

(1998) 04 AHC CK 0124

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8003 of 1994

Yamuna Narain Misra

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 07-04-1998

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards
(Amendment and Validation) Act, 1991 — Section 2
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 16(1), 16(2)

Citation : (1998) 2 UPLBEC 1517

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : Ashok Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

J.C. Gupta, J.—By means of this writ petition, the petitioner has prayed for quashing the order dated 29.12.1993 passed by respondent No. 3, Annexure-2 to this writ petition, in so far as it directs the respondent No. 4 to function as the Principal of the institution and also for issuing a direction calling upon the respondents to permit the petitioner to function as officiating/cd/ioc Principal of the institution. The institution in question is run under the name of Janta Intermediate College, Mau Aiema, district Allahabad, which is governed by the provisions of the U.P. Act No. 5 of 1982, the U.P. Intermediate Education Act, 1921 and U.P. Act No. 24 of 1971. The petitioner was appointed as a permanent lecturer in Sanskrit in the institution and he took over charge from 22.7.1971 and since then he has been continuously functioning as such. Respondent No. 4 was also appointed on the same day as lecturer in English. One Rama Kant Tripathi was the Principal of the institution. A substantive vacancy occurred due to the retirement of Sri Tripathi on 30.6.1993. The vacancy was notified by the Management of the Institution in accordance with the provisions of U.P. Act No. 5 of 1982 but no regular selection could be made through the agency of the

Secondary Education Services Commission/Regional Selection Board, Sri B.P. Shukla was the senior most lecturer in the institution and was, therefore, permitted to function as adhoc Principal of the institution in the vacancy caused due to the retirement of Sri Rama Kant Tripathi. Subsequently Sri Shukla, tendered his resignation which was considered and accepted on 26.12.1993. Thereafter the Management directed Sri Shukla to hand over charge to the respondent No. 4 as adhoc Principal though according to the petitioner he was senior to Sri Prem Narain Singh respondent No. 4. This direction of the Management is challenged as being arbitrary, discriminatory and violative of Article 14 of the Constitution and also being against the provisions of U.P. Intermediate Education Act, 1921 and the U.P. Act No. 5 of 1982. It is stated that after his appointment as Lecturer in English, the respondent No. 4 by the order dated 1.7.1982 passed by the District Inspector of Schools, Jaunpur was transferred from the institution in question to Public Inter College, Shahganj, district Jaunpur, hereinafter referred to as the "transferee institution". In pursuance of the aforesaid order, respondent No. 4 was relieved from the institution on 7.7.1982. The respondent No. 4 joined the "transferee institution" on 8.7.1982 and started functioning there as lecturer. It may be stated that the aforesaid transfer of the respondent No. 4 was made with the consent of the Committee of Management of the Institution in question and of the transferee institution and the same was also approved by the D.I.O.S. With regard to some similar transfers effected from and Educational Institution to another Educational institution in the State of Uttar Pradesh several writ petition were filed in this Court challenging the validity of such transfer orders. A Full Bench of the Court held such transfers, which were effected subsequent to 14.7.1981 i.e. the date of the commencement of U.P. Act No. 5 of 1982, to be invalid. The decision of the Full Bench was affirmed even by the Supreme Court. In view of the aforesaid position, an order was passed by the Manager of the transferee institution on 22.12.1988 to relieve Sri Prem Narain Singh, the respondent No. 4 from the said institution. As a result thereof the petitioner was sent back to this original institution where he resumed his duties as lecturer from 30.9.89 and since then he has been continuously working there.

2. It may be stated that the judgment of the Full Bench of this Court as affirmed by the Apex Court created a lot of difficulties as transfers of Principals and Teachers, continued to be made even after 14th of July, 1981 and legal rights accrued to the transferred teachers and Principals in the transferee institution. In order to rectify the same, the State Legislature intervened and enacted U.P. Act No. 8 of 1991 to be called as the Uttar Pradesh Secondary Education Services Commission and Selection Boards (Amendment and Validation) Act, 1991. This Act was made enforceable with retrospective effect from 14.7.81. Sub-section (3) of the amended Section of 16 of U.P. Act No. 5 of 1982 validated all the transfers made in pursuance of the Regulations 59 and 59-A framed under clause (c) of Sub-section (2) of Section 16-G of the U.P. Intermediate Education Act, 1921. .

3. The petitioner's case is that after the aforesaid validation Act, the transfer made of respondent No. 4 to the transferee institution revived and therefore, the respondent No. 4 could only be treated to be a lecturer in the "transferee institution" for all practical purposes and his inclusion in the seniority list of lecturers of the institution in question was illegal and on the basis of that he could not be appointed as adhoc Principal in the institution in question. For this reason the impugned order of the Committee of Management appointing the respondent No. 4 to act as adhoc Principal was invalid and liable to be quashed.

4. The Committee of Management, respondent No. 3 in their counter affidavit have not disputed most of the facts as stated by the petitioner in the writ petition. It is however stated by them in the counter affidavit that both the petitioner and respondent No. 4 joined the institution on the same date i.e. 22.7.1971 but since respondent No. 4 was older in age than the petitioner, he was placed senior to the petitioner in the seniority list. After when the resignation of Sri B.P. Shukla was accepted, respondent No. 4 who was the senior most in the seniority list was directed to act as adhoc Principal of the Institution. According to them the seniority list of the lecturers in the institution in question was circulated in the year 1990 and subsequent years also, in which Sri Prem Narain Singh, respondent No. 4 was shown senior to the petitioner. The seniority list was signed by the lecturers including the petitioner. The petitioner never raised any objection nor made any representation against the said seniority list, which goes to show that the petitioner accepted the said seniority list and he is estopped from challenging the said list by means of this writ petition. The transfer of respondent No. 4 from the institution in question to the transferee institution is admitted. However, it is stated that under the orders of the District Inspector of Schools, the respondent No. 4 was relieved from the transferee institution and he gave joining report in the institution in question on 25.2.1989 i.e. much before the date when a substantive vacancy arose in the post of Principal on account of the retirement of Sri Rama Kant Tripathi on 30.6.1993. The Principal of the Institution in question wrote letters to the Manager of the transferee institution, D.I.O.S., Jaunpur and D.I.O.S., Allahabad for guidance and clarification and the D.I.O.S., Jaunpur on 13.3.89 wrote a letter in reply to the Manger/Principal of the institution in question to the effect that there was no need of any further order and Sri Ram Narain Singh should be permitted to join and continue as lecturer in the institution in question. Respondent No. 4 was ultimately permitted to resume his duties as lecturer in the institution in question from 30.9.89. The respondent No. 4 being the senior most lecturer in the institution in question was, therefore, entitled to act as adhoc Principal of the institution.

5. The respondent No. 4 Sri Prem Narain Singh also filed his counter affidavit and his defence is almost similar to that of the Committee of Management. It has further been added in the counter affidavit that the Validation Act will not be applicable in the case of the respondent No. 4 because after his transfer to the "transferee institution", he was relieved from there and has again been

transferred back to the present institution, therefore, the appointment and the working of respondent No. 4 in the institution in question could not be effected and he continued to be a lecturer in the present institution even after the enforcement, of the Validation Act. The petitioner at no point of time challenged the seniority list and he is now estopped from contending that the inclusion of respondent No. 4 in the seniority list was illegal and the petitioner should be treated as the senior most lecturer in the institution in question.

6. The short questions involved for consideration are whether in the facts and circumstances of this case, the respondent No. 4 should be treated to be a lecturer of "the transferee institution and whether the Validation Act had the effect of nullifying the subsequent transfer order by which the respondent No. 4 was reverted back to the institution in question where he was originally appointed and continued to work till he was transferred to the transferee institution at Jaunpur.

7. In order to appreciate the controversy in question, it may be relevant to have a look to the relevant provisions of the Validation Act which are reproduced as under :

"1. This Act may be called the Uttar Pradesh Secondary Education Service (Commission and Selection Boards) (Amendment and Validation) Act, 1991.

2. In Section 16 of the Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982, in Sub-section (1), after the existing proviso, the following proviso shall be inserted and be deemed always to have been inserted, namely;

"Provided further that the appointment of a teacher by transfer from the institution to another, may be made in accordance with the regulations made under clause (c) of Sub-section (2) of Section 16-G of the Intermediate Education Act, 1921."

3. Notwithstanding any judgment decree or order of any Court or authority, the appointment of a teacher by transfer from one institution to another made in pursuance of the regulation made under clause (c) of Sub-section (2) of Section 16-G of the Intermediate Education Act, 1921, on or after July 14, 1981 and before the commencement of this Act, shall be and deemed always to have been valid and lawful as if the provisions of this Act were in force at all material times."

8. The effect of inserting the aforesaid proviso was that all the transfers made before or after 14th July, 1981 stood validated. The word "Validation" has not been defined under the Act and the dictionary meaning of the word "validate" as per the Oxford dictionary is "to make valid; rectify or confirm". This amending Act was enacted with an object to over come the difficulties and anomalous situation which had arisen on account of the judgments of the Full Bench of this Court and of the Apex Court, as in between 14th July, 1981 and the date of the judgment a number of transfers had been made transferring Principals and

lecturer from one Educational Institutional to another. In some of the cases even appointments had been made in the vacancies on account of the transfer or lecturers and Principals from that institution to another, and when the transfers made after 14.7.91 were held to be invalid by the judgment of this Court a lot of problem and difficulty arose as to what should now be done in such cases where vacancies had already been filled. With this object in order to overcome these difficulties and the anomalous situation, the State Government intervened and enacted the Amending Validation Act. The Validation Act was given retrospective effect and was made applicable to all those orders of transfer which had been made even prior to the date of coming into force of the Validation Act. In this view of the matter the transfer of the petitioner made from the institution in question to the transferee institution at Jaunpur in July, 1982 could be said to have been saved and validated by the provisions of the Validation Act. However, in the present case? before the Validation Act came into force, the petitioner had already been retransferred from Jaunpur to Allahabad in the institution in question and had resumed his duties w.e.f. 30.9.89 if not on 25.2.89 when the respondent No. 4 had submitted his letter of joining. It is an undisputed fact that the respondent Nos. 4 under the orders of the D.I.O.S. was directed to hand over charge of his office held by him in the transferee institution at Jaunpur and he resumed his duties and started functioning as lecturer in English in the institution in question much before the date of publication of the Validation Act in Official Gazette on 19.3.91. On that date the petitioner was already working and functioning as lecturer in the institution in question. The Validation Act thus would also have the effect of saving and validating the subsequent order under which the respondent No. 4 was sent back to the institution in question from Jaunpur institution. The averment made in; the counter affidavit that a seniority list in the year 1990 had been prepared and circulated amongst the lecturers including the petitioner in the year 1990 and no objection was raised by the petitioner nor any representation was filed by him, has not been controverted by the petitioner and the same was also not disputed by the learned Counsel for the petitioner during the course of his arguments. The seniority list was circulated from year to year and on the date when Sri Rama Kant Tripathi retired on 30.6.93, the impugned seniority list was in force wherein the petitioner's name stood below the name of respondent No. 4, vide Annexure Nos. CA-2 and CA-3 of the counter affidavit. It is also not disputed that respondent No. 4 is older in age than the petitioner. The Validation Act in any opinion thus could not be applied to the facts of the present case and the respondent No. 4 could not be forced to join again at Jaunpur from where he had been relieved in December, 1988 and then has joined the institution in question thereafter and is continuing as the senior most lecturer in the institution in question since then.

9. Learned Counsel for the petitioner has relied upon two decisions in support of his arguments that on account of the Validation Act, the petitioner's transfer made to Jaunpur has been validated and it should be deemed to be still in force.

10. The first case relied upon by the learned Counsel for the petitioner is Smt.

Otima Gautam v. Regional Inspectors of Girls Schools and Anr., reported in 1994 4 HVD 110. The facts of this case were entirely different. In this case the petitioner Smt. Otima Gautam was appointed as an Assistant Teacher in an Inter College, Anupshahr, district Bulandshahr. She was transferred from this College to another institution of Meerut City under Regulation 59 of Chapter III of the Regulations framed under U.P. Intermediate Education" Act, 1921. In pursuance of the order of transfer she joined at the transferee College. Respondent No. 2 was already working as Assistant Teacher in the L.T. Grade in the transferee institution since 17th September, 1972. The seniority list published in the transferee institution placed the petitioner as senior to respondent No. 2 as she had been appointed in the institution at Bulandshahr on 12th July, 1971 much before the date of appointment of respondent No. 2. The service rendered by Smt. Otima Gautam in the institution at Bulandshahr was counted as period of continuous service for the purposes of determining seniority. Respondent No. 2 filed an appeal before the D.I.O.S. who allowed appeal and declared respondent No. 2 senior to the petitioner Smt. Otima Gautam. The said order was challenged before this Court. A Single Judge of this Court allowed the said writ petition and the Hon'ble Judge was of the opinion that after the enforcement of the Validation Act, the order transferring the petitioner from Anupshahr to Meerut was saved and was not effected by the decision of this Court and of the Apex Court and since the petitioner admittedly had put in more length of the service she was entitled to be placed higher than the respondent No. 2 in the Graduation List. It is noteworthy that in paragraph-4 the learned Judge took into consideration the fact that even after the judicial pronouncement, Smt. Otima Gautam was not sent back to the College from where she was transferred and she continued to work as teacher in the transferee institution even on the date when the Validation Act came into force. The position is however different in the present case in as much as here the respondent No. 4 had already been sent back to the institution in question from where he was initially transferred to the transferee institution at Jaunpur and on the date of commencement of the Validation Act he was not working in the transferee institution at Jaunpur but has resumed his duties and was functioning as the senior most lecturer in the institution in question.

11. The other case of Committee of Management v. D.I.O.S., Gorakhpur and Ors., reported in 1994 AWC 1171, has also no application to the facts of the present case. In that case the respondent was appointed as Principal in the College of the petitioner but later on he was placed under suspension pending disciplinary proceedings against him. He was thereafter transferred and he joined as Principal of another institution in the district of Ballia and he continued to serve there. The consequence of the transfer was that the suspension order stood revoked. After the pronouncement of judgment of this Court the Director of Education sent a letter to the D.I.O.S., Ballia to cancel the transfer order and accordingly the transfer order was cancelled on 9.7.1984. However, on account of an interim order obtained by the respondent of that case from this Court, he

continued to work "as Principal in the Gandhi Mahavidyalaya, Ballia. The question arose for consideration in that case was as to whether the respondent after having joined as Principal in the College at Ballia could be deemed to continue under suspension as was the case of the respondent. The learned Judge who decided that case was of the view that on account of the amending. Validation Act, the transfer of respondent was Validated and therefore, he was entitled to his salary as a Principal of Gandhi Mahavidyalaya, Ballia and not the subsistence allowance from the institution where he was put under suspension. The facts of the present case are entirely different and the dissimilarity of the facts have been pointed out above already.

12. From the discussion made above it would follow that the respondent No. 4 is the senior most lecturer in the institution in question and the Validation Act did not have any effect nor altered the position as far as the petitioner is concerned. It may be again mentioned here that the seniority list of the lecturer was published and circulated in the year 1990 i.e. after when the respondent No. 4 had been sent back to the institution in question from the transferee institution at Jaunpur and in that list the respondent No. 4 was shown the senior most lecturer and at no point of time this seniority list is alleged to have been challenged by the petitioner. He is, therefore, estopped for challenging the same and it could be said that he has waived his right to challenge the same. Since respondent No. 4 was the senior most lecturer in the institution in question, he was entitled to act as adhoc Principal under law and the view taken by the respondents cannot be said to be against law or incorrect.

13. For the above reasons, this writ petition is liable to be dismissed and is accordingly dismissed.