

(2007) 05 AHC CK 0042
In the Allahabad High Court
Case No : Writ Petition No. 7084 (S/S) of 2004

Raj Mani Tewari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-05-2007

Acts Referred:

Societies Registration Act, 1860 — Section 12D
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 16A(7), 2, 21

Citation : (2008) 5 AWC 4956

Hon'ble Judges : S.S. Chauhan, J

Bench : Single Bench

Advocate : Mohd. Mansoor, for the Appellant; Ajay Pratap Singh, Prashant Chandra and A. Sinha, for the Respondent

Judgement

S.S. Chauhan, J.—The Petitioner feeling aggrieved with the resolution dated 30th November, 2003, by means of which his services have been recommended to be dispensed with, has preferred this writ petition.

2. The Petitioner was appointed as Officiating Principal by the Committee headed by Shri A. P. Dwivedi. The dispute arose between two factions of the Committee of Management and ultimately the committee headed by Shri A. P. Dwivedi was derecognised by the Registrar, Societies Chits and Fund on 14th February, 2003. Thereafter the present Committee of Management proceeded to initiate the disciplinary proceedings against the Petitioner and by means of the resolution dated 30th November, 2003 proceeded to pass a resolution recommending dismissal of the Petitioner from the post of Officiating Principal/Lecturer. The resolution was forwarded by the Committee of Management to the U. P. Secondary Services Selection Board for approval. The U. P. Secondary Services Selection Board by means of a letter dated 29.5.2004 asked for the service record and other records pertaining to the Petitioner from the District Inspector of Schools but he is sitting tight over the matter and has not forwarded the service record etc., as demanded by the Board. On account of inaction of the

District Inspector of Schools the Board has failed to take any decision in the matter of the Petitioner. The Petitioner under the above facts is not being permitted to work although his dismissal has not attained final approval of the Board.

3. This Court passed an order on 13.7.2006, against which a special appeal was filed and the order dated 13.7.2006 was set aside in special appeal with a direction to this Court to decide the matter expeditiously preferably within a period of three months. The special appeal was allowed on 21st August, 2006.

4. Learned Counsel for the Petitioner has submitted that the District Inspector of Schools in the case of another person has already held by means of an order that the Committee of Management was not recognized on the date of passing of the suspension order. He has also submitted that on the date of passing of the resolution dated 30th November, 2003, the Committee of Management was not recognised. He does not dispute that the committee headed by Mr. A. P. Dwivedi came to an end by means of order dated 14th February, 2003 but he emphasised that since the signatures of the Manager were not recognized up till 1.3.2005, therefore, a validly constituted Committee of Management did not come into existence. He has placed reliance upon the judgment in Nand Deo Pandey Vs. Committees of Management and others,

5. It is also submitted that the suspension order of the Petitioner was not approved by the District Inspector of Schools at the time when it was passed and till today the suspension order has not been approved by the District Inspector of Schools, therefore, the suspension order never came into existence and remained on the file only. The reliance has been placed by him on Section 2(k) of the U. P. Secondary Education Services Selection Board Act, 1982 (for short the "Act") which defines teacher as a person employed for imparting instruction in an institution and includes a Principal or a Headmaster and shelter of Section 21 of the Act has also been taken by the Petitioner wherein it has been made mandatory to the management not to proceed to dismiss or remove or reduce in rank, or emolument, increment without prior approval of the Board. It also provides that no notice of removal from service shall be served upon an incumbent whose services are sought to be dispensed with without the approval of the Board. The Petitioner's dismissal having not attained finality he cannot be deprived of working on the post in question. The suspension order which has been passed has never been approved by the District Inspector of Schools and no decision has been taken by the District Inspector of Schools in respect of the suspension order. The Committee of Management itself was not legally recognized Committee of Management on the date of passing of the suspension order and the District Inspector of Schools rightly did not approve the suspension order. The fresh election took place on 6.7.2003 and on the basis of the said election the Committee of Management was recognised on 1.3.2004. The Committee of Management was having no jurisdiction to pass suspension order or to pass the impugned resolution dated 30th November, 2003, by means of

which it has recommended that the services of the Petitioner may be dispensed with. The Petitioner cannot be made to suffer for the inaction on the part of the District Inspector of Schools. The charges have been framed against the Petitioner maliciously on account of the change of regime. The earlier Committee of Management headed by Mr. A. P. Dwivedi who appointed the Petitioner as Officiating Principal went out of power on 14.2.2003 and thereafter the present Committee of Management presumed the Petitioner to be a man of the earlier manager proceeded maliciously against him and framed various false and frivolous charges and concluded disciplinary proceedings with undue haste in order to get rid of the Petitioner.

6. On the other hand the counsel for the Committee of Management vehemently argued that the resolution which was passed on 30th November, 2003 was ratified by the Committee of Management in its meeting held on 1st of March, 2004. Therefore, the competency of the Committee of Management to pass the resolution cannot be questioned by the Petitioner and once rectification has been made it will be presumed under law that a valid resolution has been passed. He also submitted that inspite of recommendation to dismiss the Petitioner to the Board on 30th November, 2003 the Board has not taken any decision and by means of letter dated 29.5.2004 the service record and other documents were demanded by the Board but they have not been forwarded by the District Inspector of Schools on account of which no action could be taken and the dismissal of the Petitioner could not be approved. The Petitioner and the District Inspector of Schools are hand in gloves with each other and if the authorities have failed to take any decision within reasonable time then the person against whom serious charges are there cannot be allowed to work. Even if the resolution dated 30th November, 2003 recommending the dismissal of the Petitioner has not been approved, the suspension of the Petitioner will continue to operate as no decision has been taken by the District Inspector of Schools and to support his argument he has placed reliance upon the Full Bench decision in Chandra Bhushan Misra v. District Inspector of Schools, Deoria and Ors. (1995) 1 UPLBEC 460: 1995 (2) AWC 749. He has submitted that in view of this judgment the Petitioner cannot be allowed to officiate as Principal as there are various serious charges against the Petitioner which is evident from the charge-sheet and the finding of the Inquiry Officer and the law in this regard has been laid down by the Apex Court in the case of Ram Murti Singh v. District Inspector of Schools, Deoria and others, 1995 SCC 1134, wherein it has been said that if the working of a teacher who is senior-most, is not in the interest of the institution then the Committee of Management can deprive the person concerned from officiating as Principal. The resolution having been ratified on 1.3.2004 there is no illegality or incompetence on the part of the Committee of Management in passing the resolution or suspension order.

7. I have heard learned Counsel for the parties and gone through the record.

8. It is evident from the record that a dispute arose with regard to the

Committee of Management of the present college, one headed by Mr. A. P. Dwivedi and other by Ram Bujharat Singh. Writ Petition No. 1845 (M/S) of 1996 was filed before this Court relating to the dispute of the Committee of Management wherein an order was passed by this Court on 14.1.1997 directing the Regional Deputy Director, Education to pass appropriate orders u/s 16A (7) of the Act. The Regional Deputy Director of Education had passed an order on 13.8.1998 wherein he recognized the Management Committee headed by Mr. A. P. Dwivedi. The said order of the Regional Deputy Director dated 13.8.1998 recommending the Committee of Management of Mr. A. P. Dwivedi was challenged in Writ Petition No. 1873 (M/S) of 1998 before this Court and this Court vide order dated 9.5.2000 was pleased to dismiss the aforesaid writ petition. Against the order dated 9.5.2000 a Special Appeal No. 174 of 2000 was preferred, which too was dismissed by this Court vide order dated 12.7.2000.

9. It is evident from the record that Shri Shiv Murti Singh was working as Officiating Principal at the time when the Committee of Management was headed by Mr. A. P. Dwivedi. Shri Shiv Murti was placed under suspension by the then Committee of Management. He, however, preferred a writ petition before this Court and his suspension order was stayed. Shri Shiv Murti Singh thereafter expired and the Petitioner became senior-most teacher in the College. It is noteworthy that even after the death of Shri Shiv Murti Singh the Petitioner being senior-most teacher was not allowed to officiate as Principal and so he preferred a writ petition in this High Court but no order could be passed in the said writ petition. The then Committee of Management headed by Mr. A. P. Dwivedi appointed the Petitioner as Officiating Principal of the College and his signatures were duly verified. Since there was volcanic situation in the College. So the District Inspector of Schools, Faizabad had to go personally to the College to enable him to take charge of the post of Officiating Principal as the rival faction headed by Mr. Ram Bujharat Singh (present Manager) was not allowing the Petitioner to take over the charge of Principal. The Petitioner took over the charge of the post of Principal on 9.3.2004 as Officiating Principal. The dispute between two Committee of Managements went on and by means of the order dated 14.2.2003 the Registrar Firms Societies and Chits (Deputy Registrar) cancelled the renewal certificate of the Committee of Management headed by Mr. A. P. Dwivedi by means of order dated 14.2.2003 and recognized the society headed by Mr. Ram Bujharat Singh. The said order dated 14.2.2003 passed by the Deputy Registrar was challenged by Mr. A. P. Dwivedi by means of filing the writ petition before this Court which was dismissed on the ground of alternative remedy and thereafter an appeal was preferred before the Divisional Commissioner challenging the order u/s 12D of the Societies Registration Act and the same was dismissed on 25th August, 2004 by the Commissioner. After the dismissal of the appeal by the Divisional Commissioner Mr. Ram Bujharat Singh started harassing the Petitioner and initiated proceedings regarding his suspension and the Petitioner was superseded by his junior Gyanendra Prasad Yadav on the post of Principal. Soon thereafter the present Committee of

Management headed by Mr. Ram Bujharat Singh initiated disciplinary proceedings against the Petitioner in the year 2003, behind the back of the Petitioner. The signatures of Mr. Ram Bujharat Singh as Manager were verified only on 1.3.2004 but the Committee of Management which was neither recognized by the District Inspector of Schools nor the signatures of the Manager were attested on 30th November, 2003, passed a resolution for dismissing the Petitioner. The suspension order was also passed on 6th October, 2003. In definite terms the Committee of Management came to be duly recognized on 1.3.2004. On the date of passing of the suspension order or the impugned resolution the Committee of Management was not a legally recognised Committee of Management on account of on going dispute and long drawn litigation.

10. It seems that the present Committee of Management presuming the Petitioner to be a man of earlier Committee of Management, although it was sheer bad luck of the Petitioner that at the relevant time when the Committee of Management was headed by Mr. A. P. Dwivedi, Shri Shiv Murti Singhi earlier the Officiating Principal died and he became the senior-most teacher and by virtue of his seniority, he was given the charge of Officiating Principal. The association of the Petitioner with the earlier Committee of Management was also not established. He has preferred a writ petition before this Court as he was not being permitted to officiate as Principal being the senior-most teacher. The rivalry between the two Committee of Managements was so vigorous and vulnerable that the Petitioner who was allowed by the District Inspector of Schools to take over the charge as Officiating Principal was opposed tooth and nail by the present Committee of Management then rival faction. The District Inspector of Schools had to come to the college to facilitate the charge of the post of the Officiating Principal. The ratification, if any, made at the subsequent point of time, i.e., on 1.3.2004 will not validate the consequential proceedings which were initiated without authority of law.

11. In the case of V.C., Banaras Hindu University and Others Vs. Shrikant, the Apex Court in paras 45 and 36 held as under:

45... The resolution of the Executive Council dated 8/9.1.2003 was also not final. The same was placed before the High Court by way of a supplementary-counter-affidavit only on 23.3.2003 whereas the matter was heard much prior thereto and the judgment was reserved. Judgment was delivered on 25.3.2003 which again goes to show that an attempt had been made by the University to stall the proceedings before the High Court. Before us only the University has taken a stand that even the Executive Council had put its seal by way of approval of the order of the Vice-Chancellor.

46. As the initial order passed by the Vice-Chancellor was wholly without jurisdiction, the same was a nullity and thus, the purported approval thereof, by the Executive Council would not cure the defect.

12. The entire proceedings have commenced before the 30th November, 2003,

the signatures of the present Manager were recognized on 1.3.2004, meaning thereby that on the date of initiation of the proceedings in pursuance to the suspension order no authority vested with the Committee of Management to initiate the proceedings. It is only the resolution dated 30th November, 2003 which has been ratified but the resolution placing the Petitioner under suspension or initiating the proceeding against him has not been ratified. In Nand Deo Pandey (supra) case their Lordship held in clear terms that the disputed Committee of Management was not authorised to initiate enquiry against the incumbent. It was held that the enquiry initiated by the disputed Committee of Management was stayed by the Apex Court and it was directed that after the dispute is resolved the Committee of Management will be at liberty to take decision. In the present case, also till the Committee of Management concluded the proceedings or placed the Petitioner under suspension it was not a legally recognized Committee of Management and dispute was already going on in the Court of the Commissioner as well as by means of Writ Petition No. 4902 (M/S) of 2004, in which the order of the Registrar as well as the Commissioner dated 25.8.2004 were under challenge before this Court. So the dispute between the Committee of Managements has not come to an end but in fact it is still continuing. In Nand Deo Pandey (supra) case the dispute was pending before the Sub-Divisional Magistrate and the Deputy Director of Education and in the present case the dispute is pending in this Court so the dispute has not attained finality. The ratio of law laid down in Nand Deo Pandey (supra) case will apply with full force and the proceedings initiated or the resolution passed by the Committee of Management will not be of any avail to the opposite parties. It is another fact that the signatures of the present Committee of Management have been attested but the dispute still continues. It has not been brought on record that any fresh election has taken place and on that basis some new Committee of Management has come into existence. The action of the Committee of Management in passing the resolution dated 30th November, 2003 cannot be termed to be a valid resolution in view of the above discussion.

13. The argument of the learned Counsel for the opposite party No. 6 is that the suspension will continue to remain in operation even if the dismissal has not been approved by the Board. The contention does not merit any consideration on account of the fact that the resolution by means of which disciplinary proceedings were initiated against the Petitioner has not been ratified in any subsequent meeting. The Full Bench sought to be relied upon by the learned Counsel for the opposite party No. 6 in Chandra Bhushan Misra (supra), also does not come to his rescue in view of the finding recorded in paragraph 3 of the said decision, which is as under:

3. According to Sub-section (7) no order of suspension But if the order of suspension is approved even after the expiry of sixty days, it will come into force again and will become effective immediately on such approval.

14. The order of suspension in the present case has not been approved up till

now. No decision has been taken by the District Inspector of Schools up till now. So the argument advanced by the learned Counsel for the opposite party No. 6 that the suspicion will continue in operation also does not survive any merit.

15. The disciplinary proceedings which have been concluded ex parte against the Petitioner have not attained finality in view of the fact that the resolution has not been approved by the Board up till now. The rigour of Section 21 of the Act imposes a restriction upon the Committee of Management to even issue a show-cause notice which is evident from the language implied in Section 21 of the Act. In the instant case, the District Inspector of Schools has called for the papers by means of letter dated 29.5.2004 and since then the matter is pending with the Board, the recommendation for dismissal having not been approved, it cannot be assumed under law that the Petitioner stands dismissed from service. The suspension order also not having been approved subsequently by the District Inspector of Schools nor having been passed by a validly constituted Committee of Management, the same cannot continue to operate. The resolution is awaiting its approval from the Board.

16. The argument of the learned Counsel for the Petitioner is that Section 2 (k) of the Act defines "Teacher" which means a person employed for imparting instruction in an institution and includes a Principal or a Headmaster and on that reasoning it has been urged that the Petitioner may be permitted to work as Principal. This Court would have permitted the Petitioner to work as Officiating Principal but in the wake of charges levelled against him, may be they are sheer outcome of the malice of the Committee of Management but then this has to be considered and decided by the Board and as such no direction can be given at this stage to allow the Petitioner as Officiating Principal, but his right to continue as a teacher cannot be stopped.

17. In the above circumstances, it will be premature to interfere with the disciplinary proceedings which are going on before the Board and the approval is awaited from the Board with regard to the dismissal of the writ petition. The Petitioner will be at liberty to challenge the dismissal order after approval of the Board if such approval is granted, the Petitioner cannot be deprived from functioning as Lecturer. It is prerogative of the Committee of Management to take work from the Petitioner as Officiating Principal or not but if the Board disapproved the resolution dated 30th November, 2003, then the Petitioner would be entitled to continue as Officiating Principal but till that time the Petitioner will be permitted to continue as Lecturer and all the salary payable to him during this period will be paid to him as the Petitioner has never avoided to work but on account of action of the Committee of Management the Petitioner has been deprived from working. The Petitioner has not absented himself but in fact he has been pursuing his remedy in this Court to be permitted to work.

18. In such circumstances, the Petitioner cannot be deprived of the salary. The Petitioner would be entitled to continue upto the end of academic session in accordance with the provisions of the Act and the Government order in case he

attains the age of superannuation in the mid session.

With the aforesaid direction the writ petition is disposed of.