

(1999) 08 AHC CK 0125

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 17325 of 1997

Dhurendra Deo Sharma

APPELLANT

Vs

State of U.P. and
othersRESPONDENT

Date of Decision: Aug. 31, 1999**Hon'ble Judges:** V.M.Sahai, J**Final Decision:** Allowed

Judgement

V.M. Sahai, J.

In Shiv Charan Inter College, Bulandshahar, a duly recognised institution governed by the provisions of U.P. Secondary Education Services Selection Boards Act, 1982, a vacancy arose due to retirement of its principal on 30.6.1992. The petitioner being the senior most lecturer was appointed on 1.7.1992 as ad hoc principal. District Inspector of Schools attested his signature on 7.7.1992. He continued to work as such. The management intimated the vacancy of the principal to U.P. Secondary Education Service Commission (in brief commission) which advertised the same. The commission on 30.1.1997 held the interview for the post of principal. Respondent No. 5 was selected. The petitioner has challenged the selection mainly because the names of the two senior most teachers along with their character roll etc., was not sent as required by the rules.

2. I have heard Shri G.K. Singh learned Counsel for the petitioner; Shri Arun Tandon learned Counsel appearing for respondent No. 5 and Miss Ainakshi Sharma learned Standing Counsel appearing for respondent Nos. 1 and 3.

3. Shri G.K. Singh learned Counsel for the petitioner urged that in view of amendment made in U.P. Secondary Education Service Commission Rules, 1995 (in brief Rules, 1995) adding subrule (b) to Rule 11(2) by U.P. Secondary Education Service Commission (First Amendment) Rules, 1996, requiring the management to send the name of two teachers in accordance with seniority along with their service records, character roll, etc., for consideration of their claim also by the commission the selection was illegal as the

management did not comply with it.

4. On the other hand, Shri Arun Tandon learned Counsel appearing for respondent No. 5 urged that the commission had written a letter to District Inspector of Schools on 8.1.1997 that interview was fixed for 30.1.1997 and service records of two senior most teachers along with character roll be sent. The District Inspector of Schools on 24.1.1997 in pursuance of it sent a letter, by registered post, to the Manager of the Institution for sending the records of the two senior most teachers. A copy of this letter was forwarded to ad hoc principal as well. These letters have been filed as Annexures 1 and 2 to the counteraffidavit filed on behalf of District Inspector of Schools. On the basis of these letters Shri Tandon contended that the petitioner had full knowledge of the date fixed for interview as he was ad hoc principal, therefore, he could have participated in the interview and the appointment of respondent No. 5 cannot be said to be illegal only because the records of two senior most teachers were not sent to the commission.

5. The argument of Shri Tandon is against the rules and its interpretation by this Court. Earlier similar provision existed in the U.P. Secondary Education Service Commission Rules, 1983. Rule 4(1)(ii) of it provided that the management shall forward to the commission the name of two senior most teachers along with the copies of their service records, including character roll and such other records which may be relevant for the selection, and the commission shall consider the claim of such teachers also, along with other candidates while making selection for the post of principal. In *Ram Briksha Maurya v. Murlidhar Misra*, (1999) 1 UPLBEC 706, a Division Bench of this Court considered the rule and held that any selection in disregard of the rule was illegal.

6. When, new rules known as U.P. Secondary Education Service Commission Rules, 1995 came into force with effect from 8.5.1995 it did not contain any such provision similar to Rule 4(1)(ii) of Rules, 1983. Therefore, the commission was making selection on the posts of principals without their being records of two senior most teachers of the institution. Soon the earlier provision was restored by U.P. Secondary Education Service Commission (First Amendment) Rules, 1996, by which Rule 11 was amended, requiring the management to send names of two senior most teachers along with their character roll for consideration by the commission at the time of selection. In view of this amendment made on 26.2.1996 in Rule, 1995 the management was required to send names of two senior most teachers for selection to the post of principal of the institution. The effect of not complying with the requirement of amended Rule 11 of Rule, 1995 was that the selection becomes illegal.

7. Shri Arun Tandon vehemently urged that the letter sent by District Inspector of Schools on 24.1.1997 was within the knowledge of the petitioner as he was working as ad hoc principal. Similar argument was not accepted in the case of *Ram Briksha Maurya* (supra). In that case the selection was held illegal even though the teacher participated in the selection because the records sent by the management were not available on the date of interview. The knowledge in the circumstances was immaterial. It is not denied in the

counteraffidavit that the management failed to comply with the mandatory requirement. It is in fact admitted that the management despite the letter of the Inspector of Schools did not send the records for reasons best known to it. Since the mandatory requirement of sending the record of the two senior most teachers was not complied the entire selection was contrary to rules. Further in the counteraffidavit, filed on behalf of District Inspector of Schools, it has been stated that letter was sent on 24.1.1997 by registered post but it is nowhere mentioned when it was actually served on the petitioner. In absence of these assertions it cannot be presumed that the petitioner received the letter dated 24.1.1997 prior to 30.1.1997. Even if the letter would have been received the participation of the petitioner in absence of the record was of no avail. Shri Arun Tandon further contended that the letter of commission dated 8.1.1997 fixing date of interview on 30.1.1997, was also sent to the management of the institution and must have been in the knowledge of the petitioner. There is nothing on the records to show that the management prior to 30.1.1997 received this letter of commission. Service or knowledge of the date in absence of the record as observed earlier was immaterial. In any case it was obligatory on the commission to have considered the names of two senior most teachers of the institution. In absence of such consideration the selection cannot be upheld. Where names of two senior most teachers and their service records were not sent by the management to the commission and selection is made by the commission in absence of two senior most teachers as provided by amended Rule 1995, such selection is contrary to rules. Therefore, no right accrued in favour of respondent No. 5.

8. In the result this writ petition succeeds and is allowed. The recommendation made by the commission on 15.4.1997 so far as it relates to respondent No. 5 being posted as principal of Shiv Charan Inter College, Bulandshahr is quashed. It shall be open to the commission to adjust the respondent No. 5 in some other institution, in accordance with law within a period of three months from the date a certified copy of this order is produced before the concerned respondents.

9. There shall be no order as to costs. Petition allowed.