

(2002) 01 AHC CK 0080

Allahabad High Court

Case No: C.M.W.P. No's. 41563 of 1999, 12738 and 27204 of 2000 and 31173 and 37167 of 2001

Mahant Prasad Singh

APPELLANT

Vs

District Inspector of Schools,
Fatehpur and Others

RESPONDENT

Date of Decision: Jan. 11, 2002

Acts Referred:

- Uttar Pradesh Intermediate Education Regulations, 1921 - Regulation 2(3)
- Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 - Section 18(4)

Citation: (2002) 1 AWC 859 : (2002) 93 FLR 495 : (2002) 2 UPLBEC 1316

Hon'ble Judges: Sunil Ambwani, J

Bench: Single Bench

Advocate: Ashok Khare and Vidya Bhushan Srivastava, for the Appellant; S.C., V.K. Shukla and P.S. Yadav, for the Respondent

Final Decision: Disposed Of

Judgement

Sunil Ambwani, J.

The delays caused by the U. P. Secondary Education Selection Board in making regular appointment to the post of Principal and teachers has exploded the dockets of this Court with unending litigation for appointment of officiating Principals and ad hoc appointments of teachers. Although this Court has, while interpreting the provisions of Regulation 2 (3) of the Chapter II of the Regulations framed under U- P. Intermediate Education Act. 1921 and Clause 4 (1) (a) of U. P. Secondary Education Service Commission (Second) Removal of Difficulties Order, 1981 and thereafter the amended Sub-section (4) of Section 18 of the U. P. Secondary Education Service Commission Act, 1927. clarified more than once that seniority is not the only criteria for appointment of officiating Principal by the Committee of Management to be approved by the District Inspector of Schools, and that it only gives a right of

consideration subject to suitability of senior-most person to hold the office as laid down in the Full Bench Decision of *Radha Raizada v. Committee of Management* (1994) 3 UPLBEC 1551, actual experience shows that the Committee of Management prefers their own candidate and go to any extent to circumvent the law. The present case is a classic example of fight between senior teachers in getting the approval to officiate as Principal engaging valuable time of this Court, in this simple process of appointment.

2. The facts relating to the aforesaid bunch of cases filed for appointment to the post of officiating Principal of the Chaudhary Ramroop Singh Dhanraj Singh Intermediate College, Dhata, district Fatehpur are stated as below.

3. The appointment of Dhan Raj Singh, the out-going Principal was under challenge in Writ Petition No. 41563 of 1999. After his retirement on 30.6.1998, the aforesaid writ petition appears to have become infructuous. The post of Principal was going to fall vacant on 30.6.1998. Sri Bacchi Lal Singh is the senior-most teacher in "Lecturers Grade". He was also due for retirement on 30.8.1998. Thereafter the next three lecturers, namely. Sri Prem Narain Singh. the respondent No. 5, Rati Bhan Singh and Sri Mahant Prasad Singh were appointed subsequently in lecturer's grade in the same cadre and according to date of birth, Prem Narain Singh is the senior-most and thereafter Sri Rati Bhan Singh and Sri Mahant Prasad Singh are next in the line of seniority. It is alleged that on 28.6.1998 a resolution was passed by the Committee of Management of which Sri Amrit Lal Singh was the Manager,. It considered the seniority of the Lecturers and found that since Sri Prem Narain Singh, the respondent No. 5, had not worked satisfactorily in the year 1980, when he was allowed to officiate for a short-time and that he has been involved in the matter of issuing forged mark-sheets to two students who are his nephews on account of which they lost their employment and further some books, which were gifted to school, were shown to be purchased by him. It also found that he has been engaged in the activities of inciting teachers and students against the management and has also taken to liquor, and thus, inspite of being a senior-most, is not a suitable person to be appointed as officiating Principal. The Committee of Management, therefore, resolved to enquire in writing from lecturers from senior numbers 3 and 4 for appointment as officiating Principal. The manager of the college accordingly Informed the District Inspector of Schools with the resolution. The District Inspector of Schools, however, attested the signature of Sri Prem Narain Singh, by his order dated 7.7.1998. Aggrieved, Writ Petition No. 8162 of 1998 was filed by the petitioner, Mahant Prasad Singh, which was disposed of on 16.3.1999 with the direction to the District Inspector of Schools to decide the claim of the petitioner on the basis of the documents already sent to him. By an order passed on 16.8.1998 the District Inspector of Schools considered the written statement of Sri Amrit Lal Singh ex-manager of the college, the petitioner Mahant Prasad Singh, Sri Dhanraj Singh, the existing manager of the college (who was the Principal on whose vacancy the officiating appointment had to be made) and came to the conclusion

that since Sri Prem Narain Singh Is the senior-most teacher in lecturer grade, his appointment shall be approved.

4. Aggrieved by the aforesaid decision of the District Inspector of Schools dated 16.8.1998, the petitioner Mahant Prasad Singh filed Writ Petition No. 12738 of 2000. The writ petition was pending in the Court for a long time and as it could not be heard due to paucity of time with the Court, the petitioner filed a second writ petition for the same relief stating therein that the first writ petition has not been heard and that an application has been moved in the first writ petition to withdraw the same with a liberty to file fresh writ petition. It is alleged that this second Writ Petition No. 31173 of 2001 was directed to be connected with Writ Petition No. 12738 of 2000 and an order was passed staying the operation of the order dated 16.8.1998 with a direction that the respondents are restrained to interfere in the functioning of the petitioner as Principal of the College. This order, passed on 14.6.2000 could not see the light of the day upto 8.12.2000. It is alleged by Sri Ashok Khare, senior advocate, appearing for the petitioner that the copy of the order could not be issued for a long time. After it was issued the original writ petition was misplaced and was not traceable on which a report has been submitted by the Registrar regarding loss of the record. He stated that after obtaining the order it was filed with the District Inspector of Schools, upon which the petitioner's signatures were attested by the District Inspector of Schools on 28.8.2000.

5. Now this time, it was the turn of Sri Prem Narain Singh the respondent No. 5 who filed Writ Petition No. 31173 of 2001 challenging the attestation of signature of petitioners as officiating Principal, on which on 29.8.2000 an order was passed by this Court to the effect that the learned standing counsel will obtain a copy of the alleged order of the Court from respondent No. 1, within 10 days and that the Joint Director of Education having Jurisdiction over Fatehpur will accept the copy and forward the same to the District Inspector of Schools for compliance. The Joint Director of Education (Fourth Region), Allahabad, took cognizance of the matter and that by his impugned order dated 20.9.2001 he has decided the dispute by holding that Sri Prem Narain Singh is the senior-most teacher whose officiating appointment was approved and signatures were attested and that the stay order dated 16.8.1998 was given effect to. He found that the interim order dated 14.6.2000 was produced by the petitioner after fourteen months during which Sri Prem Narain Singh was working as Principal. This delay in production of the certified copy raised serious doubt over the right of the petitioner and since the order dated 16.8.1998 was given effect to, it was held that there was no question of implementing the order after a gap of such a long time.

6. Sri Ashok Khare appearing for Mahant Prasad Singh, submits that both the District Inspector of Schools in his order dated 16.8.1998 and Joint Director of Education in his order dated 20.9.2000 have not considered the effect of the resolution of the Committee of Management dated 28.6.1998. According to him,

seniority gives a right for consideration but is not a sole criteria for appointing as officiating Principal. This High Court and the Supreme Court has held that the suitability of the officiating Principal is to be judged by the Committee of Management, for appointment as officiating Principal and that the petitioner, on the strength of the interim order dated 14.6.2000, was entitled to continue as officiating Principal. He further stated that the resolution of the Committee of Management informs serious charges against Prem Narain Singh and that the committee was right in finding him unsuitable for holding the post of officiating Principal.

7. Sri V. K. Shukla, appearing for Prem Narain Singh, has strongly refuted the contention of Sri Khare. According to Sri Shukla, Amrit Lal, who was the manager at the relevant time, when the said resolution is said to be passed, denied in writing to the District Inspector of Schools that any such resolution was passed by the Committee of Management. He was removed by a vote of no confidence on 12.8.1998, and that Sri Dhanraj Singh, the outgoing Principal became, the manager. An enquiry was conducted into the charges and a resolution of termination was passed against Prem Narain Singh. This resolution was disapproved by the resolution in the fresh election held on 27.2.2000. Sri Amrit Lal was again returned as Manager and that thereafter the orders were challenged at the behest of Sri Dhan Raj Singh.

8. Since Sr. V. K. Shukla put in appearance at the time of admission, this Court summoned the records of Writ Petition Nos, 41563 of 1999, 12738 of 2000, 27204 of 2000 and heard all the matter together. With the consent of the parties these writ petitions are disposed of at this stage.

9. The first Writ Petition No. 41563 of 1999 was filed by the Committee of Management of the institution against the order dated 16.8.1999 passed by the District Inspector of Schools, Fatehpur, holding that Sri Prem Narain Singh who is officiating as Principal is a senior-most in the Lecturers grade and was approved to function as the officiating principal. The Committee of Management in this writ petition was represented through its Manager Sri Dhanraj Singh. Respondents were directed to file counter-affidavit within one month and after directing steps to be taken the petition was directed to be fixed by the office. No further orders were passed in this writ petition.

10. After narration of facts and submissions of the counsel as aforesaid, it is necessary to first discuss the orders passed by this Court in various writ petitions in this matter. Civil Misc. Writ Petition No. 81629 of 1995 filed by Mahant Prasad Singh for a direction to the District Inspector of Schools to decide the matter, was disposed of finally with the direction to the District Inspector of Schools, Fatehpur, to decide the claim of Mahant Prasad Singh on the basis of the papers already sent to him and such decision was required to be taken in accordance with law within a period of three months from the date of production of a certified copy of the order. In Writ Petition No. 12738 of 2000, Mahant Prasad Singh challenged the order of the

District Inspector of Schools dated 16.8.1999. The Court by order dated 30.3.2000 passed in the writ petition noticed that Sri Yogesh Agarwal has appeared for the respondent Sri Prem Narain Singh the respondent No. 4 along with Sri A. P. Tiwari and while directing counter and rejoinder-affidavits to be brought on record, directed the matter to be put up on 31.3.2000. After the District Inspector of Schools, Fatehpur, decided the matter in compliance with the order dated 16.8.1999 holding that Sri Prem Narain Singh is the senior-most in lecturers grade and is thus entitled to continue as officiating Principal, Writ Petition No. 27204 of 2000 was filed by Mahant Prasad Singh. By order dated 14.6.2000 it was directed to be connected with Writ Petition No. 12738 of 2000, and be listed in the First week of July, 2000 and that by interim order, until further orders the operation of the order of District Inspector of Schools, Fatehpur, dated 16.8.1999 was directed to remain stayed and the respondents were restrained from interfering in the peaceful functioning of the petitioner as Principal of the institution.

11. Writ Petition No. 31173 of 2001 has been filed by Sri Prem Narain Singh challenging the order of the District Inspector of Schools, Fatehpur, dated 14.8.2001 by which he acknowledged the receipt of the order of the High Court dated 14.6.2000, staying the operation of the order of District Inspector of Schools dated 16.8.1999, and directed Prem Narain Singh to file any other order of the High Court, if it has been so passed, within seven days, failing which Sri Mahant Prasad Singh will be approved as officiating Principal of the college. On 29.8.2001, this Court noticed the contention of Sri Prem Narain Singh that there is no order of the High Court dated 14.6.2000 referred by the District Inspector of Schools. A direction was issued to learned standing counsel to obtain a copy of the alleged Court order from District Inspector of Schools within ten days and to list the writ petition on 11.9.2001.

12. There are thus five writ petitions before this Court for deciding as to who should be officiating Principal of the college till the U. P. Secondary Education Services Selection Board selects and a regular Principal is appointed. The entire controversy revolves around the fact as to who is the senior-most teacher in the lecturer's grade and whether such senior-most teacher is suitable for discharging the function of officiating Principal or a teacher falling the next in line should be promoted as officiating Principal.

13. There is no dispute between contestants that Prem Narain Singh, Rati Bhan Singh and Mahant Prasad Singh were appointed in the lecturers grade on the same day and that according to the decision of Radha Kaizada case (supra) interpreting Regulations made under the U. P. Intermediate Education Act, 1921, the date of birth will determine the seniority, according to which Sri Prem Narain Singh is a senior-most, after which Sri Rati Bhan and Sri Mahant Prasad Singh are next in the line of seniority. The Supreme Court in Ram Murti Singh v. District Inspector of Schools, Deoria, 1995 Suppl 3 SCC 170, while interpreting Rule 4 of the U. P.

Secondary Education Services Commission (Removal of Difficulties) Order. 1981, has held that ad hoc appointment by promotion can be made in vacancy on the post of the institution till a regular appointment is made. Ordinarily, the senior-most person may expect that he would be appointed but certainty not if he is not competent, in that case the District Inspector of Schools found that the appellant, though is senior-most, was not competent. His relationship with teachers and other employees were not satisfactory and hence the management feared that he would not be able to draw the cooperation of the teachers and employees for working as a team and that, these found detrimental to the interest of the institution and he was not promoted, though senior-most. There was no fault in the order of the District Inspector of Schools which was affirmed by the High Court.

14. The Committee of Management in its resolution dated 28.6.1998 resolved that Sri Prem Narain Singh had earlier worked in the year 1980 as officiating Principal and during the said period he had committed gross irregularities for which he has not given explanation till that time. He was involved in issuing forged mark-sheets to two students which was the subject-matter of enquiry and on account of which those two students, who were the nephews of Prem Narain Singh, lost their employment with the Government. Some of the books sent by publisher as free copies were shown to have been purchased by the institution and the amount was misappropriated. It was further resolved that Sri Prem Narain Singh is not interested in teaching, reaches late in the college and incites other teachers and is also in habit of consuming liquor. The management thus resolved that a Inquiry committee be constituted to enquire into the allegations against Sri Prem Narain Singh and that he should not be handed over the charge of officiating Principal.

15. Sri V. K. Shukla appearing for Prem Narain Singh has strongly urged that no such resolution was passed by the Committee of Management and that in fact it was a forged document prepared to help Mahant Prasad Singh.

16. The petitioner. Mahant Prasad Singh, has brought on record, Courts order of S.D.M.. Khaga. Fatehpur, dated 30.5.1998 by which Sri Narendra Bahadur Singh, Lekhpal and Sri Vijai Bahadur Singh, Lekhpal were dismissed for obtaining employment on forged mark-sheet. It is not denied that these two employees are related to Sri Prem Narain Singh. In the aforesaid inquiry, statements were called from the Principal of the institution, who denied that the mark-sheets were issued from the college. In the inquiry it was noticed that Sri Prem Narain Singh is the uncle of the delinquent employees. An F.I.R. dated 5.1.2001 u/s 420. I.P.C. P.S. Dhata has been annexed as Annexure-6 to the writ petition. This report has been lodged against Sri Amrit Lal Singh and Sri Prem Narain Singh. Sri V. K. Shukla stated that a final report has been submitted in the aforesaid case, but it has not yet been accepted by the competent Magistrate.

17. From the materials placed on record, it cannot be said that Sri Prem Narain Singh had a clean record. There were charges against him. It is different matter that

these charges required enquiry and unless they were established they cannot be relied upon. It is not alleged that any inquiry is pending. The fact, however, remains that on the aforesaid allegations, the management did not consider it fit to appoint Sri Prem Narain Singh as officiating Principal of the college. Observations made by the Supreme Court in Ram Murti Singh's case (supra) are squarely applicable to the present case. In case the management fears that the senior-most teacher will not be able to draw cooperation of the teachers and employees for working as a team, and if it is found that the appointment of the senior-most teacher will be detrimental to the institution, the next senior-most teacher can be appointed as an officiating Principal of the college. Seniority is not sole criteria for appointment as an officiating Principal. It is an interim arrangement awaiting the joining of the candidate selected by the U. P. Secondary Education Services Selection Board.

18. In the aforesaid circumstances, the Court without entering into the merits of the charges against Sri Prem Narain Singh, or the fact whether any valid resolution was passed by the Committee of Management, holds that on the facts and circumstances brought on record, the Committee of Management found that Sri Prem Narain Singh, though senior-most teacher on the basis of date of birth, was not suitable to officiate as Principal of the college and thus the choice rightly fell upon Sri Mahant Prasad Singh to officiate as a Principal.

19. The writ petition is accordingly allowed. The orders dated 20.9.2001 and 21.9.2001 passed by the District Inspector of Schools, Fatehpur and Regional Joint Director of Education, IV Region, Allahabad, are set aside. Sri Mahant Prasad Singh shall continue to officiate as Principal of the college until the regularly selected candidate selected by the U. P. Secondary Education Services Selection Board joins the institution.

20. With these observations all the aforesaid writ petitions stand disposed of.