a recognised Intermediate College is patently illegal. Transfer to an institution, which is recognized under the U.P. Intermediate Education Act, 1921 can be affected only in accordance with Regulations 55 to 62 of Chapter III of the Regulations framed under the U.P. Intermediate Education Act, 1921, which requires prior approval of the education authorities as detailed therein. Therefore, this Court has no hesitation to hold that the alleged transfer of the petitioner in the year 2006 is only a waste paper and does not confer any legal right upon the petitioner to work as Principal In a recognized Intermediate College. Even if the order of the Authorized Controller is found to be illegal for any reason, this Court refuses to interfere with the order of the Authorized Controller as it will perpetuate the illegal continuance of the petitioner in the institution concerned.

6. At this stage counsel for the petitioner submits that if this Court come to conclusion that his order of transfer is bad and, therefore, the order of the authorised controller setting aside the joining of the petitioner In the institution is not being interfered, the petitioner is at least entitled to function at his original institution from where he has been transferred. No directions are required in that regard from this Court inasmuch as if the petitioner was validly appointed in the institution from where he has been transferred to the present institution as per the statutory provisions applicable he can always report back in his original institution and seek permission for being permitted to work therein in accordance with law.

7. This Court may record that since the transfer of the petitioner was de hors the statutory rules and, therefore, nullity, the order passed by the Authorized Controller does not in any manner affect his rights qua his working in earlier institution. It is always open to the petitioner to revert back to his original institution by making appropriate application before the authority concerned. Writ petition is disposed of subject to the observations made above.