

(2006) 08 AHC CK 0241

Allahabad High Court

Case No: Civil Misc. Writ Petition No's. 8314 and 10984 of 2003 and 21114 of 2004 and
Writ Petition No's. 41254 and 46356 of 2005

Sabhajeet Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Aug. 18, 2006

Acts Referred:

- Uttar Pradesh Intermediate Education Regulations, 1921 - Regulation 104, 105, 2

Citation: (2006) 7 ADJ 361 : (2006) 4 AWC 3614

Hon'ble Judges: D.P. Singh, J

Bench: Single Bench

Advocate: H.S.N. Tripathi, P.S. Tripathi and Pankaj Tripathi, for the Appellant; Pradeep Verma, R.B. Singhal and Gajendra Pratap and S.C., for the Respondent

Final Decision: Dismissed

Judgement

D.P. Singh, J.

All these petitions raise common questions on somewhat similar facts and, therefore, on the request of the parties, they are being decided by a common order.

2. Only those facts which run through the spine of the petitions are being noted which are necessary for their decision. With the consent of the parties, writ petition of Sabhajeet Pandey is taken up as the lead petition.

3. Heard learned Counsel for the parties.

4. Dwarika Prasad Higher Secondary School is a duly recognized Intermediate College but receives grant-in-aid only upto the High School level. Election disputes of Committee of Management led the Joint Director of Education, Varanasi Region, Varanasi to appoint an Authorized Controller vide order dated 23.7.2003, which was subjected to challenge by Sabhajeet Pandey, claiming to be the manager in Writ Petition No. 39207 of 2003 wherein an injunction was granted against the

Authorized Controller vide order dated 8.9.2003 restraining him from making any appointment in the institution. The said writ petition was allowed vide order and judgment dated 20th, May, 2005 and the said order has become final.

5. This petition has been filed with the allegation that in the teeth of the aforesaid injunction, the Authorized Controller appointed Sri Dan Bahadur Yadav as the officiating Principal and further he appointed Sri Ajay Kumar, as a teacher on compassionate ground. It is further alleged that one Rama Shanker Maurya was also appointed by promotion as a clerk. The said three appointments are under challenge and so also the attestation of the signature of Sri Dan Bahadur Yadav, as Principal of the institution is sought to be quashed.

6. Learned Counsel for the petitioner has firstly urged that all the three appointments were in contravention of the aforesaid injunction order dated 8.9.2003 and as such they are void and should be struck-down.

7. Before the Court proceeds to examine the argument, it would be appropriate to notice the attending facts and circumstances of the three appointments.

8. It is not denied by the parties that the then Principal of the institution Sri Matroo Yadav died in harness as the Principal of the institution in mid-session, i.e. on 20.11.2003. Regulation 2 sub-clause (2) of Chapter II of the Regulations framed under the U.P. Intermediate Education Act mandates that a temporary vacancy caused by death or retirement of an incumbent on the post of Principal "shall be filled by the promotion of the senior-most qualified teacher, if any, in the highest grade in the institution." Thus, the management, by whatever named called, was obliged under this Regulation to appoint the senior-most teacher of the institution as the officiating Principal. The mandate of the said provision has a pious object behind it. An important organization like an educational institution cannot be run headless. The Principal of such an institution has a very pivotal role to play in its day-to-day functioning. A teacher may be absent; leave may have to be granted; necessity may arise to admonish or advise students, salary bills have to be forwarded; the staff has to be managed; these are but some of the daily functions which have to be performed. Apart from it, where the vacancy occurs in mid-session, the dates for home examination may have to be fixed, forms of Board Examination may have to be forwarded. These chores cannot be left unattended even for a day. Therefore, the Authorized Controller, apart from the necessity of the situation, was not only obliged under law, but duty bound to make temporary officiating arrangement. Thus, the contention that the appointment was in the teeth of the said injunction cannot be accepted. The said injunction, in the context in which it was granted, related to making any fresh appointment by recruitment but it did not restrict or prohibit any action which has to be taken in consonance with the operation of law.

9. This very argument has been orchestrated in the case of compassionate appointment of Ajay Kumar, as a Assistant Teacher. It is not denied that Ajay Kumar is the son of late Matroo Yadav, who died in harness while working as the Principal of the institution. Under Regulation 104 of Chapter III of the Regulations, the management is obliged to report to the Inspector within seven days, details with regard to the members of the family of the deceased employee. Any one of the eligible members of the family of the deceased employee may apply to the Inspector under Regulation 105 for compassionate appointment and his claim is bound to be considered by a committee constituted for the purpose which is mandated, in case he fulfills the requirement, to recommend his appointment, whereafter the Inspector has to send the application and the recommendation to the management for issuing the appointment letter and the management is without any option, except to issue the letter of appointment. Thus, here also, the Authorized Controller was obliged under the Regulations to issue the appointment letter in pursuance of the recommendation of the Committee and the action is necessitated by operation of law. Thus, again, it cannot be said that the Authorized Controller acted in the teeth of the prohibition imposed by the order dated 8.9.2003.

10. It is also urged that late Matroo Yadav was continuing on session benefit (Satra Labh) and as he was to superannuate on 1st July, 2003, he was illegally continuing since his date of birth did not fall between 2nd July and 30th June, therefore, Ajai Kumar could not have been given the benefit of compassionate appointment. Firstly, there is no such pleading or relief claimed in the writ petition and secondly the said claim cannot be considered in these collateral proceedings. However, there is complete answer to the petitioner's argument in Khan Chandra Madhu v. Deputy Director of Education, IIIrd. Region, Bareilly and Ors. 1993 (2) U.P.L.B.E.C. 1128.

11. Yet again the "ghost" of 8.9.2003 injunction has been projected for challenging the promotion of Rama Shanker. From the record it is apparent that Rama Shanker, a class IV employee of the institution was promoted to the post of clerk vide order dated 3rd September, 2003, i.e. prior to 8.9.2003, though, the approval was granted by the Inspector subsequent to the said injunction. Much rhetoric has been raised that it is an anti-dated order, Mere vouchsafing that it is an anti-dated order, without any substantive and authentic material, can only be likened to a bell without its dong. Therefore, the contention cannot be accepted even in the case of Rama Shanker.

12. No doubt, technically speaking, promotion, compassionate engagement or officiating arrangement may all belong to the genre of "appointment", but as has already been observed that, it has to be examined in the context and in the background in which the injunction dated 8.9.2003 was issued. Keeping that in view, it would be apparent that the injunction confined itself to making any fresh or new appointment.

13. In any event, the petition in which the said injunction was granted has already been allowed and though these facts were in existence and were brought on record, the Court did not set aside the appointments. Had the Court been of the opinion that even such appointments were prohibited; it would and could have set it aside. Thus, it has to be held that all the three appointments were by operation of law and are not hit by the said injunction.

14. It is then urged that Sri Onkar Nath Dubey was the Senior-most teacher in the institution while Sri Dan Bahadur Yadav was at serial No. 2, likewise, it is argued that Sheo Shanker Maurya was the Senior-most class IV employee while Rama Shanker was junior to him. Reference is being made to the seniority list of yesteryears, which has been vehemently denied as being a manufactured document.

15. A quick hawkeye view of the history of litigation with respect to the Seniority in the institution would do well and disclose the hollowness of this argument.

16. Sri Onkar Nath Dubey has filed Writ Petition No. 10948 of 2003 while Sheo Shanker Maurya has filed Writ Petition No. 8314 of 2003 with the allegation that since the year 1998 the Authorized Controller was functioning in the institution due to various management disputes but he failed to publish the seniority list. Both claimed the relief of publishing and declaring the seniority list of the institution. In the former writ petition vide order dated 11.3.2003 and in the latter writ petition vide order dated 20.2.2003, directions were issued to the Principal, District Inspector of Schools and the Authorized Controller to publish the seniority-list of the institution. In pursuance of the aforesaid directions of the Court a seniority list dated 10.7.2003 was duly published and objections were invited on 14.7.2003 by the District Inspector of Schools in which Sri Dan Bahadur has been shown to be the senior-most teacher in the institution. The original service book was also produced in Court and the relevant extract of it has been filed in this petition. It reflects that Onkar Nath Dubey joined the institution on 1.8.1974 while Sri Dan Bahadur joined the institution on 8.7.1974. Interestingly the parties who are affected by the said seniority list, viz : Sri Onkar Nath Dubey and Sheo Shanker Maurya have not challenged the said seniority list in their respective writ petitions by amending it, even though their alleged adversaries had been appointed on the strength of the said seniority list. Further, there is nothing on record to show whether they have filed any appeal challenging the said seniority list.

17. Much has been said on behalf of the petitioner that the said seniority list was a manufactured document prepared in collusion of the Authorized Controller and the District Inspector of Schools, but this rhetoric is not substantiated by any worthwhile material on record either by Pandey or by Sri Onkar Nath Dubey and Sheo Shanker Maurya. It is only Sabhajeet Pandey, the newly anointed Manager, who is clamouring the seniority dispute. Has he an oblique motive?

18. Whatever may be the reason, the officiating arrangement of the Principal and promotion of Rama Shanker Yadav are based on the latest seniority list, which has yet not been set aside by any competent Court or authority. Correctness of documents like the service book and the seniority list prepared in the normal course of business has to be presumed, unless it is proved to be incorrect by cogent evidence in appropriate proceedings. Therefore, the argument of the petitioner appears to be premature and cannot be accepted.

19. No other point has been urged.

20. For the reasons given above no interference is required in the discretionary jurisdiction of this Court under Article 226 in Writ Petition Nos. 21114 of 2004, 10948 of 2003, 8314 of 2003 and 46356 of 2005. Consequently, these petitions are dismissed.

21. For the same reasons Writ Petition No. 41254 of 2005 is allowed and the impugned order dated 25.4.2005 is hereby quashed.

22. No order as to costs.