

(1995) 09 AHC CK 0135

Allahabad High Court

Case No: Special Appeal No. 520 of 1995

Kaushal Kishore Singh

APPELLANT

Vs

Shubh Karan Mishra and Others

RESPONDENT

Date of Decision: Sept. 7, 1995

Acts Referred:

- Uttar Pradesh High Court (Abolition of Letters Patent Appeals) Rules, 1962 - Rule 5
- Uttar Pradesh Intermediate Education Act, 1921 - Regulation 3, 3(1)

Citation: (1995) 3 UPLBEC 1786

Hon'ble Judges: A.L. Rao, C.J; R.R.K. Trivedi, J

Bench: Division Bench

Advocate: V.K.S. Chaudhry and S.N. Srivastava, for the Appellant;

Final Decision: Dismissed

Judgement

A.L. Rao, C.J. and R.R.K. Trivedi J.

1. This appeal is directed against the order dated 20th July, 1995 passed by the learned single Judge in Writ Petition No. 25722 of 1994 by which writ petition filed by Respondent No. 1 has been allowed and order dated 18th July, 1994 passed by Respondent No. 2, Deputy Director, Education, VII Region, Gorakhpur, has been quashed and Respondent No. 1 has been held entitled to continue on the post of Principal.

2. The learned Counsel appearing for the Respondent No. 1 raised a preliminary objection, questioning the maintainability of this special appeal. The submission of the learned Counsel is that the order dated 18th July, 1994 has been passed by Respondent No. 2 in exercise of the appellate powers, as provided in Regulation-3 of Chapter-II of the Regulations framed under the U.P. Intermediate Education Act, 1921. As the order Impugned in this appeal has been passed in a writ petition arising out of an appellate order, the appeal is not legally maintainable Under Rule-5

of Chapter VIII of the Rules of the Court.

3. The learned Counsel for the Appellant on the other hand submitted that the order of the Deputy Director, Education dated 18th July, 1974 has been passed in exercise of powers contemplated in para 7 of the U.P. Secondary Education (Removal of Difficulties Order) of 1981 as amended by 4th Removal of Difficulties Order of 1982 which provides that any dispute connected with the promotion or direct recruitment, under this Order, shall be referred to the Deputy Director, Education for a decision. The learned Counsel for the Appellant has submitted that as there was a dispute regarding the opportunity to be given to the senior-most teacher to officiate as Principal of the College and the Appellant was the senior most, he raised that issue against the appointment of Respondent No. 1 on the post and it was not by way of appeal. In this connection, the learned Counsel for the Appellant has further submitted that the court should determine the real character of the proceeding before Respondent No. 2 on basis of the contents of document filed and not on basis of the wrong provisions mentioned by the Appellant, who is a layman, or from the fact that document filed has been described as appeal under misconception. It has also been submitted by the learned Counsel for the Appellant that the committee of management decides the question of seniority as an employer and not as an authority. The provisions creating right of appeal or revision presupposes the existence of a decision by some authority which may be challenged. In substance, the submission of the learned Counsel for the Appellant is that for attracting the bar against appeal from an order of the learned single Judge under Clause (h) of Section 5 of U.P. High Court (Abolition of Letters Patents Appeal) Act, 1962, there should be two authorities, one deciding the dispute initially, from which revision or appeal could be filed and then decided by another authority who is conferred with the appellate or revisional power. The learned Counsel in support of this contention has mentioned the object or reason behind enacting Clause (a) of aforesaid Section 5, prohibiting the appeal from the award, judgment or order of a Tribunal, court or statutory authority. The submission is that the Tribunal, court or statutory authority are normally presided over by the persons having judicial experience and the right of special appeal has been taken away in such cases as the officers are supposed to decide the dispute judicially. Whereas in other cases, as the orders are passed generally by executive officers, the right of special appeal has been taken away only in those cases where the order of learned Judge has been passed in writ petitions challenging orders of appellate or revisional authority and not in cases where the order of initial authority has been challenged. The learned Counsel has submitted that the committee of management cannot be termed as an authority as it does not exercise any function of the Government and the seniority is determined by it only as an employer. The learned Counsel has placed reliance on the cases [Chautala Workers Co-operative Transport Society Ltd. and Another Vs. State of Punjab and Others](#), [Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others](#), and [Som Prakash v. Union of India AIR 1981 SC 212](#) for this submission.

4. We have considered the submission made by the learned Counsel for the parties. However, in the present case, the Appellant filed an appeal before the Deputy Director, Education. The memo of appeal has been filed as Annexure-IV to the supplementary affidavit dated 28th August, 1995. From perusal of the memo of appeal, there remains no doubt that it has been filed under Regulation 3(1) of Chapter 11 of the Regulations framed under U.P. Intermediate Education Act, 1921. The facts mentioned in the memo of appeal clearly disclose the intention of the Appellant that he raised and sought the determination of the dispute of seniority. The relief claimed in the appeal also indicates that the seniority list has been sought to be corrected and it has been prayed that the Appellant may be shown as senior to Respondent No. 1. In the facts pleaded and relief claimed in memo of appeal, the Deputy Director, Education passed the order dated 18th July, 1994 allowing the appeal and declaring the Appellant (Kaushal Kishore Singh) as senior to Respondent No. 1. The appeal has thus been decided under Regulation 3 of Chapter II of the Regulations mentioned above. From perusal of the memo of appeal and the order passed therein by the Deputy Director, Education, there remains no doubt that It has been passed by the Deputy Director, Education in exercise of appellate powers conferred upon him by Regulation 3 of Chapter II.

5. So far as the contention that the committee of management is not an authority and hence an order passed by the Deputy Director, Education in appeal from an order of the committee of management should not be treated to be an appellate order for purposes of this special appeal, cannot be accepted. The provisions of law are very clear and unambiguous In this regard and are not required to be interpreted in the manner suggested or behalf of Appellant. We are of the opinion that it is not necessary to enter into the question as to whether the committee of management is an authority or not. So long as the provisions ^contained in Regulation 3 of Chapter II of the Regulations exist, seniority list has to be prepared for each grade of teachers by committee of management and Clause (p) thereof provides that If any teacher is aggrieved by such seniority list, he may file an appeal before the Deputy Director, Education within 15 days and such appeal shall be decided after hearing the concerned parties. In the present case, it cannot be disputed that the relief sought In the appeal was for changing the seniority list prepared by the committee of management and Deputy Director, Education has by order dated 18th July, 1994 altered the seniority list and granted relief as claimed by the Appellant. The Deputy Director of Education is an authority and he in exercise of the appellate powers decided the appeal and it is sufficient to attract the bar against special appeal. It is not necessary, in our opinion, that the committee of management should also be an authority as normally understood in law.

6. The contention of the learned Counsel for the Appellant that it was a dispute about appointment of ad hoc Principal, which was referred to the Deputy Director of Education under para 7 of U.P. Secondary Education Service Commission (Removal of Difficulties Order), 1981, is also not acceptable in view of the clear averments

made and relief claimed In the memo of appeal. The question of seniority was directly raised before Respondent No. 2 and the determination of dispute of seniority between Appellant and Respondent No. ♦I may as a consequence also affect the appointment of head of the institution, but it has nothing to do with the bar against the present special appeal provided under law.

7. For the reasons stated above, in our opinion, the appeal filed by the Appellant is not legally maintainable having been preferred against an order passed by the learned single Judge in a writ petition in which the order passed by the appellate authority was challenged.

8. The special appeal is accordingly rejected. No order as to costs.