

(1985) 10 AHC CK 0062

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8092 of 1984

Naresh Kumar

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 03-10-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 1, 10, 18, 2, 20
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 10, 10(1), 10(2), 10(3), 11
Uttar Pradesh Secondary Education Services Commission Rules, 1983 — Rule 4

Citation : (1985) 10 AHC CK 0062

Hon'ble Judges : M.N. Sheila, C.J.;J.N. Dubbed, J

Bench : Division Bench

Advocate : V.D. Johank, for the Appellant; Sudhir Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Dubai, J.—This writ petition is directed against the Order dated 02-06-1984 of the District Inspector of schools, Muzaffaraagar refusing to accord his approval to the proposed transfer of the Petitioner from Junta Jana Dan Intermediate College, Baser to Kayaker Intermediate College, Bacharach, district Muzaffaraagar, Under Regulation 55 of Chapter III of the regulations, framed under the U.P. Intermediate Education Act.

2. It appears that the Petitioner Marsh Kumar who is a permanent Principal of the Junta Jana Dan Intermediate College moved an application to the Manager of the College on 10th May, 1985 for transferring him to Kalyan-kari Intermediate College, Bacharach in place of the opposite party No. 2 Marine Varma. The Committee of Management of the College considered the matter in its meeting held on 17-05-1984 and accorded its approval to the transfer. Meanwhile on 14-05-1984 the opposite party No. 2 also moved a similar application to the Manager of his College for transferring him to Junta Jana Dan Intermediate

College in place of the Petitioner. The Committee of Management of Kayaker Intermediate College also accorded its approval to tire transfer on 16-05-1985. The Manager of the Kayaker Intermediate College forwarded the proposal for mutual transfer of the Petitioner and the opposite party No. 2 to the District Inspector of Schools on 18-05-1984 for his approval Under Regulation No. 55. The District Inspector of Schools, however, refused to accord his approval to the proposed transfer on 02-06-1984 on the ground that the transfers Under Regulation 55 have been banned by the Director of education. U.P. after the commencement of the U.P. Secondary education Services Commission and Selection Boards Act (hereinafter referred to as the Commission Act) Feeling aggrieved, the Petitioner has approached this Court Under Article 226 oi the Constitution.

3. We have heard the learned Counsel for the parties and have perused the record.

4. The learned Counsel for the Petitioner contended that the orders of various Education authorities referred to in the impugned order of the District Inspector of Schools have no application to the lasts of the present case and the District Inspector of Schools erred in refusing to grant approval to the proposed transfer on the basis thereof. On the other hand, the learned Counsel for the opposite parties contended that no transfer could legally be made Under Regulation 55 after the commencement of the Commission Act and as such the District Inspector of Schools committed no illegality in refusing to accord approval to the proposed transfer more so when the opposite party No. 2 had already attained the age of superannuation and was to relinquish the folly-e of tire Ironical, Kayaker Intermediate College at the end of that academic year on 30th June, 1984 and that the vacancy in the said office had already been intimated to the Commission. He further contended that the requirements of Regulations 55 to 62 had not been complied with and, therefore, even if such transfers were not banned by the Director of Education, U.P., the proposed transfer could not be legally approved. Neither the transfer application was addressed to the District Inspector of Schools as required Under Regulation 55 nor the opposite party No. 2 had given clear consent for the mutual transfer. According to the learned Counsel the conditional consent of the opposite party No. 2 could not be made a basis for the mutual transfer.

5. In Raghunandan Prasad Bhatnagar Vs. Administrator, Committee of Management, Gandhi Vidyalaya Intermedinate College and Others, a Full Bench of this Court Ruled

A transfer cannot be made a subterfuge for making "appointment" with respect to which the power vests only in the Commission. If the view in Rattan Pal Singh's case (supra), is allowed to prevail and appointments by transfer are held permissible to fill vacancies, it would defeat the very object of the Commission Act and it would not be difficult for institutions actuated by ulterior motive to adopt the convenient device mutual exchange of teachers and by securing such

transfer make regular appointments by the Selection Board verily impossible. Any management with a view to circumventing the provisions of the Commission Act may fill the post at any time even after the selection is made but before actual appointment on the basis of the recommendation of the Commission by transferring a teacher from one institution to another which is contrary to the very spirit of the Act. In my opinion a transaction which leads to such result cannot be accepted. A perusal of the various provisions of Law, Ordinances, Regulations and Orders etc. to which I have already adverted, would demonstrate that if a vacancy occurs on account of retirement or otherwise it can be filled only under the various Removal of Difficulties Orders and it cannot be filled by promotion. And a bare look at Regulations 55 to 62 of Chapter III framed under the U.P. Intermediate Education Act would also show that appointment can be made by transfer of a teacher from the institution to another but in that context a restricted meaning will have to be given to the word "transfer". A complete harmony between the old provisions and the new law can be effected and the supreme object of managing educational institutions with men of doubtless merit be achieved by giving to the word "transfer" the restricted meaning of mutual exchange and giving to the word "appointment" a wider meaning so as to include "appointment by transfer". An appointment consists in doing something which has the intrinsic ingredient of appointment notwithstanding the fact that it is given the nomenclature of transfer. In the instant case I find that even the employer is changed in case of the so called "Transfer" of a teacher from one educational institution to another. The person so transferred becomes an employee of the transferee institution and so it becomes a case of appointment under the guise of transfer. Regulation 60 speaks of appointment in the new institution and the effect of Regulation 59A is that the employer changes and the teacher concerned becomes an employee of the transferee institution the two acts can be reconciled with each other by giving to the word "transfer" a restricted meaning by adjudging an order of appointment on its intrinsic attributes irrespective of the word "transfer" predicated to it. It is the substance which matters and not the form.

6. Thus, we have also to examine whether the proposed transfer is a case of mutual transfer or it is an attempt on the part of the Committee of Management of Kayaker Intermediate College to fill up a clear vacancy on the post of the Principal In the garb of mutual transfer.

7. Admittedly, te opposite party No. 2 the Principal of Kayaker Intermediate College had completed the age of superannuation and was continuing In office till the end of that academic year Under Regulation 21 of Chapter III. Regulation 21 reels.

8. Regulation 1 of Chapter III which prescribes the time limit for filling up the vacancies on the post of Principal etc. runs as Under:

1. Headmaster, Principal and Teachers-The Committee of Management should fill substantively by the 31st of July following any clear vacancy of Principal,

Headmaster or teacher occurring before the commencement of the school year. A vacancy likely to occur by 7th August should likewise be filled by the 21st of August following.

9. After the commencement of the Commission Act appointment of a teacher by the Management has to be made only on the recommendation of the Commission. Section 10 of the Commission Act which provides the procedure for selection of teachers specified in the schedule runs as under:

10. Procedure of selection of teachers specified in the Schedule. (1) for the purposes of making appointment of a teacher specified in the Schedule, the management shall notify the vacancy to the Commission in such manner and through such officer or authority as may be prescribed.

(2) The procedure of selection of candidates for appointment to the posts of such teachers shall be such as may be prescribed?

Provided that the Commission shall, with a view to inviting talented persons, give wide publicity in the State to the vacancies notified Under Sub-section (1).

10. The State Government in exercise of its power u/s 35 of the Commission Act has framed U.P. Secondary Education Services Commission Rules (hereinafter referred to as Commission Rules). The procedure for determination and intimation of vacancies is contained in Rule 4 which reads as under

4. Determination and intimation of vacancies. (1) (i) The Management shall determine and intimate to the Commission, in the preformed given in Appendix "A" and in the manner hereinafter specified, the number of vacancies existing or likely to fall vacant during the year of recruitment and, in the case of any post, other than the post of the head of an institution, also the number of vacancies to be reserved for the candidates belonging to the Scheduled caste, scheduled tribes and other category of persons in accordance with the rules or orders issued by the Government in this behalf in regard to the educational institution.

(ii) In regard to the post of head of an institution, the Management shall also forward the names of two senior most teachers, copies of their service record (including character rolls) and such other record or particulars as the Commission may require from time to time.

Explanation.-For the purpose of this Sub-rule " senior most teacher " means the senior most teachers in the post of highest grade in the institution, irrespective of total service put in the institution.

(2) The statement of vacancies shall be sent by the Management to the Inspector in quadruplicate by September IS of the year of recruitment and the Inspector shall, after verification, forward two copies of the same to the Deputy Director by October 15, with a copy to the Commission.

(3) The Deputy Director shall, after keeping a copy, forward the statement received by him Under Sub-rule (2), along with a consolidated subject-wise

statement of various categories of vacancies to the Commission by November 15.

(4) Notwithstanding anything contained in Sub-rules (1), (2) and (3), the time schedule mentioned in the said Sub-rules shall not apply in respect of recruitment year 1962 and, unless any other date or schedule is notified by the Government, the Director shall ensure that the vacancies are notified to the Commission by February 28, 1983.

Provided that where the Government is satisfied that there are sufficient reasons for doing so, it may relax or modify the time schedule in respect of any other year generally or in respect of any particular institution.

11. Section 11 of the Commission Act which provides that the Commission will prepare a panel of the candidates found most suitable for appointment runs as Under :

11. Panel of candidates selected by Commission. (1) The Commission shall, as soon as possible, after the notification of vacancy u/s 10, hold interview (with or without examination) of the candidates and prepare a panel of those found most suitable for appointment.

(2)The panel referred to in Sub-section (1) shall be forwarded by the Commission to the officer or authority referred to in Sub-section (1) of Section 10 in such manner as may be prescribed.

(3)After the receipt of the panel Under Sub-section (2), the officer or authority concerned shall intimate the management of an institution in respect of which the vacancy was notified Under Sub-section (1) of Section 10, the names of candidates selected for appointment as teachers, and for this purpose, the officer or authority shall follow such procedure as may be prescribed.

(4)The management shall, within a period of one month from the date of receipt of such intimation, issue appointment letter to the candidate whose name has been intimated Under Sub-section (3).

(5) Where the candidate referred to in Sub-section (3) fails to join the post of teacher in such institution within the time allowed in the appointment letter or within such extended time as the management may allow in this behalf, or where such candidate is otherwise not available for appointment as such teacher, the officer or authority concerned may, on the request of the management, intimate fresh name or names from the panel forwarded by the Commission Under Sub-section (2) in the manner prescribed.

12. Thus, u/s 10 the Management has to notify the vacancy to the commission. Rule 4 provides that management should determine and intimate to the Commission the number of vacancies existing or likely to occur during the year of recruitment. The statement of the vacancies should be sent to the District Inspector of Schools by Sept. 15, of the recruitment year for onward transmission to the Commission. u/s 11 a duty is cast upon the Commission to

hold interview of the candidates and prepare a panel of those found most suitable for appointment, as soon as possible, after the notification of the vacancies u/s 10. This panel is forwarded to the District Inspector of Schools who in turn intimates to the Manager the name of the selected candidates for making appointment on the existing post. Although the Commission Act does not provide any time limit for filling up the existing vacancies but according to Regulation 1 of Chapter III all the vacancies existing on the commencement of the academic year should be filled by 31st July of that academic year.

13. As stated above, the opposite party No. 2 was going to attain the age of superannuation during the academic year 1983-84 and, therefore, it was the duty of the Committee of Management of Kalyankari Intermediate College to intimate to the Commission that the post of Principal was likely to fall vacant during that recruitment year. The statement in this regard was to be submitted by the management to the District Inspector of Schools by September 15, 1983 for onward transmission to the Commission. Thereafter, steps were to be taken by the Commission for selecting suitable candidates for appointment of that post. The actual appointment was to be made by the management before 31-07-1984 on the basis of the recommendation received from the commission. Thus, the process for selecting candidate for the post of principal of that college should have begun in the beginning of the academic year 1983-84 and been completed by the end thereof.

14. Now, it has to be determined whether a post of Principal can be filled by transfer after the process for selection of the candidate for filling that post by direct recruitment begins. The provisions of U.P. Intermediate Education Act are very useful for determining this question. Regulation 2 of Chapter II provides that post of the Head of Institution shall be filled by direct recruitment. It reads as under :

2 (1) The post of the Head of Institution shall (except as provided in Clause (2)) be filled by direct recruitment after reference to the Selection Committee constituted Under Sub-section (1) of Section 16F or, as the case may be Under Sub-section (1) of Section 16FF:

Provided that in the case of any institution not being an institution referred to in Section 16FF a temporary vacancy caused by the grant of leave to an incumbent for a period not exceeding six months or by death, retirement or suspension of an incumbent occurring during an educational session in the post of the Head of Institution shall be filled by the promotion of the senior most qualified teacher, if any in the highest grade in the institution.

15. Regulation 10 of Chapter II which prescribes the procedure for filling up the vacancy of the head of institutions by direct recruitment reads as under:

10. The procedure for filling up the vacancy of the head of institution and teachers by direct recruitment in any recognised institution shall be as follows:

(a) After the Committee of Management has determined the number of vacancies to be filled by direct recruitment the posts shall be advertised by the Manager of the institution (in the Employment News or Rozgar Samachar and at least one Hindi and one English Newspaper having adequate circulation in the region giving particulars as to the nature i.e. whether temporary or permanent) and number of vacancies, description of post (i.e. Principal or Headmaster, Lecturer or L.T.C.T., or J.T.C., K.T.C., grade teacher, including the subject or subjects in which the lecturer or teacher is required), scale of pay, any other allowances, experience required, the prescribed minimum qualifications and the minimum age, if any for the post, and prescribing the last date (which should not ordinarily be less than two weeks from the date of advertisement) by which the applications in the prescribed form duly completed by candidates shall be received in the office of

(i) the District Inspector of Schools, or

(ii) the Regional Inspectors of Girls' Schools, in case of institutions of girls.

The advertisement shall also state that the prescribed application forms can be had from the office of any Inspector on payment of Rs. y per form by a crossed postal order or bank draft or through treasury Chelan by depositing the amount in the State Bank of India under the Heaa indicated by the Inspector. In no case the payment shall be accepted in cash in the office of the inspector. A copy of each advertisement shall be simultaneously sent by the Manager to the District Inspector of Schools or the Regional Inspectors of Girls' Schools concerned and in the case the post of the head of institution Is advertised a copy of the advertisement shall also be sent to the Regional Dr. Director of Education.

(2)(d) An application received shall be serially numbered and entered in a register in the form approved by the Director in the office of the Inspector and particulars of the candidates noted under appropriate columns along with quality-point-marks obtained by each candidate. The quality-port-marks will be awarded to each candidate according to the criteria laid down in Appendix " D " preferably by the local retired gazette officers or retired principals or teachers of Degree Colleges or University or retired heads of institutions engaged for the purpose by the Inspector and checked by the Inspector or an officer of the Department authorized by him in this behalf. These applications forms will be collected by the Committee of Management though the Manager of the Institution from the office of the Inspector within three days after the expiry of five days from the last date of receipt of applications notified in the advertisement failing which the Inspector shall cause the applications to be sent to the Manager of "the institution concerned. The management shall maintain a register likewise. The candidates to be called of for interview shall be selected in the order of quality point marks obtained by them. The number called for interview shall be seven for each post of the number of applicants permitting) provided that his number may be increased to accommodate candidates who get equal number of quality-point-marks in the first seven places. The Inspector shall send intimation of the date, time and place for holding selection as may be fixed by him to the Committee of

Management through its Manager at least two weeks before such date immediately on receipt of this information the Manager shall send intimation to the members of the Selection Committee other than the Experts and issue interview cards to all the candidates selected for interview by registered post specifying therein the date, time and place of holding selection, at least ten days before such selection. The Selection Committee will hold its sitting for making the Selection accordingly. The Inspector shall intimate to the Experts nominated Under Clause (iii) of Sub-section (1) or (2) of Section 16-F, as the case may be, the date, time and place fixed for holding of selection along with the name of the institution, sufficiently in advance of such date. If on account of any unavoidable reason, any Expert is unable to attend the selection on the date fixed, the Inspector shall at once arrange for the Expert on the waiting list. In the absence of two Experts, meeting of the Selection Committee shall be postponed and another date shall be fixed for the same.

16. Regulation 18 of Chapter II makes it obligatory for the committee of management to issue appointment order to the selected candidate within fifteen days of the receipt of the recommendation of the Selection Committee. Regulation 18 is reproduced below:

18. (1) Within fifteen days of the receipt of the recommendation of the Selection Committee constituted Under Sub-section (1) or (2) of Section 16F, and in case of an institution referred to in Section 16FF, the approval of the authority specified therein, the Manager, shall, on authorization under resolution of the Committee of Management issue an order of appointment by registered post to the candidate in the form given in Appendix " ii " requiring the candidate to join duty within ten days of the receipt of such order failing which the appointment of the candidate will be liable to cancellation.

(2) In case of promotions and ad hoc appointments also a formal order of promotion or appointment in the form as near as possible to the form referred to in Clause (1) shall be issued to the person concerned under the signature of the Manager.

(3) A copy of every order referred to in Clauses (1) and (2) shall be sent to the Inspector and in case of appointment of the head of institution a copy thereof shall also be sent to the Regional Deputy Director of Education.

17. Regulation 20 of Chapter II provides that if the Committee of Management fails to advertise the post within certain period such post shall be deemed to have been surrendered. Regulation 20 reads as under :

20. Where the Committee of Management has failed to advertise any sanctioned post which has fallen vacant in accordance with the regulations contained in this Chapter within a period of three months from the date of occurrence of any vacancy, such post shall be deemed to have been surrendered and shall not be filled up unless its creation is sanctioned afresh by the Director.

18. A perusal of the above provisions shows that the entire process for filling the vacancy of the head of the institution and teacher by direct recruitment under the U.P. Intermediate Education Act could be completed within a few weeks but under the provisions of the Commission Act the process for filling such vacancy takes several months. It appears that the Legislature was conscious of this fact and, therefore, Under Rule 4 of the Commission Rules it provides that the management shall determine and intimate to the Commission the number of vacancies existing or likely to occur during the academic year while under regulation 10 of Chapter II the Committee of Management was required only to determine the number of the existing vacancies and advertise the same. Not only this, while Regulation 20 provides that the existing vacancy should be advertised by the Committee of Management within three months from the date of occurrence of such vacancy failing which it shall be deemed to have been surrendered, Rule 4 of the Commission Rules makes it obligatory for the Committee of Management to determine the number of vacancies existing or likely to occur during the year of recruitment in the beginning and submit the statement of such vacancies to the District Inspector of Schools by 15th September for onward transmission to the Commission. If the Commission of Management is permitted to fill the vacancy likely to occur during the recruitment year after the process for selection of the candidate for filling that vacancy by direct recruitment begins, it would not be difficult for the institution actuated by ulterior motive to adopt the convenient device of mutual exchange of teachers and by securing such transfer make regular appointment on the basis of recommendation of Commission verily impossible, as observed by the Full Bench in Raghunandan Prasad Bhatnagar's case (supra) while over-ruling a Division Bench decision of this Court in Ratan Pal Singh's case. In our opinion, a head of the institution or a teacher cannot be transferred under Regulations 55 to 62 of Chapter III in the last recruitment year of his service. In other words, a head of institution or a teacher cannot be transferred under Regulations 55 to 62 during the academic year in which he is to attain his age of superannuation.

19. The fact that Rule 4 makes it obligatory for the Committee of Management to intimate the number of vacancies existing or likely to occur during the year of recruitment indicates that the post is taken vacant on the date on which the incumbent working on it attains the age of superannuation and not on the date on which he actually relinquishes his office at the end of that academic year, otherwise there would be no possibility of any post falling vacant during the year of recruitment on account of statutory extension. In other words, if the posts were to be treated vacant on their being actually relinquished, no post could fall vacant during the recruitment year in view of the automatic extension of services under Regulation 21 of Chapter III of all those teachers whose date of superannuation fall during the recruitment year. Our this view finds support from Regulation 20 of Chapter II and Regulation 1 Chapter III Regulation 20 makes it obligatory on the part of the Committee of Management to advertise the post within three months from the date of occurrence of the vacancy. Regulation 1

provides that such post should be filled by 31st July following. The two provisions can be reconciled only if a post is treated vacant on the date on which the incumbent working on it attains the age of superannuation and not on the date on which he actually relinquishes his office at the end of that academic year inasmuch as it will not be possible for the Committee of Management to fill the post by 31st July following if the post can be advertised only after 30th June considering the time taken in the selection process. On this interpretation vacancy in the office of Principal of the Kalyankari Intermediate College occurred on opposite party No. 2's attaining the age of superannuation. This being so, the post was lying vacant for the purposes of direct recruitment on the date when the two Committees of Management decided to effect mutual transfer of petitioner and opposite party No. 2 Under Regulations 55 to 62 which is not legally permissible in view of the Full Bench decision in Raghunandan Prasad Bhatnagar's case (supra).

20. In this particular case, only a few weeks before the end of academic year 1983-84 the Committee of Management of Kalyankari Intermediate College in collusion with its counter-part of Janta Janardan Intermediate College decided to shift the Petitioner to fill up a clear vacancy inasmuch as the opposite party No. 2 had admittedly attained the age of superannuation and was continuing in office till 30-06-1984 on the basis of statutory extension of service Under Regulation 21 of Chapter III. The mere fact that the post was not physically vacant could not entitle the management of Kalyankari Intermediate College to bring the Petitioner to their institution by transfer when for the purposes of recruitment the post had fallen vacant on the date of opposite party No. 2's attaining the age of superannuation.

21. Transfer Under Regulations 55 to 62, according to the Full Bench, can be made for the mutual benefit of the teachers but as in this case the opposite party No. 2 was going to relinquish his office on 30-06-1984, there was no occasion for him to derive any benefit from the proposed transfer. This being so, the proposed transfer cannot, in substance, be considered a case of real mutual transfer. It was a clear attempt on the part of the Committee of Management of the Kalyankari Intermediate College to fill a clear vacancy in the post of Principal by resorting to take transfer. The proposal for the transfer was made only a few days before the two institutions were going to be closed for summer vacation. There was no occasion for the opposite party No. 2 to go and work in Janta Janardan Intermediate College even if the proposal was approved by the District Inspector of Schools and as such the proposed transfer would have been a mutual transfer only for name sake.

22 In mutual transfer both the parties should derive some advantage which was not the case here, in this particular case admittedly the opposite party No. 2 was not going to be benefited at all. Considering from another angle the words "mutual exchange" used by the Full Bench should involve some sort of exchange of interest between the parties, which too is completely missing in this case. The

opposite party No. 2 was left with hardly any interest in the post on which he was working which could be mutually exchanged with the Petitioner. Moreover, from the conditions imposed by the opposite party No. 2 for accepting the proposal it is apparent that he was not prepared to exchange even the nominal interest he was left with. He had specifically stated in his letter dated 14th May, 1984 that he would like to draw his salary for the remaining two months and also the pension from the Kalyankari Intermediate College. This further exposes the hollowness of the claim of the Petitioner that it was a case of mutual transfer. There is yet another circumstance from which it is clear that the proposed transfer was not for the mutual benefit of the two teachers. We find from the record that Swami Kalyandeo Ji Maharaj is at the helm of the affairs of both the institutions and the Petitioner and the opposite party No. 2 agreed for the so called mutual transfer to fulfil his wishes. We propose to reproduce here the two letters addressed by the Petitioner and the opposite party No. 2 to their respective Managers: * * * * Letters omitted-Ed. The language of the two letters leaves no manner of doubt that the proposed transfer was the result of the wishes of Swami Kalyandeo Ji Niahraj rather than the wishes of the Petitioner and the opposite party No. 2.

23. Now, let us examine whether the requirements of Regulations 55-62 were complied with. In order to appreciate this point we reproduce below the Regulations 55 to 62:

55. A permanent employee of an institution, other than minority institution, desiring his transfer to another institution may make an application for the purposes through the Head and Manager of the institution to the Inspector of Schools or the Regional Inspectors, as the case may be. The application, besides other particulars of the applicant, shall contain the names of institutions, places or districts to which the transfer is desired. If the application is forwarded by the Manager, copies of the service book and character roll should be sent along with it.

After an application has been forwarded intimation should be sent by the employee through the Head Master/Principal and the Manager to the Inspector/Regional Inspectors before April 1, each year intimating whether the request for transfer continues to hold good. Failing such intimation it would be presumed that the request has lapsed.

56. Application received by the Inspector or Regional Inspectors under Regulation 55 shall be forwarded by him/her to the Inspector/Regional Inspectors in whose jurisdiction the desired place of transfer lies or to the Manager of the institution it lies within his/her own jurisdiction.

57. The Inspector and Regional Inspectress shall maintain a register of application for transfer received by them Under Regulation 55 and 56.

(58)

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

(a) the Committee of Management for each such institution, by means of a resolution, duly passed in that behalf, concur in such transfer;

(b) the permission in writing of the Inspector is obtained before giving effect to such transfer.

59. A. Upon the transfer of any person Under Regulation 59 the following consequences shall ensure, namely :

(a) such person shall become an employee of the institution to which he is transferred and shall hold office by the same tenure, at the same remuneration and upon the same other conditions of service as he would have held if the transfer had not taken effect, and shall continue to do so, unless and until such tenure, remuneration and other terms and conditions are duly altered;

(b) the seniority of such person in relation to other employees in the same cadre and grade serving in the said institution shall be subject to re-fixation in accordance with law;

(c) any services rendered by such person before the date of transfer in the institutions from which he is transferred shall, for the purpose of this regulation, be deemed to be services rendered under the institution to which he is transferred.

60. The order of appointment in the new institution of an employee transferred from another institution shall mention along with other particulars prescribed, the fact of his transfer and the name of the institution from which he has been transferred.

61. Within a month of the transfer of an employee from one institution to another the Manager of the former shall, under intimation to the Inspector or Regional Inspectors concerned, send to the Manager of the latter institution the Employee's Service Book, Character Roll, Leave Account, Provident Fund Account and other relevant papers, all duly posted up to date.

62. An employee shall not be entitled to traveling allowance on transfer. He will, however, be permitted journey time at the rate of one day for every 100 miles or part thereof subject to a maximum of three days. The salary for journey time will, in the absence of agreement to the contrary, be paid by the institution which he joins on transfer.

24. Regulation 55 requires that the teacher desirous of transfer to some other institution should apply through the Manager of the Institution to the District Inspector of Schools who in his turn should forward it to the Institution to which the transfer is sought. If the committees of management of both the institutions agree for the proposal, the matter will be finally considered by the District Inspector of Schools for according his approval. Here we find that neither the

Petitioner nor the opposite party No. 2 addressed any communication to the District Inspector of Schools as required under Regulation 55. Instead both of them requested the Managers of their Institutions to allow the mutual transfer. The committees of management of the two institutions also considered the applications independently without the intervention of the District Inspector of Schools. It is only after completing the entire formalities hurriedly that the Manager of Kalyankari Intermediate College wrote a letter to the District Inspector of Schools, seeking his approval to the proposed transfer. Similarly, the consent given by the opposite party No. 2 was not in conformity with the provisions of Regulations 55 to 62. On transfer, according to the regulations, a teacher ceases to be an employee of the former institution and becomes an employee of the institution to which he is transferred but this was not possible in the instant case in view of the conditions imposed by the opposite party No. 2 that he would like to draw his salary for the months of May and June, 1984 as well as the pension from the Kalyankari Intermediate College. In our opinion, no action could legally be taken for affecting mutual transfer on the basis of such conditional consent given by the opposite party No. 2. Thus, there was clear non-compliance of the provisions of Regulations 55 to 62 which vitiated the entire proceedings.

25. The manner and the speed with which the two committees of management acted in this case further shows that the proposed transfer was not a case of bonafide mutual transfer but was a calculated attempt on the part of the committees of management of the two institutions to fill a clear vacancy in the post of Principal of Kalyankari Inter College in the garb of mutual transfer by circumventing the entire provisions of the Commission Act. The Petitioner and the opposite party No. 2 moved applications for mutual transfer to the Managers of their respective Institutions on the eve of summer vacations. While the Petitioner moved his application on 10-05-1984, the opposite party No. 2 did so on 14-05-1984. Within two days the proposal was approved by the committees of management of both the institutions without intervention of the District inspectors of Schools. The Committee of Management of Janta Janardan intermediate College approved the proposal on 17-05-1984, while its counter part of Kalyan-kari, Intermediate College did soon 16-05-1984. The proposal was submitted for the approval of the District Inspector of Schools on 18-05-1984. This was presumably done to the reason that the opposite party No. 2 had already attained the age of superannuation and was going to relinquish his office of Principal of Kalyankari Intermediate College at the end of that academic year on 10-06-1984 and, therefore, it was not possible to complete the formalities by that time if the transfer application was moved to District Inspector of Schools as required Under Regulation 55.

26. As the appointment of heads of Institutions and teachers were banned by the orders of the Director of Education and other authorities of the Education Department after the commencement of the Commission Act. The learned Counsel for the Petitioner has not been able to point out as to why the case of

the Petitioner was not covered by the said orders. In our opinion, the case of the Petitioner is fully covered by the orders of the Director of Education and other Education authorities referred to by the District Inspector of Schools in the impugned order. However, even assuming for the sake of arguments that the case of the Petitioner is not covered by those orders, he is not entitled to any relief in view of the Full Bench decision in Raghunandan Prasad Bhatnagar's case (Supra). In our opinion, the District Inspector of Schools did not commit any illegality in refusing to accord approval to the proposed fake transfer.

27. In the result, the writ petition fails and is dismissed but in the Circumstances of the case we direct the parties to bear their own costs.