

## Yogendra Kumar Sharma Vs State of U.P. and Others

**Court:** Allahabad High Court

**Date of Decision:** Nov. 17, 2009

**Acts Referred:** Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 " Section 12

**Citation:** (2010) 1 AWC 600

**Hon'ble Judges:** A.P. Sahi, J

**Bench:** Single Bench

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

A.P. Sahi, J.

Heard Sri Prabhakar Awasthi learned Counsel for the petitioner and the learned standing counsel for the respondent Nos. 1,

2 and 3. Sri Ashok Khare learned senior counsel assisted by Sri Irshad Ali appears for the respondent Nos. 7 and 8, Sri Khalil Ahmad Ansari for

the respondent No. 6 and Sri Shailesh Pandey for the respondent No. 9.

2. The challenge is to the order dated 23.10.2009, passed by a committee comprising of the Deputy Director of Education, Moradabad Region

who was also holding the charge of the Regional Deputy Director of Education, Moradabad whereby the representation filed by the petitioner

which was directed to be decided in terms of the order dated 22.4.2009 as well as in compliance with the directions of the Special Appellate

Bench dated 28.1.2009, has rejected the claim of the petitioner.

3. The petitioner has come up against the impugned order on several grounds but primarily on the ground that the order is without jurisdiction as

the same has proceeded to determine the selections which have to be made u/s 12 of the U.P. Secondary Education Services Selection Board

Act, 1982 inspite of the fact that the committee defined therein was not allowed to proceed as directed by this Court. While raising the challenge to

the said order the petitioner has categorically stated and averred in the writ petition that he does not seek to challenge the status of the respondent

No. 6. In view of this the matter of respondent No. 6 Jata Shankar Sharma as already concluded by the judgment of the Special Appellate Bench

stands affirmed.

4. Sri Prabhakar Awasthi contends that the impugned order, therefore, is unsustainable on the other grounds inasmuch as the Committee, which

has proceeded to decide the matter was incompetent in terms of Section 12 of the 1982 Act, to do so. He has further submitted that the

mandamus issued by this Court on 22.4.2009 also clearly directed that the dispute with regard to the selection under the 25% promotion quota has

to be examined u/s 12 and the Selection Committee constituted therein.

5. Sri Khare for the contesting respondents and the learned standing counsel have both conceded to this position as the decision has not been

taken with regard to the claim of the petitioner by the competent authority namely the Committee constituted u/s 12 of the 1982 Act. In view of this

it is not necessary to issue any notice to the respondent No. 4 or any other unrepresented respondents as the impugned order dated 23.10.2009

is being set aside with a direction to the Regional Joint Director of Education to place the matter before the Committee to be constituted as per

Section 12 of the Act.

6. It is well-settled that once a Statute provides a particular procedure to be followed then in view of the law laid down by series of decisions that

have been continuously followed by the Supreme Court and this Court that an act which has to be followed in a particular manner has to be done

in the same manner and not otherwise. Reference may be had to the following decisions:

1. Taylor v. Taylor (1876) 1 Ch D 426.

2. Prof. Ramesh Chandra, Vice Chancellor Bundelkhand University Vs. State of Uttar Pradesh and Sri Sovoran Singh Yadav, Ex. Commissioner,

Jhansi Region (Enquiry Officer),

Para 27 of the decision in 2007 (4) ESC 2338 is being quoted below:

2 7. When the Statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of

the same. It has been hitherto uncontroverted legal position that where a statute requires to do a certain thing in a certain way, the thing must be

done in that way or not at all. Other methods or mode of performance are impliedly and necessarily forbidden. (Vide Taylor v. Taylor (1876) 1 Ch

D 426 ; AIR 1936 253 (Privy Council) Deep Chand Vs. The State of Rajasthan, Patna Improvement Trust Vs. Smt. Lakshmi Devi and Others,

State of Uttar Pradesh Vs. Singhara Singh and Others, Nika Ram Vs. State of Himachal Pradesh, Ramchandra Keshav Adke (Dead) by Lrs. and

Others Vs. Govind Joti Chavare and Others, Chettian Veetil Ammad and Another Vs. Taluk Land Board and Others, State of Bihar and Another

Vs. J.A.C. Saldanha and Others, A.K. Roy and Another Vs. State of Punjab and Others, State of Mizoram Vs. Biakchhawna, J.N. Ganatra Vs.

Morvi Municipality, Morvi, Babu Verghese and Others Vs. Bar Council of Kerala and Others, and Chandra Kishore Jha v. Mahavir Prasad

(1998) 8 SCC 266).

7. Accordingly, the impugned order dated 23.10.2009 is set aside and the matter stands remitted to the respondent No. 2 who shall proceed to

decide the claim of the petitioner as directed by this Court vide order dated 22.4.2009 in accordance with law as expeditiously as possible

preferably within a period of 8 weeks from the date of production of a certified copy of this order before him after giving opportunity of hearing to

the concerned parties.

8. The writ petition is allowed. No order as to costs.