
(2003) 04 AHC CK 0205
In the Allahabad High Court
Case No : C.M.W.P. No. 871 of 2003

Mahant Prasad Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-04-2003

Acts Referred:

Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 — Rule 11

Citation : (2003) 3 AWC 2261

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : Arun Tandon, for the Appellant; A.P. Tiwari, V.K. Singh, R.P. Dubey, R.K. Srivastava, A.P. Sahi and G.K. Singh and S.C., for the Respondent

Final Decision : Partly Allowed

Judgement

Vineet Saran, J.—Heard Sri Arun Tandon, learned counsel appearing for the petitioner ; learned standing counsel for the State for respondent Nos. 1, 2 and 3 ; Sri A.P. Tiwari, learned counsel for the respondent No. 4 Committee of Management ; Sri V.K. Singh, learned counsel for respondent No. 5 Prem Narain Singh and Sri R.P. Dubey, learned counsel for respondent No. 6, U.P. Secondary Education Service Selection Board. Allahabad.

2. By means of this writ petition the petitioner has challenged the order dated 5.10.2002 passed by the Director of Education (Secondary), U.P., Lucknow whereby it has been directed that being the senior most teacher of the college, respondent No. 5 Prem Narain Singh be appointed as officiating Principal of the college. A further prayer has been made for a direction to the respondents not to interfere in the working of the petitioner as officiating/ad hoc Principal of the College.

3. The impugned order is the result of long-drawn litigation going on between the parties for the last several years. Brief facts as they emerge from the record are that admittedly one Dhanraj Singh retired from the post of Principal of

Chaudhary Ramroop Singh Dhanraj Singh Intermediate College, Dhata, Fatehpur on 30.6.1998. Thus, on 1.7.1998 undisputedly a permanent vacancy occurred on the post of Principal of the college.

4. It is the case of the petitioner that since there were serious charges against the senior most teacher Prem Narain Singh (respondent No. 5), as such on 28.6.1998 the Committee of Management resolved that he may not be appointed as officiating Principal of the college and the qualified teacher next in seniority after him may be appointed. In pursuance thereof, on refusal of the second senior most teacher of the college to accept the post of ad hoc Principal, the petitioner, who was third in the order of seniority, was appointed as officiating Principal for which a resolution dated 3.7.1998 was passed by the Committee of Management, respondent No. 4. However, despite such recommendations the District Inspector of Schools, instead of attesting the signature of the petitioner attested the signature of respondent No. 5 as officiating Principal of the college. The said order of the District Inspector of Schools was challenged by the petitioner in Writ Petition No. 37167 of 2001 which was allowed by this Court on 11.1.2002 along with other connected writ petitions and it was directed that the petitioner herein Mahant Prasad Singh shall continue to officiate as Principal of the college until the candidate regularly selected by the U.P. Secondary Education Service Selection Board joins the institution. The said judgment was challenged in Special Appeal No. 112 of 2002. The Division Bench vide its order dated 30.1.2002 remanded the matter and directed the Director of Education (Secondary) to consider the suitability of rival parties on the basis of their service records and other materials which may be placed by the parties before him and the teacher found suitable be appointed as officiating Principal of the college. It was further directed that till then status quo as on that date was to be maintained between the parties.

5. Learned counsel for the petitioner has submitted that after having considered the material placed before him as directed by this Court in Special Appeal No. 112 of 2002, the Director of Education (Secondary) vide its order dated 26.7.2002 disallowed the claim of Prem Narain Singh, respondent No. 5 for being appointed as officiating Principal of the college and directed that till the regularly selected candidate was appointed as Principal by the Selection Board, the said Mahant Prasad Singh was to continue to officiate as Principal of the college. It has been submitted that while passing the aforesaid order, the Director of Education (Secondary) had relied on several documents including the report dated 30.5.1999 of the Deputy Collector, Khaga, Fatehpur, holding that the conduct of the said Prem Narain Singh in issuing false and fabricated certificates to his two nephews was suspicious, on the basis of which his two nephews got appointment during the short period in 1998 when he officiated as Principal of the college; the order of the Civil Judge (Junior Division), Khaga with regard to the involvement of Prem Narain Singh in such forgery; first information report u/s 420, I.P.C. filed against Prem Narain Singh; as well as the affidavits of the Chairman and five other members/ office bearers of the then Committee of

Management affirming that the Committee of Management had passed a resolution that since there were serious charges against Prem Narain Singh it would not be proper to handover the charge of officiating Principal to him and also that another resolution had been passed that Mahant Prasad Singh may be given the charge of officiating Principal of the college.

6. The said order dated 26.7.2002 of the Director of Education was again challenged by respondent No. 5 Prem Narain Singh in Writ Petition No. 34828 of 2002. This Court vide its order dated 26.8.2002 allowed the writ petition and set aside the order of Director of Education and remanded the matter back to him for fresh decision. This Court had further directed that neither Prem Narain Singh nor Mahant Prasad Singh would function as Principal and the management was directed to make alternate arrangement by making the next senior most teacher to officiate as Principal till decision was taken by the Director of Education. It has been submitted at the Bar that in compliance of the aforesaid order of this Court, the teacher who was next in seniority after the petitioner was given charge of officiating Principal of the college.

7. In the aforesaid circumstances the matter was placed before the Director of Education (Secondary) for re-consideration and he decided the dispute by the impugned order dated 5.10.2002 whereby it has been directed that Prem Narain Singh, respondent No. 5 herein, be given charge of officiating Principal of the college. Learned counsel for the petitioner has submitted that the documents and evidence adduced by the parties, which were placed before the Director of Education (Secondary) in the earlier proceeding and had then been considered by him. Were on record in the present proceeding also but for the reasons best known to him, the Director of Education (Secondary), had totally ignored the same in the subsequent order. It has also been submitted that besides certain relevant reports and documents, the affidavits filed by the then Chairman and members/office bearers of the Committee of Management with regard to passing of the resolutions, though relevant, had not been considered as also the documentary evidence relating to the involvement of Prem Narain Singh in the case relating to the fabrication of mark-sheets issued in favour of his two nephews as also the criminal case u/s 420, I.P.C. pending against the said respondent No. 5. Learned counsel has thus submitted that even though this Court had directed the Director of Education (Secondary) to consider the suitability of the rival claimants for appointment as officiating Principal in accordance with law, the same was not done as all the evidence and documents placed before the said authority were completely ignored. Learned counsel for the petitioner has also submitted that although the Director of Education (Secondary) was not required to look into the aspect as to whether show cause notice was given by the Committee of Management before the passing of the resolution or not but still the claim of respondent No. 5 has been allowed merely on such technicality without actually considering the suitability of the rival claimants. Sri Tandon submitted that the observations made by this Court in Radha Raizada's case (1994) 3 UPLBEC 1551 , that entries for the last 5-10

years should be looked into while considering the suitability of the candidate for appointment as officiating Principal was only illustrative, and not exhaustive and in case if there was even one serious charge against a candidate, it would be sufficient to oust him from being considered for the post. He has further submitted that the Apex Court in its decision rendered in *Ram Murti Singh v. District Inspector of Schools* as, has held that no one has a right to promotion but only has a mere right to be considered for promotion, if he satisfies the requirements of law or rules, and ordinarily the senior most person may expect that he would be appointed, but certainly not if he is not competent. In that case the senior most teacher did not have cordial relations with the teachers and other employees and thus since the management had found that it would be detrimental to the Interest of the institution, the Court held that by not appointing such person as officiating Principal no illegality had been committed.

8. Sri Arun Tandon also urged that the present Committee of Management is conniving with respondent No. 5 and only in order to support him, the Committee of Management respondent No. 4 has not carried out its statutory duty as contemplated under Rule 11 of the U.P. Secondary Education Service Selection Board Rules, 1998, which requires it to send a requisition to the selection board to appoint a regular Principal when a permanent vacancy had admittedly occurred. In compliance of the directions issued by this Court on 29.1.2003 the District Inspector of Schools has filed his personal affidavit wherein it has been stated that intimation of the vacancy had been sent to the Commission (Selection Board) by the office of the then District Inspector of Schools despite the fact that no such information had been sent to them by the Committee of Management.

9. In its counter-affidavit respondent No. 6 U.P. Secondary Education Service Selection Board has specifically stated that they had received an application dated 21.11.1998 from the Manager of the respondent No. 4, Committee of Management of the college with a prayer that the selection process for the post of Principal of the college be kept in abeyance till the decision in Writ Petition No. 12216 of 1983. The facts relating to the said writ petition are that in that year 1983 when the selection process for appointment of regular Principal was initiated by the then U.P. Secondary Education Service Commission for which interviews were scheduled to be held on 11.10.1983, one Dhanraj Singh who was then officiating as Principal of the college filed Writ Petition No. 12216 of 1983 wherein an interim order was passed, which is quoted below ;

"Until further orders interview scheduled for 11.10.1983 for selection and appointment of Principal of Jawahar Lal Nehru Memorial Inter College, Fatehpur, shall remain stayed."

Learned counsel for the parties have stated that the name of Jawahar Lal Nehru Memorial Inter College has now been changed to Chaudhary Ram Roop Singh Dhanraj Singh Inter College.

10. It has been submitted that after the retirement of the said Dhanraj Singh on 30.6.1998, the aforementioned Writ Petition No. 12216 of 1983 had become infructuous. It has also been submitted that in any case the selections on the post of Principal only with regard to the Interviews, which were scheduled to be held on 11.10.1983, had been stayed and not any other selections, which would be clear on perusal of the record of the said writ petition which was placed before me and I examined the same.

11. In the aforesaid circumstances, in my view the application dated 21.11.1998 ought not to have been filed by Committee of Management. Not only this, it was also stated therein that in case if any steps were taken by the selection board for appointment of Principal, the same would amount to contempt of the orders passed by the High Court for which the selection board alone shall be responsible. The said communication dated 21.11.1998 has been filed as Annexure-S.C. A-2 to the short counter-affidavit of respondent No. 6. In the said "communication," it was not pointed out by the Committee of Management that the said writ petition had already become infructuous after the retirement of Dhanraj Singh (the petitioner therein) who had admittedly retired on 30.6.1998. Further, it appears that the Committee of Management deliberately did not bring it to the notice of the selection board that the interim order passed in the aforesaid writ petition was only with regard to the interviews scheduled for 11.10.1983, which means that the selection of the Principal otherwise in accordance with law had not been stayed. Learned counsel for the petitioner has submitted that the Committee of Management deliberately misguided the selection board so that no regular appointment could be made on the post of Principal of the college as the Committee of Management was only interested in continuing with an ad hoc/officiating Principal in the college.

12. Sri A.P. Tiwari, learned counsel appearing for respondent No. 4 has not denied the issuance of the said letter dated 21.11.1998 by his client. He has not been able to show to this Court that the Committee of Management made any efforts for selection and appointment of a regular Principal.

13. Sri V.K. Singh, learned counsel appearing on behalf of the contesting respondent No. 5 has submitted that there was no resolution of the Committee of Management passed either on 28.6.1998 or on 3.7.1998 against respondent No. 5 or in favour of the petitioner. He has submitted that Sri Amrit Lal Singh, son of Jiya Lal Singh, who is the present Manager of the Committee of Management had filed an affidavit that no such resolution had been passed in favour of the petitioner and since copy of the said resolution had not been placed before the Director of Education (Secondary), the same could not be considered by him. However, in its counter-affidavit the respondent No. 5 has also not brought on record any such resolution alleged to have been passed in favour of the respondent No. 5 nor has it been claimed that any such resolution was either placed before the Director of Education (Secondary).

14. Having heard learned counsel for the parties and having perused the record,

in my view, the dispute regarding the appointment of ad hoc Principal is going on between the present parties for the last more than 4-1/2 years and there are claims and counter claims of the parties on which conflicting findings of fact have come from the same authority Director of Education (Secondary), once after considering one set of facts and documents and the second time on considering different facts and documents, totally Ignoring the ones considered by him in his earlier order and without assigning any reason as to why the documents relied upon by him in its earlier order dated 26.7.2002 were not considered by him in the impugned order dated 5.10.2002. Thus, it is clear that the Director of Education (Secondary) has not passed the orders on correct facts or in accordance with the directions of this Court passed earlier and as such the impugned order dated 5.10.2002 is liable to be set aside.

15. In view of the facts narrated above, I am not inclined to grant the other prayer for mandamus to permit the petitioner to continue to officiate as Principal of the college. This Court had earlier by order dated 29.1.2003 directed that as an interim measure neither the petitioner Mahant Prasad Singh nor respondent No. 5 Prem Narain Singh shall function as officiating Principal of the college and the management shall forthwith make arrangement by appointing the next senior most teacher after the petitioner and respondent No. 5 to officiate as Principal of the college and it was further directed that the District Inspector of Schools, Fatehpur, shall ensure that the said next senior most teacher was given charge of officiating Principal of the college. Learned counsel for the petitioner has submitted that the said order has been complied with and the next senior teacher has already been given charge and is officiating as Principal.

16. On 25.2.2003, Sri R.P. Dubey, learned counsel for respondent No. 6, U.P. Secondary Education Service Selection Board was granted time to file an affidavit on behalf of the Board categorically stating as to in how much time the regular appointment on the post of Principal could be made. In compliance thereof an affidavit has been filed by the selection board wherein it has been stated that selection process for appointment of regular Principal of Chaudhary Ramroop Singh Dhanraj Singh Intermediate College, Dhata, Fatehpur, could be completed by the selection board within four months.

17. Considering all the aspect of the case and also the fact that for the last two decades litigation regarding continuance of officiating Principal is going on and no effort has been made by any of the parties for appointing a regular Principal in the college specially after 30.6.1998 when undisputedly the permanent vacancy had occurred, thus in the totality of the circumstances it Is directed that the arrangement for appointment of officiating Principal of the college as provided by the order dated 29.1.2003 shall continue till regularly selected candidate is appointed. It is further directed that respondent No. 6, U.P. Secondary Education Service Selection Board shall take immediate steps to fill up the post of the Principal of the college and shall complete the process and make recommendation for such appointment within four months as they have

undertaken to do in their affidavit filed before this Court. It is further directed that all the parties, Including the Committee of Management shall co-operate in the process for making such selection of a regular Principal of the college.

18. In the result, this writ petition is partly allowed. The order dated 5.10.2002 passed by the Director of Education (Secondary) is quashed. The teacher who is next in seniority after the respondent No. 5 and the petitioner shall be permitted to continue to officiate as Principal of the college, as per the arrangement made vide order dated 29.1.2003, till the regular Principal, duly selected by the selection board takes charge. However, there shall be no order as to costs.

19. Before parting with the case, I may observe that from the facts as narrated above, it is clear that the Committee of Management is guilty of promoting adhocism by not wanting to or making any efforts for appointment of a regular Principal for which a duty is cast on it once a permanent vacancy on the post of Principal occurs. Thus, the State of U.P. through Secretary, Madhyamik Shiksha is directed to take appropriate action in accordance with law and the provisions of the U.P. Intermediate Education Act, 1921, against the management of the college for not complying with its statutory duty for getting a permanent Principal appointed by sending a requisition to the selection board as contemplated in Rule 11 of U.P. Secondary Education Service Selection Board Rules, 1998.