

(1992) 03 AHC CK 0016

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 17554 of 1990

Tribhuwan Mishra

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 30-03-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 52, 54, 68, 69, 70
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 18, 18(1), 2, 32

Citation : (1992) 2 AWC 1099 : (1992) 1 UPLBEC 716

Hon'ble Judges : M. Katju, J

Bench : Single Bench

Advocate : S.N. Singh, R.N. Singh, Anil Kumar Misra and R.P. Srivastava, for the Appellant; R.G. Pandia and R.R. Singh, for the Respondent

Judgement

M. Katju, J.—This case raises the question which has often come up before this Court as to who is to officiate as Principal of a High School or Intermediate College on the vacancy created by the death, retirement, removal, or resignation of a Principal until regular selection by the Secondary Education Commission under the U.P. Secondary Education Services Commission Act, 1982 (hereinafter referred to as the Act).

2. The Petitioner is admittedly the senior most Lecturer in the institution. The post of Principal fell vacant due to resignation of the former Principal, Devi Prasad Singh. The vacancy was notified to the Commission, and in the meantime Satya Narain Tewari, being senior most Lecturer was appointed officiating Principal. Shri Tewari also retired, and the post of Principal again fell vacant. The Petitioner has alleged that in the normal course he being the senior most lecturer should have been appointed Principal, but the Committee of Management by passed him and after inviting applications appointed Respondent No. 3 as ad hoc Principal. It is admitted that Respondent No. 3 is junior to the Petitioner. It is also

admitted that the Commission has not yet selected a regular Principal The Petitioner claims that he was wrongly not been appointed ad hoc Principal.

3. In this case on 22-11-90 Shri R. R. Singh, Advocate appeared for the Management and he was granted ten days time to file a counter affidavit, but as yet no counter affidavit has been filed by the Management. The only counter affidavit is of Respondent No. 3, in which it has been alleged in para 6 that a selection was held for appointment as ad hoc Principal in which Respondent No. 3 appeared, but not the Petitioner, Respondent No. 3 was selected and he has been functioning as Principal since July, 1990.

4. In para 13 of the counter affidavit it has been alleged that it is wrong to claim that only the senior most lecturer can be appointed as ad hoc Principal. This is in fact the real question to be decided in this case.

5. There are a large number of decisions of this Court bearing on this controversy, the latest being the decision of A.N. Verma, J. dated 24-2-1992 in Writ Petition No. 4461 of 1991 Mohd. Maim v. District Inspector of Schools, and Ors. The other decisions are : Gauri Shanker Dube v. District Inspector of Schools 1992 (1) UP LB EC 158, Shashi Bhushan Sharma v. Committee of Management 1991 (2) ALR 398, Radhey Shiam Tewari v. Dy. Director 1990 (2) UP LB EC 160, Charu Chandra Tewari v. D.I.O.S. 1990 (1) UP LB EC 980, Bandana Banerji v. Administrator 1990 (1) UP LB EC 116, Maya Saxena v. Committee of Management 1989 (1) UP LB EC 666. Ramwati v. State 1987 UP LB EC 290, Yogendra Prasad Chaturvedi v. Addl. Civil Judge 1986 EC 44. There is also an unreported judgment of a Division Bench, Run Murti Singh v. District Inspector of Schools in Writ Petition No. 169 of 1987 decided on 7-12-87. I shall advert to some of these decisions at relevant places.

6. Yogendra Prasad Chaturvedi's case (supra) has relied mainly on Section 18(b) of the Act which provides that after the management has notified the vacancy of a teacher, which word includes Principal vide Section 2 (k), and the Commission has failed to recommend a suitable candidate, then the management may appoint by recruitment or promotion a teacher on ad hoc basis from amongst qualified persons. This judgment has been followed by the Division Bench ruling in Ram Murti's case (supra), where the contention that the senior most teacher should necessarily be appointed has been repelled

7. The other line of decision (the preponderant view) has been that the senior most teacher should be appointed ad hoc Principal. These decisions have been referred to by A.N. Verma, J. in Mohd. Nain's case (supra), and many of them are Division Bench decisions. Thus, in Charu Chandra Tiwari's case (supra) the Division Bench held that on a superficial reading of Section 18(1)(b) an impression may be created that it is open to the management to fill an ad hoc vacancy of Principal either by direct recruitment or promotion, but this view will lead to arbitrariness and could be against the interests of the teachers. In Bandana Banerji v. Administrator 1990 (1) UP LB EC 116, the Division Bench

pointed out that under Chapter II of the Regulations framed under the U.P. Intermediate Education Act an ad hoc Principal could be appointed only on the basis of seniority, and the same scheme has been continued in the Removal of Difficulties Order. u/s 32 of the Act, the provisions of the U.P. Intermediate Education Act, and Regulations made thereunder, unless inconsistent to the Act, shall continue, The court also held that any other construction would lead to arbitrariness and provide the management the power to pick and choose, and breed sycophony.

8. At first glance it may appear that the decision in Ram Murti Singh's case (supra) and Bandana Banerji's case are contradictory, and hence the matter should go to a Full Bench However, I am of the opinion that references to Larger Benches should not be made lightly, and an attempt should be made to reconcile and harmonise the apparently conflicting decisions. In my opinion, it is possible to harmonise all the decisions of this Court, and hence I am not referring the matter to a Larger Bench but am proceeding to decide the controversy myself.

9. A perusal of Section 18(1)(b) shows that if a literal interpretation is given to this provision it will become arbitrary and hence violation of Article 14 of the Constitution as it does not lay down when there should be promotion and when a direct recruitment. Such a literal interpretation will lead to a likelihood of pick and choose, and consequent sycophony, as held in Bandana Banerji's case. Hence to make the statute constitutional we will have to abandon the literal interpretation. Thus, Bandana Banerji's case is correct, but to reconcile it with Ram Murti Singh's case, we have to interpret Bandana Banerji's case as laying down that ordinarily the senior most teacher (who is qualified) should be appointed the ad hoc Principal. Ram Murti Singh's case should also be interpreted as meaning that it is not the rule that invariably the senior most teacher must be appointed ad hoc Principal. By taking this view the apparent conflict in both these Division Bench decisions is reconciled.

10. Now the question immediately arises as to when can the senior most teacher who is qualified to be appointed Principal be superseded in the matter of appointment of ad hoc appointment as Principal. The statute is silent in this respect, and hence this gap has to be filled in by Judge made law. As held by the Supreme Court in Rattan Chand Hira Chand Vs. Askar Nawaz Jung (Dead) by Lrs and Others, "The legislature often fails to keep pace with the changing needs and values, nor is it realistic to expect that it will have provided for all contingencies and eventualities. It is, therefore, not only necessary but obligatory on the courts to step in to fill the lacuna. When courts perform this function undoubtedly they legislates judicially. But that is a kind of legislation which stand's implicitly delegated to them to further the object of the legislation, and to promote the goals of society, or to put it negatively to present the frustration of the legislation, or perversion of the goals and values of the society" (followed by me in Usha Singh v. District Magistrate Writ Petition No. nil of 1992, decided on 26-2-1992.

11. It may be mentioned that by interpreting Bandana Banerji's decision (and other decisions to the same effect) to mean that ordinarily the senior most qualified teacher should be appointed ad hoc Principal though not invariably we shall not only bring it in harmony with Ram Murti Singh's case, but we shall also be taking a common sensical and rational view. There may be exceptional occasions when a senior most teacher should not be appointed teacher e. g. if there are grave charges against him. The senior most teacher may be involved in a case of murder, dacoity, or embezzlement. Surely it will not be conducive to the interests of the institution to appoint such a person as Principal.

12. It may be mentioned that the U.P. Intermediate Education Regulations contain detailed and meticulous provisions relating to a teacher's service record. For example, Regulation 52 provides that annual increments to a teacher may be denied if a punishment is imposed on him, or he is detained at an efficiency bar. Regulation 54 provides that no teacher shall be allowed to cross the efficiency bar unless he has proved himself to be a competent teacher, exercises a healthy influence on students, co-operates in the maintenance of discipline and remains loyal to the institution, and his integrity is certified. Regulations 68 to 76 provide for a character roll and service book, and yearly entries in the character roll. If integrity certificate is proposed to be withheld the teacher must be given opportunity of hearing. Similarly there is a right of representation against an adverse entry under Regulation 73.

13. I have indicated some of the provisions in the Regulations to show that it is not easy for an ill intentioned management to manipulate the service record of a teacher, since everything has been meticulously provided for. Hence the ipse dixit of the Management that the senior most teacher's service has not been good and hence he should be superseded cannot prevail over the service record maintained in accordance with the Regulations.

14. However, in order to minimise the possibility of arbitrariness I am of the opinion that if the management wishes to supersede the senior most teacher (who is qualified to be appointed Principal) it can only do so if (1) there are grave charges against him which are so serious that it will be wholly detrimental to the interests of the institution to appoint him ad hoc Principal or (2) he suffers from such a serious physical disability that he cannot properly perform the function of Principal. In either case the senior most teacher must be given a show cause notice by the management stating the charges against him (or the physical disability), and stating that it is proposed to supersede him. The hearing to be given by the management need not be a personal hearing, but copies of any material sought to be relied upon (whether contained in the service book or else where) must be supplied in advance so as to enable the teacher to give his reply/explanation. After considering the teacher's reply the Management can supersede him, but only by a reasoned order, and such reasons can be scrutinised by the High Court under Article 226 of the Constitution. If the second senior most teacher is also sought to be superseded, then the same procedure

must be followed in respect of him also, and so on.

15. If the vacancy occurs due to retirement, or a resignation to take effect after two months, then this entire process should begin by giving a show-cause notice at least two months prior to the occurrence of the vacancy and it should be completed within two months. In other circumstances, the show-cause notice must be given as soon as the vacancy occurs, or its further occurrence becomes known, and the process must be completed within two months, for which period the second senior most teacher can be allowed to officiate.

16. In the present case admittedly the Petitioner is the senior most teacher. Hence, ordinarily he should have been appointed ad hoc principal. I, therefore, direct that if there are any grave charges against him, or he is physically incapable of performing the function of principal, a show-cause notice must be given by the Management to him within one month from production of certified copy of this order and after receiving his reply it must be disposed off by a reasoned order within one month thereafter. If no such show-cause notice is given within one month the Petitioner must be appointed ad hoc Principal.

17. With these observations the writ petition is disposed off finally.

18. Before parting with this case I may mention about the technique which has been utilized in this case for reconciling the apparently conflicting Division Bench judgement. I cannot claim credit for this technique, for it is one of the principles which were regularly utilised by our ancient jurists. In this connection I may mention that I have utilised one of the principles of Purva Mimamsa which were utilised by our great commentators, like Vijnaneshwara (author of Mitakshara) Jimut Vahana (author of Daya Bhag), Nand Pandit (author of Dattaka Mimamsa), etc. whenever there was any conflict in two Smritis (e.g. Manusmriti and Yajna Valkya Smriti) or ambiguity in any Smriti, the principles of Purva Mimamsa were utilised in this connection. The principles of Mimamsa (as laid down by Jaimini in his Sutras, and as explained by Sabar and as commentated upon by Kunarila Bhatt, Prabhakara etc. were the principles of interpretation of our legal texts. Some of these principles were extremely rational and practical. They can be utilised not only for interpretation of statutes, but also for interpretation and harmonization of judgments. The Hon'ble Supreme Court in U.P. Bhodan Yagna Samiti, U.P. Vs. Braj Kishore and Others, , has utilised one of these principles, but it is regrettable that they have hardly been utilised elsewhere. I propose to utilise these principles of Mimamsa in my judgments though only when they are appropriate to the context and clarificatory of the legal position. Of course, we should utilise principles of western jurists also, but there is no reason why we cannot utilise our own intellectual treasury on appropriate occasions.

19. Many of these principles have been mentioned in K. L. Sircar's book "The Mimamsa Rules of Interpretation as applied to Hindu Law". In the second lecture of these Tagore's Law Lectures delivered by K. L. Sircar two axioms of interpretation, the Samanjasya axiom and the Vikalpa axiom have been

mentioned. In brief, the Samanjasya axiom states that contradictions should not be presumed where it is possible to reconcile them, whereas the Vikalpa axiom states that where there is a real and irreconcilable contradiction one of the contradictory principles may be adopted. However, it has been clarified that the Vikalpa Axiom is to be resorted to only as a last resort, In my opinion, in the present case the Samanjasya, axiom will solve the difficulty. This axiom as laid down by Jaimini in chapter II Sutra 9 states "The inconsistencies Asserted are not actually found. The conflicts consist in difference of application. The real intention is not affected by application. Therefore, there is consistency". The Samanjasya Axiom is illustrated in Daya Bhag. Jimutvahana found that there were two apparently conflicting texts of Manu and Yajnavalkya. The first stated "a son born after a division shall alone take the paternal wealth". The second text stated "Sons, with whom the father has made a partition, should give a share to the son born after the distribution". Jimutvahana, utilising the samanjasya principle of Mimansa, reconciled these two texts by holding that the former applies to the case of property which is the self acquired property of the father, and the latter applies to the property descended from the grand father.

20. One of the illustrations of the Samanjasya principle is the axiom of lost horses and burnt chariot (Nashtasvadagdha Ratha Nyaya). This is based on the story of two men travelling in their respective chariots and one of them losing his horses and the other having his chariot burnt through the out break of fire in the village in which they were putting on for the night, The horses that were left were harnessed to the remaining chariot and the two men pursued their journey together. Its teaching is union for mutual advantage which has been quoted in the 16th Vartika to panini, and is explained by Patanjali. It is referred to in Kumarila Bhatta's Tantra Vartika.

21. As can be seen from the above discussions, the apparent conflict in the two Division Bench decisions stand easily and logically reconciled by using the above mentioned principle of Mimansa.