

(2012) 09 AHC CK 0196

Allahabad High Court

Case No: C.M.W.P. No. 26802 of 2006

Rajendra Kumar Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Sept. 14, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 15
- Uttar Pradesh Intermediate Education Act, 1921 - Section 16A, 7A

Citation: (2013) 3 AWC 2724

Hon'ble Judges: Arvind Kumar Tripathi, J

Bench: Single Bench

Advocate: Ashok Mehta, for the Appellant; P.C. Pathak, Jagdish Chandra and C.S.C., for the Respondent

Final Decision: Allowed

Judgement

Arvind Kumar Tripathi, J.

List revised. Heard learned counsel for the petitioner Mr. Ashok Mehta, learned standing counsel and perused the record. The present writ petition has been filed to issue writ of certiorari quashing the order dated 15.4.2006 (Annexure-6 to the writ petition) passed by District Basic Education Officer, Gautam Buddh Nagar by which the petitioner was terminated by the Committee of Management after approval of the order by the District Basic Education Officer, Gautam Buddh Nagar vide order dated 12.4.2006.

2. The brief facts of the present case is that Gandhi Smarak Vidhayalaya was established in the year 1969, which was managed by the Society Gandhi Smarak, Vidhayalaya Sanstha. The society was registered under the Societies Registration Act, 1860. The institution was running Junior High School, which was recognized by the education department w.e.f. 1.7.1972 and after the U.P. Basic Education Act, 1972 was enforced in State of U.P. The said institution was governed by the

provision of said Act. In the year 1975 the institution received "grant-in-aid" from the State Government. From the year 1979 the Uttar Pradesh Junior High School (Payment of Salaries of Teachers and Other Employees) Act, 1979 was enacted and enforced and the provision of the aforesaid Acts were applicable to the institution Gandhi Smarak Junior High School (hereinafter referred as "institution"). Thereafter in the year 1986, the name of the sansthan was reviewed and changed under direction of the State Government and the name of Gandhi word was deleted from the society and it was changed as Hindu Vidhayalaya Sanstha. The institution was upgraded to High School in the year 1998 and after upgradation of the institution the same was to be governed by the provisions of U.P. Intermediate Education Act, 1921. The committee of management of the institution applied for approval of the scheme of administration in accordance with the provisions of Section 16A, U.P. Intermediate Education Act and the same was approved by the Directorate by order dated 27.3.2000. The institution was upgraded and Board of High School and Intermediate Education, recognized the institution for the classes of 9th - 10th in accordance with the provisions of Section 7A of the U.P. Intermediate Act, 1921. There was some dispute in between committee" of management and principal. The writ petition was filed by the committee of management as well as principal Shri Krishna Pal Singh Yadav. Sri Krishna Pal Singh Yadav was not authorised to take action, as Manager against the petitioner. The petitioner was a senior most assistant teacher in the aforesaid institution imparting education from class 6th to High School. The petitioner was senior most teacher hence whenever the principal was suspended, even the charges as officiating principal" was given to the petitioner. Subsequently, the allegation was made against the petitioner of a criminal case and he was suspended and charge-sheet was submitted. After inquiry the management passed the impugned termination order with approval of the District Basic Education Officer, Gautam Buddh Nagar in view of the Government Order dated 24.11.2001.

3. Learned counsel for the petitioner submitted that the question involved in the present case is that after institution was upgraded to High School whether it will be governed under the U.P. Intermediate Education Act, 1921 and under the provision of U.P. Secondary Education Services and Selection Board Act, 1982 or under the provisions of U.P. Basic Education Act, 1972. He further submitted that this point has already been considered by the Full Bench of this Court in [State of U.P. and Others Vs. District Judge and Others](#), , which was further considered and followed in case of [Dr. \(Smt.\) Sushila Gupta, Officiating Principal of Sri Dosar Vaish Balika Inter College Vs. The Joint Director of Education, Kanpur Region and Others](#), . He also relied the judgment of this Court in case of Krishna Dixit. ETC. ETC. v. District Basic Education Officer, Jaunpur and others, 2007 (2) ESC 849 (All) and [Ajay Pratap Rai Vs. District Basic Education Officer, C/m Kisan Purva Madhyamik Vidyalaya and Sri Krishna Dixit](#), . He further submitted that it was categorically held by the Full Bench of this Court that once a basic school or a junior high school being upgraded as high school or a

intermediate college the identity of the institution known as basic school or junior high school is lost, it ceased to exist as a legal entity and in its place another institution with the legal entity comes into being. He further submitted that in the present case, the committee of management passed the order of termination after obtaining prior approval from the District Basic Education Officer in view of the G.O. dated 24.11.2001. The said G.O. dated 24.11.2001 was held to be ultra-virus by the High Court in Writ Petition No. 17422 of 2003. Ramesh Singh v. State of U.P. and others, decided on 23.5.2003. After considering the aforesaid judgment and G.O. dated 24.11.2001 it was held by this Court in case of Dr. Smt. Sushila Gupta (supra) that when the institution is upgraded to the high school then it would be governed by the provisions of the U.P. Intermediate Education Act, in stead of other provisions which might have been applicable earlier to the teachers of the junior high school. Learned counsel for the petitioner further submitted that the detail reply to the charge was submitted denying the charges. The enquiry report was without complying the provisions of Chapter III, Regulation 37. Oral evidence and documentary evidence were not disclosed with the charge-sheet and enquiry report was not supplied. In earlier inquiry, on the basis of same charges in which the inquiry committee submitted its report dated 22.7.2003, the petitioner was exonerated from all the charges. However, again on the basis of similar charges the charge-sheet was submitted, however, neither inquiry report nor any opportunity of hearing was given to the petitioner in accordance with Chapter III, Regulation 37. When the termination letter was served and the necessary information was sought then the Basic District Education Officer, Gautam Buddh Nagar supplied documents including the inquiry report dated 7.10.2005.

4. Learned standing counsel opposed the aforesaid prayer on the ground that in view of the G.O. dated 24.11.2001 issued by State of U.P. rightly the approval was accorded by the District Basic Education Officer for termination of the petitioner as that order was in existence though the institution was upgraded for running the high school classes.

5. Considered the submission of counsel for the parties. There is no dispute that the institution was upgraded. The institution was upgraded to the high school in the year 1998 and was governed by the provisions of U.P. Intermediate Education Act, 1921. The amended rules and regulation of the society dated 11.10.1998 were adopted and the same were communicated to the Registrar of the Society by communication dated 27.10.1998. The management applied for approval of the scheme of the administration in accordance with the provisions of Section 16A of the Intermediate Education Act and the same were approved by the letter issued by the office of the Director Education on 27.3.2000. Hence, w.e.f. 27.3.2000 the institution was governed and managed under the scheme. The board of high school and intermediate education, Allahabad recognized the institution for higher classes, class 9th and 10th in accordance with the provisions of Section 7A of the U.P. Intermediate Act, 1921. The institution was governed for payment of salary and for

all other purpose under the provision of Intermediate Education Act and Rules Regulation framed thereunder. The controversy in the present case is whether after the institution was upgraded and recognized by the Board of High School and Intermediate Education, Allahabad the services of the teachers and other staff would be governed under the provisions of U.P. Intermediate Education Act, 1921 and Regulation framed thereunder and under provisions of U.P. Secondary Education (Services Selection Board) Act, 1982 or under the provisions applicable to the junior high school for appointment and termination etc. After the junior high school is upgraded to high school and intermediate, which provision would be applicable was considered in the full Bench of this Court consisting of Hon"ble Yashoda Nandan, Hon"ble C.S.P. Singh and Hon"ble N.D. Ojha, J.J., which was delivered by Hon"ble N.D. Ojha, J. in case of [State of U.P. and Others Vs. District Judge and Others](#), . The para 17 of the aforesaid judgment is quoted herein below:

A basic school or a junior High School is thus different from a High School or an Intermediate College. On the plain language of these definitions the same institution cannot be called a basic school or a Junior High School as well as a High School or an Intermediate College. Each one has a distinct legal entity. On a basic school or a Junior High School being upgraded as a High School or an Intermediate College the identity of the institution known as basic school or Junior High School is lost. It ceases to exist as a legal entity and in its place another institution with a new legal entity comes into being. One cannot be equated with the other. In this connection performance may also be made to the decision of the Supreme Court in [Commissioner, Lucknow Division and Others Vs. Kumari Prem Lata Misra](#), . It would further be seen that administration including constitution of Committee of Management of an institution recognized under U.P. Act 11 of 1921 is to be carried out in accordance with a Scheme of Administration prepared u/s 16A of the said Act and this section does not apply to a basic school or a Junior High School. For all these persons and in the absence of any specific provisions in this behalf none having been pointed out to us maintenance grant payable to the basic school or Junior High School which has been upgraded as High School cannot and does not automatically become payable to the recognised High School. Suppose after a Basic School, or a Junior High School has been upgraded as a recognised High School, the State Government stops payment of the amount of maintenance grant which was being paid to the basic school, can the recognised High School claim as a matter of right that the said amount has become automatically payable to it. The answer, in the absence of any specific provision permitting such automatic formation, so to speak till, in our opinion, have to be in the negative. Such a recognised High School will have to wait maintenance grant payable to it as a recognised High School has been fixed as contemplated by Section 2(c) of U.P. Act 24 of 1971. Consequently, even if the maintenance grant payable to a basic school or a Junior High School is continued to be paid to those who were managing the erstwhile basic school or Junior High School it cannot be said that the upgraded recognised High School is

receiving any maintenance grant as defined in Section 2(c) of U.P. Act 24 of 1971.

6. The aforesaid Full Bench decision was considered in number of subsequent cases and followed. In case of [Dr. \(Smt.\) Sushila Gupta, Officiating Principal of Sri Dosar Vaish Balika Inter College Vs. The Joint Director of Education, Kanpur Region and Others](#), it was held in para 29 that:

a Junior High School upgraded to the High School/Intermediate level, the institution is governed by the provisions of U.P. Intermediate Education Act and Service Rules as applicable to such institution, have to be applied. There is no distinction drawn between an aided or an unaided school. The recognition of the institution is by itself sufficient to exclude the applicability of the laws governing Junior High School once the institution is upgraded. It is for this reason that a special transitory amending provision was brought in by way of Section 13A in U.P. Act No. 6 of 1979 discussed hereinabove to enable such upgraded institution to continue to receive the grant-in-aid that they were receiving at the level of Junior High School.

7. The Full Bench judgment was again followed by the Division Bench of this Court in case of [Ajay Pratap Rai Vs. District Basic Education Officer, C/m Kisan Purva Madhyamik Vidyalaya and Sri Krishna Dixit](#). It was held by the Division Bench in paras 8, 9 and 10, which are reproduced hereinbelow:

8. Having considered the rival submissions, we find that the learned single Judge after having noticed the Full Bench decision in the case of State of U.P. and others (supra) and the judgment of the learned single Judge in Sushila Gupta (supra) has held that once a Junior High School stands upgraded as a High School or an Intermediate College, then in that event the post of the Head of the Institution has to be filled up in accordance with the procedure prescribed under the Act 1921 read with Act 1982. It has been held that in such eventuality the Junior High School loses its identity as such and upon upgradation of the institution, there cannot be any appointment of a Head Master in a Junior High School under Rules 1978. For this, the learned single Judge has placed reliance upon the decisions referred to therein and has also indicated the ratio of the decision in Sushila Gupta's case to be fully applicable to the facts of the present controversy. The issue raised by the appellant, therefore, in respect of the status of the institution as still to be that of a Junior High School for the purposes of appointment on the post of Head of the Institution, has to be rejected for the reasons given by the learned single Judge with which we find ourselves to be in full agreement with. The word "upgradation" in its normal connotation means improvement; enhancement of status; more efficient. The word "grade" is derived from the latin word "gradus" which means degree, step. In [Hari Nandan Sharan Bhatnagar Vs. S.N. Dixit and Another](#), and [A.K. Subraman and Others Vs. Union of India \(UOI\) and Others](#), the Apex Court held "grade" means rank, position in a scale, a class or position in a class according to the value. It means a degree in the scale of rank, dignity, proficiency etc. (Section 15 of Code of Civil Procedure, 1908). The word "upgradation", therefore, means improvement in

degree, raising of status, rank, quality or in values. It is an improvement in proficiency and reflects a rising gradient. The institution was admittedly a Junior High School and was raised to the status of a High School in 1993 and to that of Intermediate College in the year 1999. It is undisputed that upon being upgraded as a High School, the institution has been recognised as such under the provisions of Act, 1921. This undisputed position, therefore, clearly establishes that the institution ceases to be a Junior High School and for the purposes of appointment of Head of the Institution, the appointment can only be made by resorting to the provisions as indicated in the judgment rendered in Sushila Gupta's case (supra). The observations made by the Full Bench in the case of State of U.P. v. District Judge, Varanasi (supra), which have been quoted in detail by the learned single Judge are worth reiterating to the effect that Basic School or a Junior High School is different from a High School or an Intermediate College as the same institution cannot be called Basic School or a Junior High School as well as a High School or an Intermediate College. The Full Bench above referred to held as under:

On a Basic School or a Junior High School being upgraded as a High School or Intermediate College, the identity of the institution known as Basic School or a Junior High School is lost and it ceases to exist as a legal entity and in its place another institution with a legal entity comes into being. One cannot be equated with the other.

9. The aforesaid observations of the Full Bench as explained in the judgment of Sushila Gupta's case, therefore, leave no room for doubt that the selection and appointment on the post of Head of the Institution which has been recognised as a High School and Intermediate College cannot be made under the provisions which are applicable to a Junior High School. In Sushila Gupta (supra), the learned single Judge considered all the Amendment made in the Statute and held that in spite of so many amendments to the statutory provisions, the proposition of law laid down by the above referred to Full Bench remained the same. Mr. Saxena has not brought to our notice any provision which have altered the legal position.

10. From the aforesaid discussions, it is evident that status of an institution after being upgraded loses its significance and the lower section of the school after upgradation completely merges into the upgraded institution. Interpreting the provisions otherwise would lead to complete absurdity and create a chaotic situation even for governance of the different parts of the same institution. An institution cannot have a multiple Code for its governance. There is no provision permitting continued applicability of the laws in relation to a Junior High School even after its upgradation.

8. In view of aforesaid discussion it is clear that the legal entity of basic school or a junior high school is a different from a high school or intermediate college after the institution is upgraded. The legal entity of the basic school of junior high school ceases to exist and in place of that institution, another institution comes into

existence with new legal entity as a high school or a intermediate college as the case may be and there is no distinction in between aided and unaided institution. This provision and principle will be applicable for both the institution after upgradation of the basic school or basic junior high school. The legal entity of the basic school or junior high school loses its significance and status after its upgradation and the same merged into the upgraded institution after the institution is upgraded as high school or intermediate. The basic school or junior high school will be in integral part of the upgraded high school and intermediate college as the case may be. The institution will be governed by the provisions applicable to the high school and intermediate college. Hence, the provisions of U.P. Intermediate Education Act, 1921 and the other provisions including Act of 1971, Act No. 5 of 1982 and Rules and Regulation framed there under will be applicable.

9. In view of the aforesaid discussion it is clear that appointment, removal or dismissal etc. of the teachers of the upgraded institution will be governed under the provision of U.P. Intermediate Education Act, 1921, U.P. Secondary Education (Services Selection Board) Act, 1982 and Rules and Regulations framed from time to time. In the present case, the impugned termination order dated 15.4.2006 (Annexure-6 to the writ petition) was passed on the basis of approval granted by the District Education Officer, hence the approval order dated 12.4.2006 and termination order dated 15.4.2006 on the basis of said approval is illegal without authority. The merit of the case is not required to be examined at this stage that in the earlier inquiry report the petitioner was exonerated and subsequently on the basis of same allegation the inquiry was again conducted and without giving copy of relevant papers and without affording opportunity of hearing the termination order was passed and these objections are required to be examined by the authority concerned. The termination order itself is illegal and the same is liable to be quashed. Hence, in view of the facts, the impugned termination order dated 15.4.2006 (Annexure-6 to the writ petition) passed by the Committee of Management and the alleged order of approval dated 12.4.2006 passed by the District Basic Education Officer is hereby quashed. The competent authority is free to pass a fresh order, after affording opportunity of hearing to the petitioner in accordance with law. Accordingly the present writ petition is allowed. No order as to cost.