

(1994) 04 AHC CK 0010

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 29136 of 1991 and Special Appeal No. 6 of 1994

Manager-cum-Chairman

APPELLANT

Vs

Smt. Rajeshwari Singh and Another

RESPONDENT

Date of Decision : 13-04-1994

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16, 16A, 16B, 16C, 16D
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 59

Citation : (1994) 2 AWC 1151

Hon'ble Judges : S.S. Sodhi, J;R.A. Sharma, J

Bench : Division Bench

Advocate : Adity Narain, for the Appellant;

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—Zila Parishad, Varanasi, runs number of Intermediate Colleges and Higher Secondary Schools in district Varanasi. These institutions have been recognised under the Intermediate Education Act, 1921 and the Regulations framed thereunder, and are being managed by Zila Parishad. which is a local body. Girls Higher Secondary Schools Chaubeypur and Girls Higher Secondary School, Chakia, are the two of such institutions, which are being run and managed by Zila Parishad. Petitioner is the Principal of Girls Higher Secondary School, Chaubepur. Chairman Zila Parishad vide order dated 10-9-1991 has transferred the Petitioner from Chaubepur to Chakia, and the Principal of Chakia has been transferred to Chaubepur in place of the Petitioner. Petitioner has challenged the above order of transfer by means of this writ petition.

2. When the writ petition was filed this Court on 10-10-1991 granted exparte interim order, whereby operation of the order of transfer dated 10-9-1991 was stayed. The order of stay was confirmed by learned Single Judge on 6-12-1993, against which Chairman. Zila Parishad, Varanasi, has filed Special Appeal. With the consent of the Learned Counsel for parties this Court directed that Special

Appeal and writ petition, giving rise to the appeal, may be disposed of together. Accordingly both, writ petition and the appeal, are being decided by a common judgment, We have heard Learned Counsel for both the parties.

3. Principal, teachers and other employees of the Higher Secondary Schools and Intermediate Colleges are appointed by the Managing Committees of these institutions and their conditions of service are governed by the provisions contained in Section 16-G of U.P. Intermediate Education Act, 1921 (herein after referred to as the Education Act) and Regulations framed thereunder. According to Section 16-G(2)(c) of the Education Act, service of an employee can be transferred from one recognised institution to another. Regulation 59, which is reproduced below, lays down the conditions precedents for transfer of service of the employees from the institution to another:

59. No person employed in a recognised institution shall be transferred from the institution to any other institution unless-

- (a) the Committee of Management for each such institution, by means of a resolution only passed in that behalf, concur in such transfer;
- (b) the permission in writing of the Inspector is obtained before giving effect to such transfer.

In 1982 an Act known as U.P. Secondary Education Services Commission and Selection Board Act, 1982 (hereinafter referred to as Secondary Commission Act), was enacted by the State of Uttar Pradesh, Section 16 of which laid down that notwithstanding anything contained in Education Act and Regulations framed thereunder every appointment of a teacher of Intermediate College and Higher Secondary School on or after July 10, 1981, shall be made by the Management of those institutions only on the recommendation of Secondary Education Commission. In view of above provision the Supreme Court in *Om Prakash Rana Vs. Swarup Singh Tomar and Others*, , has laid down that after commencement of Secondary Commission Act, it is not permissible to transfer a Principal or a teacher u/s 16-G(2)(c) of the Education Act from one institution to another. In view of Section 16 of the Secondary Commission Act and decision of Supreme Court in *Om Prakash* (supra) transfer of the Principal and teachers was completely prohibited. The State of U.P. however, enacted U.P. Act No. 8 of 1991, whereby after existing proviso the following proviso was inserted, with retrospective effect, in Section 16 of Secondary Commission Act.

Provided further that the appointment of a teacher by transfer from one institution to another, may be made in accordance with Regulations made under Clause (c) of Sub-section (2) of Section 16-G of the Intermediate Education Act, 1921.

In view of this amendment it has again become permissible to transfer a teacher or Principal from one institution to another, in exercise of the power conferred by Section 16-G(2)(c) of the Education Act.

4. In this connection, Learned Counsel for the Petitioner has, however, contended that the Petitioner has been transferred without complying with the conditions laid down in Regulation 59, according to which no person employed in recognised institution can be transferred from one institution to another unless the Committee of Management for each such institution by means of resolution concur in such transfer and permission in writing of the Inspector is obtained before giving effect to such transfer. The submission is that there is neither resolution of the Committee of Management of each institution nor is there any permission in writing of the Inspector and thus there is non-compliance of Regulation 59 in the matter of transfer of the Petitioner.

5. Sub-section (2) of Section 16-H of the Education Act lays down that in case of recognised institutions maintained by local body the State Government may declare that all or any of the provisions referred to in Sub-section (1) shall not apply or shall apply subject to such alterations, modifications or conditions as it may make and the provisions so made shall have effect notwithstanding anything inconsistent therewith contained in other law for time being in force. Provisions mentioned in Sub-section (1) are Sections 16-A, 16-B, 16-C, Sub-section (2) to (13) of Sections 16-D, 16-E, 16-F and 16-G. Government of U.P. has issued an order dated June 13, 1979 u/s 16-H providing for the applicability of Sections 16-A and 16-G to the institutions maintained by local bodies, according to which in those sections for the word "management" the words "local body concerned or person empowered to manage the institution", has been substituted. By another order dated 22-6-1984 the Government has further declared that the Chairman of the Zila Parishads can transfer the teachers from one of its institutions to another and for such transfer permission of the District Inspector of Schools will not be required.

6. In view of above position, as both the Higher Secondary Schools at Chaubepur and Chakia belong to the Zila Parishad, its Chairman is fully competent to transfer the Petitioner and for such transfer permission of the District Inspector of Schools is not required. As there is only one authority which is managing and running both the institutions, the question of passing of resolutions by the two Managing Committees of the two institutions, does not arise. Thus no exception can be taken to the impugned order of transfer.

7. In this connection it may also be mentioned that although by the impugned order the Petitioner has been transferred to Chakia in place of Smt. Shanri Devi who has been transferred to Chaubepur in place of the Petitioner, but Smt. Shanti Devi has not been impleaded as a party. If the impugned order is set aside or its operation is stayed by this Court, Smt. Shanti Devi will be directly affected. She was, as such, necessary party to the writ petition, who has not been impleaded by the Petitioner. This writ petition is liable to be dismissed on this ground alone.

8. As we are disposing of the writ petition on merit, it is not necessary to decide Special Appeal, which has been filed against the interim orders passed in that

writ petition.

9. For the reasons given above, writ petition is dismissed with costs In view of dismissal of the writ petition special appeal stands dismissed.