
(2016) 02 AHC CK 0270
In the Allahabad High Court
Case No : Special Appeal No. 108 of 2016

Sudhir Kumar Sinha

APPELLANT

Vs

State of U.P. & 3 Ors.

RESPONDENT

Date of Decision : 25-02-2016

Acts Referred:

Uttar Pradesh Secondary Education Service Commission Act, 1982 — Section 18

Citation : (2016) 4 AILLJ 403 : (2016) LIC 3330

Hon'ble Judges : Dr. Dhananjaya Yeshwant Chandrachud, C.J. and Yashwant Varma, J.

Bench : Division Bench

Advocate : Ashish Kumar Ojha and R.K. Ojha, Advocates, for the Appellant;
C.S.C., Shailendra and Siddharth Khare, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

1. This special appeal has arisen from an interim order of the learned Single Judge dated 28 January 2016 staying an order of the District Inspector of Schools dated 21 November 2015 for the disbursement of salary to the appellant on the post of officiating Principal. The institution in question is a secondary institution governed by the provisions of the UP Secondary Education Services Selection Board Act 1982.

2. The dispute essentially is between the appellant and the fourth respondent for occupying the post of officiating Principal. Admittedly, the appellant is the senior most lecturer.

3. Under Section 18 of the UP Secondary Education Services Selection Board Act 1982 (Act), it has been provided that where a management has notified a vacancy to the UP Secondary Education Services Selection Board (Board) in accordance with sub-section (1) of Section 10 and the post of Principal or the Headmaster actually remains vacant for more than two months, the management shall fill up such vacancy on purely ad hoc basis by promoting the

senior most teacher in the lecturer's grade on the post of Principal. Under sub-section (2) of Section 18, where the management fails to promote the senior most teacher under sub-section (1), the Inspector shall himself issue the order of promotion of such teacher who would be entitled to get salary as Principal.

4. Prior to 1 July 2015, one Sri Shyam Sunder Tiwari was the Principal. On his retirement on 30 June 2015, a vacancy arose on 1 July 2015. On 21 September 2015, the District Inspector of Schools (DIOS) passed an order by which the signature of the appellant was attested. The order dated 21 September 2015 was challenged by the Committee of Management in a writ petition (Writ-A No. 56173 of 2015) before this Court. By an interim order dated 5 October 2015, a learned Single Judge directed the parties to maintain the status-quo with regard to the post of officiating Principal until the next date of listing. The appellant had filed a caveat against the Committee of Management and the fourth respondent who asserts a claim to the post of officiating Principal. After the interim direction dated 5 October 2015, a second writ petition was filed, this time by the fourth respondent to challenge the order of the DIOS dated 21 September 2015 attesting the signature of the appellant; to restrain the respondents to the petition from interfering with the working of the fourth respondent as officiating Principal and to recover the salary from the appellant as officiating Principal which was disbursed to him in November and December 2015.

5. It may be noted, at this stage, that on 21 November 2015, the DIOS had passed an order for the disbursement of the salary to the appellant as officiating Principal. The learned Single Judge has not stayed the operation of the order dated 21 September 2015 which forms the subject matter of the writ petition filed by the fourth respondent. As a matter of fact, as we have noted earlier, the order dated 21 September 2015 was the subject matter of a challenge in the first writ petition which had been filed by the Management, which had not been stayed in those proceedings also. However, by the impugned order of the learned Single Judge, an interim order had been passed by which the order of the DIOS dated 21 November 2015 (authorizing the disbursement of the salary to the appellant) has been stayed. The order dated 21 November 2015 was not the subject matter of challenge in the writ petition which has been filed by the fourth respondent.

6. Having due regard to the fact that the appellant is admittedly the senior most lecturer, he has, *prima facie*, made out a case for appointment on the post of officiating Principal. The submission of the fourth respondent is that the appellant had given up his claim in 2012 and as a result it was the fourth respondent who was officiating on the post of Principal.

7. At this stage, it would be material to advert, *prima facie*, to an inference liable to be drawn from an order dated 9 March 2015 passed by a learned Single Judge in a writ petition (Writ-A No. 7723 of 2015) filed by the fourth respondent. A perusal of the order would indicate that the learned Single Judge has observed that, *prima facie*, the fourth respondent was continuing on the post of lecturer in

the institution.

8. We are of the view that ordinarily, this Court remains circumspect in interfering with an ad interim order but for the reasons indicated above, we are of the view that this is a fit and proper case to interfere with the interlocutory order of the learned Single Judge in the special appeal. The appellant is the senior most lecturer who is entitled to work as officiating Principal which is at least prima facie recognised by Section 18 of the Act. The DIOS had attested the signature of the appellant on 21 September 2015. This order was subject matter of the writ petition filed by the Committee of Management where it has not been stayed. In the writ petition which was filed by the fourth respondent again, the order dated 21 September 2015 has not been stayed and instead, the learned Single Judge proceeded to stay a consequential order of the DIOS dated 21 November 2015 for the disbursement of salary to the appellant. The impugned interim order, for these reasons, is unsustainable.

9. We, accordingly, allow the special appeal and set aside the interim order of the learned Single Judge dated 28 January 2016 staying the operation of the order of the DIOS dated 21 November 2015.

10. The special appeal is, accordingly, disposed of. There shall be no order as to costs.