

**(1988) 08 AHC CK 0074**

**In the Allahabad High Court**

**Case No : Civil Misc. Writ Petition No. 8580 of 1988**

Shiv Kumar Sharma

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

**Date of Decision : 01-08-1988**

**Acts Referred:**

Constitution of India, 1950 — Article 141, 226  
Uttar Pradesh Intermediate Education Act, 1921 — Section 16G(2)

**Citation : (1988) 2 AWC 1191**

**Hon'ble Judges : S.D. Agarwala, J; Ravi S. Dhavan, J**

**Bench : Division Bench**

**Advocate : Ashok Bhushan and V.C. Misra, for the Appellant;**

**Final Decision : Dismissed**

## Judgement

S.D. Agarwala, J.—This is a petition under Article 226 of the Constitution of India challenging the order passed by the District Inspector of Schools, Agra, on 26th of April, 1988, by virtue of which the Petitioner has been asked to join the college where he was the principal prior to his transfer. This order has been passed in pursuance of the law declared by the Hon'ble Supreme Court. The principal of the S.R.K. Intermediate College, Firozabad, district Agra, hereinafter referred to as "the Firozabad College", retired on 30th of June, 1984 and consequently a substantive vacancy came into existence. On 27th March, 1984 the manager of the S.R.K. Inter College wrote to the District Inspector of Schools, Agra, desiring to fill the post which was to fall vacant on 30th June, 1984, by means of transfer of the Petitioner from Moti Lal Inter College Saiyan, district Agra, hereinafter referred to as "the Saiyan College" as the Petitioner was working as a confirmed Principal of the Saiyan College. By letter dated 24th of May, 1984, addressed to the Manager of the Firozabad College, the District Inspector of Schools specifically wrote to the manager that in view of the directions issued by the Director of Secondary Education, vide his letter dated 21st of October, 1983, the post cannot be filled by transfer and that as soon as

the vacancy occurred, the vacancy be reported to the U.P. Education Service Commission and Selection Board. On 6th July, 1984, M.P. Singh, who was the senior most teacher in the Firozabad College and has now been appointed as officiating Principal in the college along with one other senior teacher opposed the filling of vacancy by transfer. This representation was made to the management of the college.

2. On 8th of October, 1984, the management sent a requisition to the Commission through the District Inspector of Schools for filling the post of Principal, but by the said letter it further recommended that the post be filled by transfer. In reply to the letter on 3rd December, 1984, the District Inspector of Schools specifically informed the management that according to law the post of Principal has to be filled by direct recruitment and not by way of transfer.

3. In spite of the specific directions issued by the District Inspector of Schools, on 8th of January, 1985 resolution was passed by the managing committee of Firozabad college recommending that the Petitioner be appointed by transfer from the Saiyan College. The said recommendation was forwarded to the District Inspector of Schools for his approval. The management on 18th of January, 1985, addressed a letter to the Deputy Director of Education Agra Region, Agra, asking his consent also for filling up the post of Principal by transfer. The Deputy Director of Education by his letter dated 23rd of January, 1985, intimated the District Inspector of Schools that the post can be filled by transfer. In view of the directions issued by the Deputy Director of Education the District Inspector of Schools granted his approval to the appointment of the Petitioner by transfer by his letter dated 1st of February, 1985. This approval was given in view of the directions issued by the Deputy Director of Education though the District Inspector of Schools had specifically written to the management by his letter dated 24th of May, 1984 and 3rd of December, 1984 that the appointment of the Petitioner cannot be made by transfer.

4. After the District Inspector of Schools granted approval to the recommendation made by the management on 3rd April, 1985, the acting Manager of the Firozabad College wrote to the Petitioner Shiv Kumar Sharma informing him of the approval granted by the District Inspector of Schools and asked him to join the college on 24th of April, 1985. On 24th April, 1985, the Petitioner joined as Principal of the Firozabad College. It is, therefore, clear that on 24th April, 1985, the Petitioner was appointed as the Principal of the Firozabad college by way of transfer from the Saiyan College.

5. The question whether in view of the enactment of U.P. Secondary Education Service Commission and Selection Boards Act, 1982, hereinafter referred to as "the Services Commission Act" the appointment of a principal of an Intermediate College can be made by way of transfer from one Intermediate College to another by virtue of Section 16-G(2)(c) of the U.P. Intermediate Education Act, 1921, came up for consideration before the Hon"ble Supreme Court in a number of petitions, filed before the Hon"ble Supreme Court, Hon"ble Supreme Court

treating the case of Om Prakash Rana v. Swarup Singh Tomar as the leading case (decided on 9th of May, 1986, reported in 1986 AWC 911 : 1986 Ed. Cas 203) declared the law that the appointment of a Principal of an Intermediate College after the 10th of July, 1981, can be made only by the commission under the Services Commission Act and that any appointment made by transfer of a Principal from one Intermediate College to another would be void. In view of the declaration of law by the Hon'ble Supreme Court on 9th of June, 1986, the Director, Secondary Education, issued directions that all appointments on the post of a Principal should only be made by direct recruitment and not by way of transfer. On 10th of December, 1987, the Deputy Secretary, U.P. Secondary Education Services Commission also wrote to the Deputy Director of Education that the vacancy on the post of Principal be filled by direct recruitment and also directed the Deputy Director of Education, Agra Region Agra, that till that date neither the vacancy of the Principal had been filled in the Saiyan College nor the post of the Principal of the Firozabad College had been advertised. In pursuance of the above mentioned communications the District Inspector of Schools on 29th of January, 1988, issued a show cause notice to the Petitioner as to why his appointment by transfer be not cancelled and he be sent back to the Saiyan College where he was the Principal. On 26th April, 1988, the impugned order was passed directing the Petitioner to join as the Principal of the Saiyan College, it is this order which has been impugned in the present petition.

6. In view of the law laid down by the Hon'ble Supreme Court in the case of Om Prakash Raua (supra) the appointment of the Petitioner by transfer as a Principal of the Firozabad College was a void order as no appointment could be made of a Principal by transfer. The impugned order dated 26th April, 1988, has been passed in accordance with the decision of the Hon'ble Supreme Court and as such in our opinion we do not find any illegality in the same. The Hon'ble Supreme Court had clearly declared the law that on or after 10th of July, 1981, no appointment of a Principal of the Intermediate College can be made by way of transfer and the appointment can only be made on the recommendation of the commission under the provisions of the Services Commission Act. Article 141 of the Constitution clearly lays down that all authorities, civil and judicial, in the territory of India, shall act in aid of the Supreme Court. In view of this constitutional provision and in view of the fact that under Article 141 the law declared by the Hon'ble Supreme Court is binding on all courts within the territory of India, the District Inspector of Schools acted well within his jurisdiction to order the Petitioner to join as Principal of the Saiyan College as no appointment of a Principal in the Firozabad College can be made by way of transfer. The impugned order, therefore, cannot be said to be in any manner manifestly erroneous requiring interference by this Court under Article 226 of the Constitution of India.

7. It may be stated here that a counter affidavit has been filed on behalf of the U.P. Secondary Education Services Commission. In the counter affidavit it has been categorically stated that the post of the Principal in the Saiyan College is

still lying vacant and the Petitioner is free to go there and join the said post. The management of the Saiyan College, vide letter dated 4th of May, 1988, have expressed their no objection to the Petitioner joining the Saiyan College. The management have further intimated that as soon as the Petitioner comes to take over charge as the Principal of the Saiyan College he will be permitted to do so. These facts are not disputed. In the circumstances, it is clear that the post of Principal on which the Petitioner was working prior to his transfer is still lying vacant. The management of the Saiyan College has no objection to his joining as the Principal of the said college. In the circumstances no prejudice is likely to be caused to the Petitioner.

8. Learned Counsel for the Petitioner has vehemently contended that since the Petitioner was appointed as the Principal of the Firozabad College in view of the Division Bench decision of this Court and prior to the decision given by the Full Bench of this Court as well as by the Hon''ble Supreme Court in Om Prakash Rana's case the Petitioner has got the vested right to continue to hold the said post. In our opinion the submission is wholly without any substance. In *Ratanpal Singh v. Deputy Director of Education*, 1983 UP LB EC 34 : 1982 Edu Cas 258 and *Committee of Management, National Inter College v. D.I.O.S* 1983 UP LB EC 198, the Division Benches of this Court took the view that appointments of Principals of colleges could be made by way of transfer. The correctness of the views taken in the decisions were referred to a larger Bench. In *Raghunandan Prasad Bhatnagar Vs. Administrator, Committee of Management, Gandhi Vidyalaya Intermedinate College and Others*, the Full Bench of this Court overruled the above decisions and took the view that the appointments of Principals in Intermediate Colleges cannot be made by way of transfer under the provisions of U.P. Intermediate Education Act. This decision of the Full Bench was delivered on 20th of March, 1985. As stated above, the Petitioner was appointed by way of transfer on 24th April, 1985, after the decision given by the Full Bench of this Court in *Raghunandan Prasad's* case (supra). It is consequently not open to the Petitioner to urge that he took over as Principal of the Firozabad College in view of the decisions given by the Division Benches of this Court. This argument is wholly misconceived and not based on correct facts. Even otherwise the Hon''ble Supreme Court has clearly held in the case of *Om Prakash Rana* (supra, that if any such appointment is made by way of transfer it must be regarded as void. The Petitioner's appointment as Principal in the Firozabad College being void the question of any right vesting in him does not arise and as such the argument raised on behalf of the Petitioner is wholly misconceived and cannot be accepted.

9. The learned Counsel for the Petitioner further urged that the impugned order dated 26th of April, 1988, is based on non-existing grounds and has been passed without application of mind. This submission of the learned Counsel is also without substance. In both the letters referred to in the impugned order it has been categorically stated that an appointment of a principal of the Intermediate College cannot be made by way of transfer. The instructions were issued in view of the law declared by the Hon''ble Supreme Court in the case of *Om Prakash*

Rana (supra) and it was in view of the law settled by the Hon''ble Supreme Court that the impugned order had been passed. The impugned order has been passed on grounds valid in law and after the authority applying its minds to the facts of the case. In the circumstances as held above this submission also does not have any substance.

10. In the result it may be emphasised that inspite of serious objections by the District Inspector of Schools who was compelled to give his approval in view of the directions issued by the Deputy Director of Education, the Principal joined the Firozabad College after the decision given by the Full Bench of this Court that no appointment of a Principal can be made by way of transfer. This appointment is clearly void under the provisions of the Education Services Commission Act. The Petitioner cannot be permitted to continue on the post by virtue of a void order seriously affecting the rights of the senior teachers of the Firozabad College who had been constantly objecting to the Petitioner's appointment by way of transfer. The post on which the Petitioner was working as a Principal in Saiyan College is still lying vacant as such he can join the said post now without affecting him in any manner. In view of these facts also it is not a fit case for interference under Article 226 of the Constitution of India.

11. In the result, the petition fails and is, accordingly, dismissed. The interim order dated 4th May, 1988, extended by order dated 19th May, 1988, is hereby vacated.