
Dhanesh Kumar Sharma Vs State of U.P. and Others

Civil Miscellaneous Writ Petition No. 13974 of 2004

Court: Allahabad High Court

Date of Decision: April 6, 2004

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 "â€" Section 16, 18

Citation: (2004) 5 AWC 4099 : (2004) 3 UPLBEC 2297

Hon'ble Judges: Sunil Ambwani, J

Bench: Single Bench

Advocate: P.K. Bhardwaj, for the Appellant;

Final Decision: Dismissed

Judgement

Sunil Ambwani, J.

Heard Counsel for petitioner and learned Standing Counsel for respondents.

2. The Respondent No. 5 is senior most teacher in lecturer's grade in the institution. On the retirement of permanent Principal, he took over charge

as officiating Principal in July, 2002. In April, 2003, he gave in writing that on account of illness, he shall not be able to continue as officiating

Principal and thus the second senior most person namely Sri Subhash Chandra Gupta was appointed as officiating Principal. Sri Subhash Chandra

Gupta resigned on 25.11.2003 on the ground of some domestic circumstances after which the third senior most person Sri Adarsh Kumar was

offered to officiate as Principal. Sri Adarsh Kumar declined to accept the office of officiating Principal as he was going to retire on 30.6.2004. In

these circumstances, the authorised Controller handed over charge of the officiating Principal to the 4th senior most teacher on 25.11.2003. It is at

this stage the Respondent No. 5 again appeared before the District Inspector of Schools and requested to officiate as Principal on the ground that

he has recovered from illness. By impugned order, the District Inspector of Schools has disapproved the proposal of the authorised Controller to

allow the petitioner, who is the 4th senior most teacher to officiate as Principal and has accepted the representation of the Respondent No. 5 to

resume charge of officiating Principal.

3. Counsel for petitioner submits that once the officiating Principal has resigned, he cannot be thereafter permitted to assume charge as officiating

Principal. The petitioner has relied upon judgment of this Court in Satya Beer Singh v. District Inspector of Schools, Buland Shaher, reported in

1995 AWC 122 this judgment upheld the contention that once senior most teacher declines the offer as officiating Principal, she cannot claim right

subsequently to be appointed as officiating Principal in the institution. This judgment is based upon a decision in the Special Appeal No. 141/1993

between Smt. Sudesh Kakkar v. Regional Inspectress of Girls School, 1st Region, Meerut and Ors.. I have gone through the Paragraphs No. 11,

12 and 13 of the judgment. Neither the judgment of special appeal nor learned Single Judge has given any reason to hold that once he senior most

teacher declines to hold or to continue with the office, she cannot be subsequently appointed as officiating Principal.

4. The facts and circumstances of this case are different. The petitioner took over and had functioned as officiating Principal from July, 2002 to

April, 2003 and thereafter expressed his inability to continue due to illness. After he recovered from illness and the office again fell vacant he

requested to be appointed as officiating Principal.

5. The letter dated 25.4.2003 sent by Respondent No. 5 was conditional. This letter cannot be treated to be a resignation, and inability to function

as officiating Principal forever. It was written on the ground that he was not keeping good health. The petitioner had given adequate and bonafide

reasons, to decline to function as officiating Principal. Once the stated disability was removed, he requested to be considered to officiate as

Principal. The judgment in Satya Veer Singh"s case (supra) does not give any reason or state any principle of law to arrive at a conclusion that

once senior most teacher declines, he cannot be subsequently appointed as officiating Principal.

6. Regulation 2 of Chapter-II of the Regulations made under the U.P. Intermediate Education Act, 1921 provides that the post of head of the

institution, shall except as provided in Sub-clause (2) (where the institution is raised from High School to Intermediate Colleges) be filled by direct

recruitment after reference to the Selection Committee constituted under Sub-section (1) of Section 16F or as the case may be under Sub-section

(1) of Section 16FF. Sub-Regulation (3) provides that temporary vacancy on the post of head of institution for period not exceeding 30 days

should be filled by the senior most teacher in the highest grade, but he shall not be entitled to pay in the scale higher than the scale of pay in which

he is drawing salary as a teacher. The U.P. Secondary Education Services Selection Board Act, 1982 provides in Section 16 that notwithstanding

anything to the contrary contained in the Intermediate Education Act, 1921 or the Regulations made thereunder but subject to the provisions of 12,

18, 21-B, 21-C, 21-D, 33, 33-A to 33-F, every appointment of teacher shall on or after the date of commencement of the U.P. Secondary

Education Services Selection Board (Amendment) Act, 2001 be made by the Management only on the recommendation of the Board. The

teacher here includes the Principal. Section 18, however, provides for ad-hoc appointment on the post of teachers as well as Principal or Head

Master until a candidate recommended by the Board joins on the post. This Court has held in *Kumari Bandana Banerjee v. Administrator, Arya*

Kanya Pathshala (1990) 1 UPLBEC 116 that the appointment of a junior teacher as Principal against a senior teacher is against the Act under

Regulations and that the provisions of Chapter-II of Regulations framed under the U.P. Intermediate Education Act, for promotion includes the

provisions for filling of the post of Head of Institution due to retirement temporary by promoting the senior most qualified teachers. In *Ram Murti*

Singh v. DIOS (Writ Petition No. 169/1987 decided on 7.12.1987) and *Yogendra Prasad Chaturvedi v. Additional Commissioner*, 1986

Educational Cases 44, as well as, *Tribhuvan Mishra Vs. District Inspector of Schools and Others*, it was held that senior most teacher should not

necessarily be appointed as ad-hoc Principal. Where, however, the Management wishes to supersede the senior most teacher, he must be given a

show cause notice by the Management stating the charges against him and the proposal to supersede him. This, however, can be done in cases

where the senior most teacher may be involved in the acts of misconduct drawing and is not otherwise suitable to act as ad-hoc Principal.

7. Where a senior most teacher was found suitable was allowed to work as officiating Principal, his right cannot be defeated on the ground that he

was allowed and was unable to carry on functions as officiating Principal for some period of time. In the present case, Respondent No. 5 gave in

writing that he is unable to officiate as Principal on account of illness. The second senior most teacher took over the charge but resigned on the

ground of domestic circumstances and third senior most teacher declined to accept the office as he was going to shortly retire. By this time

Respondent No. 5 recovered from illness and requested to be appointed as officiating Principal. His right cannot be defeated only on the ground

that he was ill at the time when he expressed his inability to continue on account of ill-health. Once he has recovered and has requested to accept

the responsibility, his right cannot be defeated on the ground that he had in the past, expressed his inability to continue on the ground of illness.

There is no averment in the writ petition and any material on record to show that he was unsuitable or was disqualified for any act of misconduct or

otherwise, after he declined to continue on the ground of illness. The petitioner has not pressed any principle of law which may disqualify

Respondent No. 5 to assume charge as officiating Principal.

8. For the aforesaid reasons, I do not find any error in the order of District Inspector of Schools, Buland Saher. The writ petition is dismissed.