

(1980) 09 AHC CK 0039

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petitions Nos. 10484 and 10495 of 1978

Sarla Chopra

APPELLANT

Vs

Director of Education, Allahabad and others

RESPONDENT

Date of Decision : 12-09-1980

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (1980) 09 AHC CK 0039

Hon'ble Judges : K.N.Singh, J and S.J.Hyder, J

Final Decision : Disposed Of

Judgement

K. N. Singh and S. J. Hyder, JJ.

These are two connected writ petitions and they involve common questions of law and fact, we are deciding them by a common judgment.

The petitioner in Civil Misc. Writ petition No. 10484 of 1978 is Smt. Sarla Chopra. She has prayed that a writ of certiorari may be issued by this Court calling for the record of the case and after perusing the same; this Court may quash the order of the Director of Education dated October 6, 1978. She has also prayed for a writ of mandamus directing the respondents not to interfere with her right to function as Assistant Teacher (Sewing and Tailoring) in the Mahila Vidyalaya Inter College, Hardwar.

The petitioner in the connected Civil Misc. Writ petition No. 10495 of 1978 is also a teacher of the same College. She has also claimed the same reliefs which have been sought by Smt. Sarla Chopra.

Smt. Sarla Chopra has alleged in her petition that she was appointed as Assistant Teacher (Sewing and Tailoring) in the college aforesaid after being recommended by a duly constituted selection committee. The appointment of the petitioner was approved by the Regional Inspectors of Girls School (hereinafter referred to as the "RIOGS") by her order dated September 16, 1974. This approval was for the

period ending 30th June, 1974. It may be stated that the approval of the RIOGS gave ex post facto sanction to the appointment which had been originally made by the Managing Committee of the College, hereinafter referred as the Committee", on 24th of July, 1974. The petitioner's appointment, which was against regular vacancy, was extended with the approval of the RIOGS on a number of occasions. The last such extension given to her was effective till the period when the management of the institution advertised the post held by The RIOGS informed the members of the be required to interview the candidates the post on November 8, 1976 at II A. M. by its telegram dated November 4, postpone the selection. In consequence Government, the selection fixed for 8111978 was postponed, dispute between the parties in so far as these facts are concerned.

The petitioner on August 24, 1976. Selection Committee that they shall who have applied for appointment to In the meantime, the State Govern1976 ordered the RIOGS, Meerut to of the direction given by the State There is no

The petitioner has stated that when she came to know of the illegal manner in which the Selection Committee was being held, she made representations though as the Madhyamik Shikshak Sangh and the Sangh brought the matter to the notice of the State Government,; It was in pursuance of the action taken by the Madhyamik Shikshak Sangh that the State Government intervened and sent the telegram dated 4111976. She further alleges that on 21st of November, 1976, a meeting of the Selection Committee was convened and letter of appointment was issued to the candidates who had been selected at the Selection Committee. The petitioner further says that in these circumstances, she along with other teachers of the college placed in the same predicament again made representation through the Madhyamik Shikshak Sangh to the RIOGS and on that representation the RIOGS by a letter dated 1st December, 1976 directed the Managing Committee of the College not to implement the decision of the Selection Committee. It is stated in the petition that the Management of the institution paid no heed to the direction given by the RIOGS and stopped payment of salary to the petitioner. Ultimately the representation of the petitioner and other teachers of the institution, who were in similar difficulties, made a representation to the Director of Education who. after hearing the teachers concerned and the Management, passed an order dated 13th of October, 1977. By means of this order, the Director of Education quashed the selection of the candidate who had been selected by the Selection Committee convened by the Manager of the institution on 21111976. The teachers aggrieved by the order of the Deputy Director of Education dated 13th of October, 1977 filed writ petition No. 2005 of 1975, Smt. Rajbala v. Director of Education, but when the said writ petition was ripe for hearing, the Director of Education by his order dated 6th of October, 1978 recalled his order dated 13th of October, 1977. In consequence, Writ petition No. 3005 of 1977 was dismissed as in fructuous. It is this order of the Deputy Director of Education dated 6th of October, 1978 which is the bone of contention between the parties.

The petitioner has urged a number of grounds in support of this writ petition. In the first place, it is argued that the petitioner had acquired the status of a permanent teacher and there was no vacancy which could be filled by the Managing Committee. It is next submitted that the selection of a new incumbent in place of the petitioner virtually amounted to a termination of her services and that her services could not be terminated except in accordance with the provisions of law contained in Section 16G of the U. P. Intermediate Education Act, 1921, hereinafter referred to as "the Act." Thirdly, it is urged that the selection Committee which met on 21/11/1975 was not constituted in accordance with the provisions of law contained in the Act and the Regulations framed there under and the selection made by the said Committee, in consequence, is vitiated in law. The fourth submission on behalf of the petitioner is that the Director had no authority to review his order dated October 13, 1976 in as much as the said order had not been obtained either by misrepresentation or fraud. It is next submitted that the Director of Education in passing the impugned order dated October 6, 1977 has acted on the behest of the State Government and has not applied his independent judgment and the impugned order is vitiated on that ground alone. Finally it has been argued that the Director of Education could not review his order dated 13th of October, 1977 without affording an opportunity to the petitioner to be heard. In other words, the submission on behalf of the petitioner is that the impugned order of the Deputy Director of Education deserves to be struck down as it is violative of the Principles of natural justice.

The writ petition has been opposed on behalf of the Management and a counteraffidavit has been filed by one Anand Swarup in rebuttal of the allegations made by the petitioner. The averments made in the counteraffidavit, in so far as they are relevant for the decision of this case, shall be dealt with dealing with the submissions urged on behalf of the petitioner.

With a view to appreciate the submissions made on behalf of the parties, certain amendments made in the Act and the Regulations framed there under may be noticed. The Governor of Uttar Pradesh promulgated U. P. Ordinance 18 of 1975 which came into effect on July 7, 1975. Before the expiry of the Ordinance, the State Legislature passed the U. P. Secondary Education Law (Amendment) Act, 1975, which was published in the Government Gazette Extraordinary dated August 18, 1975. The Amendment Act of 1975 virtually replaced the provisions of law contained in U. P. Ordinance 18 of 1975. Section 22 of the Amendment Act of 1976 empowered the State Government by an order not inconsistent with the provisions of the Act as amended to pass orders to remove any difficulty which may arise in giving effect to the provisions of the Act, as amended. In pursuance of this power, the State Government issued a number of Removal of Difficulties Orders. First such order was issued on August 18, 1975. Clause (2) of the said order provided that any substantive or leave vacancy in a recognised educational institution may be filled by a Committee of Management on Adhoc basis for a period not exceeding six months. This order was followed by a series of other Removal of Difficulties orders. There is nothing relevant for the purposes of this

case in the Removal of Difficulties Second, Third and Fourth Orders. The Removal of Difficulties Fifth order was passed by the State Government on November 27, 1976. Para 3 of the said order has an important bearing on this case and is quoted below:

"3. Where any person was appointed by the Committee of Management as a teacher on or before June 30, 1975 for any period as a temporary measure with the approval or permission of the Inspector and such person has worked thereafter unto November 15, 1976, he shall be deemed to have been appointed in a substantive capacity.

(a) in case the appointment was initially made in a clear vacancy from the date of appointment;

(b) In case the appointment was initially made in a leave vacancy or a vacancy occurring for part or the session of otherwise than in clear vacancy, from the date when such vacancy assumed the character of clear vacancy;

(c) in case the appointment was initially made on a post the creation of which was sanctioned subsequently by a competent authority in that behalf, from the date of such sanction;

(d) in case he did not possess the prescribed training qualifications at the time of initial appointment, from the date of acquisition of such training qualifications;

Provided that in cases referred to in subclauses (a), (b) and (c), such person possesses the prescribed qualification or has been exempted from the requirements of minimum qualifications and was duly selected and appointed in accordance with law for the time being in forces.

Explanation. The period during which any such teacher has, between the date of his appointment and November 15, 1979, ceased to work for any reason not arising out of his misconduct or his own request shall not continue a break into service for purpose of this clause."

The removal of difficulties (Fifth) Order was followed by Removal of Difficulties (Sixth) Order which was promulgated on January 2, 1977. There is, however, nothing material in this order which may have a bearing in this case.

A further legislative change was brought about in the Act of 1921 as originally enacted by Ordinance 5 of 1977 which was published in the U. P. Gazette of April 21, 1977. This Ordinance was also permanently incorporated, in the Act by the U. P. Secondary Education Laws (Amendment) Act, 1977. Section 16GG, as it now stands, inter alia, provides that notwithstanding anything contained in Sections 16E, 16F, and 16FF of the Act, every teacher of an institution appointed between August 18, 1975 and September, 30, 1975 (both days inclusive) on an ad hoc basis against a clear vacancy shall, with effect from the date of the commencement of Section 16GG be deemed to have been appointed in a substantive capacity.

As already stated, the petitioner was appointed by the Committee on July 24, 1974 and approval to such appointment was given with retrospective effect by the KIOGS on 30th of June, 1974. Her appointment was against a regular vacancy and had been made on the basis of the recommendation made by a Selection Committee. She continued to serve the institution until the impugned order was passed which was subsequent to the date of the promulgation of the Removal of Difficulties (Fifth) Order. From these facts, it is evident that the petitioner was entitled to the benefit of the said Order and she became permanent in her appointment under Para 3 of the said Order. Further, Section 16GG had been inserted in the Principal Act on 21/4/1977. The petitioner had been appointed against clear vacancy. It is not disputed that she also possessed prescribed qualifications for such appointment. True it is that her appointment to the post was on Ad hoc basis and was continued from time which included the period between August 8, 1975 to September 30, 1976. She had also been serving the institution from the date of her appointment to the commencement of Section 16.....1 As such she would be deemed to have been appointed in a substantive capacity from the date of her appointment under the said provision of law also. The learned counsel appearing for the respondent has no satisfactory answer to this legal position. We, therefore, hold that there was no vacancy of the post which was held by the petitioner and the Selection Committee which was convened on November 21, 1975 was not competent to recommend any person to fill the alleged vacancy which did not exist.

In the view which we have taken above, the second contention urged on behalf of the petitioner must also succeed. Subsection (3) of Section 16G provides that no Principal, Head Master or Teacher may be discharged or removed or dismissed from service or reduced in rank or subjected to any diminution in emoluments or served with a notice of termination of service except with the prior approval in writing of the Inspector. As already held, the petitioner's appointment though made initially on an Ad hoc basis had, by operation of law, been converted into a substantive appointment. Her services could not have been terminated except after following the procedure prescribed in subsection (3) of Section 16G.

The Director of Education by his order dated October 13, 1977 came to the conclusion that the selection made to fill the alleged vacancy in the petitioner's post was contrary to the provisions of law contained in the Act and the Regulations framed there under. He accordingly set aside the selection made to fill the vacancy of the post held by the petitioner. The said order was passed by the Director of Education in exercise of his powers under Section 16E (10) of the Intermediate Education Act, However, the Director passed another order dated October 6, 1973. By means of this order, he took a contrary view and upheld the selection made by the Selection Committee on November 21, 1976. He accordingly recalled his earlier order dated October 13, 1977. In the order dated October 6, 1978, it is specifically stated that the Director of Education had been informed about the correct legal position the matter by the Joint Secretary in the Department of Education by his letter dated January 19, 1977 that the selection

made in the meeting of the Selection Committee on November 21, 1976 for appointment of Lady Teachers in the respondent institution was lawful and valid. In spite of the said advice, the Director of Education passed the order dated 13101977 holding the selection to be invalid. As such the order of the Director of Education was contrary to the express advice given by the Joint Secretary about this matter. This discrepancy has been brought to the notice of the Director by another letter of the Government dated May 31, 1978 and it has, therefore, become necessary that the matter may be considered in this light of the advice tendered by the Joint Secretary. After making recitals the Director of Education by his order dated October 6, 1978 proceeds to enumerate the reasons according to which the selection held by the Selection Committee on November 21, 1975 was valid. After enumerating the said reasons, the order recites as follows in the operative person :

"From the aforesaid, it is clear that the appointment of Smt. Rajbala, Assistant Lady Teacher, in the pay scale of Rs. 400750 in the Mahila Vidyalaya Inter College, Sattikund Khankhal, Saharanpur on the basis of the selection done on November 21, 1976 is wholly legal."

"Therefore, letter No. 1/16/2225/142/13/7678 dated 13101977 is hereby vacated."

It is not in dispute between the parties that the petitioner was not given an opportunity to be heard in support of the order dated October 13, 1977 and that the Director reviewed the said order by his order dated October 6, 1978 entirely behind the back of the petitioner. The validity of the said order has been impugned on a number of grounds which we have already stated. We shall now proceed to consider the said grounds seriatim. However, before we proceed to do so, it would be useful to read subsection (10) of Section 16E of the Act :

"16E (1.01 where the State Government, in the case of appointment of the head of institution, and the Director in the case of appointment of teacher of an institution, is satisfied that any person has been appointed as head of the institution or teacher as the case may be in contravention of the provisions of this Act, the State Government or as the case may be, the Director after affording an opportunity of being heard to such person cancel such appointment and pass such consequential order as may be necessary."

Sri S. S. Bhatnagar appearing for the Management contended that the power conferred on the Director under Section 16E (IO) is only administrative power which can be reviewed by him with the aid of Section 22 of the U. P. General Clauses Act. According to him, powers being administrative in nature, it was not at all necessary for the Director to give any hearing" to the petitioner before passing the impugned order. He submitted that these administrative powers conferred on the Director could be exercised by him on the direction of the State Government. He further stated that it was not at all necessary for the Director to be satisfied before passing the impugned order that his order dated 13101977

was vitiated by any fraud or mistake. We are unable to accept the said submissions.

One test which distinguishes judicial from administrative functions turns upon the fact as to whether the performance of the function results in a binding order which is conclusive between the parties. If so the order is held to be judicial or quasi judicial. One of the most obvious characteristic of the Court is that it decides the issue between two or more parties. If the functions of a statutory body also include the determination of issue affecting the rights interpretive, the resultant order would be deemed to be a quasi judicial order. Professor S. A. de smith in his celebrated book "Judicial Review of Administrative action" has stated the same thing in the following words:

"An authority acts in a judicial capacity when, after investigation and deliberation, it determines an issue conclusively by the application of preexisting legal rule or any fixed objective standard to the facts of the situation."

The same test has been formulated by him thus :

""An authority acts in a judicial capacity when after investigation and deliberation, it performs an act or makes a decision that is binding and conclusive and imposes obligation upon or affixes the rights of individuals."

The cases decided by the Supreme Court on this aspect of the case are in consonance with the above principle. (See Province of Bombay v. Kusal Das S. Advani (A.I R. 1950 S C. 222), Board of High School and Intermediate Education U P v Ghanshyam Das (A.I.R. 1962 S.C. 1110.), and The Partabpur Co. Ltd., v. Cane commissioner of Bihar (A.I.R. 1970 S.C. 1896).

On a reading of the said role, it is evident that power under Section 1 E (1) of the Intermediate Education Act is exercisable by the Director of Education only after hearing the parties concerned. It presupposes a lies to which there are two or more parties. The order affects the rights of one or more of the parties to the said lies. It is further conclusive in nature. For these reasons, it is idle to contend that the order of the Director under Section 16E (10) is administrative and not quasi judicial in nature.

It is clear from a reading of the provisions contained in the U. P. Intermediate Education Act, 1921 that the Director has not been given any power to review an order passed by him under Section 16E(10) of the Intermediate Education Act. As already stated, it is not any body's case that the order passed by him on 13101977 was the result of any mistake or fraud. He had, therefore, no power to review the said order by his order dated October 6, 1978 which is impugned in this writ petition. In this conclusion, we find support from two Division Benches of this Court in the case of R. S. Chaube v. District Inspector of Schools (1977 A.LJ. 451), and Committee of Management. Inter College, Nonapur v. District Inspector of Schools Kanpur (1979 A.LJ. 33).

We have already noticed that the order of the Director of Education dated

October 10, 1978 is based on the dictates of the State Government. In the case of Purtabpur Company Ltd. (supra), it has been observed by the Supreme Court as under :

"The power exercisable by the Cane Commissioner under clause 6 (1) is a statutory power. He alone could have exercised that power. While exercising that power, he cannot abdicate his responsibility in favour of anyone not even in favour of the State Government or the Chief Minister. It was not proper for the Chief Minister to have interfered with the functions of the Cane Commissioner. In this case what has happened is that the power of the Cane Commissioner has been exercised by the Chief Minister, and authority not recognised by clause (6) read with clause (11) but the responsibility for making those orders was asked to be taken by the Cane Commissioner."

This is precisely what has happened in the instant case. The Joint Secretary in the Department of Education gave certain legal opinion on the questions of law involved in the case and the Director was required to decide the case in accordance with the said legal principles. The then Director, however, did not follow the directions given by the Joint Secretary. He passed the order dated October 13, 1977 applying his own independent mind. The said order was however, contrary to the wishes conveyed to the Director by the Government. His attention was again invited by the Government to the opinion given by the Joint Secretary and he was requested to review his order in the light of the said direction. This time the gentleman who happened to be the Director proved more obliging and he reviewed the order of his predecessor dated October 10, 1977 by order impugned in this writ petition. From this sequence of facts, it is evident that the decision of the case was actually made by the Joint Secretary in the Department of Education and the responsibility for the said decision has been taken by the Director himself by passing the impugned order. In view of what has been stated above, we do not consider it necessary to consider the other submissions made on behalf of the petitioner.

In connected Smt. Kamla Lal v. Km. Surjeet Kaur and others (Writ Petition No. 10495 of 1978.), the petitioner Smt. Kamla Lal was appointed as a Lecturer of Economics in the aforesaid college on 12th of September 1975 and her appointment was approved by the RIOGS. There it is that in the counteraffidavit filed by Sri Om Chandra Sastri on behalf of the college, it has been stated that the appointment of the petitioner had not been made by the Management of the college but by its Principal. The said averment contained in paragraph 22 of the counteraffidavit has, however, been verified on the basis of record. No copy of the record has been annexed with the writ petition. As such, no reliance can be placed on the said averment. It is not disputed that the appointment of Smt. Kamla Lal was also in a clear vacancy. She continued to serve the college until the said post was advertised on August 24, 1976. The petitioner along with other teacher made representation through the Madhyamik Shikshak Sangh to the RIOGS and the selection was postponed. Some times thereafter respondent No. I

was selected to fill the post held Smt. Kamla Lal Representation was thereafter made by her to the Joint Director of Education (Women), Allahabad, complaining against the illegal appointment of respondent No. 1. They further made a representation to the Director of Education complaining against the said appointment. On the basis of the said representation the Director of Education passed an order dated October 13, 1977 quashing the appointment of respondent No. 1. The said order was passed by him in exercise of his power under Section 16A (10) of the U. P. Intermediate Education Act. Respondent No. 1 thereupon filed *Suraj Kaur v. Director of Education, U. P.* (Civil Misc. Writ No. 2011 of 1977). Challenging the order dated October 13, 1977. However Smt. Kamla Lal was not impleaded as a party to the writ petition on coming to know of the same, she made an application to be arrayed as a party. The said application was directed to be put up at the time of final hearing after exchanging counter and rejoinder affidavits. The hearing of the said writ petition was expedited by the order of the Court. In the meanwhile, respondent No. 1 approached the State Government which by its letter dated 31st of May, 1978 directed the Director of Education to review his order dated October 13, 1977. In consequence of the said direction, the Director reviewed his order dated October 13, 1977 by passing a subsequent order dated 6th October, 1978 and held that the selection of respondent No. 1 was legal and valid.

The case of Smt. Kamla Lal stands on identical footing with the other writ petition No. 10485 of 1978 *Smt. Sarla Chopra v. Director of Education* (8) with which we have just now dealt with in detail. The considerations which apply to the case of Smt. Sarla Chopra also govern writ petition No. 10195 of 1978. It is unnecessary to go in any further detail for the disposal of this writ petition. In our view, the connected writ petition of Smt. Kamla Lal also deserves to succeed.

The result is that (*supra*) *Smt. Sarla Chopra v. Director of Education* and (*supra*) *Smt. Kamla Lal v. Surjeet Kaur and others* are hereby allowed. The orders passed by the Director of Education on 6th October, 1978 in the two cases are hereby quashed. A writ of mandamus is issued against respondents Nos. 1 and 2 in Civil Misc. Writ No. 10484 of 1978 and against Respondents Nos. 2, 3 and 4 in Civil Misc. Writ No. 1049 of 1978 to restrain them from interfering with the right of the petitioners in the two writ petitions to work as teachers in the College. The petitioners are entitled to receive their costs from the contesting respondents.