
(1978) 12 AHC CK 0039

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9828 of 1975

Swarn Kaur

APPELLANT

Vs

Deputy Director of Education and Others

RESPONDENT

Date of Decision : 05-12-1978

Acts Referred:

Constitution (Forty-Second Amendment) Act, 1976 — Section 58(2)

Constitution of India, 1950 — Article 226(3)

Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 2(b)

Citation : (1978) 12 AHC CK 0039

Hon'ble Judges : N.D.Ojha, J and R.R.Rastogi, J

Final Decision : Disposed Of

Judgement

N. D. Ojha, J.

The petitioner is an employee of the U.P. Board of Basic Education constituted under the U. P. Basic Education Act, 1972. By this writ petition she has prayed for the quashing of an order of reversion dated 1881975 passed by the Additional District Basic Education Officer (Women), respondent No. 3. She has also prayed for a writ of mandamus commanding the respondents to pay the salary of the petitioner from 5th of February, 1974 onwards.

It has been asserted on behalf of the State Government that the writ petition deserves to be abated under Section 58 (2) of the Constitution (42nd Amendment) Act, 1976 inasmuch as had the writ petition been filed after the appointed day (1st February, 1977) it would not have been admitted under the provision of Article 226 of the Constitution as substituted by Section 38 of the Constitution (42nd Amendment) Act, 1976, inasmuch as the petitioner had an alternative remedy of making a reference to the State Public Services Tribunal under Section 4 of the Uttar Pradesh Public Services (Tribunals) Act, 1976 (hereinafter referred to as the Act") within the meaning of clause (3) of Article 226 of the Constitution so substituted.

Having heard counsel for the parties we are of opinion that there is substance in

this submission. Section 4 of the Act permits any person who is or has been a public servant to make a reference in the circumstances mentioned in the said section to the State Public Service Tribunal. "Public servant" has been defined in Section 2 (b) of the Act as follows:

(b) Public servant means every person in the service or pay of

(i) the State Government, or

(ii) a local authority not being a Cantonment Board, or

(iii) any other corporation owned or controlled by the State Government including any company as defined in Section 3 of the Companies Act, 1956, in which not less than fifty per cent of the paidup share capital is held by the State Government but excluding any other company.

The U.P. Board of Basic Education is a body corporate as is apparent from subsection (2) of Section 3 of the U. P. Basic Education Act, 1972. Being a body corporate it would be a corporation within the meaning of Section 2 (b) (iii) of the Act. The further question which falls for consideration is whether the U.P. Board of Basic Education can be said to be a "Corporation owned or controlled by the State Government" for this purpose it is necessary to have a conspectus of certain sections of the Uttar Pradesh Basic Education Act, 1972. Subsection 3 of Section 3 indicates that the Board shall consist of the members who are either Government servants or nominees of the State Government. In view of subsection (1) of Section 6 of this Act if the Board makes appointments of its employees it can be made only with the previous approval of the State Government. Subsection (2) of Section 6 contemplates that the recruitment and the conditions of service of persons appointed to such posts shall be regulated by rules made by the State Government in that behalf. The power to spend the funds of the Board has been made subject to any general or special order of the State Government by subsection (2) of Section 7. Section 8 deals with the audit of accounts and all its four subsections make it clear that the State Government has control over the maintenance of accounts. The notice contemplated by subsection (2) of Section 9 is also to be given to the State Government. Section 13 provides that the Board shall carry out such directions as may be issued to it from time to time by the State Government for the efficient administration of this Act. It further provides that if any dispute arises between the Board and the State Government or between the Board and any local body, the decision of the State Government on such dispute shall be final. Section 9 gives the State Government power to make rules for carrying out the purposes of this Act and for the regulation of the recruitment and conditions of service of persons appointed as teachers of basic schools recognised by the Board, It is thus apparent that the U.P. Board of Basic Education is corporation controlled by the State Government. An employee of the U, P. Board of Basic Education will consequently be a "public servant" within the meaning of Section 2 (b) (iii) of the Act. This being so had the petitioner instituted this writ petition after 1st

February, 1977, it would not have been admitted because of Article 226 (3) of the Constitution inasmuch as she had an alternative remedy to make a reference to the State Public Services Tribunal under Section 4 of the Act.

We accordingly hold that the writ petition has abated under Section 58 (2) of the Constitution (42nd Amendment) Act, 1976. There will, however, be no order as to costs.