

(1992) 01 AHC CK 0047

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No 4461 of 1991

Sri Mohd.Naim

APPELLANT

Vs

District Inspector of Schools, Farrukhabad and others

RESPONDENT

Date of Decision : 24-01-1992

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16E, 16F, 16FF
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 18(b), 32

Citation : (1992) 01 AHC CK 0047

Hon'ble Judges : Amarendra Nath Varma, J

Final Decision : Allowed

Judgement

1. The dispute giving rise to this petition concerns the post of principal of an intermediate college recognized under and governed by the U.P. Intermediate Education Act, 1921 as well as U.P. Secondary Education Service Commission and Regional Selection Boards Act, 1982 ("the 1982 Act" for short). The tie for ad hoc appointment to this post is between the petitioner and the respondent no. 4 Sheo Bahadur Singh. Admittedly, the petitioner is at present the seniormost lecturer in the institution and in the list of seniority the fourth respondent ranks third. The institution, however, preferred to appoint the fourth respondent on ad hoc basis in the purported exercise of powers under Section 18 of the 1982 Act.

2. The aforesaid appointment was challenged by the three seniormost teachers by means of a writ petition no. 3662 of 1989 on the ground that the appointment was ex facie improper and illegal. The contention was that the appointment should have been made by promotion from amongst the existing lecturers in accordance with the approved list of seniority in which, at that time, the fourth respondent ranked below all these three petitioners. This petition was eventually allowed by this court by an order dated May 10, 1990 and the appointment of the fourth respondent was quashed. The latter unsuccessfully appealed before the Supreme Court. While dismissing the Special Leave Petition, their Lordships observed that regular appointment of the principal be made in the prescribed

manner latest by the end of June 1991. Their Lordships further observed that the order passed by the High Court in the above writ petition directing the Management to make ad hoc appointment of the principal in accordance with law by February 1990 was, however, ordered to be carried into effect in the meantime. Pending the regular appointment to the post, the Management again handed over the officiating charge to the fourth respondent despite the fact that both the petitioner and another lecturer Sri B.S. Sisodia were senior to that respondent.

3. It is this latest action of the Management of handing over the charge to the fourth respondent with effect from February 1, 1991 that is assailed in this petition. Challenging the officiating appointment of the fourth respondent counsel for the petitioner urged that even for making ad hoc appointment the Management should have gone strictly in order of seniority. Reliance was placed by the learned counsel on three decisions of this Court in *Charu Chandra Tewari v. Committee of Management and others* (1989) 1 U.P. Local Bodies and Educational Cases 666 (paragraph 9) and *Smt. Rama Rati v. State of Uttar Pradesh and others* 1987 U.P. Local Bodies and Educational Cases 220. These decisions do undoubtedly support the contention of the learned counsel and hold that even in the matter of ad hoc appointment under Section 18 of the 1982 Act, regard should be had to the seniority of the lecturers in filling the post of the principal.

4. The stand taken in the counter affidavit, however, is that the Management is not obliged to go by the seniority of the lecturers in making appointment of the principal of an intermediate college on ad hoc basis. Alternatively, it is contended that the petitioner was not considered fit for appointment in view of the remarks made in the character roll of the petitioner by the Management. For the respondents, reliance was placed by the learned counsel on some unreported decisions copies whereof have been annexed as CA1 and CA2 to the counter affidavit as well as a reported decision in the case of *Yogendra Prasad Chaturvedi v. Additional Civil Judge, Gorakhpur and others*, (1985) 2 U.P. Local Bodies and Educational Cases 1531.

5. Having heard learned counsel for the petitioner and the learned counsel for the respondent no. 4, I am clearly inclined to take the view expressed by this Court in the three decisions cited by the learned counsel for the petitioner, namely, *Charu Chandra Tiwari v. District Inspector of Schools, Deoria and others* (1990) 1 U.P. Local Bodies and Educational cases 160: *Smt. Maya Saxena v. Committee of Management and others* (1989) 1 U.P. Local Bodies and Educational Cases 666 and *Smt. Rama Rati v. State of Uttar Pradesh and others* 1987 U.P. Local Bodies and Educational Cases 290. In *Charu Chandra Tiwari's* case (*supra*) his Lordship R.M. Sahai, J. (as he then was) speaking for the Court analysed the scheme of the U.P. Intermediate Education Act and the regulations framed thereunder as well as that reflected by the 1982 Act and observed in paragraph 6 of the judgment that in the first place ad hoc appointment should be made by

promotion and not direct recruitment and, secondly, that seniority of the teachers considered for appointment to the post of principal should be respected. His Lordship summed up the law thus:

From what has been stated above, it is clear that any vacancy, whether substantive or temporary, which is to be filled by ad hoc selection, has to be filled by promotion and, in the absence of availability of a candidate, by direct recruitment, there appears no rational basis to exclude this method from Section 18 of the Act empowering the Committee of Management to make direct recruitment even though seniormost teacher in the institution was available.

6. His Lordship further observed that any other construction conceding absolute and unbridled power to the Management to fill ad hoc vacancy ignoring the claim of the seniormost teacher would bring in arbitrariness. Even in respect of ad hoc appointments, this Court ruled, seniority of the teachers should be respected. With respect, I entirely agree provided of course the teachers are otherwise qualified for the post.

7. The same view has been expressed in Kumari Bandana Bannerji's case reported in (1990) 1 U.P. Local Bodies and Educational Cases 116. Repelling the argument that for ad hoc appointment of Principal seniority need not be adhered to, the Bench observed at page 118 of the report in paragraph 3 of the judgment:

Therefore, it was urged that what was necessary to be seen was qualification and not seniority. Literally speaking, the argument may be correct. But can the provision be construed or understood in this manner. Under Chapter II of Regulations framed under U.P. Intermediate Education Act, an ad hoc or officiating principal either against a permanent or temporary vacancy could be appointed on seniority. Same scheme has been continued, under Removal of Difficulties Order and any ad hoc appointment either under paragraph 4 or paragraph 5 by promotion has to be made of the seniormost, teacher. Can this scheme be deemed to be given up for appointments under Section 18. In our opinion it cannot. Reasons are twofold, one that the clause purported to lay down qualification only, not only for promotion but ad hoc appointment by direct recruit also. It could not, therefore, provide that for promotion seniority should be criteria. In fact it was not necessary as Section 32 of the Act provides as under:

The provisions of Intermediate Education Act, 1921 and the Regulations made thereunder in so far as they are not inconsistent with the provision of this Act or the rules or regulations made thereunder, shall continue to be in force for the purpose of selection, appointment, promotion, dismissal, removal, termination or reduction in rank of a teacher.

In the absence of any provision to the contrary the provisions under Chapter II of Regulation framed under UP Intermediate Education Act for promotion which includes the provisions for filling the post of head of Institution due to retirement temporarily by promoting the seniormost qualified teacher has to be read as part

of Section 18(1)(b) of Act V of 1982.?

8. Again, in paragraph 4 of the judgment the Bench said:

?Apart from it seniority for adhoc or temporary or officiating appointment by promotion subject to being qualified is just and proper which should be adhered to. If the construction as suggested by learned Additional Chief Standing Counsel or the learned counsel for opposite party is accepted it shall lead to arbitrariness & provide the management with a power to pick and choose which shall be destructive of the discipline in institutions and shall breed sycophancy than efficiency.?

9. The same opinion has been reiterated in the other two decisions cited for the petitioner (1987 U.P. Local Bodies and Educational Cases 290 and 1989 (1) U.P. Local Bodies and Educational Cases 666 paragraph 9). I respectfully agree with the view expressed in all these cases for the reasons stated therein, particularly that the contrary view is bound to lead to arbitrariness arising from the policy of picking and choosing of teachers on the whims and fancies of the Management, a policy and phenomenon which, if approved, will directly infringe on the constitutional guarantee enshrined in Article 14.

10. This brings me to the contrary opinions cited by the counsel for the fourth respondent. Annexure CA1 purports to be a copy of the order of the Supreme Court dismissing Special Leave Petition against the judgment and order of this Court on 181185 which is incidentally reported in 1935 U.P. Local Bodies & Educational Cases 1531 (Yogendra Prasad Chaturvedi v. Additional Civil Judge). The order of the Supreme Court reads thus:

?Special Leave Petition is dismissed with the direction that the U.P. Secondary Education Services Commission shall fill up the post of Principal of Adarsh Inter College, Parsauna, City Gorakhpur, forthwith after judging the suitability of the candidates on their merits.?

11. There is no discussion of the precise submission which was urged before their Lordships of the Supreme Court. I, therefore, turn to the decision of the learned Single Judge in Yogendra Prasad Chaturvedi's case (supra). In this case in support of the argument that in making ad hoc appointment under Section 18 of U.P. Act No. 5 of 1982, the Management is not bound to go by the seniority of the teachers, was sought to be supported on the strength of paragraph 2 and 4(1)(s) of the U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981. The learned Single Judge repelled the contention on the ground that the Removal of Difficulties Order referred to above dealt with how ad hoc appointments were to be made in certain specific contingencies and that the same cannot curtail the ambit or width of power available under Section 18(1)(b). The learned Single Judge, however, did not examine whether on a true and proper interpretation of Section 18 of U.P. Act No. 5 of 1982 itself there is an implicit requirement that subject to the rejection of the unfit appointments under Section 18 should be made in order of seniority. The aspects which were

examined and commented upon by the Division Benches of this Court cited for the petitioner and commented upon by me hereinabove were not noticed. The aspect that the contrary interpretation sought to be placed on Section 18(1)(b) would lead to arbitrariness was also not considered by the learned Single Judge. I would, therefore, respectfully agree with the opinion expressed by the Division Bench decisions of this Court noticed above in preference to the view expressed by the learned Single Judge in Yogendra Prasad Chaturvedi's case (supra).

12, Annexure CA2 is a copy of the judgment delivered by a Bench of this Court in writ petition no. 169 of 1987. It lends no assistance to the respondent as the Bench has simply relied on the decision in Yogendra Prasad Chaturvedi's case without adding anything of its own. There is no discussion at all nor examination of the relevant applicable provisions noticed by the Division Benches cited above.

13. In the premise of the foregoing discussion I would hold that on an analysis of Section 18(1)(b) and the Scheme of U.P. Act No. 5 of 1982 as well as the Intermediate Education Act, appointment to the post of principal should, subject to the rejection of the unfit, be made keeping in view the seniority of the teachers. Appointments based on seniority in the absence of statutory provisions to the contrary exclude the possibility of arbitrariness in public appointments and is a wholesome principle which should ordinarily rule the same.

14. It is, however, not necessary to rest the decision solely on the interpretation of Section 18 of the aforesaid Act as the ground on which the petitioner's claim has been overlooked appears to be wholly arbitrary and improper. Paragraph 17 of the counter affidavit attempts to justify the claim that the petitioner was not considered fit and suitable for appointment in view of his record of service. Two factors have been highlighted in this paragraph. One and, two, an adverse character roll entry stated to have been made jointly by Mahendra Pal Singh Chauhan and the Manager of the institution. Both the grounds are wholly untenable. So far as the order of suspension is concerned, the same was not approved by the District Inspector of Schools and had automatically lapsed on the expiry of sixty days from 1989. The further allegation that the suspension order was revoked because of some supposed apology by the petitioner has been strongly refuted in the rejoinder affidavit. Looking to the overanxiety of the Management to install the fourth respondent as the principal of the institution as evidenced by the series of litigations and petitions filed by the senior teachers of the institution successfully thwarting such attempts, I am inclined to accept the petitioner's version in the rejoinder affidavit that the entire allegations in paragraph 17 of the counter affidavit are incorrect. The assertions made by the petitioner in paragraph 17 of the rejoinder affidavit appear to be more reliable. As regards the adverse entry awarded by Mahendra Pal Singh Chauhan and the Management is concerned suffice it to say that against the appointment of the former, the petitioner and other senior teachers had filed a petition in this Court (writ petition no. 3662 of 1989). It is apparent that the so called character roll entry made by the adversary of the petitioner during the pendency of that

petition can have no legal effect particularly when the same was never communicated to the petitioner. As for the Manager joining in that entry, counsel for the respondent was unable to point out any provision which authorised the Manager to make character roll entries of teachers. Further the entry is alleged to have been made at a time when litigation was pending between the petitioner and the Management during the pendency of writ Petition in this Court and later in the Supreme Court. No credence can, therefore, be attached to such entry. My own impression is that the entire story set up in paragraph 17 of the counter affidavit appears to be unreliable and it has been cooked up for the purpose of the present litigation.

15. In the result, the petition succeeds and is allowed. The ad hoc appointment of the fourth respondent as the Principal of the institution is quashed. As the petitioner is the seniormost teacher of the institution he shall officiate as the Principal till a regular appointment is made through the Commission. If despite direction of the Supreme Court, the U.P. Secondary Education Services Commission has not filled the vacancy in question, it shall do so at the earliest. The petitioner shall submit before the Secretary to the U.P. Secondary Education Services Commission as well as the District Inspector of Schools copies of this judgment and order within 15 days from today.

16. A copy of this order may be given to the learned counsel for the parties on payment of the usual charges within a week.