

(2002) 12 AHC CK 0113

Allahabad High Court

Case No: C.M.W.P. No. 26226 of 2002

Smt. Hem Lata Agarwal

APPELLANT

Vs

District Inspector of Schools and
Others

RESPONDENT

Date of Decision: Dec. 19, 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, 18(1), 21

Citation: (2003) 2 AWC 939

Hon'ble Judges: Janardan Sahai, J

Bench: Single Bench

Advocate: G.K. Singh and V.K. Singh, for the Appellant; Rishi Chaddha, V.K. Shukla and S.C., for the Respondent

Final Decision: Allowed

Judgement

Janardan Sahai, J.

The petitioner has challenged the order dated 11.6.2002 of the Manager, Crosthwaite Girls College, Allahabad, which states that the management committee of the college in its meeting dated 7.6.2002 had resolved to relieve the petitioner as in-charge Principal of the institution and also communicating that the respondent No. 3 Smt. Asha Pandey, who was given charge of the post of Principal during the period when the petitioner was under suspension, would continue to hold the charge. The petitioner has challenged this order on the ground that the order is arbitrary and does not contain any reason and was passed without opportunity afforded to the petitioner and also on the ground that no approval u/s 21 of the U. P. Secondary Education Services Commission and Selection Boards Act, 1982 (hereinafter referred to as the Act) has been obtained.

2. Undisputedly, the petitioner is the seniormost teacher in the institution and it is submitted that she is entitled to officiate as Principal under Regulation 2 (3) of Chapter II of the regulations framed under the Intermediate Education Act and also to be paid salary for the post of Principal as the vacancy against which the petitioner was appointed has lasted for more than one month. The post of Principal in the institution had fallen vacant on 30.6.2001 and the petitioner was given charge with effect from 1.7.2001. Reliance is placed by the petitioner upon Section 18 of the Act and it is submitted that under that provision, the seniormost teacher in the institution shall be promoted on ad hoc basis as Principal. In the counter-affidavit filed by Prakash Dubey, Manager the stand taken is that Smt. Sailja Rani Srivastava, who was discharging the duties of Principal attained the age of superannuation on 30.6.2001 and the petitioner was handed over the charge as officiating Principal with effect from 1.7.2001 and the papers for approval of her appointment were sent to the District Inspector of Schools but no order has been passed by the District Inspector of Schools ; that the petitioner, who was holding charge as officiating Principal indulged in various acts of misconduct, acts of financial irregularity and she was placed under suspension and a charge-sheet was served upon her on 12.4.2002 and after giving full opportunity of hearing, disciplinary proceedings were concluded and the enquiry committee constituted in this regard made recommendation on 28.5.2002 for discontinuance of the petitioner as officiating Principal and for awarding her adverse entry and the papers have been transmitted on 10.6.2002 to the District Inspector of Schools for necessary action. It is stated that the order dated 11.6.2002 was passed after giving full opportunity of hearing.

3. Notice was issued to the third respondent by registered post. Office report indicates that notice was sent to respondent No. 3 by registered post with acknowledgment due fixing 26.8.2002. The third respondent had also filed Special Appeal No. 773 of 2002 against the interim order dated 8.7.2002 in this writ petition. In the circumstances, notice would be deemed to have been served upon her. She has, however, not appeared but her absence does not come in the way of the petition being heard because it has been deemed that she was served. Even otherwise, as admittedly the petitioner is the senior-most teacher in the Institution and she was given charge of the post of Principal, the rights, of the third respondent would come into existence only if it is found that the impugned order relieving the petitioner was valid and effective.

4. Regulations 2 (1) and (3) of Chapter II of the Regulations framed under the Intermediate Education Act read as under :

"2 (1) The post of the head of institution shall except as provided in Clause (2) be filled by direct recruitment after reference to the selection committee constituted under Sub-section (1) of Section 16F, or, as the case may be, under Sub-section (1) of Section 16FF :

Provided that in the case of any institution not being an institution referred to in Section 16FF a temporary vacancy caused by the grant of leave to an Incumbent for a period not exceeding six months or by death, retirement or suspension of an incumbent occurring during an educational session in the post of the Head of Institution shall be filled by the promotion of the senior most qualified teacher, if any, in the highest grade in the institution.

(3) Where the temporary vacancy in the post of head of institution is for a period not exceeding thirty days, the senior most teacher In the highest grade may be allowed to work as acting head of institution, but he shall not be entitled to pay in a scale higher than the scale of pay in which he is drawing salary as such teacher."

5. Under this provision, where the vacancy does not exceed 30 days, the senior most teacher working as the acting head of the institution is not entitled to a pay higher than that drawn by her as teacher but if the vacancy continues for more than 30 days, the teacher appointed to officiate would be entitled to salary admissible to a Principal vide Narabdeswar Mishra v. D.I.O.S., Deoria 1982 UPLBEC 171 and Solomon Morar Jha v. D.I.O.S.. 1985 UPLBEC 113. Section 18 of the Act as amended by U. P. Act No. 5 of 2001 is quoted below :

"18. Ad hoc Principals or Headmasters.--(1) Where the management has notified a vacancy to the Board in accordance with Sub-section (1) of Section 10 and the post of the Principal or the Headmaster actually remained vacant for more than two months, the management shall fill such vacancy on purely ad hoc basis by promoting the senior most teacher :

(a) in the Lecturer's grade in respect of a vacancy in the post of Principal ;

(b) in the trained graduate's grade In respect of a vacancy in the post of the Headmaster.

(2) Where the management fails to promote the senior most teacher under Sub-section (1) the Inspector shall himself issue the order of promotion of such teacher and the teacher concerned shall be entitled to get his salary as the Principal or the Headmaster, as the case may be, from the date he joins such post in pursuance of such order of promotion.

(3) Where the teacher to whom the order of promotion is issued under Sub-section (2) is unable to join the post of the Principal or the Headmaster, as the case may be, due to any act or omission on the part of the management, such teacher may submit his joining report to the Inspector, and shall thereupon be entitled to get his salary as the Principal or the Headmaster, as the case may be, from the date he submits the said report.

(4) Every appointment of an ad hoc Principal or Headmaster under Sub-section (1) or subsection (2) shall cease to have effect from the date when the candidate recommended by the Board joins the post."

6. The facts set out in paragraph 25 of the writ petition indicate that the vacancy of the post of Principal of the institution was advertised but an interim order dated 22.3.2002 was obtained by the petitioner in Civil Misc. Writ Petition No. 12603 of 2002 by which it was directed that selection in pursuance of the advertisement may go on but till hearing of the matter, the petitioner's working on the post on account of fresh selection will not be disturbed. A copy of the interim order has been filed as Annexure-3 to the writ petition.

7. The two facts which are necessary to invoke the application of Section 18 of the Act, viz., the notification of a vacancy and the post of Principal having actually remained vacant for more than two months do exist in the present case. The post of Principal had fallen vacant on 30.6.2001 and in any case, the petitioner who was undoubtedly the senior most teacher in the institution was entitled to be promoted on ad hoc basis as Principal after two months. However, the petitioner had already been given charge of the post of Principal with effect from 1.7.2001 as stated in the counter-affidavit. The rights of the petitioner to officiate as Principal which were initially created by her appointment under the regulations stand buttressed by the provisions of Section 18 of the Act. The language of Section 18 (1) makes it incumbent upon the management to fill up the vacancy on purely ad hoc basis. The arrangement postulated u/s 18 (1) is mandatory as is evident from the use of the word "shall" in Section 18 (1) and further from the scheme provided u/s 18 (2). Under Sub-section (2), if the management fails to promote the seniormost teacher, under Sub-section (1) the Inspector shall himself issue the order of promotion of such teacher and the teacher concerned shall be entitled to get his salary as the Principal from the date he joins such post. Recourse to the provisions of Section 18 (2) was not required in the present case as the management itself had given charge of the post of Principal to the petitioner. Subsection (3) of Section 18 further provides that if a teacher to whom the appointment letter is issued is unable to join the post of Principal due to any act or omission on the part of the management, such teacher may submit his joining report to the Inspector and shall thereupon be entitled to get his salary as Principal from the date he submits the said report. The scheme of the amended Section 18 makes it clear that where the conditions u/s 18 (1) exist, the promotion of the seniormost teacher as Principal on ad hoc basis is mandatory and he is also entitled to be paid salary for the post of Principal. The petitioner is thus entitled to be paid the salary of the post of Principal.

8. Section 21 of the Act may now be quoted :

"Restriction on dismissal etc., of teachers.--The management shall not, except with the prior approval of the Commission, dismiss any teacher or remove him from service, or serve on him any notice of removal from service, or reduce him in rank or reduce his emoluments or withhold his increment for any period (whether temporarily or permanently) and any such tiling done without such prior approval shall be void."

9. The question whether the reversion of a teacher, who was appointed on temporary ad hoc basis as Principal u/s 18 of the Act would amount to reduction in rank so as to require approval of the Board need not be considered here as whether or not it is a reduction in a rank, it is clear that it amounts to reduction of emoluments. The petitioner is entitled to the salary for the post of Principal and reverting her, as a Lecturer would undoubtedly affect the emoluments to which she is entitled. The language of Section 21 of the Act is wide enough to cover within its scope the order impugned in this writ petition. Similar controversy Indeed before the amendment introduced by Act No. 5 of 2001 fell for consideration before this Court in [Smt. Pramodini Agarwal Vs. Regional Inspectress of Girls Schools and Others](#), : 1993 (3) UPLBEC 1989 . This Court while Interpreting Section 18 (4) of the Act as it then stood held that there could be no doubt that a vacancy for the post of Principal has to be filled by promoting the seniormost teacher in Lecturer grade and it was not left to the management or District Inspector of Schools to adopt any other exercise except to the promote seniormost teacher. This Court resorted to the provision of Section 21 of the Act and held that the petitioner would not be disturbed on the basis of resolution dated 27.6.1993 by which the Committee of Management had decided to relieve her as in-charge Principal and to work on her substantive post as Lecturer in English. The decision of the Committee of Management dated 27.6.1993, in that case was taken during the pendency of the enquiry proceeding. However, even in such case, it was held that Section 21 of the Act was attracted. In the present case, as the respondents claim to have taken a decision after the enquiry in the matter, it was all the more necessary to obtain approval u/s 21 of the Act. The language of Section 18 as amended by Act No. 5 of 2001 has made it all the more clear that on the existence of the conditions mentioned in Section 18 (1), it is incumbent to promote the seniormost teacher as Principal on purely ad hoc basis and that such a teacher is entitled to be paid the salary for the post of Principal. In these circumstances, the decision in the case of Pramodini Agarwal (supra) applies with redoubled vigour.

10. Even though the promotion as Principal on purely ad hoc basis may not be treated as a promotion in rank, the substantive post of the teacher being still that of Lecturer but it is clear that Section 18 creates a right in favour of the seniormost teacher to be given a promotion on ad hoc basis as Principal and a person appointed on the basis of such seniority cannot be divested of the right to work as ad hoc Principal unless the statute so provides and no such provision has been brought to my notice. In such cases, if the ad hoc Principal commits any misconduct, such as is alleged in the present case in the counter-affidavit, the power of suspension can be invoked.

11. Accordingly the petition is allowed. The impugned order dated 11.6.2002 of the Manager, Crosthwaite Girls College is quashed. It is directed that the petitioner shall be treated as ad hoc Principal of the college and her functioning as such shall not be disturbed on the basis of the order dated 11.6.2002 or the resolution of the

Committee of Management dated 7.6.2002 until approved by the competent authority.