
(2007) 10 AHC CK 0001
In the Allahabad High Court

Smt. Shail Kumari Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-10-2007

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 7A(a)

Citation : (2008) 5 AWC 4695

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Judgement

Sudhir Agarwal, J.—Both these writ petitions have been filed by the same petitioner Smt. Shail Kumar Singh and involve common questions of law and fact, hence, as requested and agreed by learned Counsel for the parties, have been heard together and are being decided by this common judgment.

2. Writ petition No. 21119 of 2004 (hereinafter referred to as the "first petition") has been filed assailing the order dated 21.2.2004, issued by District Basic Education Officer, Jaunpur (hereinafter referred to as (hereinafter referred to as "the B.S.A.") granting approval to the appointment of respondent No. 6. Sudhir Kumar Singh as Head Master of Sangram Balika Vidyalaya, Sarokhanpur, Badlapur, district Jaunpur (hereinafter referred to as "the institution") as also the appointment letter dated 23.2.2004, issued by Committee of Management of the institution to respondent No. 6 pursuant to approval granted by the B.S.A. She has also sought a writ of mandamus) commanding the respondents not to interfere in her functioning as Headmistress of the institution till a regularly selected candidate recommended by the U.P. Secondary Education Services Selection Board (hereinafter referred to as "the Selection Board") joins the If post. She has further sought a writ of mandamus commanding the respondents not to allow respondent No. 6 to work as Headmaster of the institution pursuant to approval order dated 21.2.2004 and appointment letter dated 23.2.2004.

3. Writ Petition No. 35532 of 2004 (hereinafter referred to as "the second writ petition) has been preferred by the petitioner challenging the order dated

2.7.2004 of B.S.A, whereby he has countersigned the signatures of respondent No. 6, Smt. Usha Singh as officiating Principal of the institution. The petitioner has also sought a mandamus commanding respondents not to interfere with the functioning of the petitioner as Headmistress of the institution.

4. Brief facts relevant to adjudication of the dispute giving rise to both these petitions ml that the institution is a duly recognized Junior High School. Initial racognition was granted by the Regional Girls Inspctress of Schools, Varanasi vide Order dated 4.1.1982, a copy whereof has been placed on record as Annexure-1 to the first writ petition. The institution is also recognized by the Board of Basic Education under the provisions of Basic Education Act, 1972 (hereinafter referred to as "1972 Act") and is also getting financial aid. Salary is being paid to the staff of the institution in accordance with the provisions of Junior High Schools (Payment of Salaries of Teachers and other Employees) Act, 1978 (hereinafter referred to as "1978 Act") 1978 Act, made applicable to the institution in 1983. It appears that in 1992, the institution applied for recognition to ran classes upto High School in certain subjects, namely, Literature with compulsory subjects, e.g., Hindi, English, Sanskrit, Home Science, Science-I, Social Science, Moral, Physical, Sociological and other productive works, and in the optional Subject of Geography. The recognition was grained by the Board of School and Intermediate Education, U.P. Allahabad (hereinafter referred to as "the Board") vide letter dated 19.6.1992 issued by the Additional Secretary, Secondary Education Board, Regional Office, Varanasi, subject to certain conditions contained in the said letter. A copy of the said letter is on record as Annexure 2 of first writ petition, which shows that recognition was granted u/s 7A(a) of U.P. Intermediate Education Act, 1921 (hereinafter referred to as 1921 Act). Besides other, the said letter required the institution to obtain permission from the District Inspector of Schools/Regional Inspectress of Schools for running IX class within two years and to make all arrangements for imparting education as per standards and norms laid down by the State Government. Vide conditions No. 4, 5 and 6 which are relevant for the present case, it provided, as under:

(4) Is Patra Me Ankit Vishayon Ke Adhyapanarth Parishad Dwara Nirdharit Nyuntam Yogyataon Se Vibhushit Adhyapikaon Ki Niyukti Niyamanusar Ki Jaye Tatha Aprashikshit Adhyapikaon Ke Sthan Par Prashikshit Evam Yogya Adhyapikaon Ki Niyukti Ki Jaye.

(5) Niyamanusar Ek Yogya Pradhanacharya Ki Niyukti Ki Jaye.

(6) Naveen Kachhayen Sanchalit Karne Samast vyaya Sansthadhikari Svayameva Vahan Karen"

English version.

(4) For teaching the subjects enumerated in this letter, lady teachers possessing minimum prescribed qualifications be appointed by the Board according to Rules and untrained lady teachers be substituted by trained lady teachers.

(5) A competent Principal (lady) be appointed as per rules.

(6) All expenditure relating to running new classes shall be borne out by the institution itself.

5. Thus the institution was required to appoint teachers fulfilling requisite qualifications as prescribed by the Board to appoint a competent Principal and to bear the requisite expenses for running new classes from its own resources. As required vide condition No. 2 of the letter dated 17.6.1992, the institution obtained permission from the Regional Inspectress of Girls School, Varanasi for running High School (Literary Group-IX Class) vide letter dated 14.8.1992. It appears that despite upgradation of the institution and permission to run High School classes in 1992, it did not get a principal appointed for upgraded High School level and continued to have a Headmistress appointed in respect of Junior High School who was continued to be paid salary under 1978 Act by the State Government even after 1992. One Smt. Sharda Singh, it appears continued to work as Headmistress of the institution and died on 28.1.2004 after having undergone serious illness, the petitioner was assigned the charge of Headmistress of the institution on 12.1.2004. During the period Smt. Sharda Singh, Headmistress was absent and had been on medical leave, and after her death on 28.1.2004, the petitioner continued to discharge duties as Headmistress of the institution.

6. There appears to be some dispute with respect to the committee of management which may not be of much relevance for the points in issue involved in both these petitions and only this much would be sufficient to mention that the committee of management of the institution after death of Smt. Sharda Singh, Headmistress of the institution, advertised the vacancy of Headmaster on 4.2.2004 in daily newspaper, "Tarun Mitra" and thereafter selected Sudhir Kumar Singh, (respondent No. 6 in the first writ petition) for the post of Headmaster and sought approval of B.S.A. which was granted by him vide letter dated 21.2.2004 (Annexure-10 to the first writ petition pursuant whereunto the committee of management issued appointment letter dated 23.2.2004 (Annexure-11 to the first writ petition), appointing respondent No. 6 Sri Sudhir Kumar Singh as Headmaster of the institution. Aggrieved by the said two orders, the petitioner filed the first writ petition. After hearing learned Counsel for the parties, this Court passed an interim order on 28.5.2004 to the following effect:

Having regard to the facts and circumstances of the case, the selection, appointment and approval of respondent No. 6 as Headmaster of the Sangram Balika Vidyalaya, Sarokhanpur, Badlapur, District Jaunpur shall remain stayed. He shall not be allowed to work in the institution and paid salary until the decision of the case.

7. Short counter affidavit and counter affidavits have been filed on behalf of B.S.A. and respondent No. 6 (of the first writ petition) to which petitioner has also filed rejoinder affidavits. It further appears that against the interim order

dated 28.5.2004, Special Appeal No. 773 of 2004 was filed by Sudhir Kujmar Singh (respondent No. 6 of the first writ petition), which was dismissed by the Division Bench vide order dated 5.7.2004. Subsequently, the committee of management of the institution informed the B.S.A. that Smt. Usha Singh, (respondent No. 6 of the second writ petition) is officiating as headmistress of the institution and B.S.A. vide order dated 1.7.2004 approved and counter signed signatures of Smt. Usha Singh as officiating Headmistress of the institution giving rise to the second writ petition and this Court on 31.8.2004 passed an interim order in the second writ petition to the following effect:

In these circumstances, until further orders of this Court operation of the order dated 02.07.2004 passed by District Basic Education Officer, Jaunpur attesting the signature of Smt. Usha Singh as officiating Headmistress of the institution shall be kept in abeyance. Further respondents are restrained from interfering in the functioning of petitioner as Headmistress of the institution.

Pursuant to interim order dated 31.8.2004 it is not in dispute that the petitioner is presently officiating as Headmistress of the institution.

8. I have heard Sri D.S.M. Tirpathi, learned Counsel for the petitioner, learned Standing Counsel for respondents No. 1 to 4 and Sri Ashok Khare, Senior Advocate, appearing for respondent No. 6 (in first writ petition), Sri Y.K. Saxena and Sanjeev Singh, holding brief of Sri P.S. Baghel learned counsel on behalf of respondents No. 5 and 6 respectively (in the second writ petition).

9. Learned Counsel for the petitioner mainly contended that once the institution was granted recognition by the Board of High School and Intermediate Education for running High School classes under 1921 Act, no appointment on the post of Headmistress/Headmaster of a Junior High School could have been made treating the institution to be a Junior High School since the matter of appointment of Principal would be governed by the provisions of 1921 Act read with U.P. Secondary Education Services Selection Board, Act, 1982 (hereinafter referred to as "1982 Act"). He therefore, contended that the appointment of Sudhir Kumar Singh, respondent No. 6 (of the first writ petition) on the post of Headmaster of Junior High School was clearly illegal, he further contended that since the institution was upgraded, till a regular appointment on the post of Principal of the institution is made the petitioner being senior most teacher in the institution is entitled to function as officiating Principal and therefore, the respondents further erred in law by permitting and attesting the signatures of respondent No. 6, Smt. Usha Singh in the second writ petition as officiating Principal of the institution. In support of the contention that once the institution is upgraded to High School, appointment on the post of Headmaster/Headmistress of Junior High School could not have been made, he placed reliance on a Single Judge decision of this Court in Dr. (Smt.) Sushila Gupta, Officiating Principal of Sri Dosar Vaish Balika Inter College Vs. The Joint Director of Education, Kanpur Region and Others,

10. Per contra Sri Ashok Khare submitted that though apparently the contention of the petitioner that after upgradation of the institution to High School appointment on the post of Headmaster of a Junior High School could not have been made, appears to be covered by the Single Judge judgment of this Court in Dr. (Smt.) Sushila Gupta (Supra) but the said judgment requires to be reconsidered by a larger Bench, inasmuch as it had not considered the earlier judgment of this Court in Committee of Management Beni Singh Vaidic Vidyawati Inter College, Baluganj, Agra and Ors. v. State of U.P. and Ors. 2005 (61) ALR 398. He further contended that recognition for High School classes was granted u/s 7A(a) of 1921 Act and in respect to such matters, the power of appointment of teachers is conferred upon the management u/s 7-AA of 1921 Act. He further drew attention of this Court to fill Section 7-AB of 1921 Act, declaring that 1982 Act shall not be applicable in relation to part-time teachers and part-time instructors employed in an institution u/s 7-AA and contended that effect of Section 7-AA and 7-AB had not been considered by Hon"ble Single Judge in Dr. (Smt.) Sushila Gupta (Supra) and as such, same is per incurium and does not lay down a good law. He submits that 1982 Act has no application in the case in hand and, therefore, the appointment made by the committee of management is absolutely valid and in accordance with law.

11. I have heard learned Counsel for the parties and perused the record. In view of rival submissions advanced by learned Counsel for the parties, three issues germane to be answered for adjudication of these writ petitions.

1. Whether on recognition as High School, a Junior High School or Basic School would loose its identity and would be governed by the provisions applicable to a Junior High School or Basic School?

2. Effect of Section 7-AA and 7-AB of 1921 Act in respect to appointment of a Principal of High School and what would be legal procedure applicable thereto?

3. Whether the appointment of Sri Sudhir Kumar Singh, respondent No. 6 (of the first writ petition) made by the committee of management was valid and in accordance with law?

Issue No. 1

12. This issue has recently been considered by a Division Bench of this Court in Ajay Pratap Rai v. District Basic Education Officer Jaunpur and Ors. 2007(4) ADJ 357 (DB) and it has clearly been held that once the institution is upgraded to High School level, it ceases to exist as a legal entity as a Junior High School or Basic School and, therefore, the provisions applicable to Junior High School would not continue to govern the same and on the contrary, it will be governed by the provisions applicable to a High School. The Division Bench has also approved the Single Judge judgment in Dr. (Smt.) Sushila Gupta (Supra) which has followed earlier Full Bench judgment in State of U.P. and Ors. v. District Judge Varanasi and Ors. 1981 UPLBEC 336 and this Court is bound by the law laid down by the Division Bench in the above case. It would be useful to

reproduce paragraphs No. 9 and 10 of the judgment as under:

9. The aforesaid observations of the Full Bench as explained in the judgment of Sushila Gupta's case, therefore, leave no room for doubt that the selection and appointment on the post of Head of the Institution which has been recognized as a High School and Intermediate College cannot be made under the provisions which are applicable to a Junior High School. In Sushila Gupta (supra), the learned Single Judge considered all the Amendment made in the Statute and held that in spite of so many amendments to the statutory provisions, the proposition of law laid down by the above referred to Full Bench remained the same, Mr. Saxena has not brought to our notice any provision which have altered the legal position.

10. From the aforesaid discussions, it is evident that status of an institution after being upgraded loses its significance and the lower section of the school after upgradation completely merges into the upgraded institution. Interpreting the provisions otherwise would lead to complete absurdity and create a chaotic situation even for governance of the different parts of the same institution. An institution cannot have a multiple Code for its governance. There is no provision permitting continued applicability of the laws in relation to a Junior High School even after its upgradation.

So far as the pigment relied upon by Sri Ashok Khare in Committee of Management Beni Singh Vaidic Vidyawati Inter College (Supra) is concerned, I find that the question involved in this case was neither raised, nor argued, nor decided therein and, therefore, it cannot be said that the same lay down a different law on the subject. Moreover, since now the issue has been decided by the Division Bench in Ajay Pratap Rai (Supra), issue No. 1 is no more res Integra and is being decided accordingly. It is held that on recognition as a High School, a Junior High School or Basic School would lose its identity and would be governed by provisions applicable to High School.

Issue No. 2

13. Coming to the second issue, in my view Section 7-AA and 7-AB of 1921 Act would be applicable when the management of the institution after recognition having been granted u/s 7-A intends to make appointment of part-time teachers or instructors as an interim measure. In such cases, the management has power to make appointment on its own without following the procedure laid down under 1982 Act but where the appointments are to be made on full time regular basis, neither Section 7-AA has any application nor the management can bypass the procedure laid down in 1982 Act merely on the ground that upgraded institution is unaided for the reason that application of 1982 Act is not dependent on the fact whether the institution is aided or unaided. This issue has also been considered by a Division Bench in Special Appeal No. 1408 of 2005 Narendra Singh v. State of U.P. and Ors. decided on 28.11.2005 wherein it has been held:

Section 16 of 1982 Act prohibits any appointment of teacher in the institution

unless it is recommended by the commission. Neither in the definition clause nor u/s 16 of the 1982 Act, teachers of the recognised or unaided institution are excluded. The institutions excluded from the purview of 1982 Act, are those, which are maintained by the State Government, otherwise all recognised institutions have been restrained from making any appointment of teachers in their institution unless it is recommended by the commission irrespective of the fact that they are aided or unaided. Sections 7-A, 7-AA and 7-AB of the Act also nowhere mentions the word "aided or unaided", as is being suggested by the learned Counsel for the appellant. A bare reading of Sections 7-A, 7-AA and 7-AB of the Act show that the management of an institution, whether aided or unaided, if intends to make appointment of part-time teachers, as an interim measure, it may do so from its own resources. Meaning thereby, the payment of salary or wages or honorarium to such part-time teachers shall be arranged by the management from its own financial resources and the provisions of the, U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 are not applicable in such case. Similarly, for appointment of such part-time teachers, whether in aided or unaided institution, the provisions, of 1982 Act are also inapplicable. This shows that in respect of such institution also, where appointment of teachers have to be made under 1982 Act, if the management intends to make only part-time appointment, it may be made without having any recommendation from the Commission but the payment shall, be made by the management from its own resources.

I Admittedly, the petitioner, in the present case, was appointed in the year 1993 by the management on its own although under 1982 Act an appointment could have been made by the management only on the recommendation of the commission. Therefore, we are of the view that the Hon'ble Single Judge has rightly held that the management had no power to make appointment of the teacher, which is not part-time, in the year 1993. Learned Counsel for the appellant stated that date of appointment, mentioned in the order, as 1983, is not correct since he was actually appointed by the order dated 8.6.1993. Be that as it may, it will not improve the case of the appellant, since in both the contingencies, the management did not have power to make appointment without having any recommendation from the commission under 1982 Act. In the circumstances, there is no error in the order passed by the Hon'ble Single Judge.

In the case in hand, while granting recognition as High School, the Board clearly imposed a condition that the management has to make appointment of Principal of High School. Obviously, such appointment was not to be made as an interim measure or on part-time basis and, therefore, the appointment of Principal has to be in respect of upgraded institution as per the procedure prescribed in 1982 Act and the management could not have made appointment by resorting to the provisions applicable to Junior High School, since after upgradation as High School, no appointment of Headmaster/Headmistress of Junior High School could have been made in law as the post of Headmaster/Headmistress of Junior High School becomes inoperative after upgradation since only one head of the

institution could have continued at a time. Therefore, there could be only one Principal and that too of High School. This is what has been held by Division Bench in *Ajay Pratap Rai (Supra)* also and in my view, that is the only cogent and practical solution in such cases otherwise it would create a chaotic situation. Issue No. 2 is decided accordingly.

Issue No. 3

14. In view of the answer rendered to first issue the answer of third question is obvious, inasmuch as, the appointment of Sudhir Kumar Singh, respondent No. 6 in first writ petition cannot be said to be valid and legal and has to be set aside, After upgradation of the institution the appointment of Principal of the institution could only be made in accordance with the provisions of 1982 Act read with Removal of Difficulties Orders issued thereunder applicable in this regard and, therefore, the appointment of respondent No. 6 Sudhir Kumar Singh (first writ petition) is held to be illegal.

15. Now remains the question to be considered in the second writ petition as to whether the authorities were justified in recognizing and countersigning the signatures of Smt. Usha Singh (respondent No. 6 in the second writ petition). It is evident that the said action has been taken by the authorities in order to permit her to officiate as Principal of the institution, treating her to the seniormost teacher. The petitioner claims that she being the seniormost teacher is entitled to officiate as Principal instead of Smt. Usha Singh and the respondents authorities have erred in law by treating Smt. Usha Singh as seniormost teacher in the institution. This necessarily raises a dispute pertaining to seniority inter se of petitioner and Smt. Usha Singh (respondent No. 6 in second writ petition). It is not disputed that whenever there is a dispute with respect to inter se seniority of teachers, remedy is provided in the statute itself, inasmuch as, Regulation 3, Chapter II of Regulations provides and empowers the competent authority to hear and decide such disputes. Since the parties have not availed the said remedy, therefore, in my view, the dispute pertaining to seniority should be raised and decided at the instance by the competent authority under Regulation, 3 Chapter II of Regulations. It is, however, made clear that any decision in respect to seniority by itself would not result in entitling the petitioner or Smt. Usha Singh to officiate as Principal of the institution unless they are found to be eligible and entitled to officiate as Principal of the institution in accordance with the provisions of 1982 Act read with 1921 Act and various Removal of Difficulties Order issued thereunder.

16. In view of the foregoing discussion, both the writ petitions are allowed in part. The impugned orders dated 21.2.2004 and 23.2.2004 impugned in the first writ petition are hereby quashed. The respondents are directed to make appointment on the post of Principal of the institution in accordance with provisions of 1982 Act read with 1921 Act. It is further directed that meanwhile, question of recognition of counter signature of Smt. Usha Singh, respondent No. 6 in second writ petition or of the petitioner being seniormost teacher in order to

allow them to function as officiating Principal shall be considered and resolved by the Competent Authority under Regulation 3, Chapter II of the Regulations after hearing the petitioner and concerned parties. In case the petitioner raises any such dispute before the Competent Authority within one month from today, the same shall be decided in accordance with law within a period of two months thereafter and appropriate order shall be passed by the competent authority giving reasons. However, it is also made clear that nothing in this order shall construe authorising/enabling the petitioner or Smt. Usha Singh (respondent No. 6 in the second petition) to function as officiating Principal of the institution, if they are not eligible or competent to function as such in accordance with the provisions of 1982 Act read with 1921 Act and, in such case, it shall be open to the educational authorities to require the institution to make appointment on the post of Principal of the institution in accordance with the aforesaid statutes without any further delay. There shall be no order as to costs.