

(2005) 09 AHC CK 0256

Allahabad High Court

Case No: Special Appeal No's. 1108 and 1110 of 2005

Committee of Management,
Panchayat Inter College

APPELLANT

Vs

Bechu Singh and Others

RESPONDENT

Date of Decision: Sept. 23, 2005

Acts Referred:

- Suits Valuation Act, 1887 - Section 11
- Uttar Pradesh Intermediate Education Act, 1921 - Section 16G(3)

Citation: (2005) 6 AWC 5846

Hon'ble Judges: Ashok Bhushan, J; Ajoy Nath Ray, J

Bench: Division Bench

Advocate: K.N. Mishra, for the Appellant; V.K. Singh and S.K. Yadav and S.C., for the Respondent

Final Decision: Dismissed

Judgement

Ajoy Nath Ray and Ashok Bhushan, JJ.

We are in respectful agreement with the reasoning given and the order, passed by the Hon"ble Single Judge in his Lordship's Judgement and order dated 25.8.2005.

2. The matter before his Lordship consisted of a seniority dispute between Ram Subhao Yadav and Bechu Singh. This dispute assumed relevance and importance since the seniormost teacher is to be appointed as Ad- hoc Principal, to the Institution now.

3. These two appeals have been filed against the impugned order one by Yadav and another by the Committee of Management, the Manager of which is also another Yadav, namely, Rajendra Prasad Yadav. However, the similarity of the surname has no legal relevance. Bechu was appointed in 1969 and Yadav in 1971. In the normal course Bechu would be senior. By an order passed in the year 2001, the District Inspector of Schools had disapproved the suspension of imposed on Bechu and by

the same order had recommended Bechu's appointment as officiating Principal. Yadav, meaning there by Ram Subhao Yadav (and it will be so meant hereafter), filed a writ petition which was dismissed by a reasoned order of Hon"ble D.P. Singh on the 5th of April 2004. The special appeal filed thereafter was disposed of on 20.7.2004. The appeal was dismissed but at the end the Division Bench decided to direct the issue of seniority to be decided by the concerned authorities under the UP Intermediate Education Act and Regulations.

4. Decisions have thereafter been given and the matter has now been set at rest by the Hon"ble Single Judge. Admittedly departmental decisions have proceeded on a seniority list drawn by the Managing Committee in-or about the year 2001. Prior thereto there appears to have been no seniority list drawn up. In the seniority list Yadav is preferred to Bechu. The reason for such preference has not been very clear or at all clear from the papers. In the departmental decisions the seniormost as per the list was simply preferred. The contesting parties came to Court claiming seniority on the respective bases of date of appointment, and seniority list. The Hon"ble Single Judge however, has now clarified the matter. Bechu was imprisoned in or about the year 1971 for 1 1/2 years although he was appointed in 1969. During imprisonment, the committee communicated to him in writing that his services were being terminated and that after release he might be given fresh appointment. Again in 1973 the Committee's letter does purport to give Bechu a fresh appointment. Bechu's service record was also accordingly altered on the basis of his termination of service by the Committee and the giving of fresh appointment by the Committee.

5. The first challenge made to the Court was in or about the year 2001 and that too at the instance of Yadav when Bechu was approved by the District Inspector of Schools. During all these periods Bechu took no step against the communication of the Committee of Management regarding his purported break of service and giving of fresh appointment.

6. The learned Single Judge has pointed out that the purported termination of Bechu's service by the Committee was void since it was sought to be imposed without the prior approval of the District Inspector of Schools.

7. Under Sub-section (3) of Section 16G of the U.P. Intermediate Education Act 1921 a termination by the Committee without the prior approval of the District Inspector of Schools is void. The slightly old but still authoritative case of Smt. Manorama Devi reported in 1971 ALJ 983 also holds to the same effect borne in mind that such purported termination is not merely voidable but void. The law in regard to void instrument is that a person purportedly affected thereby can, at his choice, disregard the same until any action is taken or is threatened to be taken on the basis of such void instrument. At the time of such threat or such taking of action the person aggrieved can take appropriate steps including commencement of litigation and claim therein that a void instrument is being sought to be put into operation against him or has been put in operation against him. Time is not usually a matter of

any importance, in this matter; what is old remains void and is not made alive simply by passage of time. The reported case of [Kiran Singh and Others Vs. Chaman Paswan and Others](#), might be referred to in this respect. Paragraph 6 of the said judgement is quoted below:-

"6. The answer to these contentions must depend on what the position in law is when a Court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of Section 11 of the Suit Valuation Act is on that position. It is a fundamental principle well- established that a decree passed by a Court without jurisdiction is a nullity, & that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction whether it is subject matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration feel to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was "coram non judice", and that its judgement and decree would be nullities. The question is what is the effect of Section of 11 of the Suits Valuation Act on this position. "

8. In the instant case, therefore, according to law, Bechu was entitled to keep silent and take no action against the purposed void termination sought to be imposed upon him, but act only as and when it affected his claims of seniority in regard to appointment as principal. We have no doubt that Bechu has no conscious knowledge of this right of his but the Courts of law permit the rules of law to operate in favour of persons whether they know those or whether they conscious/choose to exercisety their legal rights or not.

9. The Hon"ble single Judge has done exactly this. His Lordship has (sic) to the real issue and has applied, with respect, correct law as we have already said above. We are in respectful agreement with his Lordship"s opinion.

10. Both the appeals are dismissed.