

(2008) 10 AHC CK 0144

Allahabad High Court

Case No: None

Mohd. Ayyub Khan

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Oct. 14, 2008

Acts Referred:

- Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 - Section 18

Citation: (2009) 1 AWC 71 : (2008) 119 FLR 1082

Hon'ble Judges: V.M. Sahai, J; Sanjay Misra, J

Bench: Division Bench

Final Decision: Allowed

Judgement

V.M. Sahai and Sanjay Misra, JJ.

We have heard Sri R.C. Dwivedi, learned Counsel for the appellant, learned standing Counsel appearing for respondents No. 1 and 2 and Sri Azad Khan, Advocate holding brief of Sri S. Islam, learned Counsel appearing for respondent No. 4.

2. The District Inspector of Schools, Deoria by his order dated 26.8.2008 held that Sri Muzafrul Hasan was the senior most lecturer in the institution, Mohd. Samiullah is the second senior most lecturer in the institution and the District Inspector of Schools has cancelled the appointment of Mohd. Ayyub Khan as ad hoc principal of the institution as he has found that since Sri Muzafrul Hasan had refused to shoulder the responsibility of officiating principal, hence Sri Samiullah, lecturer next in the order of seniority, was entitled to be appointed on the post of officiating principal. This order was challenged by Mohd Ayyub Khan by filing writ petition being Civil Misc. Writ Petition No. 4833 of 2008, dismissed by the learned single Judge by his judgment and order dated 17.9.2008, which has been challenged in this appeal.

3. We have gone through the order of learned single Judge and we are of the considered opinion that the order of learned single Judge cannot be maintained as he has completely lost sight of the admitted fact that the institution namely O.K.M. Inter College, Deoria is a minority institution and it is the right of the minority institution to choose its principal or officiating principal.

4. In [The Secretary, Malankara Syrian Catholic College Vs. T. Jose and Others](#), in paragraph 27, it has been held:

It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognized as a vital facet of the right to administer the educational institution. This has not been in any way, diluted or altered by TMA Pai. Having regard to the key role played by the Principal in the management and administration of the educational institution. There can be no doubt that the right to choose the Principal is an important part of the right of administration and even if the institution is aided, there can be no interference with the said right. The fact that the post of the Principal/Headmaster is also covered by State aid, will make no difference.

5. Section 18 of the U.P. Secondary Education Services Selection Board Act, 1982 provides for making ad hoc appointment. Section 18 would not be applicable to a minority institution in view of Section 30 of the aforesaid Act, which exempts minority institution from the operation of the Act itself. The proviso to Regulation 2(1) of Chapter II of the Regulations framed under the Intermediate Education Act provides that a temporary vacancy could be filled by promotion of the senior most qualified teacher of the institution.

6. This provision is applicable only to other institutions, but they are not applicable to minority institutions, which are governed by the provisions of Section 16-FF of U.P. Intermediate Education Act. For ready reference Regulation 2(1) of Chapter II of the Regulations is extracted below:

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 16-F, or as the case may be, under Sub-section (1) of Section 16-FF:

Provided that in the case of any institution not being an institution referred to in Section 16-FF 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.

7. Therefore, the aforesaid provisions make it clear that for the post of officiating principal the committee of management of a minority institution is free to appoint

the principal of its choice irrespective of the seniority list of lecturers. Therefore, the judgment and order passed by learned single Judge dated 17.9.2008 as well as the order passed by District Inspector of Schools dated 26.8.2008, Annexure-4 to the writ petition, are liable to be set aside.

8. In the result, this appeal succeeds and is allowed. The judgment and order passed by learned single Judge dated 17.9.2008 as well as the order passed by District Inspector of Schools dated 26.8.2008, Annexure-4 to the writ petition, are set aside. It would be open to the committee of management to appoint any person of its choice for the post of officiating principal who, according to the committee of management, is the most suited to head the institution provided he possesses the prescribed qualifications for holding the post of principal.

9. The parties shall bear their own costs.