
(1996) 05 AHC CK 0001

In the Allahabad High Court

Case No : Special Appeal No's. 348 and 363 of 1995

Manni Singh Chaturvedi

APPELLANT

Vs

Nathu Ram Tripathi and Others

RESPONDENT

Date of Decision : 24-05-1996

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 5

Uttar Pradesh Intermediate Education Act, 1921 — Section 5

Citation : (1996) 05 AHC CK 0001

Hon'ble Judges : D.P. Mahapatra, C.J; R.R.K. Trivedi, J

Bench : Division Bench

Advocate : Ajit Kumar, Manu Saxena, Devendra Kumar and Yasharath, for the Appellant; N.S. Chaudhary and Alok Sharma, for the Respondent

Final Decision : Allowed

Judgement

R.R.K. Trivedi, J.—Both these appeals have been preferred from the judgment and order dated 15.5.1995, passed by learned single Judge in Civil Misc Writ Petition No. 12769 of 1995. As both the appeals are from the same judgment and the questions of fact and law involved are common, the appeals can conveniently be decided by a common judgment and they are being decided accordingly. Special Appeal No. 348 of 1995 shall be the leading case.

2. Facts, in short, giving rise to these appeals are that Dy. Director of Education, Respondent No. 4 herein, by order dated 4.4.1995 decided the question of seniority between Appellant Manni Singh Chaturvedi, Respondent No. 1 Shri Nathu Ram Tripathi and Respondent No. 3 Jor Singh Yadav. According to Respondent No. 4, Manni Singh Chaturvedi Appellant is senior-most lecturer, Respondent No. 3 Jor Singh Yadav is second to him in seniority and Shri Nathu Ram Tripathi, Respondent No. 1, is Junior-most lecturer of Jawaharlal Inter College, Chakar Nagar, Etawah. Aggrieved by the aforesaid order, Respondent No. 1 filed writ petition No. 12769 of 1995 which was allowed by the learned Single Judge by the impugned order dated 15.5.1995 on the ground that appeal

filed by Appellant Manni Singh Chaturvedi before Respondent No. 4 was not competent as it was filed directly against the seniority list dated 23.12.1993 and without filing any objection before the committee of management raising objection against the seniority list and decision on such objection by the committee of management. According to the learned single Judge, an appeal under Clause (f) of Regulation 3 of Chapter II of the Regulations framed under the U.P. Intermediate Education Act could be filed only against the decision of the committee of management on the objection filed by the teachers and not directly against the seniority list published for communication to the teachers. Writ petition was thus allowed by the learned single Judge. The order dated 4.4.1995 was set aside and it was left open to the Appellant and Respondent No. 3 to file appeal against the decision of the management dated 15.1.1995 within three weeks which shall be considered and decided by Dy. Director of Education by a speaking order within two months and the appeal so filed will be treated within time. Challenging the aforesaid judgment, present appeals have been filed.

3. Shri N. S. Chaudhary, learned Counsel appearing for Respondents, raised a preliminary objection challenging the maintainability of the appeal. It has been submitted that as the impugned judgment of the learned single Judge dated 15.5.1995 has been passed in writ petition arising out of an order passed by the appellate authority in exercise of the appellate power under Clause (f) of Regulation 3 of Chapter II of the Regulations framed under the Act, the special appeal is not legally maintainable under Rule 5 of Chapter VIII of the Rules of the Court. The learned Counsel has placed reliance in a Division Bench judgment of this Court in case of S.B. Nath v. Committee of Management A.B.I.C. College, Allahabad and Ors. 1995 (3) AWC 1469 : 1995 (2) LBESRP 395.

4. Learned Counsel for the Appellant in reply to the aforesaid preliminary objection has submitted that Respondent No. 1 cannot be permitted to raise the aforesaid objection against maintainability of the appeal as the stand of Respondent No. 1 as Petitioner in the writ petition was that the appeal filed by the Appellant herein before Regional Deputy Director of Education was not competent and was not an appeal in the eyes of law. This contention of the Respondent No. 1 has been accepted by the learned Single Judge and order of the Deputy Director of Education has been set aside only on this ground that the appeal before him was not competent. It is submitted that now in the Special Appeal, the stand already taken by Respondent No. 1 as Petitioner cannot be allowed to be changed. The same appeal cannot be said to be competent for raising the preliminary objection against the maintainability of the special appeal.

5. The second submission of learned Counsel for the Appellant is that from perusal of the provisions contained in Rule 5 of Chapter III of the Rules of the Court, it is clear that the special appeal shall be barred only in such cases where the appellate or revisional order has been passed by the Government or any officer or authority in purported exercise of appellate or revisional Jurisdiction under any Uttar Pradesh Act or Central Act with respect to any of the matters

enumerated in the State List or the Concurrent List in the VII Schedule to the Constitution. The submission of learned Counsel for the Appellant is that in the present case, the impugned order dated 4.4.1995 was passed by the Regional Dy. Director of Education in exercise of the appellate Jurisdiction conferred on him by Regulations framed in exercise of delegated legislative power and such power cannot be said to be appellate power conferred or created under the Act. Learned Counsel for the Appellant has taken us through the U.P. High Court (Abolition of Letter Patent Appeals) Act, 1962, namely U.P. Act No. of 1962 and further amendments in the aforesaid Act made in 1972 and 1975. It has been submitted that Rule 5 of Chapter VIII is in fact the reproduction of Section 5 of U.P. Act No. 31 of 1975. Learned Counsel has submitted that for purpose of creating Jurisdiction to decide appeal, the Act and Regulations are entirely different so far as their status, scope and application is concerned. Learned Counsel has submitted that Regulations framed in exercise of the delegated legislative power cannot be equaled with the Act in any manner. Learned Counsel has also sought corroboration to his submissions from the definition of the Act given in General Clauses Act which does not include Regulations. The learned Counsel has submitted that the Division Bench judgment relied on by learned Counsel for Respondent No. 1 is silent about this important aspect of the matter and on the basis of the aforesaid judgment, the present special appeals cannot be said to be not maintainable.

6. Coming to the merits, learned Counsel for the Appellant has submitted that the learned Single Judge passed the impugned order dated 15.5.1995 without considering important facts which preceded before (the order dated 4.4.1995 was passed by the Regional Deputy Director of Education. Learned Counsel for the Appellants has submitted that on undisputed facts, Appellant Manni Singh Chaturvedi and Respondent No. 3 Jor Singh Yadav were senior to Respondent No. 1 Nathu Ram Tripathi. Shri Jawaharlal Inter College, Chakar Nagar, District Etawah (hereinafter referred to as the College) was formerly up to High School, when the present contesting teachers were appointed in L. T. Grade. The undisputed dates of appointment of the three teachers are as under:

Date of appointment in L. T. Grade.

1. Manni Singh Chaturvedi ... 6.7.1965 Appellant 2. Jor Singh Yadav, Respondent No. 3 ... 29.10 1974 3. Nathu Ram Tripathi ... 21.11.1974

7. It has been submitted that the college was subsequently upgraded to Intermediate status In the year 1979 and then dispute arose about the creation of the post of lecturers and appointment on such posts. The management was keen and adamant to by-pass the name of Appellant. Consequently, he filed Writ Petition No. 8386 of 1980 in this Court which was decided on 6.1.1992. Appellant was directed to get his seniority determined by filing a representation before the committee of management and thereafter, he may file an appeal before the District Inspector of Schools. It is submitted that in pursuance of the judgment dated 6.1.1992, applications were moved by Appellant on 19.1.1992,

on 20.2.1992 and 29.12.1992 for deciding the dispute of seniority. However, the management did not pass any order. The Appellant was thus compelled to file another writ petition No. 1997 of 1993 in this Court which was decided on 12.4.1993 directing Appellant to file appeal before Dy. Director of Education of the Region. Appeal was accordingly filed on 10.5.1993. The Dy. Director of Education passed an order on 19.8.1994 directing the committee of management to decide the dispute of seniority by speaking order within three months.

However, in spite of the aforesaid order, the committee of management failed to pass any order deciding the seniority. Contrary to it a letter was addressed to the Dy. Director of Education on 20.3.1995 saying that whatever decision is taken by the Deputy Director of Education will be obeyed by the management. Respondent No. 1 filed writ Petition No. 21033 of 1994 in this Court challenging the proceedings of appeal before the Deputy Director of Education. This writ petition was disposed of finally on 8.7.1994 directing the Dy. Director of Education to decide the appeal in accordance with law after hearing the parties. Learned Counsel for the Appellant has submitted that it was in this background that Deputy Director of Education decided the appeal of the Appellant on 4.4.1995. It is submitted that the aforesaid facts could have a serious impact in forming the view as to whether the appeal of the Appellant before the Deputy Director of Education was maintainable or not. However, the learned single Judge did not consider these important facts and allowed the writ petition by the impugned order on the ground that the appeal was not maintainable. Learned Counsel has submitted that the order of the learned single Judge cannot be sustained. It is also submitted that the dispute between the parties was pending for the last about 15 years and it was high time to decide this dispute this way or that way by this Court instead of sending it back to the Dy. Director of Education for deciding it afresh and thus generating another series of litigation.

8. Learned Counsel for the Appellant in Special Appeal No. 263 of 1995, on the other hand, has submitted that Appellant Jor Singh Yadav was not even given opportunity to file his counter-affidavit. He appeared before the Court and the copy of the writ petition was given to the learned Counsel for the Appellant on 15.5.1995 itself. However, the writ petition was allowed on the same day without giving a reasonable opportunity of hearing to the Appellant. It has also been submitted that the alleged order dated 15.1.1994 was forged alleging that the seniority was determined by the committee of management while in fact no such order was passed.

9. Learned Counsel for the Respondents, on the other hand, has disputed the aforesaid facts and has tried to justify the order passed by the learned Single Judge.

10. We have considered the preliminary objection raised by the learned Counsel for Respondents. However, in our opinion, in the present case, since Respondent No. 1, as Petitioner in the writ petition, contended that the appeal filed by the Appellant before the Deputy Director of Education was not maintainable and in

fact there was no appeal in the eyes of law and this contention has been accepted by the learned single Judge and the writ petition has been allowed, now it is not open to him to contend that the appeal filed by the Petitioner was competent and the special appeal is barred as the impugned order has been passed in the writ petition arising out of the appellate order. The Appellant cannot be allowed to blow hot and cold in the same breath. In fact, raising the preliminary objection against the maintainability of appeal amounts to changing the stand which was taken by Respondent No. 1 in the writ petition. For the aforesaid reasons, we overrule the preliminary objection and, in our opinion, the appeal is legally maintainable.

11. So far as the second submission raised by learned Counsel for Appellant based on the interpretation of Clause (5) of Chapter VIII of the Rules of the Court is concerned, since we have already found the special appeal maintainable, it is not necessary for us to give any verdict on the aforesaid submission. We leave this question open to be decided in some other appropriate case.

12. We have gone through the judgment of the learned single Judge and the order dated 4.4.1995 passed by the Deputy Director of Education which was impugned in the writ petition and, in our opinion, the facts which have been placed before us by learned Counsel for the Appellants would have a serious impact in forming opinion as to whether the appeal filed by the Appellant before the Dy. Director of Education was maintainable in law or not. In fact, without taking into consideration the background in which the appeal was filed and the subsequent developments, the issue about maintainability of the appeal could not have been decided. It appears that the attention of the learned single Judge could not be invited to these important facts and consequently the writ petition was allowed by the impugned order. The contention of learned Counsel for the Appellant in Special Appeal No. 363 of 1995 also appears to be correct that he put in appearance on 15.5.1995 itself and filed Vakalatnama on behalf of Respondent No. 3 Jor Singh Yadav. However, the writ petition was allowed before even the copy of the writ petition could be served on the learned Counsel for Appellant. This is another factor on which basis we are of opinion that the impugned order of the learned single Judge should be set aside and the case be sent back to the appropriate court for deciding afresh in accordance with law.

13. For the reasons stated above, both the Special Appeals are allowed. The impugned order dated 15.5.1995 passed in Writ Petition No. 12769 of 1995 is set aside. The writ petition is being sent back for being decided afresh by the appropriate Bench in accordance with law after hearing the parties and in the light of the observation made above. There will be no order as to costs.