

(2010) 05 AHC CK 0343
In the Allahabad High Court
Case No : Special Appeal No. 310 of 2010

Sundar Pal Singh	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 06-05-2010

Acts Referred:

Citation : (2010) 2 UPLBEC 1040

Hon'ble Judges : Uma Nath Singh, J;S.N.H. Zaidi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This special appeal arises out of an order dated 15.04.2010 passed by the learned Single Judge directing the District Inspector of Schools, Sultanpur, to take appropriate steps for joining of the private respondent (herein) on the post of Principal, Gandhi Intermediate College, Korari, Lachchan Shah, Sultanpur.
2. We have heard learned Counsel for parties and perused the records.
3. Learned Counsel for appellant submitted that this case impugns a challenge to the appointment of respondent No. 7. Learned Counsel further submitted that the interim impugned order is in the nature of a final order whereby the proceeding in the pending writ petition before the learned Single Judge has stood terminated. Learned Counsel further submitted that this Court may thus direct the learned Single Judge to tag all the writ petitions together for final disposal at the earliest, and this order which appears to be a final order may be set-aside in the interest of justice.
4. On the other hand, learned Counsel for respondents submitted that the appellant was rejected in a regular selection process for appointment to the post of Principal and, thereafter, he has been continuing as the officiating Principal as the result of collusion with management. Learned Counsel also referred to a judgment of Hon'ble the Apex Court reported in Trivedi Himanshu Ghanshyambhai Vs. Ahmedabad Municipal Corporation and Others, in support of

his submission. Learned Counsel, in particular, highlighted paragraph 19 of the judgment, which on reproduction reads as:

Before parting with this judgment, we may deal with a short submission of the learned Counsel appearing on behalf of respondents 2 and 3. It is an admitted position that although, respondents 2 and 3 had passed the written examination conducted under the supervision of the Indian Institute of Management, Ahmedabad, they were unsuccessful in the oral interview. Therefore, according to the learned Counsel for respondents 2 and 3, they did have the locus standi to move the writ application for challenging the appointment of the appellant because they were successful in the written examination. In this connection, a decision of this Court in *Distt. Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi* was strongly relied on. In that decision, this Court had laid down that an appointment in disregard to the rules is a matter not between the appointing authority and the appointee himself, but, all those who had similar qualification and could not apply as they did not possess the qualifications mentioned in the advertisement, are also affected. Neither do we accept this submission of the learned Counsel for the respondents 2 and 3, nor can we rely on the decision of this Court in *M. Tripura Sundari Devi* for the simple reason that in this case, admittedly, respondents 2 and 3 were not selected on the combined performance of the candidates in the written test and the oral interview. Although, the selection process itself was challenged before the High Court, it is to be noted that the learned Single Judge, while allowing the writ application, had turned down the argument of respondents 2 and 3 holding that the entire selection process could not be said to be illegal or tainted with mala fides. So far as the Division Bench is concerned, we do not find any argument advanced by respondents 2 and 3 challenging the selection process before it. That being the position, we are unable to hold that even though, respondents 2 and 3 were unsuccessful in the test and could not figure in the merit list, they would be entitled to challenge the appointment of the appellant.

5. Learned Counsel also submitted that in an identical situation this Court in Special Appeal No. 196 of 2010 passed the following directions:

By considering the totality of the facts and circumstances of the case and by following the ratio laid down in the above mentioned Special Appeal (supra), we find no merit in the special appeal filed by the appellant. There is nothing wrong in the impugned interim order passed by the learned Single Judge. The same is hereby sustained.

The Special Appeal is dismissed at the admission stage itself.

6. Thus, an identical order passed by the learned Single Judge was sustained.

7. On due consideration of rival submissions, we are of the view that in view of the ratio of Supreme Court's judgment in *Trivedi Himanshu Ghanshyambhai's* case (supra), and further for the order passed in the Special Appeal No. 196 of 2010, which was disposed of by this Court, we have no option but to dismiss the

special appeal. Moreover, since the writ petition of petitioner and other identical matters are still pending before the Court of learned Single Judge, we direct the Registry to club all such writ petitions together, and if possible, place before the Court of learned Single Judge for disposal within a period of four weeks from the date of production of a copy of this order. Though we have referred to the judgment in Trivedi Himanshu Ghanshyambhai's case (supra) passed by Supreme Court and the order passed by the Division Bench in Special Appeal No. 196 of 2010 but it is not to be taken as the expression of our opinion on the merit of writ petitions pending before the Court of learned Single Judge.

8. The special appeal is, thus, dismissed.