
(2000) 12 AHC CK 0090

In the Allahabad High Court

Case No : C.M.W.P. No"s. 30305, 18546 of 1999 and 11933 of 2000

Smt. Usha Wahi

APPELLANT

Vs

District Inspector of Schools, Meerut and others

RESPONDENT

Date of Decision : 08-12-2000

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 33A(1A)

Citation : (2001) 1 AWC 349 : (2001) 1 UPLBEC 455

Hon'ble Judges : V.M. Sahai, J

Bench : Single Bench

Advocate : K.P. Bajpai, for the Appellant; Vinod Sinha, S. Prakash, S.C., Addl. C.S.C., V.K. Shukla and M.C. Chaturvedi, for the Respondent

Final Decision : Dismissed

Judgement

V. M. Sahai, J.—These are three writ petitions, one filed by officiating Principal of Arya Kanya Inter College, Sadar, Meerut. seeking mandamus for direction to respondents to refrain from interfering in her functioning as Principal till regular selection is held by the Selection Board. The second and third writ petitions have been filed by the selected candidate, one to restrain the earlier Principal from taking over as permanent Principal as she had retired before the appointment letter was issued to her and second to restrain the respondents from holding fresh selection.

2. In Arya Kanya Inter College, Sadar, Meerut (in brief institution) one Smt. Shakuntala Garg was working as permanent Principal. She retired on 30.6.1990. The next seniormost lecturer Smt. Subhashni Gupta was appointed as ad hoc Principal on 1.7.1990. The management sent a requisition through the District Inspector of Schools to U. P. Secondary Education Services Commission to fill the post of permanent Principal. The commission proceeded to hold selection for the post of Principal and prepared a panel of selected candidates on 15.4.1997 in the panel the name of Smt. Subhashni Gupta was placed at serial No. 1, the name of

Smt. Raj Bala Sharma the respondent No. 3 was placed at serial No. 2 and the name of Smt. Braj Bala Sharma was placed at serial No. 3. In pursuance of selection made by commission, no appointment letter was issued by the educational authorities probably because of general interim order dated 17.10.1996 passed by this Court in Civil Misc. Writ Petition No. 31115 of 1996. In large number of petitions the validity of selections made by the commission was challenged. It was upheld by Division Bench in Balak Singh Kushwaha v. State of U. P. and others (1998) 3 UPLBEC 1989. During the pendency of the writ petition, the educational authorities did not issue appointment letters to the candidates selected by the commission. After the decision in Balak Singh Kushwaha (supra), the Joint Director of Education, 1st Region, Meerut, directed the District Inspector of Schools on 16.1.1999 to implement the appointment of Principal as per the panel selected by the commission. Smt. Subhashni Gupta, who was working as ad hoc Principal in the meantime, had retired on 1.1.1999. She was permitted to continue, till the end of academic session under Regulation 21 of Chapter III of the Regulation framed under the U. P. Intermediate Education Act. 1921 (in brief Regulation). The District Inspector of Schools issued a letter on 8.2.1999 to the management to issue an appointment letter as per the panel selected by the commission. The management issued appointment letter on 4.3.1999 and appointed Smt. Subhashni Gupta as permanent Principal of the institution. Smt. Raj Bala Sharma the respondent No. 3 challenged the appointment of Smt. Subhashni Gupta by means of Civil Misc. Writ Petition No. 18546 of 1999 on the ground that before Smt. Subhashni Gupta could be appointed, she had retired on 1.1.1999 and she could not be appointed regular Principal after retirement, therefore, the respondent No. 3 being at serial No. 2 in the panel was entitled to be appointed as permanent Principal of the institution. This Court passed an interim order on 10.5.1999 and stayed the appointment letter issued on 4.3.1999 by the management. The Court permitted Smt. Subhashni Gupta to continue to work as ad hoc Principal till 30.6.1999, the last date of the academic session. Smt. Subhashni Gupta retired on 30.6.1999. The management appointed Smt. Usha Wahi the petitioner who was the seniormost lecturer, as officiating Principal on 1.7.1999. She filed Civil Misc. Writ Petition No. 30305 of 1999 for a direction to the respondents that no interference be made in her working as officiating Principal of the Institution as panel prepared by the commission on 15.4.1997 stood exhausted after appointment of Smt. Subhashni Gupta. Therefore, Smt. Raj Bala Sharma could not claim the post of Principal on the basis of panel prepared by the commission on 15.4.1997. This Court passed an interim order on 23.7.1999 and permitted the petitioner to continue as ad hoc Principal. Smt. Raj Bala Sharma the respondent No. 3 filed another Writ Petition No. 11933 of 2000 before this Court as the Commission/Selection Board had issued an advertisement No. 1/99/2000 dated 24.12.1999 published in the newspaper "Amar Ujala" on 1.1.2000 for holding fresh selection for the post of Principal. And she claimed that since the dispute is pending before this Court and till her claim is decided, the Commission/Board should not proceed to fill up the post of Principal in the institution. This Court passed an interim order on

27.3.2000 that the Selection Board shall not make selection for the post of Principal in the institution. The petitioner has claimed by amending the writ petition that Smt. Subhashni Gupta stood regularised as Principal of the institution u/s 33A (1A) of U. P. Act No. 5 of 1982, therefore, the panel prepared by the commission was of no use.

3. I have heard Shri K. P. Bajpai, Sri Vinod Sinha, Sri V. K. Shukla and Sri M. C. Chaturvedi Additional Chief Standing Counsel, appearing for the parties in all the three writ petitions. Smt. Subhashni Gupta who had been arrayed as respondent No. 5 in Writ Petition No. 18546 of 1999 wherein her appointment as permanent Principal has been stayed has not put in appearance despite notice sent to her by registered post on 13.5.1999. She is left with no interest. Service on her is deemed to be sufficient. Since affidavits have been exchanged, all the three writ petitions have been taken up for final disposal with the consent of learned counsel for the parties. Writ Petition No. 30305 of 1999 shall be the leading writ petition.

4. Sri K. P. Bajpai, learned counsel for the petitioner has vehemently urged that after appointment of Smt. Subhashni Gupta on 4.3.1999, as Principal the panel selected by the commission stood exhausted. He urged that since the panel prepared by the commission stood exhausted, its effect was, that the petitioner being the seniormost lecturer in the institution, was entitled to be appointed officiating Principal and her working cannot be disturbed unless a regularly selected candidate from the Commission or Selection Board comes and joins the post of regular Principal. He relied on decisions of this Court in Civil Misc. Writ Petition No. 26454 of 1996, Sri Bijay Bahadur Singh v. U. P. Secondary Education Services Commission and others decided on 26.2.1999 and the Division Bench decision in Special Appeal No. 664 of 1997, Hari Om Gupta v. Director of Education and others decided on 20.4.1999. He further urged that Smt. Subhashni Gupta stood regularised as permanent Principal of the institution u/s 33A (1A) of U. P. Act No. 5 of 1982. And since she stood regularised automatically, therefore, there was no vacancy of Principal in the institution which could be filled by direct recruitment, therefore, the panel prepared by the commission was meaningless.

5. On the other hand, Sri Vinod Sinha, the learned counsel appearing for the respondent No. 3 has urged that advertisement was issued by the commission on 13.12.1995 and 11.1.1996 for appointment on the post of permanent Principal. Smt. Subhashni Gupta never claimed regularisation of her service as Principal. And she appeared before the commission in the selection for the post of Principal. She was selected and placed at serial No. 1 in the panel prepared by the commission. The petitioner also participated in the selection of Principal but could not succeed. It is urged that the petitioner has not denied this fact stated in paragraph Nos. 7 and 10 of the counter-affidavit filed to the amendment application. Since Smt. Subhashni Gupta did not claim regularisation of her service, therefore, it cannot be accepted that she stood regularised u/s 33A (1A)

of U. P. Act No. 5 of 1982. Learned counsel further urged that Smt. Subhashni Gupta retired on 1.1.1999. The educational authorities and the management issued the letter for appointment after her retirement, therefore, she could not be appointed as permanent Principal of the institution. She was continued as Principal till the end of academic session in view of the provisions of Regulation 21 of the Chapter III of the Regulations. Continuance of service under Regulation 21 did not confer any right on her to be appointed as permanent Principal of the Institution. Therefore, the management illegally appointed Smt. Subhashni Gupta as Principal and appointment letter issued by the management was of no consequence. The respondent No. 3, being at serial No. 2 in the panel selected by the commission, was entitled to be appointed as permanent Principal of the institution. He urged that the panel prepared by the commission had not exhausted. He placed reliance on Division Bench decision of this Court in Committee of Management, Jadgish Saran Rajvanshi Kanya Inter College, Meerut and others v. Joint Director of Education, 1st Region, Meerut and others (2000) 2 UPLBEC 1161. The learned counsel further urged on the basis of clarification issued by U. P. Secondary Education Service Commission dated 4.8.1999 that panel prepared by commission is for a period of one year and it would not exhaust if the candidate appointed at serial No. 1 of the panel either retired or left the post after joining within one year. In such case, the candidate at serial No. 2 in the panel is to be offered appointment and if the candidate at serial No. 2 did not join then the candidate at serial No. 3 has to be offered appointment. It was clarified that if there was an interim order, then, the period during which the interim order was operating, would not be counted while determining the period of one year.

6. Sri V. K. Shukla, the learned counsel appearing for the management has placed reliance on the decisions of the Apex Court in Munishwar Dutt Pandey Vs. Ramjeet Tiwari and others, and Kiran Gupta and others v. State of U. P. and others (2000) 4 ESC 2436. He also relied on the Division Bench decision of this Court in Special Appeal No. 664 of 1997, Hari Om Gupta v. Director of Education and others decided on 20.4.1999.

7. The question that arises for consideration is whether Smt. Subhashni Gupta, ad hoc Principal of the institution, who had attained the age of superannuation of sixty years on 1.1.1999 but continued to work as Principal till 30.6.1999, the end of the academic session under Regulation 21 of Chapter III of the Regulations, could be appointed as regular Principal by the respondents in pursuance of panel prepared by the commission? Smt. Subhashni Gupta, retired on 1.1.1999. The age of superannuation of a teacher or Principal is sixty years. Regulation 21 provides that if the date of retirement of a teacher or a head of the institution or an employee falls between 2nd July and 30th June, then such teacher is entitled to continue till the end of academic session 30th June. The continuance after the date of retirement till the end of the academic session does not confer any right except to get salary. The retirement is complete. It does not get extended by Regulation 21. A Division Bench of this Court in Committee of Management,

Jagdish Saran Rajvanshi Kanya Inter College (supra), has considered this question and has held that if a teacher retires during mid-session. Regulation 21 grants automatic extension of service till the end of academic session to protect the academic interest of the students of the institution. But such arrangement could not confer any right on the teacher. It was further held that if a candidate selected by the commission at serial No. 1 attained the age of superannuation, he could not be appointed as per panel prepared by the commission and the candidate at serial No. 2 of the panel is to be appointed. Since, admittedly, Smt. Subhashni Gupta retired on 1.1.1999 on the date she attained the age of sixty years, therefore, she could not be appointed as permanent Principal in pursuance of selection made by the commission and order passed by the Joint Director of Education dated 16.1.2000 or by the District Inspector of Schools dated 8.2.1999. Therefore, the order dated 4.3.1999 appointing Smt. Subhashni Gupta as Principal by the management was ineffective and the respondent No. 3, who was at serial No. 2 of the panel prepared by the commission was entitled to be appointed as permanent Principal of the institution. The argument of the learned counsel for the petitioner, therefore, is devoid of any merit.

8. The next argument of the learned counsel for the petitioner is that Smt. Subhashni Gupta, who was working as ad hoc Principal with effect from 1.7.1990, stood automatically regularised as permanent Principal of the institution u/s 33A (1A) of U. P. Act No. 5 of 1982. This argument cannot be accepted for the simple reason that Smt. Subhashni Gupta never claimed to be regularised u/s 33A (1A) of U. P. Act No. 5 of 1982. If she would have been regularised then no selection could have been held in 1997. In any case, the petitioner cannot advance this claim to frustrate the selection.

9. The Division Bench decision of this Court in Hari Om Gupta (supra), Sri Bijay Bahadur Singh (supra) and the decisions of Apex Court in Munishwar Dutt Pandey (supra) and Kiran Gupta (supra) are of no help to the petitioner. Smt. Subhashni Gupta after her retirement on 1.1.1999 was neither entitled to be appointed as permanent Principal of the institution in pursuance of selection made by the commission nor she stood regularised u/s 33A (1A) of U. P. Act No. 5 of 1982. Therefore, the respondent No. 3 was entitled to be appointed as permanent Principal of the institution, being at serial No. 2 of the panel prepared by the commission. The Joint Director of Education, Meerut on 21.6.1999 made a query from the U. P. Secondary Education Services Selection Board about the life of select list as the U. P. Secondary Education Services Commission Rules, 1995, did not prescribe the life of panel prepared by the commission. A clarification was issued by Joint Director of Education in pursuance of the letter dated 4.8.1999 issued by the Secretary. U. P. Secondary Education Services Selection Board that is extracted below :

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10. From the aforesaid clarification, it is clear that even if it is assumed that the management could appoint Smt. Subhashni Gupta on 4.3.1999, even then since she retired on 30.6.1999, the panel prepared by the commission would not exhaust and the respondent No. 3 who was at serial No. 2 of the panel selected by the commission is entitled to be appointed as permanent Principal of the institution.

11. In the result, Writ Petition No. 30305 of 1999, Smt. Usha Wahi v. District Inspector of Schools and others fails and is accordingly dismissed. The Writ Petition No. 18546 of 1999. Smt. Raj Bala Sharma v. Joint Director of Educations 1st Region, Meerut and others, succeeds and is allowed and letter dated 8.2.1999 issued by the District Inspector of Schools and appointment letter dated 4.3.1999 issued by the Committee of Management are quashed. The Writ Petition No. 11933 of 2000. Smt. Raj Bala Sharma v. U. P. Secondary Education

Services Selection Board and others, is allowed, the notification No. 1/99/2000 issued by the U. P. Secondary Education Services Selection Board on 24.12.1999 published on 1.1.2000 is quashed so far as it relates to the selection for the post of Principal, Arya Kanya Inter College, Sadar Meerut. The respondents are directed to pass appropriate orders appointing Smt. Raj Bala Sharma as permanent Principal of the institution within a period of one month from the date a copy of this order is served on the District Inspector of Schools, Meerut and Committee of Management of the institution.

12. Parties shall bear their own costs.