
(2005) 04 AHC CK 0182
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 23849 and 31580 of 2004

Sneh Lata Saxena

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-04-2005

Acts Referred:

Uttar Pradesh Higher Education Services Commission (Amendment) Act, 1982 — Section 16, 33A(1A)
Uttar Pradesh Intermediate Education Act, 1921 — Section 16G(2)
Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 — Rule 11
Uttar Pradesh Secondary Education Services Commission and Selection Boards Regulations, 1998 — Regulation 11(2)

Citation : (2005) 5 AWC 5056

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Ashok Khare, Ram Sheel Sharma and Onkar Nath, for the Appellant; R.P. Dubey, Anil Bhushan, B.D. Mandhyan, P. Kumar and Satish Mandhyan and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Sri Ashok Khare, Senior Advocate for petitioner Smt. Sneh Lata Saxena; Sri R.P. Dubey for U.P. Secondary Education Services Selection Board, Allahabad and Sri B.D. Mandhyan for respondent no. 5 Dr. Vinita Tiwari.

2. Both these writ petitions have been filed by Smt. Snehlata Saxena, claiming to be the second senior most teacher in the institution, challenging the appointment of Dr. Vinita Tiwari, as Principal of Maharani Laxmibhai Kanya Inter College, Nagar Palika Parishad, Etah. It is a recognised institution run and managed by Nagar Palika Etah.

3. Brief facts giving rise to these two writ petitions are as follows;

4. Dr. Vinita Tiwari, respondent No. 5, in both the writ petitions is M.A., M.Ed.

and P.Hd. She was teaching classes IX to XII in Madan Mohan Kanodia Balika Inter College, Farukhabad. The vacancies on various posts including Principals were advertised by the U.P. Secondary Education Service Commission in the year 1995-1996. The selections were held on 15.4.1997. She was selected for appointment as Principal of Arya Kanya Inter College, Hapur. She, however, was not allowed to join, as the Principal of that college obtained an order of status quo from this Court. Dr. Vinita Tiwari moved a representation before the Commission and thereafter filed a Writ Petition before this Court, which was disposed of with a direction to the Commission to decide her representation. The said representation was decided in her favour with directions to appoint her on the vacancy on the post of Principal of Maharani Laxmibhai Kanya Inter College, Nagar Palika Parishad, Etah.

5. The petitioner Smt. Sneha Lata Saxena has challenged the order dated 23.6.2004 by which the District Inspector of Schools, Etah in pursuance of directions of the U.P. Secondary Education Service Selection Board Allahabad dated 1.6.2004, has directed Dr. Vinita Tiwari to be appointed as Principal of the College.

6. Before these two writ petitions were filed, the petitioner Smt. Sneha Lata Saxena had preferred a writ petition No. 2105/2003. It was disposed of on 18.9.2003 with a direction to decide her representation. The District Inspector of Schools by his order dated 3.6.2004 had rejected the representation for handing over charge of Officiating Principal to her, with the finding that the post of Principal had fallen vacant on the retirement of Sri Sushma Sharma on 30.6.2002. Smt. Usha Pandey the senior most teacher, was given the charge of Officiating Principal, and her signatures were approved by the District Inspector of Schools on 31.7.2002. She functioned upto 4.10.2002. On 30.9.2002, the Sub Divisional Magistrate/Manager of the College forwarded the papers of Smt. Sneha Lata Saxena as the third senior most teacher for officiating as Principal. Her signatures as Officiating Principal were approved on 16.10.2002 and she was allowed to function, but since there was a ban on the appointment of Adhoc Principal, she was not allowed the salary for the post. She has filed a Writ Petition No. 455/2003 against this order dated 16.10.2003.

7. The District Inspector of Schools, Etah, has found that Smt. Sneha Lata Saxena was appointed in the leave vacancy of Smt. Saraswati Devi, Assistant Teacher on 16.1.1969 and had joined on 17.1.1969. She was appointed as a temporary teacher in C.T. grade on 12.2.1969 and was promoted in L.T. grade on 1.8.1969, She was confirmed on 1.9.1969 and was thereafter promoted in Lecturers grade on 24.2.1982 on adhoc basis. He found that since Smt. Sneha Lata Saxena did not produce the required documents of her regularisation. She is still continuing as adhoc Lecturer, and thus she cannot be appointed as Officiating Principal. This order has been challenged by her in Writ Petition No. 31580/2004.

8. The questions which arise for determination in these writ petition are firstly whether Smt. Sneha Lata Saxena is the second senior most confirmed teacher in

Lecturer's grade and further if the vacancy on the post of Principal was advertised, does she have a right to be considered for appointment? Secondly this Court has been called upon to decide whether the persons selected as Principal by the U.P. Secondary Education Service Selection Board on vacancies arising and advertised for some other College can be appointed as Principal of a College of which the vacancy was not advertised and for which no selections were held.

9. Sri Ashok Khare, learned Senior Advocate appearing for the petitioner Smt. Sneha Lata Saxena submits that she was entitled to, and shall be deemed to be regularised u/s 33A (1-A) of the Act of 1982 w.e.f. 6.4.1991 when she was promoted as Lecturer on adhoc basis. There is a specific order by the Management and the Principal of the institution dated 4.2.1992 and 8.4.1992, about her regularisation (Annexure No. 2 and 3 to her rejoinder affidavit) in writ petition No. 23849/2004. Sri Khare submits that Smt. Sneha Lata Saxena was a confirmed teacher and she being one of the two senior most Lecturers is entitled under the Act of 1982, and the Regulations of 1998, to be "considered for selection as the Principal of the College. This vacancy on the post of Principal was never advertised by the Commission and thus in view of the decision of this Court in Rama Kant Singh v. State of U.P. (Writ Petition No. 34722/2004, decided on 4.2.2005), the appointment of Dr. Vinita Tiwari is illegal and is liable to be set aside. He has also relied upon judgements in Kamlesh Kumar Sharma Vs. Yogesh Kumar Gupta and others, which relates to selections under the U.P. Higher Education Service Commission Act 1980 and in which it was held that no person has right to be appointed on the posts which were not properly advertised.

10. Sri B.D. Mandhyan, learned Senior Advocate appearing for respondent no. 5 submits that the post of Principal is to be filled under the Act of 1982 by direct recruitment. The object and purpose of the advertisement and selections is to provide for a fair selection and for appointment of a meritorious candidates as Principal of the College. Dr. Vinita Tiwari was selected for appointment as Principal in Arya Kanya Inter College, Hapur. She was not allowed to join. He submits that a teacher selected as Principal is under helpless position when she is not allowed to join by the management and by the officiating Principal. This Court took this issue into account and issued direction to the Commission to decide her representation on which the Commission has rightly nominated her for appointment as Principal in Maharani Laxmi Bai Kanya Inter College, Nagar Palika, Etah. The Committee of management of the College resolved to appoint her as Principal and she has joined on 6.7.2004, and her signatures have been verified by the District Inspector of Schools, Etah. This college is not under the private management and there is no dispute about the vacancy on the post of Principal and thus the petitioner hopes to be accepted at least in this College. Smt. Sneha Lata Saxena is not a confirmed Lecturer. She is still serving as an adhoc teacher and is not amongst the two senior most teachers which could have been considered for appointment as Principal. Even if the vacancy was advertised, Smt. Sneha Lata Saxena could not have been considered as she is not

a confirmed teacher in Lecturer's grade and is not amongst the two senior most teachers to be considered by the Commission for the post. He has relied upon judgements in *Savita Kumar v. State of U.P.* 2004 (2) UPLBEC 2739 and *Committee of Management Crosthwaite Girls College, Allahabad v. District Inspector of Schools II Allahabad* 2000 (2) 3SC 1126 (Allahabad), in respect of appointment of teachers where vacancy has not been advertised, and a decision of this Court rendered by me in *Dinesh Bahadur Singh v. State of U.P.* (Writ Petition No. 560/2004) decided on 14.5.2004. In this case, I have held while deciding the question whether a Principal can be appointed by transfer to another college, where the vacancy has not been advertised, the right of the two senior most teachers to be considered for direct appointment as Principal in case the vacancy advertised is not a right of promotion to defeat the right of a duly appointed Principal to be transferred to such institution. The post is provided to be filled up by direct recruitment. The Rule 11(b) of the U.P. Secondary Education Service Selection board Rules, 1998 have been made by the Board to ensure fairness to the senior most teachers of the institution. The preference given to them in the guidelines made by the Commission cannot be treated as statutory in nature, as these guidelines do not have statutory force. I found that the two senior most teachers have a right to be considered if the vacancy is advertised. There are other methods of filling up the post of Principal namely by transfer, which was not accepted, in *Om Prakash Rana v. Swaroop Singh Tomar*, AIR SC 1672 but thereafter Section 16 of Act 1982, was amended adding a proviso, permitting transfer of a teacher from one institution to another to be made in accordance with Regulations under Clause-C of sub section (2) of Section 16-G of the U.P. Intermediate Education Act 1921.

11. The Committee of Management has supported the case of Dr. Vinita tiwari. It is stated by the management that Smt. Sneh Lata Saxena is not qualified and is not the senior most teacher. Her initial appointment is illegal. She was not appointed as Officiating Principal and was only asked to discharge the functions as Officiating principal for which she will not receive any salary. She has removed her personal file and did not produce any records and consequently an F.I.R. has been lodged against her by the Management on 15.1.2005. In the absence of the recodes, no reliance can be placed on the documents, annexed by her in proof of her confirmation, especially when these documents were not produced by her before the District Inspector of Schools and in any of her earlier or these writ petitions. There is nothing to show that she was ever confirmed as Lecturer. The U.P. Secondary Education Services Selection board has in the counter affidavit of its Secretary Shri A.N. Sharrna, supported Dr. Vinita Tiwari. She is fully qualified in terms of Appendix "A" of U.P. Intermediate Education Act, 1921. In *Jai Nath Yadav's* case the Apex Court in similar circumstances has directed him to be adjusted in any other College. The order dated 11.190.1999, passed in SLP (c) No. 17712/1988 has been annexed with the counter affidavit of the Secretary of the Board in Writ Petition No. 23849 of 2004.

12. Although the question in *Dinesh Bahadur Singh* (supra) related to filling up

the vacant post of Principal, which was not advertised by transfer the reasons given in this judgement are likely to be in conflict in the reasons given in Rama Kant Singh's case (supra). The matter, therefore, requires to be resolved by a larger bench. However, I find that in the present case, such a situation does not arise as for the reasons to be given hereinafter. I find that Smt. Sneha Lata Saxena, is not one of the two senior most teachers in Lecturer's grade and thus she could not have been considered even if the vacancy was advertised by the Board, and thus I do not propose to refer the question to resolve the conflict of opinions in this writ petition.

13. The District Inspector of Schools, Etah while deciding representation of Smt. Sneha Lata Saxena in pursuance of directions issued by this Court has found in his order dated 17.6.2004, which has been challenged by her in Writ Petition No. 31580/2004, that she has not been confirmed and is still continuing as adhoc lecturer and thus she cannot be treated as the senior most teacher for the purpose of her consideration for appointment and to claim appointment as Officiating Principal of the College. The District Inspector of Schools, Etah has further found that the appointment of Smt. Sneha Lata Saxena was not valid, as she was appointed on 16.1.1969, in the leave vacancy. Since Smt. Saraswati Devi had requested for extension of her leave, she was appointed on temporary basis in C.T. Grade on 12.2.1967 by extending the period of her appointment till the close of the academic session. She was promoted in LT. grade on 1.8.1969 and was confirmed on 1.9.1972, and was promoted as adhoc lecturer on 24.2.1982.

14. The provisions of Section 33-A (1-A) of the Act of 1982, are applicable to only those adhoc appointments in substantive capacity, which have been made in accordance with the paragraph-2 of the U.P. Secondary Education Service Commission (Removal of Difficulties) Order 1981, who possess the prescribed qualifications or are exempted from it, w.e.f. 6.4.1991 when the Amended Act of 1991 came into force. I find that in the seniority list the petitioner was placed on 23.6.2004, at serial No. 5 when an order was passed to appoint Dr. Vinita Tiwari as Principal of the College. The seniority list shows that Smt. Usha Pandey was appointed as Lecturer on 9.8.1977 and Smt. Kamla Sharma was appointed as Lecturer on 11.11.1979. They were senior to the petitioner. Smt. Sneha Lata Saxena, therefore, did not have a right for forwarding her name for consideration as Principal under Regulation 11 (2) of the Regulations of 1998, even if the vacancy was advertised. Even if her services were treated to be regularised, she would be the third Senior most teacher on 19.4.2002, when the management had communicated the vacancy on the post of the Principal to the Board and since none of the first two senior most teachers in Lecturer's grade have objected, her resistance to appointment of Dr. Vinita Tiwari as Principal cannot be sustained.

15. IN Writ Petition No. 23849 of 2004, the petitioner has challenged the order dated 23.6.2004, passed by the district Inspector of Schools, Etah. Instead of

amending the writ petition and challenging the order of the U.P. Secondary Education and Service Selection Board dated 1.6.2004, the petitioner has filed the second writ petition No. 31580 of 2004.

16. For the aforesaid reasons, both the writ petitions are dismissed.