
(2007) 01 AHC CK 0095

In the Allahabad High Court

Case No : Civil Mic.Writ Petition No. 54247 of 2007

Radhey Shyam Rajput

APPELLANT

Vs

State of U.P.AND Others

RESPONDENT

Date of Decision : 07-01-2007

Acts Referred:

Citation : (2007) 01 AHC CK 0095

Hon'ble Judges : Ashok Bhushan, J

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—Heard Sri S.C. Dwivedi, learned Counsel for the petitioner, Sri Y.K. Saxena, learned Counsel appearing for respondent No. 7 and learned Standing Counsel.

2. By this writ petition, the petitioner has prayed for quashing the orders dated 15th September, 2007 passed by District Inspector of Schools and the order dated 6th October, 2007 passed by Joint Director of Education.

3. A short counter affidavit as well as a supplementary counter affidavit has been filed by respondent No. 7 to which rejoinder affidavits have also been filed by the petitioner. The Committee of Management, respondent No. 6, has not put in appearance, notices having not been issued to respondent No. 6. The Committee of Management having not yet appeared, the writ petition cannot be decided finally and for final adjudication, it is necessary to issue notice to respondent No. 6.

4. Issue notice to respondent No. 6. Petitioner to take steps for service within aweek.

5. Petitioner's case in, the writ petition is that after retirement of the officiating Principal on 30th June, 2007, the petitioner being seniormost teacher was appointed by the Committee of Management as officiating Principal and signatures of the petitioner were also attested as officiating Principal on 30th

June, 2007. At the instance of respondent No. 7, the District Inspector of Schools passed two orders on 15th September, 2007 (Annexure1 and 2 to the writ petition). Annexure1 to the writ petition is an order prepared by typewriter of the office of District Inspector of Schools and Annexure2 to the writ petition is an order of the same date bearing same dispatch number prepared by computer. By Annexure1 to the writ petition, the District Inspector of Schools has observed that in the seniority list dated 1st October, 1999 Har Mohan Singh (respondent No. 7) has been treated to be senior and the earlier officiating Principal Sri O.R Kanaujiya has levelled certain charges on the petitioner, hence the attestation of signatures of the petitioner is not valid and is set aside. By another order of the same date, the District Inspector of Schools observed that there are charges against the petitioner and in view of the seniority list of the year 1999 respondent No. 7 is recognised as officiating Principal and attestation of the signatures of the petitioner is cancelled. After the aforesaid the petitioner represented the matter to the Joint Director of Education who passed an order on 22nd September, 2007 staying, the order of the District Inspector of Schools. Subsequently by an order dated 6th October, 2007 the Joint Director of Education has observed that since the order prepared by typewriter on 15th September, 2007 has been informed to be ineffective, the letter dated 22nd September, 2007 is withdrawn. The petitioner's case is that petitioner and respondent No. 7 both were appointed on the same date, i.e., on 13th September, 1974. The date of birth of the petitioner being 16th April, 1947 and the date of birth of respondent No. 7 being 5th October, 1951, the petitioner is senior to respondent No. 7 and has always been shown senior. The petitioner has relied on the letter of the District Inspector of Schools dated 2nd April, 2003 sent to the Secretary, U.P. Secondary Education Service Selection Board by which name of Sri Om Prakash Kanaujiya and the petitioner has been forwarded as two seniormost teachers for selection on the post of Principal of the institution. Copy of the said letter has been enclosed as Annexure4 to the writ petition. The seniority list prepared by the Management showing the petitioner senior has also been enclosed along with the said letter. The petitioner's case further is that after retirement of the permanent Principal on 30th June, 2003 Sri Om Prakash Kanaujiya having refused to work as Principal, the petitioner was given the charge and has worked for certain period. Subsequently Om Prakash Kanaujiya claimed entitlement to work and in his favour order was passed and Om Prakash Kanaujiya, was given charge in the month of August, 2004, who continued to work till 30th June, 2007.

6. The case taken by respondent No. 7 is that in the seniority list prepared on 11th May, 1999 the respondent No. 7 is shown senior to the petitioner and on the basis of the said seniority list respondent No. 7 is senior and the District Inspector of Schools has rightly recalled the order dated 30th June, 2007. In the order passed by the District Inspector of Schools (Annexure1 to the writ petition) the seniority list referred to is the seniority list dated 1st October, 1999 and in the order (Annexure2 to the writ petition) no date of seniority list has been

mentioned whereas in the short counter affidavit filed by respondent No. 7 the seniority list dated 11th May, 1999 has been relied and filed as Annexure CA1 to the writ petition. The petitioner in the rejoinder affidavit has stated that seniority list dated 11th May, 1999 is forged document and was never claimed by respondent No. 7. The petitioner has also stated in the rejoinder affidavit that in Writ Petition No. 30442 of 2007 (Har Mohan Singh v. State of U.P. and others) filed by respondent No. 7 against the order dated 30th June, 2007 the respondent No. 7 has placed reliance on the seniority list dated 1st October, 1999 and actually there is no seniority list dated 1 st October, 1999.

7. The letter of the Joint Director of Education dated 6th October, 1999 is not determination of any of the issues between the parties and the same is only an order withdrawing the earlier letter dated 22nd September, 2007. In the order of the District Inspector of Schools (Annexure2 to the writ petition), which according to the respondents was issued by District Inspector of Schools the seniority list of the year 1999 has been relied and certain allegations against the petitioner have been levelled. It has been observed by the District Inspector of Schools that there being allegation against the petitioner, he could not be given the charge. The order of the District Inspector of Schools does not refer to any decision of the Committee of Management, which is authority competent to decide, at the first stage, as to who is entitled to function as officiating Principal. The petitioner was never made aware of the allegations, which are sought to be made in the order and the fact that on the same date two orders have been prepared by the District Inspector of Schools, one in the office of District Inspector of Schools on typewriter and another by computer, which is claimed to be not prepared in the office of District Inspector of Schools, makes the procedure adopted by the District Inspector of Schools improper. Both petitioner and respondent No. 7 having been appointed on the same date and petitioner being senior in age is prima facie entitled to be treated as senior, in view of Regulation 3(1)(b), ChapterII of the Regulations framed under the U.P. Intermediate Education Act, 1921. Further the seniority list dated 11th May, 1999 relied by Counsel for respondent No. 7 in the short counter affidavit does not inspire any consequence in view of the fact that another seniority list dated 1st October, 1999 has been claimed by respondent No. 7 in Writ Petition No. 30442 of 2007. Further in the year 2003 the name of the petitioner was forwarded along with O.P. Kanaujiya as seniormost teacher and the letter of the District Inspector of Schools, which is on record as Annexure4 to the writ petition, makes it clear that petitioner was treated seniormost after O.P. Kanaujiya.

8. In view of the aforesaid, the petitioner has made out prima facie case for grant of interim relief. Let counter affidavit be filed by the respondents within three weeks. Rejoinder affidavit may be filed within two weeks thereafter.

9. List this writ petition in the week commencing 11th February, 2007.

10. Till the next date of listing, operation of the orders dated 15th September,

2007 passed by the District Inspector of Schools and the operation of the order dated 6th October, 2007 passed by the Joint Director of Education shall remain stayed.