

(1992) 07 AHC CK 0061

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 19856 of 1987

Ram Lai Misra

APPELLANT

Vs

District Inspector of School and Others

RESPONDENT

Date of Decision : 07-07-1992

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 16

Citation : (1992) 4 AWC 441 Supp

Hon'ble Judges : V.N. Khare, J;G.P. Mathur, J

Bench : Division Bench

Advocate : R.K. Jain, for the Appellant;

Final Decision : Dismissed

Judgement

V.N. Khare, J.—This is an application for review of judgment of this Court rendered in writ petition no. 9102 of 1981, Bishambar Prasad Shukla v. District Inspector of Schools and others, decided on 22nd November, 1985. This fresh writ petition was treated as review petition and was earlier rejected by this Court. However, the matter has again come up before this Bench on the direction of the Supreme Court. Before we take up the issue involved in this petition, it is necessary to set out the facts which led the applicant to file this application.

2. Sri Suresh Prasad Tripathi, Respondent No. 4 to this application was Principal of Munder Prasad Intermediate College, Bargadwa, district Gorakhpuri (hereinafter referred to as Bargadwa College). Bargadwa College is a recognised private Government aided institution. On 21st June 1981 the committee of management of Bargadwa College resolved to transfer Suresh Prasad Tripathi, Respondent No. 4 from Bargadwa College to Nautanwa Intermediate College, Nautanwa, District Gorakhpur (hereinafter referred to as Nautanwa College). By order dated 30th 1981, the District Inspector of Schools, Gorakhpur accorded approval to the transfer of Suresh Prasad Tripathi, Respondent No. 4 for being appointed as Principal in Nautanwa college. In pursuance thereof, Suresh Prasad

Tripathi was issued a letter of appointment by the committee of management Nautanwa college and he joined the college as Principal on 1st July, 1981. After Suresh Prasad Tripathi joined as Principal in Nautanwa college It is alleged that the Petitioner Ram Lai Misra, who claims to be seniormost teacher of the College, was appointed as ad-hoc Principal of Bargadwa College against the vacancy on the post of Principal caused by transfer of Suresh Prasad Tripathi. The transfer of Suresh Prasad Tripathi to Nautanwa college was challenged in this Court by Sarve Sri Bishambhar Prasad Shukla, Bishambhar Dayal Vaish and Sri Ram Yadav by means of a writ petition under Article 226 of the Constitution. The said writ petition was numbered as writ petition no. 9102 of 1981. Before Respondent No. 4 was transferred and appointed as Principal at Nautanwa college, the State Government in anticipation of Ordinance no. 8 of 1981 issued order dated 7-4-1981 banning and staying all fresh selection and appointments as Principals, Head Master and teachers including recruitment by promotion. The order contained in Radiogram message reads as under :

From Secretary to Government of U, P. Education Department G.O. No. 1701/15-7-FI-I (27)-81, dated 1-4-1981 stop all fresh selections and appointments of Principals, Headmasters and teachers including recruitment by promotion in all non-government aided secondary schools except minority institutions pending further orders. District Inspectors to ensure non-drawal of pay of teachers appointed after this date. Detailed instructions follows.

3. This order was passed by the State Government in order to check large scale malpractices going on in private Government aided institutions. The institutions were indulging in making appointments of teachers on considerations other than those of merit. The validity of the aforesaid radiogram was challenged before a Division Bench of this Court in the case of Ram Ji Dwivedi v. State of U.P. 1982 UP LB A EC 137, and it was held that the said radiogram had been issued under Article 162 of the constitution and no appointment could be made after the issue of the aforesaid radiogram. That case went up in appeal to the Supreme Court which also up-held the validity of the radiogram issued by the State Government (see Dr. Ramji Dwivedi v. State of U.P. 1983 UP LB & EC 426. On 10th July, 1981 the State Government promulgated an Ordinance known as the Uttar Pradesh Secondary Education Services Commission and Selection Boards Ordinance, 1981 being U.P. Ordinance No. 8 of 1981. This Ordinance was subsequently replaced by the Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 being U.P. Act no. 5 of 1982 which came into force with effect from 14th July, 1981. Section 16 of the said Act provides that every appointment of a teacher including Principal shall be made by the management only on the recommendation of the commission. After the U.P. Ordinance no. 8 of 1981 was promulgated which was subsequently replaced by the Act, number of transfers of Principals and teachers were challenged by means of writ petitions under Article 226 of the Constitution in this Court. This Court in Raghunandan Prasad Bhatnagar v. Administrator, Committee of Management Gandhi Vidyalaya Intermediate College Khekhra district Meerut 1985 UP LB EC 346 , has held that

such transfers, in fact, are fresh appointments and, therefore, invalid. The case went up in appeal to the Supreme Court and the Supreme Court in the case of Om Prakash Ranavs. Swaroop Singh Tomar & another upheld the decision of this Court rendered in Raghunandan Prasad Bhatnagar's case. That case is reported in Om Prakash Rana Vs. Swarup Singh Tomar and Others, . After a Full Bench decision of this Court, writ petition no. 9102 of 1981, wherein the transfer of Suresh Prasad Tripathi was challenged came up for hearing before a Bench of this Court and this Court on 22nd November, 1983 following the decision of Full Bench, allowed the writ petition and quashed the order of transfer dated 30th June, 1981. As a result of decision in writ petition No. 9102 of 1981. the District Inspector of Schools, Gorakhpur on 13-1-1987 directed the Committee of Management Nautanwa College to relieve Suresh Prasad Tripathi as Principal of the college. It is alleged that in compliance thereof Suresh Prasad Tripathi was relieved from Nautanwa college and was permitted to join his parent Bargadwa college. The applicant being seniormost teacher in Bargadwa college was working as ad-hoc Principal of the college and therefore, is aggrieved by the decision of this Court rendered in writ petition no. 9102 of 1981. This has led the applicant to file-the present petition/review application.

4. Sri R.K. Jain, learned Counsel for the applicant argued that the Full Bench decision of this Court in Raghunandan Prasad Bhatnagar's case (supra) which has been upheld by the Supreme Court in Om Prakash Rana's case (supra) is not applicable to the facts of the present case and, therefore, the decision of this Court in writ petition 9102 of 1981 requires review and be recalled. In substance the argument is that this Court as well as the Supreme Court on account of Ordinance no. 8 of 1981 which was subsequently replaced by an Act, has held that transfer of Principal from one institution to another is illegal but in the present case Suresh Prasad Tripathi was transferred prior to enforcement of the Ordinance and Act namely on 30th June, 1981, therefore, his transfer is valid and judgment of Full Bench of this Court as well as the Supreme Court is not applicable. On the other hand Sri Rang Misra, learned Counsel for the Respondents argued that the applicant is neither a person aggrieved nor a necessary party and further there is no ground for review of the judgment and, therefore, no relief can be granted.

5. It is true that Suresh Prasad Tripathi, Respondent No. 4 was transferred on 30th June, 1981 and was appointed on 1st July 1981 as Principal in Nautanwa College and Ordinance No. 8 of 1981 was promulgated on 10th July 1981, although, the Act which replaced the Ordinance came into force with effect from 14th July 1981. In view of this, it could be argued that the Ordinance no. 8 of 1981 which was made basis for the decision of Rana's case (supra) is not strictly applicable to the fact of the present case. Still the ratio of decision of Rana's case is applicable to the present case in view of the fact that when-ever any transfer of a principal was made from one institution to another it involved fresh appointment and fresh appointments were banned by the Government order dated 7-4-91 the validity of which was upheld by the Supreme Court. In view of

this, the applicant cannot be given any relief as prayed for in this application. Admittedly, prior to coming into force of the Ordinance, there was no common State level service to which principals were appointed. The scheme under the Act envisaged the appointment of a Principal in relation to a particular college. There are different colleges owned by different bodies or organisations, and each principal serves a different employer. Therefore, on filling the office of Principal to a particular college by transfer a new contract or employment with a particular employer comes into existence. When a Principal of an institution is transferred from appointment and fresh contract of service. This view of our finds support from the decision of Supreme Court in Om Prakash Rana's case (supra). The relevant passage is extracted below :

As is clear by now, the fundamental basis of the contention that the power of transfer under the Education Act and its Regulations continues in force even after the enactment of the Service Commission Act rests on the assumption that the power of appointment does not include the power of transfer. In our opinion the assumption is unsustainable. The scheme under the Education Act envisages the appointment of a Principal in relation to a specific college. The appointment is in relation to that college and to no other. Moreover, different colleges may be owned by different bodies or organisations, so that each Principal serves a different employer. Therefore, on filling the office of a Principal to a college a new contract of employment with a particular employer comes into existence. There is no State-level service to which Principals are appointed. Had that been so, it would have been possible to say that when a Principal is transferred from one College to another no fresh appointment is involved. But when a Principal is appointed in respect of a particular college and is thereafter transferred as a Principal of another college it can hardly be doubted that a new appointment comes into existence. Although the process of transfer may be governed by considerations and move through a machinery different from the considerations governing the appointment of a person ab initio as Principal, the nature of the transaction is the same, namely, that of appointment, and that is so whether the appointment be through direct recruitment, through promotion from the teaching staff of the same institution or by transfer from another institution.

Suresh Prasad Tripathi, Respondent No. 4 had been transferred to Nautanwa College but the said transfer involved fresh appointment to the post of Principal of the college. Since fresh appointment of teachers and Principals was banned by the Government order dated 7th April, 1981, the said transfer order was invalid and the writ petition was rightly allowed.

6. Sri Jain, learned Counsel for the applicant then brought up our notice to U.P. Secondary Education Services Commission and Selection Boards (Amendment and Validation) Act, 1991 by which the transfers earlier made have been validated. It is not understood that how this amending Act helps the case of the applicant. This amending Act has validated the transfers made on or after July 14, 1981 where as transfer of Respondent no 4 was made on 30th June, 1981.

7. No other point was pressed.

8. There is no merit in this application and is accordingly dismissed. There shall be no order as to costs.