
(2016) 07 AHC CK 0164
In the Allahabad High Court
Case No : Service Single No. 6926 of 2016

Vivekanand Inter College

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 04-07-2016

Acts Referred:

Uttar Pradesh Secondary Education Services Selection Board Act, 1982 — Section 21

Citation : (2016) 5 AILLJ 415 : (2016) LIC 4402

Hon'ble Judges : Rajan Roy, J.

Bench : Single Bench

Advocate : Surendra Pratap Singh and Rajendra Pratap Singh, Advocates, for the Petitioner; C.S.C, D.R. Misra and R.K.S. Suryavanshi, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Rajan Roy, J.—By means of this writ petition the Committee of Management of Vivekanand Inter College, Atwaback, District Unnao has challenged an order passed by the Joint Director, Education, Vith Region, Lucknow, allegedly on an appeal filed by the opposite party no.4 in compliance to a direction of this court dated 8.10.2015 in Writ Petition No.5915(SS) of 2015 filed by the opposite party no.4 whereby he has disapproved the decision of the Committee of Management as affirmed by the District Inspector of School (D.I.O.S.) reverting the opposite party no.4 from the post of ad hoc Principal of the institution and handing over the charge to a junior person.

2. To encapsulate the facts of the case, a vacancy occurred on the post of Principal in the petitioner-institution on 14th June 2014. In respect of the said vacancy the petitioner had sent a requisition for filling up the same under the U.P. Secondary Services Selection Board Act 1982 (hereinafter referred as "Act of 1982") as was categorically stated by learned counsel for the petitioner during the course of arguments. The petitioner handed over the charge of the post of Principal to the opposite party no.4 on 1.7.2014 in pursuance to his appointment

as ad hoc Principal under Section 18 of the Act of 1982, a fact which is not in dispute.

3. It is said that on 6.6.2015 a complaint was received against the opposite party no.4. He was placed under suspension on 12.6.2015. A charge sheet was issued to him on 25.6.2015. On 1.7.2015 the D.I.O.S. disapproved suspension of the opposite party no.4. The petitioner herein filed writ petition no.4121(MS) of 2015 assailing disapproval of suspension by the D.I.O.S. In the said writ petition an order was passed on 20.7.2015 allowing the opposite party no.4 to perform his work and duties during pendency of inquiry against him, which could be taken to its logical conclusion expeditiously. The opposite party no.4 continued to work as ad hoc Principal.

4. It is not out of place to mention here that an ad hoc Principal appointed under Section 18 of the Act of 1982 is entitled to salary of the said post and the legal position in this regard has already been settled by a Full Bench of this court in Civil Misc Writ Petition No 23627 of 2014, Jai Prakash Narayan Singh v. State of U.P. & ors., and is also evident from sub-Section (2) of Section 18. Thus, such promotion entails not only rise in the rank and status of the employee, but higher emoluments also.

5. Enquiry against the opposite party no.4 was concluded and an inquiry report was submitted on 1.9.2015 which was served upon the opposite party no.4 along with a show cause notice. After receipt of reply, the petitioner considered the matter for final decision and passed a resolution on 13.9.2015 for reversion of the opposite party no.4 from the post of ad hoc Principal to his substantive post of Lecturer. The said resolution of the Committee of Management was approved by the D.I.O.S. on 29.9.2015. Against this approval as also the resolution, the opposite party no.4 filed an appeal under Section 16(G)(3)(c) of the Intermediate Education Act 1921 before the Joint Director. During pendency of the appeal opposite party no.4 filed a writ petition bearing W.P.No.5915(SS) of 2015 wherein a preliminary objection was raised by the petitioner herein to the effect that the same was not maintainable as his appeal was already pending. Accordingly the writ petition was disposed of with a direction to the appellate authority to decide the appeal. Consequent to the said directions the Joint Director has passed the impugned order (Annexure-1 to the writ petition) canceling the approval of the D.I.O.S. as also resolution of the petitioner, as already stated herein above.

6. It is against the aforesaid background that the present writ petition have been filed.

7. While arguments and counter arguments were being made by the rival parties before this court, a legal issue cropped up as to whether the resolution of the Management reverting opposite party no.4 from ad hoc Principal to Lecturer involving reduction in rank as also diminution of emoluments was required to be approved by the D.I.O.S. under Section 16(G)(3) (a) of the Intermediate

Education Act 1921 or by the Board under Section 21 of the Act of 1982 ?

8. No purpose would be served by considering the factual issues involved assuming the same could be decided in these proceedings, if, ultimately it is found that the D.I.O.S. did not have the jurisdiction to approve or disapprove the resolution, the proceedings based thereon as also the subsequent proceedings which would then be rendered nugatory.

9. It is not in dispute that the resolution resulting in reversion of the opposite party no.4 was passed by the petitioner-Committee of Management after initiating disciplinary proceedings against him and based thereon.

10. As per Section 16(G)(3)(a) no Principal, Headmaster or Teacher may be discharged or removed or dismissed from service or reduced in rank or subjected to any diminution in emoluments or served with notice of termination of service except with the prior approval in writing of the Inspector. Clause-(b) provides that the Inspector may approve or disapprove or reduce or enhance the punishment or approve or disapprove of the notice of termination of service proposed by the Management. Under Clause-(a) any party may prefer an appeal to the Regional Deputy Director (Education) against an order of the Inspector under Clause-(b) and the Regional Deputy Director may after such further inquiry, if any, as he considers necessary, affirm, set aside or modify the order and the order passed by the Regional Deputy Director shall be final.

11. However, in the year 1982 U.P. Secondary Education Services Selection Board Act 1982 was promulgated and Section 21 thereof as inserted by an amendment vide U.P. Act No.25 of 1998 w.e.f. 20.4.1998 reads as under:-

"21. Restriction on dismissal etc. of teachers. - The Management shall not, except with the prior approval of the Board, dismiss any teacher or remove him from service, or serve on him any notice of removal from service, or reduce him in rank or reduce his emoluments or withhold his increment for any period (whether temporarily or permanently) and any such thing done without such prior approval shall be void."

12. Thus, as per the aforesaid provision the Management cannot dismiss any teacher or remove him from service or serve on him any notice of removal from service or reduce him in rank or reduce his emoluments or withhold increment for any period whether temporary or permanently except with the prior approval of the Board and any such thing done without such prior approval shall be void.

13. This court in the case of Committee of Management, D.A.V. Intermediate College & anr. v. U.P. Secondary Education Services Commission, Allahabad, reported in 1998(2) U.P.L.B.E.C. 1532 has already held that the Commission while exercising its duty/power under Section 21 whether or not to grant approval has necessarily to go into merits of the case and apply its mind independently to the question whether the evidence on record justify the removal or termination. The scope of the prior approval of the Board have been

considered in various decisions of this court which need no reiteration.

14. Now a conflict is evident in the provision contained under Section 16(G)(3) of the Act of 1921 under which the prior approval required is of the Inspector and Section 21 of the Board Act 1982 which speaks of prior approval by the Board. Therefore, Section 32 of the Board Act 1982 comes into play, as, it provides that the provisions of Intermediate Education Act 1921 and the regulation made thereunder insofar as they are not inconsistent with the provisions 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, meaning thereby in the event of conflict in respect to the provisions relating to the aforesaid subject matters, Act of 1921 will give way to the Board Act 1982. To this effect are the judgments of this court rendered in writ petition No.9625(SS) of 2015 (decided on 10.4.2015), Civil Misc. Writ Petition No.35638 of 2012 (decided on 17.8.2012).

15. As per Section 18 of the Board Act 1982 whereby the Management has notified a vacancy to the Board in accordance with Section 1 of Section 10 and the post of Principal or Headmaster actually remained vacant for more than two months, the Management shall fill such vacancy on purely ad hoc basis by promoting the senior most teacher in the lecturer's grade in respect of a vacancy on the post of the Principal. No prior approval by the D.I.O.S. is required for making such promotion, though it goes without saying that when the papers are sent for payment of salary consequent to such ad hoc promotion, the D.I.O.S. can look into the validity of the same in terms of Section 18. The Senior most teacher promoted on ad hoc basis under Section 18 as Principal is entitled to higher salary of the said post. This is evident from sub-Section (2) of Section 18. As already stated earlier, the Full Bench decision in Jai Prakash Narain's case also entitles such ad hoc promotees to the salary of the higher post.

16. Thus, consequent to such ad hoc promotion incumbent receives higher emoluments, therefore, if he is reverted, then it is not a case of 'reversion simpliciter', but one which affects his status/rank as also salary, therefore, such reversion in view of the settled legal position as per the decision rendered in the case of Purshottam Lal Dhingra v. Union of India, AIR 1958 SC 36, will be an action having penal consequences and it would amount to reduction in rank as it involves reduction in salary/emoluments, specially as such ad hoc promotion is made as per the provisions of the Board Act 1982, consequently prior approval would be required.

17. The only question is whether it is required from the D.I.O.S. under Section 16(G)(3) or from the Board under Section 21 of the Board Act 1982 ?

18. In the instant case, the resolution of the Management was approved by the D.I.O.S. against which an appeal was preferred before the Joint Director under Section 16(G)(3)(c).

19. This court has no doubt that in view of the subsequent provisions inserted in

the Board Act 1982 by way of Section 21 read with Section 32 thereof the provisions contained in Section 16(G)(3) have to give way to the provisions contained in Section 21 of the Board Act 1982, meaning thereby, approval or disapproval of the resolution of the petitioner regarding opposite party no.4 was to be considered by the Board and not by the D.I.O.S., but, this aspect of the matter has not been considered by the appellate authority i.e. the Joint Director while passing the impugned order (Annexure-1), though he has also cancelled the order of the D.I.O.S. and the resolution of the Managing Committee, but for other reasons.

20. The contention of the learned counsel for the petitioner that approval of the D.I.O.S. was necessary as the ad hoc promotion under Section 18 required his approval at least for the purpose of payment of salary, is misconceived, as, such approval even though necessary in practical terms, is not contemplated under Section 18, read with Section 21, therefore, if at all any such scrutiny is made by the D.I.O.S. it is only for the purposes of payment of salary. The resolution of the Management was penal in nature and there can be no doubt in this regard. It results in reduction in emoluments of opposite party no.4 and also reduction in his rank for the same reason. Reference may be made in his regard to the judgment of the Supreme Court in the case of P.L. Dhingra (supra).

21. Learned counsel for the petitioner has relied upon the judgments reported in 1995 Supp. 3 SCC 170, Ram Murti Singh v. District Inspector of Schools Deoria & ors.; 1995 Sup. (3) SCC 171, Krishna Chandra Hambrom & ors. v. State of Bihar & anr.; 2002 Alld. Law Journal 559, Mahant Prasad Singh v. District Inspector of Schools, Fatehpur; 2005 (23) LCD 753, Rajendra Prasad Shukla v. Ram Chandra Singh (DB) (LB); (2001) 3 U.P.L.B.E.C. 2681, Brij Raj Swarup Bhatnagar v. District Inspector of Schools, Ghaziabad; (1999) 3 UPLBEC 1765, Committee of Management of M.I.C. v. District Inspector of Schools Maharajganj; 2000(1) LBESR 676 (All), Committee of Management Maharajgunj v. DIOS Maharajganj & anr.; 2013 (2) ADJ 207, Committee of Management v. District Inspector of Schools; and also a judgment passed by this Court at Allahabad in Writ-A No.39441 of 2012, C/M Moti Lal Nehru Smarak Inter College & anr. v. District Inspector of Schools, Azamgarh & ors., to submit that considering the allegations against the opposite party no.4 he should not be allowed to work as ad hoc Principal till the approval by the Board under Section 21.

22. Under Section 21, the Management cannot reduce a teacher in rank or reduce his emoluments except with the prior approval by the Board and any such thing done without prior approval shall be void, therefore, contention raised by the petitioner as aforesaid cannot be accepted, specially, considering the factual position which arose before the Joint Director, therefore, the said prayer is declined. The judgments relied upon by the petitioner do not help its cause in the facts and circumstances of the present case.

23. For the reasons aforesaid and only for these reasons the order of the D.I.O.S. and the appellate authority are set aside. The Committee of Management is

ordered to send its resolution to the Board in terms of Section 21 of the Board Act 1982 through the D.I.O.S., who shall do the needful and the Board, in turn, shall take a decision in terms of the aforesaid provision within one month from the date a certified copy of this order along with the resolution of the Management is submitted and shall communicate its decision to the concerned including the petitioner, opposite party no.4 and the D.I.O.S. for compliance. The Board shall take such decision independently uninfluenced by any observation/recital contained herein on merits of the controversy. In the meantime the opposite party no.4 shall be reinstated as ad hoc Principal as earlier, subject of course to the decision of the Board as aforesaid, as, the reversion, if any, can be effective only after approval of the Board under Section 21.

24. With the above observations/directions this writ petition is disposed of.