

(2004) 03 AHC CK 0122

Allahabad High Court

Case No: Special Appeal No. 444 of 2001

Uma Nath Singh

APPELLANT

Vs

Rama Shankar Mishra
and Others

RESPONDENT

Date of Decision: March 15, 2004

Acts Referred:

- Allahabad High Court Rules, 1952 - Rule 5
- Uttar Pradesh Intermediate Education Regulations, 1921 - Regulation 3

Citation: (2004) 2 UPLBEC 1119

Hon'ble Judges: Tarun Chatterjee, C.J; Dilip Gupta, J

Bench: Division Bench

Advocate: R.G. Pedia, for the Appellant; Shashi Nandan, for the Respondent

Final Decision: Disposed Of

Judgement

Tarun Chatterjee, C.J. and Dilip Gupta, J.

This special appeal has been filed against an order dated 20th March, 2001 passed by a learned Judge of this Court in Civil Misc. Writ Petition No. 23063 of 2000.

2. A preliminary objection was raised by Mr. Shashi Nandan, learned Advocate appearing for the private respondent regarding maintainability of the special appeal challenging the aforesaid order.

3. We have heard Mr. Shashti Nandan, learned Advocate appearing for the private respondent and Dr. R.G. Padia, learned Advocate appearing for the appellant and have also perused the materials available on record including the judgment and order of the learned Judge which is under challenge in this special appeal.

4. According to Mr. Shashi Nandan, learned Advocate appearing for the private respondent, since the Joint Director of Education in exercise of his appellate power had

passed an order which was challenged in the writ petition, therefore, under Chapter VIII, Rule 5 of the Rules of the Court, no special appeal shall lie against such an order. In support of his contention Mr. Shashi Nandan, learned Advocate has relied upon a Division Bench decision of this Court in [Vajara Yojna Seed Farm. Vajara Yojna Seed Farm and Others Vs. Presiding Officer, Labour Court II and Another](#), Mr. Shashi Nandan, learned Advocate drew our attention to Paragraph 56 of the said decision in which it was observed by the Division Bench that appellate power exercised by Joint Director of Education under statutory regulations is also a power exercised under the Act and it cannot be said that the said power is not a power having been exercised under the U.P. Act and held that the bar contemplated under Chapter VIII, Rule 5 of the Rules of the Court is fully applicable and the submission of the learned Counsel for the appellant has no substance Relying on this conclusion of the Division Bench in the aforesaid decision, Mr. Shashi Nandan contended that no special appeal shall lie against such an order impugned in this special appeal, in view of the bar contemplated under Chapter VII, Rule 5 of the Rules of the Court.

5. The submissions of Mr. Shashi Nandan, learned Advocate appearing for the private respondent was contested by Dr. R.G. Padia, learned Advocate for the appellant.

6. After hearing learned Counsel for the parties and after giving our anxious consideration on the submissions made by the learned Counsel for the parties, we are of the view that the instant special appeal is maintainable in law.

7. Before we proceed further, we may reiterate that a writ application, being Civil Misc. Writ Petition No. 51233 of 1999 was moved before this Court wherein an adhoc/officiating appointment on the post of Principal in Jai Hind Inter College, Tezi Bazar, District Jaunpur was challenged. The writ petitioner was claiming himself to be the senior most teacher of the College, in question, for being appointed as an adhoc Principal, whereas the respondent, in that writ application, was claiming himself to be the senior to the writ petitioner for being appointed as an adhoc Principal of the College, in question. That writ application was disposed of by the learned Judge of this Court by an order dated 28th January, 2000 in the following manner :

"In view of the fact that the District Inspector of Schools had sought clarification from the Joint Director of Education regarding the seniority of the petitioner and the respondent No. 4 vide letter dated 11.10.1999 it would be appropriate that the Joint Director of Education, Vth Region, Varanasi should be asked to decide the matter himself. The Joint Director of Education shall fix a date and shall give an opportunity of hearing to the petitioner, the respondent No. 3 as also the Prabhand Sanchalak, Jai Hind Inter College, Tejibazar Jaunpur before passing the order. The Joint Director shall decide the matter within two months from the date of filing of the certified copy of this order alongwith a copy of the representation before him."

8. From a perusal of the aforesaid judgment and order it appears that the learned Judge directed the concerned Joint Director of Education to decide the matter within a period of two months from the date of filing of the certified copy of the order along with a copy of the representation. It also appears from the record that the concerned Joint Director of Education decided the said dispute and passed an order dated 27th April, 2000 against which the instant writ application was moved which was allowed by the learned Judge of this Court holding that the impugned order of the Joint Director of Education cannot be sustained.

9. Feeling aggrieved, the present special appeal has been filed by the appellant-respondent No. 5 in the writ application.

10. Mr. Shashi Nandan, learned Advocate appearing for the private respondent referring Chapter II, Regulation 3 of the Regulations framed under the Intermediate Education Act (hereinafter referred to as the "Regulations") submitted that any teacher aggrieved from an appellate order of the Joint Director of Education may file writ application challenging the same but after the disposal of that writ application, it was not open to the appellant to file an special appeal when the appellate order was challenged by way of filing a writ application.

11. Chapter II, Regulation 3 (1) of the Regulations provides that the Committee of Management of every institution shall cause a seniority List of teachers to be prepared in accordance with the following provisions, namely, (a) to (g). In the present case, we are concerned only with Chapter II, Regulation 3 (e) of the Regulations which provides that every dispute about the seniority of the teacher shall be referred to the Committee of Management which shall decide the same assigning reasons for the decision. Therefore, a dispute regarding the seniority of a teacher shall be referred to the Committee of Management. Chapter II, Regulation 3 (f) of the Regulations provides thus :

"(f) Any teacher aggrieved by the decision of the Management Committee under Sub-clause (e) within 15 days of the date of information of such decision to the teacher, may appeal to concerned Regional Deputy Director and on appeal after giving an opportunity of hearing to the concerned parties. Deputy Director will give his decision with reasons, which will be final and executed by the Management Committee."

12. From a plain reading of Chapter II, Regulation 3 (f) of the Regulations, it appears to us that an appeal lies against a decision of the Committee of Management before the Regional Deputy Director. The facts of the said case were altogether different. There was no order of the Committee of Management against which an appeal was moved before the concerned Regional Deputy Director and the concerned Regional Deputy Director, exercising his appellate power, passed an order and that appellate order was challenged in the writ jurisdiction. That being the position, no special appeal against such an order of the learned Judge disposing of the writ application. In our view, this is not the case here

13. It is an admitted position that the decision of the Committee of Management was not challenged by way of filing an appeal before the Regional Deputy Director. Therefore, in our view, it cannot be said that the order passed by the Joint Director of Education, in the instant case, was passed in exercise of his appellate power under Chapter II, Regulation 3 (f) of the Regulations and, in fact, he decided the matter on the basis of a direction dated 28th January, 2000 issued by a learned Judge of this Court in Civil Misc. Writ Petition No. 51233 of 1999, Uma Nath Singh v. District Inspector of Schools, Jaunpur and Ors., wherein he was directed to decide the matter himself in view of the fact that the District Inspector of Schools had sought clarification from the Joint Director of Education regarding the seniority of the appellant and the private respondent. Therefore, on the basis of the direction of a learned Judge of this Court, the Joint Director of Education decided the matter and therefore, it cannot be said that the Joint Director of Education, while deciding the matter, has exercised his appellate power.

14. For the reasons aforesaid, we are of the view that the decision cited by Mr. Shashi Nandan, learned Advocate representing the private respondent would not be applicable in the facts and circumstances of the present case.

15. Accordingly, we hold that the appeal is maintainable in law.

16. Let the special appeal be listed for hearing in the week commencing 12th April, 2004.