
(2016) 08 AHC CK 0234
In the Allahabad High Court
Case No : Special Appeal No. 351 of 2016

Laxmi Narain Tewari (Inre 16917 S/S 2016) APPELLANT
Vs
State of U.P. RESPONDENT

Date of Decision : 22-08-2016

Acts Referred:

Citation : (2016) 8 ADJ 539 : (2016) 5 AILLJ 792 : (2016) 5 AllWC 4962

Hon'ble Judges : Amreshwar Pratap Sahi and Dr. Vijay Laxmi, JJ.

Bench : Division Bench

Advocate : Om Prakash Misra and Rakesh Kumar Singh, Advocates, for the Appellant; C.S.C, Pankaj Kumar Shukla and Ramesh Pandey, Advocates, for the Respondents

Final Decision : Allowed

Judgement

1. The appeal questions the correctness of the judgment of the learned Single Judge dated 26.7.2016 in relation to the ad hoc appointment and continuance of a Principal on officiating basis in an aided privately managed Intermediate College governed by the provisions of Intermediate Education Act, 1921 and the U.P. Secondary Education Services Selection Board Act, 1982 and the Regulations framed thereunder.

2. The legal battle ensued for the post of Principal in Janta Inter College, Babhnan, Gonda which is duly recognised under the 1921 Act when it's regular Principal Mr. Ram Prakash Mishra died in a road accident on 15.12.2011. On the occurrence of such a vacancy ad hoc arrangement has to be made which is permissible under Section 18 of the 1982 Act. Section 18 of 1982 Act reads as under:-

"18. Ad hoc Principals or Headmasters - (1) Where the Management has notified a vacancy to the Board, in accordance with sub-section (1) of Section 10 and the post of the Principal or the Headmaster actually remained vacant for more than two months, the management shall fill such vacancy on purely ad hoc basis by

promoting the senior-most teacher.

(a) in the lecturer's grade in respect of a vacancy in the post of the Principal.

(b) in the trained graduate's grade in respect of a vacancy in the post of the Headmaster.

(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.

(3) Where the teacher to whom the order of promotion is issued under sub-section (2) is unable to join the post of the Principal or the Headmaster, as the case may be, due to any act or omission on the part of the management, such teacher may submit his joining report to the Inspector, and shall thereupon be entitled to get his salary as the Principal or the Headmaster, as the case may be, from the date he submits the said report.

(4) Every appointment of an ad hoc Principal or Headmaster under sub-section (1) or sub-section (2) shall cease to have effect from when the candidate recommended by the Board joins the post."

3. It may be clarified at the outset that such ad hoc arrangement is to be made from amongst the senior-most teachers of the highest grade in the institution and the appointment has to be made of an individual who possesses the qualification to occupy the post of a Principal in terms of the Appendix appended to the Regulations framed under Chapter - III of the 1921 Act read with the Regulations framed under the 1982 Act. There cannot be a dispute that the Principal of an Intermediate College has to have a post-graduate degree with the experience as prescribed under the said Appendix for being appointed as a Principal. The senior-most person has to be given charge unless he is ineligible or otherwise incapable and the seniority has to be determined in terms of the Rules that provide for fixation of seniority under the Regulations and the Act. According to the appellant, he is the senior-most Teacher in the highest grade and his name had also appeared at Sl. No. 1 in the seniority list dated 21.11.2012 and as such, he was entitled for being appointed. According to the appellant, the name of Sri Krishna Dev Tripathi was shown at Sl. No.2 whereas name of Sri Satyadeo Tiwari was shown at Sl. No.11. This seniority is however being disputed by the respondent No.6. The respondent No.6 also disputes the eligibility of the appellant of not being possessed of a Post-Graduate Degree on the date when he came to be given charge on officiating basis treating him to be the senior-most Teacher of the Institution. According to the respondent No.6, since the appellant did not possess the requisite qualification he could neither have been given charge nor can he be promoted on ad hoc basis as a Principal of the Institution.

4. This process of appointment on ad hoc basis on the post of Principal of the

Institution commenced with a resolution of the Committee of Management passed on 25.1.2012, whereby the said proposal was forwarded to the Regional Joint Director (Education), Faizabad. A letter dated 27.1.2012 was sent by the District Inspector of Schools to the Joint Director of Education informing him that the appellant possessed only a Graduate Degree (B.A., B.Ed.,) but in view of the impending Board Exams of students the arrangement on the post be made at the earliest. The Joint Director of Education on 15.2.2012 passed an order to the effect that Sri Krishna Dev Tripathi was the senior-most Teacher who was qualified and eligible, but since his work and conduct was not satisfactory and he was involved in a criminal case having been bailed out therein, the appellant/ Laxmi Narain Tewari was rightly proposed for being appointed on ad hoc basis and accordingly, the Joint Director of Education approved of the ad hoc promotion of the appellant through the said order dated 15.2.2012, a copy whereof is Annexure-2 to the appeal. The District Inspector of Schools, Gonda vide order dated 26.2.2012 attested the signatures of the appellant as the officiating Principal of the Institution to function till a regularly selected Principal by the Board arrives to join in the Institution.

5. At this juncture, it may be relevant to point out that till date there is nothing on record to indicate the regular selection/appointment of the Principal in the institution for the past four years.

6. The issue of seniority vis-à-vis the Teachers in the Institution also appears to have been raised before the District Inspector of Schools and Joint Director of Education and the District Inspector of Schools vide letter dated 7.9.2012 called upon the submission of the seniority list before him. A copy of the said letter is Annexure - 4 to the appeal. The Committee of Management of the Institution through its Manager forwarded the seniority list vide letter dated 22.11.2012.

7. The respondent No.6 Satyadeo Tiwari being an aspirant for the post of Principal on the aforesaid allegations appears to have approached the local Member of Legislative Assembly (MLA) who on 18.10.2012 made a recommendation to the Director of Education for appointing the respondent No.6 as the officiating Principal of the Institution. The Director of Education in turn forwarded the said letter to the District Inspector of Schools and acting thereon, the District Inspector of Schools on 12.11.2012 despatched a letter directing the Manager of the Institution to appoint the respondent No.6 as the officiating Head of the Institution and also forward papers for the attestation of his signatures. The District Inspector of Schools informed the Manager vide letter dated 16.1.2013 that the aforesaid recommendation and the letter written by him on 12.11.2012 shall be considered only after the decision of seniority which is pending before the Regional Joint Director (Education).

8. In between, the appellant had filed a Writ Petition No. 6977 (SS) of 2012 challenging the direction of the District Inspector of Schools dated 12.11.2012 which had been issued at the instance of the MLA and the Director of Education.

The said writ petition is still pending, but it appears that no action was taken as the District Inspector of Schools himself passed the order 16.1.2013 that the same shall be considered after the seniority dispute is decided by the Joint Director of Education as is evident from the letter dated 16.1.2013. Practically, the said petition appears to have become redundant in the wake of subsequent developments.

9. The respondent No.6 then adopted another course of method approaching the district authorities including the District Magistrate, Gonda alleging that the appellant had managed to procure Post-Graduation Certificates in the meantime, but since they were forged an enquiry should be conducted into the matter. The District Inspector of Schools on 6.2.2014 wrote a letter to the management calling upon it to provide the copies of the marks sheets and certificates of the Master's Degrees that came to be acquired by the appellant in between these transactions.

10. The respondent No.6 appears to have pestered the M.L.A. who again might have called upon the District Inspector of Schools, who in turn issued a letter dated 6.5.2015 calling upon the Management to explain as to why charge of ad hoc/officiating Principal has not been given to the respondent No.6. This indicates that the respondent No.6 has questioned the seniority as well as the eligibility of the appellant at the time of his appointment and even thereafter about his qualification of Post-Graduation that have been acquired later on which he had described to be fake. Not only this, this persuasion further appears to have taken shape when the respondent No.6 moved a complaint before the District Magistrate, who on the administrative side directed the Station Officer of the Police Station concerned to lodge an F.I.R. vide order dated 16.5.2016 which order finds endorsed on Annexure - 16 to the affidavit. This order has been passed on the application presented during "Janta Darshan" of the District Magistrate. The Management appears to have refused to act upon any such complaints or the direction of the District Inspector of Schools vide letter dated 20.7.2016 clearly stating therein that unless it is found that the appellant is otherwise guilty of any misconduct he cannot be removed and no charge can be given to some other person. It has also been stated by the Management that the respondent No.6/Satyadeo Tiwari has not been able to perform his teaching job satisfactorily and even otherwise he had suffered from a paralytic attack about a year ago as a result whereof it is not possible for him to maintain discipline amongst the students in the classes. The letter of the Management also indicates that a recommendation had been made for his compulsory retirement and for that purpose, he can be medically examined.

11. It is in this background that all of a sudden without any notice or opportunity to the appellant, the District Inspector of Schools on 30.6.2016 passed an order, that keeping in view the enquiry on the complaint made by the respondent No.6 which is pending and the direction of the District Magistrate to lodge an F.I.R., till the enquiry is concluded, respondent No.6/Satyadeo Tiwari is directed to be

appointed as officiating Head of the Institution. A copy of the letter was sent to the Manager of the Institution to execute the same and to forward the signatures of respondent No.6 for attestation.

12. It is this order dated 30.6.2016 that came to be challenged by the appellant through the Writ Petition No.16917 (SS) of 2016 that has given rise to this appeal contending that firstly, the impugned order is in violation of principles of natural justice as no notice or opportunity was given to the appellant and secondly, the pendency of an enquiry cannot be a basis for his substitution as the Head of the Institution by the appointment of the respondent No.6 that too even after four years of his continuing as such and thirdly, the appellant possesses the Master's Degree in two subjects which came to be obtained in the years 2012 and 2013 respectively. It was further urged on behalf of the appellant that the original order by which the appellant was recognised by the authorities as the officiating Head of the Institution, namely the order dated 15.2.2012 of the Joint Director of Education and the consequential order of the District Inspector of Schools dated 22.2.2012 has neither be rescinded nor cancelled and as such, the District Inspector of Schools on his own cannot annul the effect of the highest authorities, namely, Regional Director of Education.

13. The respondent No.6 filed a short counter affidavit before the learned Single Judge and brought on record the letter dated 27.1.2012 of the District Inspector of Schools that was addressed to the Joint Director of Education indicating therein that the appellant/Laxmi Narain Tiwari was possessed of the qualification of B.A., and B.Ed., only, but in view of the impending practical examinations of the students to be conducted by the U.P. Board, a decision should be taken in relation to the appointment of the Head of the Institution.

14. A supplementary affidavit was filed by the appellant before the learned Single Judge stating therein that he had post-graduated in the subject of English through the distance learning education of Sikkim University in January, 2011 in a course that ran between January, 2011 to December, 2011 and the marks sheet of the final year was issued on 25.9.2012. A copy of the said mark sheet was also filed along with the supplementary affidavit. It was also alleged therein that subsequently, the appellant passed the Post-Graduate Examination in Hindi as well from Acharya Narendra Dev Kisan Post-Graduate College, Babhnan, Gonda in 2013 as a private student and this certificate was appended along with the supplementary affidavit which course he had pursued with due permission granted in this regard. He also indicated his claim of seniority over and above the respondent No.6. It was also alleged therein that no complaint was there against him about his capacity and conduct as Head of the Institution since 2012 and in this background, it was prayed that the order of the District Inspector of Schools dated 30.6.2016 being mala fide deserves to be quashed.

15. We have heard Sri Rakesh Kumar Singh, learned Counsel for the appellant, Sri Ramesh Pandey, learned counsel for the respondent No.6 and the learned Standing Counsel for the respondent Nos.1 to 4.

16. Learned counsel for the said respondents clearly stated that they do not propose to file any further affidavit apart from what has already been filed before the learned Single Judge and therefore, the matter be disposed of finally at this stage itself.

17. Learned counsel for the appellant Sri Singh has submitted that there was a contest between the appellant and the respondent No.6 for the post in question. The learned Single Judge has committed a manifest error by proceeding to make a provision by directing that the function of the post of Principal in the Institution shall be discharged by a regularly appointed Principal of some nearby recognised aided Intermediate College in the vicinity of the appellant's institution. Sri Singh submits that this direction is contrary to law and the Principal of another institution cannot be supplanted in the appellant's institution either under any provision of the 1921 Act or under the 1982 Act or the Rules and Regulations framed thereunder. Such a direction therefore cannot be implemented and it amounts to appointing somebody totally outside the cadre of the Institution for which the provisions do not make any exception and therefore, such an exercise cannot be undertaken through a Mandamus under Article 226 of the Constitution of India. He therefore submits that this part of the order being totally without jurisdiction the same deserves to be set aside.

18. It would be appropriate to deal with this part of the direction at the very outset with regard to which the submission of Sri Ramesh Pandey, learned counsel for the respondent No.6 is that even if it is assumed that this direction could not be given, but the same can be saved by modifying it to the extent that any other Teacher of the same Institution including the respondent No.6 can be given charge once it is established that the appellant did not possess the minimum qualifications on the date when he came to be proposed by the Committee of Management on 25.1.2012 and even when the orders were passed by the Joint Director of Education and the District Inspector of Schools on 15.2.2012 and 22.2.2012 respectively.

19. We have considered the aforesaid submissions and the issue with regard to the qualification of appellant will be dealt with here-in-after but so far as the aforesaid direction of the learned Single Judge to make an interim arrangement by giving charge of the office of Principal to a regular Principal of some other Institution is totally foreign to the concept of an ad hoc Principal as envisaged under Section 18 of the 1982 Act. The senior-most Teacher of the same Institution has to be given charge unless he is otherwise incapable of holding the same. Sri Ramesh Pandey therefore is right to the extent that if the senior most Teacher is not qualified then the baton has to pass on to the next senior-most Teacher provided he is qualified and eligible. Thus, a Principal of another College cannot be introduced as an In-charge on officiating basis of the present Institution. The said direction of the learned Single Judge therefore being beyond law cannot be sustained. One private aided institution is a separate entity from another private aided institution. There cannot be any imposition on officiating

basis in the manner aforesaid as neither the 1982 Act nor the 1921 Act or the Rules and Regulations framed thereunder envisages any such arrangement.

20. Coming to the issue of this sudden change brought about by the order of the District Inspector of Schools dated 30.6.2016, the learned Single Judge himself has arrived at the finding that the impugned order is in violation of principles of natural justice and has been passed without any notice or opportunity to the appellant. Neither Sri Ramesh Pandey for the respondent No.6 nor the learned Standing Counsel for the State could dispute the fact that the order dated 30.6.2016 of the District Inspector of Schools was passed without notice and opportunity to the appellant. Thus, the same being in violation of principles of natural justice cannot be sustained more so in the background when the appellant had been continuing and officiating as the Head of the Institution for the past four years without any complaint about his administrative capacity on the post.

21. There was no justification for passing an ex-parte order and it also appears to have been passed not bona fide, inasmuch as the pretext of passing of the order is the pendency of an enquiry against the appellant both with regard to the seniority and also with regard to the status of his Certificates for which a direction had been issued to lodge an F.I.R. Such a pretext cannot be made the basis of an ex-parte order unless there is a final outcome of any such enquiry or even prima facie evidence before a Criminal Court to substantiate the same. An F.I.R. was directed to be lodged by the District Magistrate who had no authority to entertain a complaint with regard to such a matter which was already engaging the attention of the educational authorities, that too even in a "Janta Darshan". The District Inspector of Schools has not correctly appreciated or appears to have not been informed about the entire background of this litigation. A mere lodging of an F.I.R. would therefore not be a basis to dispense with the inbuilt mechanism of providing an opportunity before passing an order adverse to the appellant.

22. Sri Ramesh Pandey has urged that if the order is interfered with the same would amount to restoring the appellant who does not possess the minimum qualifications and is also alleged to be in possession of fake Certificates of Post-Graduation. This may only be at best a presumptuous material which is subject to any enquiry and is clearly rebuttable which proceedings were pending before the educational authorities. There is no final outcome of the same. Simultaneously, the issue of seniority which has already been raised is still pending before the Joint Director of Education. Thus, to presume everything against the appellant at this very stage and to non-suit him would be exercising an erroneous authority on the basis of a mere presumption without final proof.

23. There is yet another aspect of the matter. The impugned order of the District Inspector of Schools dated 30.6.2016 has been passed directly by the District Inspector of Schools to appoint the respondent No.6 and give him officiating charge of the Institution. There is no resolution of the Committee of Management

nor is there any final verdict on the dispute between the appellant and the respondent No.6 either about the qualifications or the seniority matter. The District Inspector of Schools was therefore right in dispatching the letter on 16.1.2013 informing the Manager that any decision on the complaint of the respondent No.6 or otherwise would be taken after a decision is taken by the Joint Director of Education. The District Inspector of Schools has pre-empted this by the impugned order dated 30.6.2016 without the order of the Joint Director of Education dated 15.2.2012 having been either withdrawn or rescinded which is in favour of the appellant. This being the position the District Inspector of Schools clearly appears to have acted upon the persuasion of the respondent No.6 and the earlier correspondence as noted above where the M.L.A. had also intervened at the instance of the respondent No.6. The order of the District Inspector of Schools therefore also suffers from malice in law. This aspect has also been overlooked by the learned Single Judge while refusing to come to the aid of the appellant and adopting a procedure which is totally alien to the provisions of the Act and Rules and introducing a third person as a Principal from outside even though the learned Single Judge has noticed the fact that the matter requires a decision by the Joint Director of Education that has been explained by him at item Nos. 1, 2 and 3 of the directions issued in the impugned judgment.

24. In view of what has been stated above, the direction Nos. 4, 5 and 7 of the impugned judgment cannot be sustained. Accordingly, we find that the learned Single Judge even though had rightly issued the directions for an early decision in the matter by the Director and the Joint Director of Education, had erred in exercising discretion by proceeding to make an interim arrangement by non-suiting the appellant or even for that matter against the respondent No.6 who were staking their claims in the institution.

25. From what has been brought on record, it is evident that the appellant was continuing in the institution pursuant to the orders referred to here-in-above for the past four years and therefore, the abrupt decision to dislodge the same without any decision on the merits of the claim by the competent authority by the District Inspector of Schools was clearly an erroneous exercise of power. The District Inspector of Schools ought not to have overreached the order of the Joint Director of Education dated 15.2.2012 and his own order dated 16.1.2013 in such a hasty manner which is also in violation of principles of natural justice.

26. Consequently, for all the reasons aforesaid, the order of the District Inspector of Schools dated 30.6.2016 is quashed and the directions given by the learned Single Judge being direction Nos. 4, 5 and 7 are set aside.

27. The other directions with regard to seniority and with regard to the enquiry into the Master's Degree of the appellant are upheld. The Joint Director of Education shall proceed with the matter of seniority and so far as the issue of the Certificates of the appellant is concerned, the same shall be decided by the Director of Secondary Education as directed by the learned Single Judge within the time period prescribed therein. The final orders to be passed by the Director

of Secondary Education would therefore govern the fate of the parties as per the direction of the learned Single Judge.

28. Subject to any further challenge being raised to the same, the Special Appeal is accordingly allowed with the aforesaid directions.