

(2005) 12 AHC CK 0045

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 70437 of 2005

Sanjeev Kumar

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 20-12-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 2
Uttar Pradesh Intermediate Education Act, 1921 — Section 16G, 7A, 7AA, 7AB
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 10

Citation : (2006) 5 AWC 4341 : (2006) 1 UPLBEC 871

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : Irshad Ali, for the Appellant;

Judgement

A.P. Sahi, J.—The petitioner has questioned the validity of the alleged oral order of termination dated 1.7.2003 whereby the petitioner is not being permitted to further discharge his duties as the head of the institution known as Maharshi Dayanand Vidyamandir Higher Secondary School, Bilaspur district Rampur.

2. The challenge is on the ground that the termination order is in violation of the rules promulgated by the State Govt. under the government order dated 10.8.2001 (Annexure 1 to the writ petition) and that the entire action is in violation of the provisions of the U.P. Intermediate Education Act and the Regulations framed thereunder. It has also been urged that the proceedings are in violation of principle of natural justice and that the petitioner has been substituted by the appointment of the respondent No. 5 which action is also in violation of Articles 14 and 16 of the Constitution of India.

3. Heard learned counsel for the petitioner Shri Irshad Ali and learned standing counsel for the respondent Nos. 1, 2 and 3.

4. The undisputed facts are that the institution was initially a junior high school

which has been granted recognition as such and was subsequently upgraded as a high school with a recognition order u/s 7-A issued by the Regional Secretary, Board of High School and Intermediate Bareilly. upgrading the institution as a high school The fact that the institution is not receiving any grant-in-aid from the State Govt. is also admitted and the salary of the employees has to be arranged by the management from its own sources.

5. The petitioner contends that under the government order dated 10.8.2001 read with provisions of Section 7-AA, the management is empowered to make appointment of part time teachers. It has further contended that the management also has the power to appoint the head of the institution under the said provision keeping in view of the definition of the word "teacher" contained in Section 2(e) of the U. P. Act No. 24 of 1971.

6. Shri Irshad AH has relied on the decision of Smt. Shashi Kala Singh Vs. District Inspector of Schools, Mahrajganj and others, .

7. Learned standing counsel on the other hand has urged that the decision relied upon by the learned counsel for the petitioner is not applicable to the facts of this case and that the petitioner is not entitled to the benefit claimed in the writ petition.

8. Having heard learned counsel for the parties the position that emerges, is that in view of the requirement of the institution and shortage of teachers selected of the Board, the State Govt. came up with a government order in the year 1986 making provisions enabling the management to appoint part time teachers from their own resources and in order to meet the exigency of requirement in particular subject. The aforesaid provision stands contained in the table Section 7-AA. A perusal of the aforesaid provision clearly indicates that the said provision is only in respect of part time teachers for particular subjects and it nowhere indicates the appointment of a part time head of the institution. This question was raised in the case of Shashi Kala Singh (supra) and this Court in para 6 of the said judgment had to say as under:-

Before parting with the case, I would like to observe that the question whether the post of Principal will also come under the provisions of Section 7-AA of the Act is left open to be decided by the Distt. Inspector of Schools and the Parties are given liberty to have their say on the point before the Dim. Inspector of Schools who will examine the question keeping in mind Clause 5 of the recognition order dated 16.1.1997, Appointment in the instant case was made not on a fixed honorarium but in a given scale of pay i.e. Rs. 2000-3500. in case, it is found that the post of Principal would be deemed to have been created in view of Clause 5 of the recognition order, whole complexion of appointment would be changed the post of Principal in that event will go out of the purview of Section 7-AA of the Act and will have to be fitted in accordance with the provision of the U.P. Secondary Education Service Selection Boards Act. 1982.

Thus there is absolutely no provision under which it can be presumed that a head

of the institution recognised under the U.P. Intermediate Education Act, 1921 could be appointed under the provisions of Section 7-AA.

9. The reliance placed by the learned counsel for the petitioner on Section 2(e) of the U.P. Act No. 24 of 1971 is also misplaced. According to the provision of Section 7-AB, it is evident that the provisions of the Payment of Salary Act (U.P. Act No. 24 of 1971) are not at all applicable to part time teachers. In view of this the petitioner cannot derive any benefit from the aforesaid provision as the applicability of the entire Act is excluded.

10. The contention of the petitioner that he was appointed and approved by the District Inspector of Schools therefore requires a consideration on the issue as to whether the head of the institution could have been appointed by the management and approved by the District Inspector of Schools. Learned counsel for the petitioner urged that there was no prior approval from the District Inspector of Schools before the oral termination of service of the petitioner. Further learned counsel for the petitioner relied on the provisions of Section 16-G (iii) of the U.P. Intermediate Education Act, 1921. This Court in a Division Bench judgment reported in 1998 Vol. 33, Education and Service Cases 1617, *Tulsi Ram v. State of U.P.* in para 35 has held that part time teachers are not regular teachers under the U.P. Intermediate Education Act. The aforesaid decision was further followed to hold that Section 16-G (iii) is not attracted in such matters and it was held that the decision in the case of *Shashi Kala (supra)* was rendered on the basis of an erroneous assumption of facts which had occurred due to a misprint in the relevant government order. The said decision, of *Tulsi Ram* has been followed in the case of *Smt. Suman Lata Sharma v. Regional Joint Director of Education* is reported in 2000 4 ESC 2828. The aforesaid contentions of the learned counsel for the petitioner, therefore as not sustainable.

11. The next decision which might be relevant for the issue is in the case of *Dr. Bheem Rao Ambedkar Shiksha Sumiti v. State of U.P.* reported in 2005 4 ESC 2715 where this Court had the occasion to indicate in para 8 of the said judgment that the appointment of a head of the institution of part time basis is not contemplated u/s 7-AA. The appointment on the post of the head of the institution is governed by the terms of the recognition which provides for the appointment of the head of the institution in accordance with rules. In the absence of any rule contained in Section 7-AA or in the rules dated 10.8.01 it is not possible at this stage to accept the plea of the learned counsel for the petitioner that the appointment of the head of a recognised institution can be made under the said rule merely because certain provisions for dispensation of service indicate the procedure for taking the disciplinary action the same cannot be made the basis for a presumption that the rule contemplates appointment of head of the institution on part time basis.

12. Even otherwise what is to be taken note of is that the U.P. Intermediate Education Act does not contain any provision of the appointment of a part time head of the institution. The duties and responsibilities, enumerated under

Chapter I, Regulation 10 of the Regulations framed under the U.P. Intermediate Education Act, 1921 and the provisions containing the duties of a head master under the Education Code 1958, clearly indicates that the job of the head of the institution is a full time job and he could not be appointed on part time basis to discharge certain particular duties. The concept of part time teacher was introduced only to make available teachers in such subjects for which no regular appointments was possible either on account of nonavailability of a sanctioned post or otherwise. The concept was limited in respect of teachers of a particular subject. In these circumstances it is not possible for this Court to accept that the head of the institution can be appointed on part time basis. Once the institution is upgraded the institution has to have a duly qualified and eligible head of the institution appointed according to the rules.

13. Learned counsel for the petitioner then contends that the respondent No. 5 could not have been appointed without there being a valid termination of the petitioner. The aforesaid question has already been raised by the petitioner before the District Inspector of Schools. The District inspector of Schools would also be required to go into the question as to whether, could there be an appointment of the head of the institution on part time basis, It is only thereafter that the violation of government order dated 10.8.2001 could be examined. In these circumstances the petitioner shall approach (he District Inspector of Schools the respondent No. 3 who shall consider the issue raised and decide the matter keeping in view of the observations made herein above as expeditiously as possible preferably within a period of two months of the date of production of certified copy of this order before him after putting the respondent No. 4 management and the respondent No. 5 alleged Principal of the institution to notice.

14. With the aforesaid observations, the writ petition stands disposed of.