

## Ashok Kumar Jain Vs State of U.P. and Others

**Court:** Allahabad High Court

**Date of Decision:** Jan. 4, 2008

**Citation:** (2008) 1 AWC 798 : (2008) 2 UPLBEC 1159

**Hon'ble Judges:** Tarun Agarwala, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

Tarun Agarwala, J.

Heard Sri Ashok Khare, the learned senior Counsel assisted by Sri Rama Kant Dubey and Sri Vinod Sinha, the

learned Counsel for respondent No. 5 and the standing counsel for respondent Nos. 1, 2 and 3. Since no factual controversy is involved in the

present writ petition, the present writ petition is being decided without calling for a counter affidavit.

It transpires, that the Principal of the institution retired and a substantive vacancy came into existence on 20.6.1998. One Ram Babu Jain was

granted an appointment as an officiating Principal but subsequently he was placed under suspension. Consequently, the petitioner, by virtue of

being the senior most lecturer, was appointed as an officiating Principal of the institution in June 1999 and, the petitioner functioned in that capacity

till 28.10.2005, on which date, the petitioner submitted his resignation citing family stress and ill health. This resignation was duly accepted by the

authorized controller and the petitioner was relieved from the post of officiating Principal.

2. Consequent upon the occurrence of the vacancy in the office of the Principal by the resignation of the petitioner, another lecturer of the institution

was given the task of the officiating Principal of the institution, namely, Girish Chandra Jain, who functioned till he retired on 30.6.2007. As a

consequence of the retirement of Girish Chandra Jain, the post of officiating Principal again became vacant. The Manager of the institution by an

order dated 30.6.2007 directed the petitioner to assume charge as the officiating Principal since he was the senior most teacher in the institution. It

is alleged that the petitioner took charge. On 7.7.2007, the District Inspector of Schools passed an order directing the management to issue

directions to Aditya Prakash Gupta, respondent No. 5, to take charge as the officiating Principal of the Institution. The order dated 7.7.2007 as

well as the earlier order of the District Inspector of Schools dated 29.6.2007 was challenged by the petitioner in Writ Petition No. 31588 of 2007.

Both the orders of the District Inspector of Schools were set aside by a judgment dated 17.7.2007 on the ground that no opportunity of hearing

was provided to the petitioner. The Court further directed the Regional Joint Director of Education to hear both the parties including the committee

of management and take a decision with regard to the entitlement of the parties on the post of officiating Principal. Based on the said directions of

the Court, the impugned order was passed on 7.12.2007 by the Regional Joint Director of Education which was communicated by an order dated

10.12.2007 passed by the District Inspector of Schools whereby the claim of the petitioner to function as an officiating Principal of the institution

was rejected. The petitioner, being aggrieved by the aforesaid decision, has filed the present writ petition.

3. The learned Counsel for the petitioner submitted that upon the retirement of Girish Chandra Jain, the post of officiating Principal fell vacant again

on 30.6.2007 and the said post was required to be filled up by a regular appointment. Since no names were recommended by the Board, the said

post was required to be filled up by the senior most lecturer working in the institution. The learned Counsel submitted that admittedly the petitioner

was the senior most lecturer and the petitioner was liable to be given the charge of the officiating Principal, the moment the vacancy arose. In

support of his submission, the learned Counsel placed reliance upon a decision of the learned Single Judge of this Court in Dhanesh Kumar Sharma

v. State of U.P. and Ors. 2004 (3) ESC 1884 wherein the Court held that the right of the senior most teacher to function as the officiating Principal

cannot be defeated on the ground that at an earlier point of time, he had expressed his inability to continue as the officiating Principal on account of

his ill health. The Court held that his right cannot be defeated, on the ground, that in the past he had expressed his inability to continue on the

ground of illness and was entitled to be considered subsequently whenever the vacancy arose.

4. On the other hand, Sri Vinod Sinha, the learned Counsel for the opposite party submitted that the petitioner, upon submitting his resignation, had

forfeited his right for reconsideration on the said post and that he could only be considered in the event a substantive vacancy occurred at any point

of time in the future. The learned Counsel for the petitioner submitted that once a substantive vacancy on the post of Principal had fallen vacant and

had not been filled up by a regular appointment, in that event, it has to be filled up by a senior most lecturer working in the institution, but once the

senior most lecturer refused to officiate as a Principal and the substantive vacancy continued, in that event, he was not entitled to be offered the

post of officiating Principal again on the retirement of the officiating Principal. In support of his submission the learned Counsel placed reliance upon

a decision of the Division Bench dated 15.9.2006 in *Sundershan Kumar v. State of U.P. and Ors.* Special Appeal No. 959 of 2006 wherein the

court held that no substantive vacancy occurred when an officiating Principal retired and consequently, when the senior most lecturer working in

the institution having once refused to officiate as Principal could not be offered an officiating appointment again during the subsistence of the same

vacancy.

5. In the present case, there is no dispute that a substantive vacancy on the post of Principal occurred on 30.6.1998 upon the retirement of Sri

Ramesh Chandra Gupta. No regular appointment was made by the Board and the petitioner, being the senior most lecturer was allowed to

officiate as the Principal till the date when he tendered his resignation, i.e., till 28.10.2005 after which the post of the officiating Principal was given

to the next senior most lecturer who functioned till 30.6.2007. The question is whether after the retirement of Girish Chandra Jain on 30.6.2007,

could the post of officiating Principal be again given to the petitioner by virtue of his being the senior most lecturer in the institution.

6. The substantive vacancy occurred on 30.6.1998 on the retirement of Ramesh Chandra Gupta and no fresh vacancy occurred upon the

retirement of Girish Chandra Jain on 30.6.1997. It was the same vacancy which continued. Consequently, the vacancy which occurred on

30.6.1998 continued and continued to exist till 30.6.2007. The same post continued to remain vacant and no substantive appointment on the said

vacancy was made. The mere fact that an adhoc arrangement of officiating Principal was made earlier on the said post which came to an end

would not mean that a fresh substantive vacancy had again been created. The substantive vacancy remained the same and only an officiating

arrangement had come to an end. This view was also held in the aforesaid Division Bench judgment of *Sundershan Kumar (supra)*, which is

squarely applicable to the present facts and the circumstances of the case. The judgment cited by the learned Counsel for the petitioner stands

impliedly overruled in view of the decision of the Division Bench.

7. Since the petitioner had declined to officiate as the Principal on the said vacancy, he could not be permitted at this stage to claim appointment on

the post of officiating Principal. The petitioner is estopped under law from claiming an officiating appointment on the same substantive vacancy. In

view of the aforesaid, this Court does not find any merit in the writ petition and is dismissed summarily.