
(2008) 12 AHC CK 0004
In the Allahabad High Court
Case No : C.M.W.P. No. 12977 of 1986

Shripal Sharma

APPELLANT

Vs

District Inspector of Schools, Muzaffarnagar and another

RESPONDENT

Date of Decision : 15-12-2008

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 18, 33A

Citation : (2009) 121 FLR 2

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. Petitioner claims to have been appointed as C.T. Grade teacher in Jawahar Lal Nehru Inter College, Garhi Pakki Muzaffarnagar, initially on 1.1.1985/15.1.1985 on ad hoc basis which was to remain in operation until 30.6.1985. According to the Petitioner he was again appointed as such on 6.8.1985 and the appointment was to remain in operation till 30.6.1986. Petitioner filed this writ petition complaining that after 30.6.1986 he was not being permitted to work. An interim order was passed in this writ petition on 23.8.1986 directing that "till further order of the Court services of the Petitioner shall not be deemed to have come to an end only because 30th June, 1986 has intervened. He shall continue."

3. According to the Petitioner he was appointed on ad hoc basis u/s 18 of U.P. Secondary Education Services Selection Board Act, 1982, after following the procedure prescribed under Removal of Difficulties Order, 1981. Annexure-1 to the writ petition is a letter by D.I.O.S. dated 15.1.1985 addressed to the Manager of the college. Approving the appointment of the Petitioner w.e.f. 1.1.1985 till 30.6.1985. Similarly Annexure-2 is letter of D.I.O.S. to the Manager of the college dated 6.8.1985 approving the appointment of the Petitioner w.e.f. 30.7.1985 till 30.6.1986.

4. This writ petition was dismissed in default on 3.11.2003 thereafter restoration application was filed on 12.7.2006. Petitioner worked until July, 2006. However, thereafter, he is not being permitted to work. Writ petition was restored on 5.8.2008.

5. As on 29.7.1986 Prabandh Sanchalak had been appointed hence in this writ petition which was filed thereafter i.e., on 23.8.1986, Administrator/ Prabandhak was impleaded as Respondent No. 2 and Committee of Management was not impleaded.

6. The Committee of Management has filed counter-affidavit (in or about 1989 Committee of Management was restored). Learned Counsel for Committee of Management has strongly relied upon Annexure-C-A.-I and C.A.-2 which are letters by D.I.O.S. to the Manager dated 21.6.1986 and by Deputy Director of Education, Meerut dated 29.7.1986. Through the first letter by D.I.O.S it was stated that the last elections were held on 27.6.1985 and accordingly recommendation was being made to the Deputy Director of Education to appoint authorised Controller. Thereafter through Annexure-C.A. 2 order dated 29.7.1986, authorised Controller was appointed. According to the learned Counsel for the Committee of Management the appointment of Petitioner by Manager of the Committee of Management whose term had expired was void ab initio.

7. Until appointment of Authorised Controller someone has to look after the affairs of the society. Even if it is assumed that term of Committee of Management had expired still the Committee of Management was de facto in charge of the affairs. Information of approving the appointments of the Petitioner was given by D.I.O.S. to the Manager of Committee of Management through Annexures 1 and 2 to the writ petition, meaning thereby that D.I.O.S. recognised the Committee of Management as being in factual as well legal control of the affairs of the college. Supreme Court in Gokaraju Rangaraju Vs. State of Andhra Pradesh, , has held that the de facto doctrine is now well established and the acts of the officers de facto performed by them within the scope of their assumed official authority in the interest of the public or third persons and not for their own benefit are generally as valid and binding as if they were the acts of officers de jure. Even after expiry of period of Committee of Management the old committee of management cannot be said to be rank usurper.

8. Accordingly, appointment of the Petitioner cannot be faulted on this ground.

9. In the counter-affidavit filed by the State it has been admitted in paragraph 3-A that Petitioner was appointed after following necessary procedure. It has further been stated that Committee of Management of the institution requested to the D.I.O.S. for granting permission to fill up the said post and after receiving the permission from the D.I.O.S. the Committee of Management followed the necessary procedure and appointed the Petitioner.

10. As Petitioner worked from 1985-86 hence he is entitled to regularisation u/s

33-A of U.P. Secondary Education Rules Selection Boards Act, 1982.

11. Accordingly, writ petition is allowed. Petitioner shall be reinstated as teacher and his case for regularisation shall be considered in accordance with the observations made in the body of this judgment. However, for the period for which he had not worked, he shall not be paid the salary but the said period shall not be treated to be break in service.