

(1999) 08 AHC CK 0038

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 1287 and 20455 of 1996

Ram Swaroop Katiyar

APPELLANT

Vs

Director of Education (Secondary) and Others

RESPONDENT

Date of Decision : 10-08-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Intermediate Education Act, 1921 — Section 16E(10)

Citation : (2000) 1 UPLBEC 37

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : V.S. Diwedi and S.K. Verma, for the Appellant; D.P. Singh and Avinash and S.C., for the Respondent

Final Decision : Dismissed

Judgement

D.K. Seth, J.—The petitioner was appointed as a Lecturer of Physiology on 25th June, 1980 pursuant to his selection. The added respondent No. 3 Sri Ram Prakash Katiyar was also a candidate in the selection. He secured the second position after the petitioner. The respondent No. 3 raised an objection that the petitioner was related to the Principal of the school. The District Inspector of Schools there-upon asked the Principal to clarify as to whether the allegations made by the respondent No. 3 was correct or not. But the Principal did not give reply to the said letter. Thereafter by order dated 1st November, 1980 the District Inspector of School had stopped the payment of salary to the petitioner. The petitioner moved this Court in a writ petition No. 109031 of 1980 against the said order dated 1st November, 1980. The said writ petition was disposed of by an order dated 7th August, 1991 directing the District Inspector of Schools to sent all relevant papers to the Director of Education for determination of the dispute u/s 16-E (10) of the U.P. Intermediate Education Act, 1921. By an order dated 23rd November, 1994, the Director opined that on the basis of the papers, it was not possible to determine the relationship between the Principal and the petitioner without any enquiry. The Superintendent of Police, Kanpur Dehat was

required to hold an enquiry pursuant to the order dated 23rd November, 1994. The Superintendent of Police had appointed the Circle Officer, Bhognipur to investigate the matter. The Circle Officer submitted his report on 11th January, 1995. In the said report, it was found that the petitioner was not the son-in-law of the Principal. On the basis of the said report, by an order dated 25th June, 1995, the Director had held in favour of the petitioner and rejected the objection of the respondent No. 3. The said order was never challenged. Subsequently the petitioner was again asked to appear before the police authority, Thereafter by an order dated 1st January, 1996, the petitioner was asked to show cause within 15 days as to why his service should not be terminated, The order dated 1st January, 1996 was received by the petitioner on 17th January, 1996. On 22nd January, 1996 the petitioner had submitted his reply. Before the expiry of 15 days the service of the petitioner was terminated. It is this order dated 11th January, 1996 contained in Annexure 7 to the writ petition that has since been challenged in this writ petition.

2. Dr. R. Dwivedi, learned Counsel for the petitioner contends that the question of relationship is governed by Rule 4, Chapter III of the Regulations framed under the U.P. Intermediate Education Act, 1921, u/s 16-G thereof. The question of relationship is also covered by Section 16-GG which deals with ad hoc appointment. There was nothing in the Act which could include relationship as a bar in respect of appointment in the school in the Act itself. The Regulation having been framed u/s 16-G relating to condition of service, Regulation 4, Chapter III could not be extended to an appointment. The question of appointment cannot be governed by the conditions of service. Therefore, the dispute within the meaning of Section 16-E (10) cannot include a dispute with regard to the relationship which is outside the scope of appointment and is only a matter relating to condition of service. Thus, according to Dr. Dwivedi, the order passed by the Director in exercise of Section 16-E (10) is void abinitio on account of its being without jurisdiction. He next contends that alternatively even if, assuming but not admitting, the Director is empowered to decide such dispute in exercise of power u/s 16-E (10), then it is a power conferred on the Director himself. There is no provision for delegation of the power. In the present case, the Director had delegated the power to the Superintendent or Police for making an enquiry and it depended on the report of the police enquiry. He further contends that even if, assuming but not admitting, the Director could delegate such power, then it could be delegated to any civil authority. It could not have been delegated to the police authority empowered with criminal investigation. The dispute in the present case is a civil dispute and as such could not have been investigated by an authority empowered to investigate under the provisions of Code of Criminal Procedure or such other laws relating to crimes or analogous thereto. Dr. Dwivedi next contends that there is no power conferred on the Director to review his own order. In the present case the Director having passed an order on 26th June, 1995, cannot review the said order subsequently and pass a fresh order on 11th January, 1996. His next contention was that the

question cannot be reopened u/s 16-E (10) long after 15 years" of appointment. Inasmuch as the appointment was made in 1980, whereas it is being reopened in 1995. He then contends that there is nothing on facts to show that the petitioner was related to the Principal. On the other hand there are materials to show that there were two Radhey Shyam Katiyar in the same village one of them was the Principal and the other was a cultivator. The petitioner had claimed that he happens to be the son-in-law of Sri Radhey Shyam Katiyar, the cultivator and not the Principal, which he had stated even on his written statement before the Director. Therefore, such intricately disputed questions of fact could not be decided solely on the basis of police report unless such police report is substantiated by independent evidence or by materials placed on record, which could lead to come to a conclusive conclusion. His last, but not the least, contention was that the impugned order dated 11th January. 1996 was passed without affording any opportunity to the petitioner. He contends further that the notice to show cause was received on 17th January, 1996. whereas the order was passed on 11th January. 1996 though in the order dated 1st January. 1996, 15 days" time was granted to the petitioner to reply. Therefore, in no circumstance, the order could have been passed before 16th January, 1996. For all these reasons he contends that the impugned order contained in Annexure 7 to the writ petition be quashed.

3. Mr. D. P. Singh, learned Counsel for the respondent on the other hand contends that admittedly, the petitioner himself has stated in paragraph 5 that despite the Principal being required to clarify as to whether the complaint of respondent No. 3 was correct or not. the Principal did not give any reply. This according to him, is sufficient to draw adverse presumption as against the Principal, who did not deny the allegation that the petitioner was son-in-law of the Principal. He next contends that nowhere in the writ petition the petitioner had ever pleaded that he was not the son-in-law of the Principal. On oath, the petitioner had never pleaded that the Principal was not his father-in-law. The statement made in paragraph 11 was affirmed as based on papers, and that too. was not a statement of the petitioner. Inasmuch as in paragraph 11 it as stated that the aforesaid reports specifically mentioned that the petitioner was not the son-in-law of the Principal. According to Mr. Singh. it was open to the petitioner to make the statement in the pleading that he was not related to the Principal. Thus the petitioner has not made out a sufficient case to establish his legal right to invoke writ jurisdiction since he had not disclosed the correct situation. According to him, the order dated 26th June, 1996 records that the petitioner was the son-in-law of Sri Radhey Shyam Katiyar. the cultivator, who was the son of Sri Baldeo and that Radhey Shyam Katiyar, the Principal was not his father-in-law This statement was made by the petitioner in writing but the same was not on oath. Therefore, it had no value and could not be relied upon. The non-denial of the fact on oath by the petitioner that he was not the son-in-law of the Principal is also a ground for drawing adverse presumption as against the petitioner himself. Therefore, on its own showing the petitioner has not come out

with a clean and unequivocal denial that he was not the son-in-law of the Principal. He has also not stated on oath that he happens to be the son-in-law of Sri Radhey Shyam Katiyar, the cultivator. Mr. Singh further contends that though in the report contained in Annexure 2, it was mentioned that the petitioner's wife holds a Post Graduate Degree and had passed High School in 1966 yet nothing is produced to show that she was the daughter of Sri Radhey Shyam Katiyar, the cultivator. On the other hand, in the same report, it was mentioned that the Sarpanch had given a certificate that the petitioner had married the daughter of Sri Radhey Shyam Katiyar, the Principal about 24 years earlier, in the same village where the Sarpanch himself used to reside and a photo copy of the Kutumb Register was also annexed with the said certificate showing that Smt. Hemlata was the third issue of Sri Radhey Shyam Katiyar, the Principal. On the basis of such a situation, it was rightly held by the Director in his order dated 24th November, 1994 that it was not possible to decide such a disputed question without the help of the police and, therefore, there should be an enquiry made through the Superintendent of Police. According to him, this was a circumstance in which it was necessary to take the aid of outside agency for arriving at a definite conclusion. Therefore, it was not a delegation as contended by Dr. Dwivedi. According to Mr. Singh, the determination was made by the Director himself but he had sought for certain materials in order to come to a definite conclusion in the form of enquiry through the police authority. According to him, Section 16-E (10) does not prescribe any procedure as to how such enquiry has to be conducted. Therefore, it is open to the Director to conduct the enquiry as he may deem fit and proper. As such there is no illegality in the seeking of the report from the police authority. He then contends that Section 16-E (10) of the Act deals with the cancellation of appointment of teacher or Head of Institution. Section 16-G provides for making of regulation with regard to condition of service. Condition of service follows appointment. Any appointment made under the U.P. Intermediate Education Act requires the approval of the District Inspector of Schools. Thus, an appointment requires approval. It has been included within the scope and ambit of condition of service to include a provision akin to Regulation 4, Chapter III. Chapter III itself is headed by the title "Probation, Confirmation and Promotion". An appointment is subject to probation and confirmation. Therefore, Regulation 4, Chapter III cannot be said to be outside the scope and ambit of Section 16-E (10) of the Act, which deals with appointment. Since an appointment is confirmed after probation or approved, provided the appointment is made properly. Section 16-GG though deals with ad hoc appointment, but the same was introduced to convert such ad hoc appointees as regular appointees against substantive vacancies. Therefore, the conditions provided in Section 16-GG relates to substantive appointment and not ad hoc appointment since unrelated against a substantive vacancy granting him a substantive vacancy granting him a substantive appointment. Therefore the relationship as a bar is very much within the scope and ambit of the Act itself since been referred in the regulation, Therefore, according to him Section 16-E (10) of the Act can very well include the present dispute. He then contends that

the question of review is normally dependent on the power conferred on the authority by the Statute. He contends that in the absence of the provision in the Statute, there cannot be any power to review. But the said proposition cannot be attracted in the present case in view of the peculiar facts and circumstances of the case. According to him, there were two reports-one by the Circle officer and the other by the Deputy Superintendent of Police. The report of the Deputy Superintendent of Police was dated 10th January, 1995: It was also in existence but the same was not considered while the order dated 26th June, 1995 was passed. The order dated 26th June, 1995 had relied upon the report of the Circle Officer alone without adverting to the report of the Deputy Superintendent of Police. As soon it was brought into the notice of the Deputy Director, it was open to him to look into (he same and reopen the case since it was done without adverting to the report already on record. He than contends that the dispute was continuing right from 1980 and by reason of various proceedings, the matter has since been delayed. Therefore, it is not being reopened after long 15 years but it is the continuation of the same process initiated in 1980. He further contends that there arc materials to show in the form of certificate by the Sarpanch that the petitioner was related to the Principal, which is supported by the report of the Deputy Superintendent of Police dated 10th February, 1995. It has been found to be correct by the Senior Superintendent of Police as was intimated to the Director. On these grounds, he contends that the writ petition should be dismissed.

4.1 have heard both the learned Counsel at length.

5. Section 16-E (10) provides that if the Director is satisfied that a teacher in an institution was appointed in contravention of any of the provisions of the Act, he may cancel such appointment after giving an opportunity to the person concerned and pass such consequential order as may be necessary. Neither in the Act nor in the Regulation any procedure has been prescribed for exercising power u/s 16-E (10) of the Act. Thus, the Director is free to adopt the procedure which according to his opinion is deemed fit an proper. He is supposed to enquire and determine the disputed question of fact. He may rely upon such materials, which according to him, would enable him to determine said dispute. In fact he had sought for a report from the Superintendent of Police. The seeking of report is, in fact, collection of material. By no stretch of imagination, seeking of report cannot be said to be a delegation. It was only a report that was sought for. which was to be considered by the Director himself. The Director himself had considered the report and had determined the question himself. The Director was free either to accept the report or to reject the report. Thus the question that he had delegated his power cannot be substantiated. Section 16-E (10) does not confer any right or power on the Director to delegate his authority to anyone lease.

6. In the present case, no delegation of the authority was there. Since there were two versions-one by the petitioner and the other by means of the certificate

of the Sarpanch produced by the respondent No. 3, therefore, he wanted to ascertain the situation by an independent report through police. Thus there having been no delegation, the order cannot be thrown away on the ground of alleged delegation.

7. How far the report could be relied upon is the question that requires determination. A police report cannot be accepted unless it is substantiated. While deciding a dispute, u/s 16-E (10) of the Act, the Director decides it administratively though he is supposed to decide quasi-judicially. He is not supposed to decide as a Court not it can be said that in a process in such decision u/s 16-E (10) either the CPC or Criminal Procedure would be applicable or that Evidence Act would be applicable. While deciding the same, he has to rely on certain materials. If there are two reports substantiating -each other, in that event it is open to the Director to rely upon the same and disbelieve or discard that of the petitioner. The only thing that is expected of him is that he should exercise his discretion in such matters judiciously though not judicially. Therefore, it was open to him to ask for certain other materials for the determination of the disputed question of fact.

8. So far as the question as to whether the police should be entrusted or a civil authority should be entrusted, is not relevant for the purpose. Inasmuch in the present case the Principal did not reply to the query made by the District Inspector of Schools as to whether the petitioner was his relative.

9. As the same time, the petitioner did not submit any affidavit to substantiate his claim denying relationship with the Principal. Thus it pre-supposes that the appointment has been obtained through misrepresentation or in other words fraudulently, which is within the domain of criminal investigation. Though it could have been investigated through the civil authority, yet there would not be any power to seek a report from the police particularly when a certificate of civil authority was already available on record, namely, a certificate by the Sarpanch of the village, the certificate of Sarpanch was sought to be substantiated by another independent enquiry by the police. Therefore, the same cannot be said to be an infirmity.

10. So far the question that Section 16-E (10) of the Act cannot include the dispute with regard to the relationship since it relates to Regulation 4, Chapter HI, which deals with condition of service, is concerned, it seems that the proposition is not a sound one. Section 16-E (10) provides that if the Director is of the opinion that any of the person has been appointed in contravention of the provisions of the Act, the same may be enquired into and in that event such appointment could be cancelled by him after giving an opportunity to the person concerned. Thus the question arises after the appointment. An appointment is always subject to probation and confirmation. Section 16-G deals with appointment, probation, confirmation and promotion. After an appointment, a person is required to be confirmed. For the purpose of confirmation condition of service may also be relevant. The question of relationship is a disqualification for

obtaining an appointment. It is such a disqualification which cannot be overlooked as an irregularity. It is a disqualification which is an illegality that renders the appointment void and liable to be cancelled. Therefore, Regulation 4 can very well be included within the scope and ambit of an enquiry u/s 16-E (10) of the Act. Section 16-GG of the Act provides that any person appointed on ad hoc basis between August 18, 1976 and September 30, 1976 shall be deemed to have been appointed in a substantive- capacity. Thus though it mentions ad hoc appointments but it is applicable to substantive appointments provided that a teacher shall not be entitled to the benefit of Section 16-GG, if he is related to any of the member of the Committee of Management or the Principal or the Head Master of the Institution concerned and the relation has since been explained as member of Hindu Undivided Family or Husband or wife or in the manner prescribed in Second Schedule, which includes son-in-law. Thus, this relationship is very much applicable in respect of substantive appointment and therefore, it is also provided in the Act itself as a disqualification for substantive appointment since been reflected in Regulation 4, Chapter III, Thus, the question of relationship can very well be gone into while dealing with the question of cancellation u/s 16-E (10) as a contravention of the provisions of the Act itself,

11. The argument that the question cannot be reopened after long 15 years after the appointment u/s 16-E (10) of the Act does not seem to be a sound proposition. Inasmuch as the question was raised in 1980 and was being proceeded continuously. It might had a chequered history but it is the same dispute which was continuing through different stage at different forums. Thus there was no question of reopening the dispute long after 15 years since the first decision was rendered on 26th June, 1995 and the second one was on 11th January, 1996.

12. Whether there is anything on merit or facts to show that the petitioner was a relation of the Principal or not, should not be gone into within the scope and ambit of this writ petition in view of the order that I propose to pass hereafter. Therefore, I refrain from entering into this question as raised by Dr. Dwivedi that there was nothing on record to establish that the petitioner was a relation of the Principal. The question of perversity, therefore, is not being gone into. The points with regard to the merits are kept open for the purpose mentioned hereafter.

13. Now with regard to the question of power of review of the Director may be dealt with. In fact. Section 16-E (10) of the Act does not provide for review of the order by the Director. Neither the Act not the Regulation prescribe any procedure.

14. At the same time, there is nothing either in the Act or in the Regulation which confers any power of review in the Director. Therefore, it is very difficult to hold that the Director has the power to review his own order. But the question in the present case is little distinct from the question of review. Inasmuch as the report was sought for from the police authorities. The police authority itself had prepared two reports one by the Circle Officer and the other by Deputy

Superintendent of Police, who is an authority superior than the Circle Officer.

15. Then again the Senior Superintendent of Police, while forwarding the report of the Deputy Superintendent of Police, had said that the report of the Deputy Superintendent of Police is the correct one. The same is dated 10th February, 1995 contained in Annexure CA-1. It was already there but somehow or the other, the same was not forwarded to the Director. The Senior Superintendent of Police was supposed to forward both the reports with his own assertion as to which one is to be relied upon. The decision on the basis of the report of the Circle Officer was given on 26th June, 1995. Thus it appears on the face of it that the report on which reliance was placed by the Director, was not submitted by the Senior Superintendent of Police, who was requested by the Director to submit the report. The Circle Officer was never asked by the Director to submit any report. Therefore, the Circle Officer, could not have forwarded the report to the Director except through the Superintendent of Police. The report of the Circle Officer having not been processed through the Superintendent of Police, no reliance could be placed upon it. Unless the same is vested by the Superintendent of Police, the report had not existence, since it was the Superintendent of Police who was asked by the Director to submit a report. Therefore, it was, in fact, not a review in the sense on which the review is made or in other words it was, in fact, a correction or irregularity in the procedure itself. Therefore, absence of power of review would not vitiate the procedure adopted by the Director in the present case in the reopening of the case itself in view of the peculiar facts and circumstances of the case as is available in the present case.

16. The Director could have asked the parties to submit their affidavits or he could have asked for affidavit from the Principal as well as from the petitioner. He might also ask respondent No. 3 to substantiate his case through such documents, including affidavits, if he is so advised. The records of education or school, college or University record or register of the wife of the petitioner could also be looked into for ascertaining whether she was the daughter of the Principal or not, or whether the petitioner could be asked to submit an affidavit from his wife or not. It is wholly within the discretion of the Director himself as to whether he would resort to such procedure or not depending on the facts and circumstances of the case requiring the determination on the basis of the materials available before him. This question is, therefore, also left open to be decided by the Director at his own discretion at appropriate stage, if occasion so arises.

17. It is apparent from the statements made in paragraphs 27, 28 and 29 of the amended writ petition that by an order dated 1st January, 1996, the petitioner was asked to show cause within 15 days as to why his service may not be terminated. This order was received by the petitioner through registered post on 17th January, 1996. The petitioner had sent his reply on 22nd January, 1996 through registered post. But the fact remains that the impugned order was

passed on 11th January, 1996 even before expiry of 15 days from 1st January, 1996. Fifteen days after 1st January, 1996 expired on 16th January, 1996. Even then the difference of the period between the date of notice and that of the order, would not be relevant. It should be counted from the date on which the petitioner had received the said order. Therefore, 15 days should have been counted from 17th January, 1996. The order could not have been passed on 11th January, 1996. Without giving any opportunity to the petitioner.

18. Section 16-E (10) of the Act clearly lays down that such an order is to be passed only after affording an opportunity to the petitioner. Since the Director had been relying on another report, therefore, it was incumbent on him to afford an opportunity to the petitioner.

19. Admittedly, no opportunity was given to the petitioner before passing the order dated 11th January, 1996. Therefore, the said order dated 11th January, 1996 is hit by the Principal of audi alteram partem and cannot be sustained.

20. Therefore, the order dated 11th January, 1996 contained in Annexure 7 to the writ petition is liable to be quashed and is, accordingly quashed. Let a writ of certiorari do accordingly issue. The writ petition No. 1287 of 1996 is thus allowed and disposed of accordingly. No. cost.

21. It will be open to the Director to decide the matter afresh after giving sufficient opportunity to the petitioner as well as the respondent No. 3 and determine the issue according to his own wisdom and discretion in the light of the observations made in this judgment and in accordance with law, as early as possible, preferably within a period of six months from date a certified copy of this order is produced before the Director either by the petitioner or by the respondent No. 3, as the case may be. The petitioner and the respondent No. 3 shall cooperate in the enquiry and shall not take any unnecessary adjournment or time. They may submit their documents or such other materials on which they may want to rely, within four weeks from the date of submission of certified copy of this order before the Director but not later than two months from the date of receipt of a certified copy by either of the parties.

22. So far as the writ petition No. 20455 of 1996 filed by Sri Ram Prakash Katiyar is concerned, the same has become infructuous. Inasmuch as now no appointment could be given to him after lapse of long 19 years.

23. The writ petition No. 20455 of 1996; therefore, after hearing Mr. K.K. Tripathi, learned Counsel for the petitioner, is dismissed as infructuous. Interim order, if any, stands discharged. No. cost.

24. However, the dismissal of the writ petition No. 20455 of 1996 on count of its having been infructuous will not affect in any manner the enquiry u/s 16-E (10) of the U.P. Intermediate Education Act, 1921, which is subject matter in writ petition No. 1287 of 1996.