

(2004) 01 AHC CK 0078

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No"s. 51403 and 56613 of 2003

Committee of Management

APPELLANT

Vs

State of U.P. and Others
Dr.

Ram Asare Chaurasiya Vs

Committee of Management and

Others

RESPONDENT

Date of Decision: Jan. 27, 2004

Citation: (2004) 5 AWC 4505 : (2004) 1 UPLBEC 975

Hon'ble Judges: Poonam Srivastava, J; M. Katju, J

Bench: Division Bench

Advocate: Yogesh Agarwal and A.K. Malviya, for the Appellant; Ashok Gupta and S.C., for the Respondent

Final Decision: Dismissed

Judgement

M. Katju and Poonam Srivastava, JJ.

Heard Counsels for the parties and the learned Standing Counsel.

2. The controversy involved in the two writ petitions is common, and as such both the writ petitions are being decided by a common judgment. Writ Petition No. 51403 of 2003 filed by Committee of Management, Attarra Post Graduate College, Attarra, Banda and Writ Petition No. 56613 of 2003 filed by Dr. Ram Asarey Chaurasiya deal with the question of placement of Dr. Ram Asare Chaurasiya in the concerned institution.

3. On account of retirement of the permanent Principal, the post of Principal in the aforesaid College had fallen vacant. The U.P. Higher Education Services Commission selected Dr. Nand Lal Shukla for appointment as Principal in the aforesaid College, while the present petitioner. Dr. Ram Asarey Chaurasiya was placed as Principal at Post Graduate College, Lalitpur. The writ petitioner of Writ Petition No. 56613 of 2003 filed a Writ Petition No. 47029 of 2002 challenging his placement order. The

writ petition was finally disposed off by a Division Bench of this Court vide judgment dated 13.2.2003 directing that Ram Asarey Chaurasiya be given placement at the second choice at Agrasen Post Graduate College, Muranipur, Jhansi. However, since Dr. Nand Lal Shukla had already joined at another institution. Dr. Ram Asarey Chaurasiya challenged the order dated 13.2.2003 before the Supreme Court and it has been directed by the Supreme Court that any action taken will be subject to the outcome of the appeal vide order dated 26.3.2003.

4. The Director of Education in pursuance to the order of this Court dated 13.2.2003, passed an order dated 24.3.2003 placing Dr. Ram Asarey Chaurasiya as Principal of Agrasen Post Graduate College, Muranipur, Jhansi. This order was once again challenged by the Committee of Management, Agrasen Post Graduate College, Muranipur, Jhansi in Writ Petition No. 19315 of 2003. It is alleged in Paragraph 8 of the Writ Petition No. 51403 of 2003 that the order passed by the Division Bench on 13.2.2003 in Writ Petition No. 47029 of 2002 was not brought to the notice of the Court, and as a consequence, an interim order dated 12.3.2003 was obtained by the Committee of Management to maintain status-quo as on that relevant date i.e. 12.5.2003.

5. The dispute arose in Writ Petition No. 56613 of 2003 when a fresh order dated 31.10.2003 (Annexure-2 to the writ petition) was passed whereby the Director of Education changed the placement of Dr. Ram Asare Chaurasiya from Agrasen Degree College, Muranipur, Jhansi to the present institution Attarra Post Graduate College, Attarra, Banda. In pursuance to the aforesaid order, the Committee of Management issued an appointment letter to Dr. Ram Asare Chaurasiya on 1.12.2003 and he submitted his joining report on the very next day i.e. 2.12.2003. When Dr. Chaurasiya submitted his joining report, an order was passed by the President of the Committee of Management cancelling the letter of appointment which has been challenged by Dr. Ram Asare Chaurasiya in Writ Petition No. 56613 of 2003.

6. In both the two writ petitions the question arises is as to whether the Director, Higher Education Commission can change his order of placement after selection by the Commission. Learned Counsel for the Committee of Management has submitted that the placement could have been changed by the Director only on the request of the President of the College, which admittedly has not been done in the instant case. The submission of the learned Counsel for the Committee of Management is, therefore, that the order dated 31.12.2003 is without jurisdiction as the Director of Education had become functus officio after the placement order date 24.10.2003 in pursuance to the final order passed by a Division Bench of this Court in Writ Petition No. 47029 of 2002. No doubt this order is under challenge before the Apex Court but the Supreme Court has not stayed the order dated 13.12.2003. The order of the Division Bench which was passed after hearing Counsel for both the parties i.e. Dr. Ram Asarey Chaurasiya and Dr. Nand Lal Shukla cannot be said to be

non-existent.

7. The power of the U.P. Higher Education Service Commission or the Director, Higher Education to transfer a Teacher from one Degree College to another was considered by a Full Bench of this Court which in Writ Petition No. 17939 of 1996, decided the controversy by its judgment dated 28.11.1996. The Full Bench held on an analysis of the provisions of the Act that the Commission has to select candidates for appointment as teachers in vacancies intimated to it u/s 12 of the Act and send them to the Director and once the order of placement is passed, the Director does not have any power to transfer a teacher from one College to another College. The Full Bench while deciding the reference in Writ Petition No. 17939 of 1996. [Ajay Kumar Vs. Director of Higher Education and Others](#), held (vide Paragraph 10) as under :

"Even the Director does not have any power to transfer a teacher from one college to another. The Director has very limited powers, functions under the Commission Act. Sub-section (3) of Section 12 requires the Director to notify to the Commission subjectwise consolidated list of vacancies intimated to him under Sub-section (2) of Section 12. After the Director receives that the list containing the names of the selected candidates from the Commission he has to intimate the names of the selected candidates to the management of the colleges for appointment in the vacancies intimated under Sub-section (2) of Section 12. It is the management, which appoints the teacher, whose name is intimated by the Director. The Director himself cannot appoint a teacher, if a candidate, whose name is intimated by the Director to the management is not appointed, the Director can take appropriate action against such management u/s 15. Section 15, which gives the power to the Director to enforce his order, is as follows :

"15. Inquiry Director.--(1) Where any person is entitled to be appointed as a teacher in any college in accordance with Sections 12 to 14, but he is not so appointed by a management within the time provided, therefore, he may apply to the Director for a direction under Sub-section (2).

(2) On receipt of an application under Sub-section (1), the Director may hold an inquiry, and if he is satisfied that the management has failed to appoint the applicant as a teacher in contravention of the provisions of this Act, he may by order, require-

(a) The management to appoint the applicant as a teacher forthwith and to pay him salary from the date specified in the order, and

(b) The Principal of the College concerned to take work from him a teacher,

(c) The amount of salary, if any, due to such teacher shall, on a certificate issued by the Director, be recovered by the Collector as arrears of land revenue."

The Director u/s 15 has the power to force the management to appoint a candidate recommended by the Commission. But inspite of the provisions the Director does not have power to transfer a teacher. The Commission Act and the rules and regulations framed thereunder do not confer any such power on the Director. Such a power cannot also be inferred or implied, because it is not at all, necessary and relevant for exercising the powers and discharging the functions conferred on the Director by the said Act."

8. The Committee of Management has challenged the order dated 31.12.2003 passed by the Director to appoint Dr. Ram Asare Chaurasiya in Attarra Post Graduate College, Attarra, Banda setting aside the earlier order vide letter No. Uchch Shiksha Ayog/44/2000-2001, dated 20.4.2001, The order has been challenged by the Committee of Management on the ground that the Director could not change his earlier order whereby the placement of Dr. Ram Asare Chaurasiya was made in Agrasen Degree College, Muranipur, Jhansi. It is settled law that once the Director has passed an order placing an incumbent in a Degree College, he is divested of any authority to transfer him to another college except on the request of the Management. In the instant case, the Management had made no request and has challenged the order dated 31.10.2003.

9. We find that the order of the Director was without jurisdiction since there was no request from the Committee of Management as well as the earlier placement was in pursuance to a direction in Writ Petition No. 47029 of 2002. The Writ Petition No. 51403 is hence allowed and the order dated 31.10.2003 is quashed.

10. The writ petition filed by Dr. Ram Asare Chaurasiya challenging the order of the Management dated 2.12.2003 staying the order of appointment dated 1.12.2003 which was passed in pursuance to the order dated 31.10.2003 does not call for any interference since it was only a consequential order. The order of the Director dated 31.10.2003 having been quashed the Writ Petition No. 56613 of 2003 is dismissed. There shall be no order as to cost.