

(2002) 04 AHC CK 0182
In the Allahabad High Court
Case No : C.M.W.P. No. 2448 of 2002

Smt. Nayyer Subzwari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-04-2002

Acts Referred:

Uttar Pradesh Secondary Education Service Commission Act, 1982 — Section 33A

Citation : (2002) 3 AWC 2117 : (2002) 2 UPLBEC 1832

Hon'ble Judges : S.K. Singh, J

Bench : Single Bench

Advocate : R.N. Singh and A.K. Goyal, for the Appellant; Ram Kirti Singh, Ram Singh and V.N. Tripathi and C.P. Gupta, S.C., for the Respondent

Final Decision : Allowed

Judgement

S.K. Singh, J.—The fight in this petition is in respect to the post of Principal in an intermediate college known as G.D.A.V, Kanya Inter College, Anushahr. Bulandshahr (hereinafter referred to as the college).

2. In pursuance of an advertisement No. 1/95-96 dated 13.12.1995, by which applications were invited against existing substantive vacancy of the Principal the petitioner besides large number of other candidates applied. The petitioner having been selected by the U. P. Secondary Education Services Commission, Allahabad (now U. P. Secondary Education Services Board, Allahabad) (hereinafter referred to as the Board), for appointment as Principal, her name was finally shown in the panel for the post of Principal in the college. The panel was forwarded by the Board on 15.4.1997. On 22.1.1999, the District Inspector of Schools directed the management of the college to issue appointment letter to the petitioner and to permit her to Join after verification of certificates of educational qualifications. Km. Uma Sharma, the main contender for the post in question, who has been impleaded in this petition as respondent No. 6, who was working as ad hoc Principal in the college challenged the recommendation of respondent No. 2 dated 16.4.1997 in favour of the petitioner and the

consequential order of the District Inspector of Schools dated 22.1.1999 by filing Writ Petition No. 20789 of 1999 claiming regularisation as Principal. In that writ petition on 16.2.1999, after a direction of issuance of notice, the Joint Director of Education was simultaneously directed to pass appropriate orders within six weeks as to whether the petitioner's services is to be regularised in view of the provisions of Section 33A of U. P. Secondary Education Services Commission Act or not. The respondent No. 3/Joint Director of Education in compliance of the orders of this Court examined the representation of Km. Uma Sharma and by order dated 11.5.1999 held that she is not entitled for regularisation on the post of Principal. The order of the Joint Director of Education dated 11.5.1999 was challenged by Km. Uma Sharma before this Court by filing Writ Petition No. 20789 of 1999 in which, following relief were claimed :

"(i) a suitable writ, order, or direction in the nature of certiorari calling for the record of the case and to quash the order dated 11.5.1999 passed by the Joint Director of Education, Region-1, Meerut (Annexure-5 to the present writ petition).

(ii) a suitable writ, order or direction in the nature of mandamus commanding the respondents to treat the services of the petitioner as having been regularised on the post of Principal of G.D.A.V. Kanya Inter College. Bulandshahr, in terms of Section 33A (1) of U. P. Secondary Education Services Commission Act, 1982 as amended upto to date."

3. The writ petition filed by Km. Uma Sharma was finally decided by this Court by the judgment dated 22.4.2000 and it was held that she has no right to the post of Principal and accordingly, writ petition was dismissed. After dismissal of the writ petitions, the District "Inspector of Schools again directed the management to issue appointment letter in favour of the petitioner, pursuant to the recommendation in her favour by the board. At this stage, the Committee of Management took challenge and came before this Court by filing Writ Petition No. 21730 of 2000 challenging the letter of the District Inspector of Schools dated 27.4.2000 on the ground that the present petitioner did not possess the requisite qualification for appointment. This writ petition was also dismissed on 16.5.2000, of course, on the ground that it has been filed after lapse of more than 15 months, although the petitioner was fully aware about the selection long back. After dismissal of the writ petition, filed by the management, appointment letter was issued in favour of the present petitioner on 17.5.2000 upon which, the petitioner joined the post of Principal on 19.5.2000 and the signature of the petitioner was also attested by the District Inspector of Schools on 29.5.2000. After satisfactory completion of services as Principal, the management in its meeting held on 31.5.2001 confirmed the services of the petitioner w.e.f. 18.5.2001 and thus the petitioner is continuously working on her post and discharging the responsibility of the post of Principal in the college.

4. After aforesaid clash of interest between the petitioner, the rival claimant Km. Uma Sharma and the management came to be set at rest in judicial side by dismissal of two writ petition, i.e.. Writ Petition Nos. 20789 of 1999 and 21730 of

2000 filed by the respondent Nos. 6 and 5 respectively, the controversy about petitioner's selection/appointment on the post of Principal appears to have been raised by one Mr. Jagvir Kishore Jain, Member of U. P. Legislative Council by way of complaint to the Minister, Secondary Education, Uttar Pradesh in respect to which a mention can be found in paragraphs 26 and 27 of the counter-affidavit filed by the respondent No. 6. It is on the basis of this complaint made by the aforesaid M.L.C., it appears that some direction was given by the concerned Minister upon which, the Joint Director of Education got enquiry conducted and submitted a report dated 7.7.2001 (Annexure-12 to the writ petition) to the board for taking a decision in respect to petitioner's selection. Thereafter, the board in the light of the aforesaid report dated 7.7.2001 appears to have taken decision in its meeting dated 23.8.2001, to cancel the petitioners selection and then the board by its letter dated 28.8.2001 directed the Joint Director of Education to take appropriate action in the matter. The letter of the board dated 28.8.2001, has been annexed as Annexure-13 to the writ petition. Thereafter, some correspondence between the Joint Director of Education and the board took place upon which the board by its letter required the petitioner to submit her explanation. The petitioner submitted her reply on 29.11.2001 (Annexure-15 to the writ petition). Besides mentioning various facts, it was also stated in the reply as was submitted by the petitioner that she is not aware of the complaint which has been made against her and, therefore, she may be supplied copy of the complaint so that, in that light, detail explanation may be furnished. After submission of the reply by the petitioner no proceedings took place and it is only the final order by the board dated 10.1.2002 (Annexure-16 to the writ petition) came to be passed. It is these three adverse action of the respondents, i.e., orders of respondent No. 2 dated 10.1.2002, 28.8.2001 (Annexures-16 and 13 respectively) and the report of the respondent No. 3 dated 7.7.2001 (Annexure-12 to the writ petition) have been challenged by the petitioner in this writ petition.

5. Shri R. N. Singh, learned senior advocate assisted by Sri A. K. Goel, for the petitioner, Sri Ram Kirti Singh for respondent No. 2, Dr. Ram Singh for respondent No. 6 and learned standing counsel representing the State authorities have been heard.

6. Learned counsel for the petitioner has challenged the impugned action of the respondent Nos. 2 and 3 on various grounds, namely : (i) so far as Km. Uma Sharma respondent No. 6 is concerned, she has absolutely no right or any locus standi to resist the petitioner's claim as her participation in the proceedings against the entitlement of the petitioner is clearly barred by principle of res judicata. It has been pointed out that in the writ petition filed by respondent No. 6 (Writ Petition No. 20789 of 1999), she claimed for her regularization on the post in question and at the same time, selection of the present petitioner by the board and the recommendation in her favour for the post of Principal in the present college, but this Court has rejected the claim of Km. Uma Sharma and therefore, learned counsel submits that respondent No. 6 is not to be heard. In

support of this submission, reliance has been placed on the decision in State of U.P. Vs. Nawab Hussain, , (ii) it was then contended that the respondent No. 2 after completing selection process for the post in question, had become functus officio and therefore, it has no Jurisdiction to cancel the selection in favour of the petitioner, specially in view of the fact that it has already been implemented and given effect as pursuant to the recommendation by the board, the management issued the appointment letter and the petitioner joined and after completion of period of probation satisfactorily her services too was confirmed. Learned counsel for the petitioner submits that review by respondent No. 2 after its recommendation was acted upon and that had seal of this Court also, cannot be said to be lawful, (iii) It was then contended that entire action of the respondents besides being illegal and without jurisdiction is also in gross violation of principle of natural justice. Learned counsel points out that so far as report as has been submitted by the Joint Director of Education is concerned, which is the sole basis for taking impugned action against the petitioner is admittedly ex parte as before submitting the report, the petitioner was never given any notice or opportunity and in fact even the copy of complaint was never supplied to her either at the stage of submission of enquiry report on 7.7.2001 or even when the petitioner asked copy of the same vide her reply dated 29.11.2001. It has been further pointed out that on 28.2.2001, even the board without hearing and giving opportunity to the petitioner has recommended the Joint Director of Education about cancellation of the petitioner's selection and thus the decision which was to be taken against the petitioner, was already finalised and it is only thereafter a notice was given and after getting the petitioner's reply on 29.11.2001 without affording any further opportunity, final confirmation of the impugned action vide order dated 10.1.2002, came into existence. Learned counsel submits that this all goes to show complete non-application of mind by the authorities and lack of adequate opportunity to the petitioner as well. Lastly, it was contended that the action of the respondents besides being illegal, without jurisdiction and in violation of principle of natural justice is also mala fide, which is quite apparent and is established from own records of the respondents. Learned counsel submits that now it is not a matter of dispute that the complaint was filed by the M.L.C., addressed to the concerned Minister and it is on the direction of the concerned Minister, the educational machinery came in motion. The enquiry report submitted by the Joint Director of Education dated 7.7.2001, (Annexure-12 to the writ petition), the letter written by the board dated 28.8.2001 (Annexure-13 to the writ petition) to the Joint Director of Education to cancel the selection and the final order of the board dated 10.1.2002 (Annexure-16 to the writ petition) all goes to indicate that at the bottom of their report/orders, it is mentioned that copy is being furnished/sent to the P. S. of the Minister concerned for his information and perusal. In view of this fact, learned counsel submits that Inference can be drawn by this Court that entire action was just to satisfy the dictates of the Minister concerned.

7. Otherwise also, learned counsel for the petitioner submits that even on merits,

the ground as has been given by the respondent No. 2 for cancellation of the petitioner's selection that the petitioner was not qualified is absolutely untenable. Learned counsel points out that there is no dispute about the fact that although the petitioner has been teaching in lecturer's grade but as she was not paid the salary for that post/work, the respondent No. 2 has inferred that the petitioner was not qualified. It has been argued that it is the actual teaching experience as lecturer is required for the appointment as Principal and as the petitioner was appointed as ad hoc lecturer on 11.7.1991, on the date of application before the commission, he possessed more than required teaching experience. In this connection, learned counsel has referred to a decision of this Court as was given in Writ Petition No. 16609 of 1992 decided on 24.8.1993 in Mohd. Idris v. State of U. P. On all these aforesaid grounds, learned counsel submits that the Impugned action of the respondents being totally unwarranted, the petitioner cannot be denied of her legitimate claim of the post of Principal, having been selected by the respondent No. 2.

8. In response to the aforesaid submission, as has come from the side of the petitioner, all the learned counsel, who appeared on behalf of the respondents joined in their submissions by raising a common argument to resist the claim of the petitioner. It has been submitted that the decision as has been taken by the board cancelling the petitioner's selection on the facts of the present case neither can be said to be illegal nor without Jurisdiction nor mala fide or in violation of principle of natural justice. It has been submitted that the board at any time when the facts are brought to its notice that any candidate has been wrongly selected, has full right to re-consider its recommendation and therefore, the respondent No. 2 has acted well within its power in passing the impugned order. Learned counsel points out that the petitioner was given notice by the board before passing the impugned order dated 10.1.2002 as it is an admitted fact from the side of the petitioner that she was called upon to submit her reply. It has been further submitted that every body including M.L.C. has a right to raise its finger to an illegal selection and therefore, no exception can be taken to the complaint as filed by the M.L.C. and on getting that complaint, the matter was rightly proceeded and the Joint Director of Education has rightly submitted its report, which, on proper analysis, has been found to be correct by the respondent No. 2. It has been vehemently argued that the petitioner did not possess requisite qualification for the post of Principal on the date of advertisement and it is on the basis of vague and false experience certificate dated 8.1.1996 issued by the previous institution, she got her appointment as lecturer which was not approved by the concerned educational authorities and she was not granted pay scale for the same. It has been submitted that the petitioner worked as Assistant Teacher in J.S.R.K. Inter College, Meerut, from time to time against leave arrangement. During this period, she was working in C. T. grade and was drawing salary as such. On 30.6.1991 on promotion of Smt. Sarla Bansal to the post of Principal of that college, the post of Lecturer in Sociology came to be filled up by the senior most teacher but her claim was

rejected by the management and present petitioner was illegally appointed on the post of Lecturer. Learned counsel points out that the appointment of the petitioner as lecturer was challenged by Smt. Reshma Devi in which an interim order was granted and ultimately the Regional Inspectress of Girls Schools did not accept the validity of the petitioner's appointment. Learned counsel submits that although against the decision of Regional Inspectress of Girls Schools, the petitioner obtained stay order from this Court and on that basis, she continued to, be Lecturer in J.R.K.S. Inter College but she was never paid salary of that post. In view of the aforesaid, it has been submitted that the petitioner has no requisite teaching experience and thus the decision as has been taken by the board cannot be said to be faulty. Learned counsel in support of the submission that the petitioner was not entitled to get an opportunity at the stage of enquiry report dated 7.7.2000, has placed reliance on the decision in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.,

9. In view of the aforesaid submissions, as has come across the Bar, pleadings as has been set forth and the materials as has been placed, have been examined.

10. The action on the part of the respondent No. 2 against which the present writ petition has been filed appears to be not a matter coming up through routine exercise which may be said either at the instance of the Committee of Management/ respondent No. 5 or Km. Uma Sharma, the rival claimant for the post of Principal. It is also not a case where there has been any concealment on part of the petitioner in getting herself selected on account of which the respondent No. 2 appears to have exercised its inherent powers. There appears to be no dispute about the fact that the selection of the petitioner has been the subject-matter of two writ petitions before this Court, one filed by Km. Uma Sharma and other by the Committee of Management. Both the writ petitions i.e., Writ Petition Nos. 20789 of 1999 and 21730 of 2000 filed by Km, Uma Sharma and the management respectively were dismissed by this Court. Km. Uma Sharma has challenged the claim of the present petitioner on the ground that she should be accepted to be regularised on the post of Principal and thus the selection of the present petitioner is to be negated. The management challenged the selection of the petitioner on the ground that she is not possessed with requisite qualification. This writ petition, of course was dismissed by this Court on the ground of laches but that do not mean that in another litigation, it is open for the management, to raise the same plea against the petitioner, of being not possessed with requisite qualification. Admittedly, after the final dismissal of the writ petition filed by the management, the petitioner was issued appointment letter on 17.5.2000 and after completion of the probation period, she stood confirmed also on her post.

11. Now the question requires to be considered, is what should be the scope and stage for re-consideration by the respondent No. 2 and in what manner the power can be exercised. The respondent No. 2 is possessed with the power of screening the candidates and after finding the best out of lot, to select the

candidates and then recommending them for appointment. There can be a case where candidate has given incorrect information and has filed incorrect and forged documents for getting himself selected. In those class of cases, as the law is settled, fraud and concealment vitiate most solemn proceedings, no body can be permitted to take a plea of lack of power with the concerned authority and the scope of re-consideration. But where so far candidate is concerned, if he is not charged with filing forged and incorrect documents and the materials so existed and the respondent No. 2 has chosen to select a candidate having found his merit, the scope of reconsideration will have to be restricted. It will have to be further restricted in those cases in which the rival claimant or the management has challenged the selection of selected candidate before this Court, but could not succeed. Once selection/recommendation in favour of a candidate comes before this Court, its challenge may be on one ground or two as it is always open for the concerned person to challenge the selection, on all the grounds available, having even not taken, any of the grounds, the dismissal of the writ petition, by this Court will have to be taken as confirmation of the recommendation by the Commission. The Commission cannot be permitted to sit over the decision of this Court. This Court feels that once the Commission has made selection and consequent recommendation for appointment, which had a seal of this Court as well and further thereafter, implementation of the recommendation of the Commission, clearly stops the reconsideration of the matter.

12. There is yet another aspect of the matter which concerns this Court at whether in the facts of the present case, re-consideration by the respondent No. 2 can be said to be justified. In the service jurisprudence, normally people fight for their own independent right and they take up the challenge of the rival candidate so that the person, who has challenged the right of other, in the event of success may get the relief for himself. It is in rare cases where a large scale bungling or any fault in procedure, in the system or in the constitution of the selecting body, there are complaints, then it may be said to be a cause of concern to a person, may not be having direct interest in the matter as the selection is to affect the society at large. So far individual selection is concerned, where no fault in the procedure, no irregularity or any charge with the selecting body, have been levelled, this Court feels that the challenge by a man having no remotest concern with the subject, should not be permitted. The reason being that a process has to be permitted to attain finality and in a very exceptional circumstances, it should be permitted to be reopened, re-considered at the instance of a stranger. In the given set of facts, as the rival claimant Km. Uma Sharma, the management where the petitioner was placed, having taken the task of challenging the selection of the petitioner having failed, I do not find any justification to permit re-opening of the matter. It appears from the record that the educational authorities including the Commission came in motion on the complaint having been made, by Member of Legislative Council upon which the Minister concerned has directed the respondent Nos. 2 and 3 to move. We do not know the exact contents of the complaint but from the facts, it is gathered that it

relates to the lack of qualification of the petitioner. The gravity of the command of the Minister concerned can be inferred from the fact that the respondent No. 3/ Joint Director of Education, Meerut Region, admittedly, without giving any notice or opportunity to the petitioner has chosen to submit report to the respondent No. 2 favouring for cancellation of the petitioner's selection/recommendation. It is at the stage of respondent No. 2, a notice was issued to the petitioner for submitting her reply. The petitioner in her reply had asked for giving copy of the alleged complaint, so that effective reply can be given. It appears that the petitioner in his reply has also filed copy of the orders of this Court and other relevant materials. Admittedly, copy of the complaint was never given to the petitioner and after submission of the reply, the impugned action of respondent No. 2 came into existence. The facts and materials on record clearly show that the petitioner was never given any opportunity before submission of report by the Joint Director of Education and even at the level of respondent No. 2, neither copy of complaint was given to the petitioner nor she was given any opportunity to demonstrate her version. It is just on account of the complaint made by the Member of Legislative Council, at the dictates of the Minister concerned, process in reverse motion took place, resulting into cancellation of the petitioner's selection. On the facts of the present case, it is fully established that the impugned action is, otherwise, in gross violation of principle of natural justice and therefore, on this score as well, the impugned order is liable to be quashed. Even, otherwise on the merits of the entitlement of the petitioner, although in view of the aforesaid analysis, it is not of much worth to examine the facts in this regard but suffice it to say that sufficient explanation has been given about her being possessed of teaching experience. On the facts of the present case and the material as has been brought on record, it cannot be said that the petitioner even lacks of the requisite experience.

13. For the reasons stated above, the writ petition succeeds and is allowed. The impugned orders/ decision of the respondent No. 2 dated 10.1.2002 (Annexure-16 to the writ petition), order dated 28.8.2001 (Annexure-13 to the writ petition) and the report of respondent No. 3 dated 7.7.2001 (Annexure-12 to writ petition are hereby quashed.

14. Parties are directed to bear their own costs.