

(2002) 09 AHC CK 0219

Allahabad High Court

Case No: C.M.W.P. No. 22972 of 1995

Rajendra Lal
Srivastava

APPELLANT

Vs

Secondary Education
Service Commission
and Others

RESPONDENT

Date of Decision: Sept. 4, 2002

Acts Referred:

- Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 - Section 21, 9
- Uttar Pradesh Secondary Education Services Commission and Selection Boards Regulations, 1998 - Regulation 2, 5

Citation: (2003) 2 AWC 1434

Hon'ble Judges: Vineet Saran, J; G.P. Mathur, J

Bench: Division Bench

Advocate: Ramesh Upadhyaya, Ramesh Chandra Srivastava and Shyam Narain, for the Appellant; R.G. Padia, Amicus Curiae and S.C., for the Respondent

Final Decision: Allowed

Judgement

G.P. Mathur, J.

This matter has come before us in order to resolve the conflict of opinions in two decisions rendered by learned single Judges of this Court.

2. Disciplinary proceedings were initiated against the petitioner who was Principal of an intermediate college. A charge-sheet was served upon him on 15.7.1993 and he was required to appear before the enquiry committee constituted by the Committee of Management of the Institution. After conclusion of the enquiry, the Committee of Management of the Institution passed a resolution proposing his dismissal from service. The resolution was sent to U. P. Secondary Education Services Commission

(hereinafter referred to as the Commission) for grant of approval. The Commission sent a notice to the petitioner requiring him to send his reply. He was afforded an opportunity of hearing by a single member subcommittee of the Commission. Thereafter, the Commission passed an order on 17.7.1995 approving the proposal of the Committee of Management of the Institution for dismissing the petitioner from service. The writ petition has been filed for quashing of the aforesaid order.

3. During the course of hearing before a learned single Judge, it was contended that the impugned order of the Commission being a non-speaking order, it is wholly illegal. Reliance was placed on a decision by a learned single Judge in *Awadh Narain Tripathi v. U. P. Secondary Education Services Commission and Ors.* 1995 (3) UPLBEC 1891 wherein it has been held that the Commission should have given reasons for not accepting the pleas set up by the teacher in his reply to the show cause notice and it should have also addressed itself to the quantum of punishment having regard to the nature of charges before expressing agreement with the report of single member sub-committee and it having not done so, the decision of the Commission was liable to be set aside. On behalf of the contesting respondents, reliance was placed on another decision of a learned single Judge in [Committee of Management, D.A.V. Inter College, Aligarh and another Vs. U.P. Secondary Education Services Commission, Allahabad and others,](#) wherein it has been held that the Commission being in agreement with the report of the sub-committee, it was not necessary for it to give reasons which impelled it to agree with the findings of the subcommittee and it was more than enough if the Commission mentioned that after due consideration of the report of the sub-committee, it has taken a decision in accordance with findings of the sub-committee. The learned single Judge who heard the writ petition has made the present reference to decide the question as to whether the Commission, while considering the report of the subcommittee, is required to give its reasons for either approving or disapproving the report or without giving any reason, it can approve or disapprove the same.

4. The State Legislature enacted the U. P. Secondary Education Services Commission and Selection Boards Act, 1982 (U. P. Act No. 5 of 1982) (hereinafter referred to as the Act) with the object of constituting Secondary Education Services Commission at the State level to select the principals, lecturers, headmasters and L.T. grade teachers and Secondary Education Services Selection Boards at the regional level to select and make available suitable candidates for comparatively lower position to C.T./J.T.C./ B.T.C. grade for such institutions. Another object for making the Act was that Section 16G (3) of U. P. Intermediate Education Act, 1921, wherein the managements were authorised to Impose punishment with the approval of District Inspector of Schools for matters pertaining to disciplinary actions, was found to be inadequate. It was, therefore, considered necessary that this power should be exercised subject to prior approval of the Commission or the Selection Boards, as the case may be, which would function as an Independent and impartial body. The preamble of the Act is as under :

"An Act to establish Secondary Education Services Commission and Selection Boards for the selection of teachers in Institutions recognised under the Intermediate Education Act, 1921."

5. The Act has undergone major amendments by U. P. Act No. 25 of 1998, which came into force on 20.4.1998 and it is now known as U. P. Secondary Education Services Selection Boards Act. However, in the present case, we are concerned with the Act as it existed prior to the aforesaid amendment. Section 2 (c) at the relevant time defined Commission and it meant U. P. Secondary Education Services Commission established u/s 3. Section 3 provided that with effect from such date as the State Government may, by notification, appoint, in this behalf, there shall be established a Commission to be called as "Uttar Pradesh Secondary Education Services Commission". After amendment by U. P. Act No., 25 of 1998, the word "Commission" has been replaced by "Selection Board". Section 4 provided that the Commission shall consist of a Chairman and not less than six and not more than eight other members to be appointed by the State Government. The only difference made by the amendment is that Board shall consist of a Chairman, a Vice-Chairman and nine members who shall be appointed by the State Government. Sub-clauses (a) to (e) of Section 9 of the Act read as under :

"Section 9.--The Commission shall have the following powers and duties, namely :

- (a) to prepare guidelines on matters relating to the method of direct recruitment of teachers ;
- (b) to conduct examinations, where necessary, and hold interviews and make selection of candidates for being appointed as teachers ;
- (c) to select and invite experts and to appoint examiners for the purposes specified in Clause (b) ;
- (d) to make recommendations regarding the appointment of selected candidates ;
- (e) to advise the management in matters relating to dismissal, removal or reduction in rank of teachers ;"

At the relevant time, Sub-section (1) of Section 21 of the Act provided that no teacher specified in the Schedule shall be dismissed or removed from service or reduced in rank and neither his emoluments may be reduced nor he may be given notice of removal from service by the management unless prior approval of the Commission has been obtained. The only difference made after the amendment is that "Commission" has been substituted by "Board" and it has been further provided that if any such thing is done without such prior approval, the same shall be void.

6. Section 34 of the Act confers powers upon the Commission (after amendment "Board") to make Regulations with the prior approval of the State Government and Section 35 confers powers upon the State Government to make Rules for carrying

out the purposes of the Act. In exercise of the aforesaid power, the Commission made the Uttar Pradesh Secondary Education Services Commission (Procedure and Conduct of Business) Regulations, 1983, (hereinafter referred to as the Regulations, 1983). Regulation 2 (c) defines a "Committee" and unless there is anything repugnant in the subject or context, it means a Committee constituted by the Commission from among its members. Regulation 5 of the aforesaid Regulations is being reproduced below :

5. Procedure (General).--(1) For convenient transaction of its business the allocation of work among members (including Chairman) shall, from time to time be made by the Commission. In urgent cases, the Chairman may allot any work to any member and place before the next meeting.

(2) For convenient and expeditious transaction of its business the Commission may constitute a committee or committees from amongst its members or authorise any member for performance of any specified work or transaction of any specified business.

(3) The allocation made under the above clauses may be amended, altered or modified as and when deemed necessary.

(4) The senior-most member shall be the Convenor of the Committee.

(5) Decisions of the Committee shall, except in matters in respect of which the Commission has otherwise directed, be subject to approval of the Commission.

(6) Member of the Committee may seek the opinion of any other member or members on any issue under consideration of the Commission and may send the file/papers to all or any of the members for the purpose."

The Commission also made U. P. Secondary Education Services Commission (Procedure for Approval of Punishment) Regulations, 1985 (hereinafter referred to as the Regulations, 1985). This Regulation lays down the procedure which has to be followed in the matter of awarding punishment to teachers. Regulations 3 and 8 of Regulations, 1985 read as under :

"3. Association of Inspector.--The Commission hereby associates with itself, the Inspector for the purposes of discharging its duties under Sub-section (1) of Section 21 of the Act.

8. Disposal by Commission.--The Commission shall after due consideration approve or disapprove the punishment proposed or may issue any other directions deemed fit in the case."

7. The mandate of Section 21 is that no teacher can be dismissed or removed or reduced in rank except with prior approval of the Commission. Similarly, without such prior approval, his emoluments cannot be reduced nor his increment can be withheld. Therefore, if the management wants to take any kind of disciplinary action

against a teacher, the same can be taken only after prior approval of the Commission has been obtained.

8. Section 21 of the Act and also Clause 5 of the Regulation 5 of the Regulations, 1983 uses the expression "approval of the Commission." The dictionary meaning of the word "approval" is as under :

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The word "approval", therefore, means expression of commendation or of agreement with. It is different from appeal which is the right of entering a superior court and invoking its aid and interposition to redress the error of the court below. In Oxford Dictionary, the appeal has been defined as the transference of a case from an inferior court to a higher court or Tribunal In the hope of reversing or modifying the decision of the former. In Law Dictionary by Sweet, the term "appeal" is defined as proceeding taken to rectify an erroneous decision of a Court by submitting the question to higher court. In Black's Law Dictionary, appeal has been defined as resort to a superior (i.e., appellate) court to review the decision of an inferior (i.e., trial) court or administrative agency. A complaint to a higher Tribunal to an error or injustice committed by a lower Tribunal, in which the error or injustice is sought to

be corrected or reversed. There is thus a substantial difference between an "appeal" and "approval" and this difference has to be kept in mind while examining the correctness or validity of function which has to be performed by the Commission.

9. During the course of hearing before us a supplementary-affidavit has been filed on behalf of U. P. Secondary Education Services Selection Board giving details of the procedure which is adopted by it in the matter of grant of approval as contemplated by Section 21 of the Act. It is stated therein that as provided in Regulations, 1983 and 1985, for convenient and expeditious transaction of its business, the Commission has constituted committees from among , its members. In discharging the duties u/s 21 of the Act, the District Inspector of Schools (for short D.I.O.S.) is associated with the Commission which is provided in Regulation 3 of Regulations, 1985. The Management Committee of an institution after completing proceedings in accordance with U. P. Intermediate Education Act, the Rules and Regulations made thereunder and also in accordance with the orders issued by the Education Department from time to time forwards the papers to the Commission through the D.I.O.S. The documents which are to be submitted to the Commission are--(i) charge-sheet served on the teacher ; (ii) reply of the charged teacher ; (iii) full record of the proceedings including evidence taken and personal hearing given before the enquiry committee appointed for this purpose ; (iv) report of the enquiry committee ; (v) proposal with regard to the punishment to be inflicted ; (vi) copy of the resolution passed by management In regard to the proposed punishment and (vii) complete service record and character roll of the teacher. After receipt of the complete papers from the management, which are sent through the D.I.O.S., the matter is placed before a subcommittee constituted by the Commission. The sub-committee (disciplinary) issues, notice to the charged teacher and also to the management and after affording an opportunity of personal hearing, It gives its report. The report is a detailed one containing reasons. The report or the decision of the subcommittee is then placed before the Commission for its approval. As provided in Regulation 3 (7) of the Regulations, 1983, the decision of the Commission, as far as possible, shall be unanimous. If divergent views are held by the members and unanimity cannot be reached at a meeting, the item may be postponed for further consideration only once and if even then unanimity is not reached, the decision shall be taken by the exercise of votes. The decision of the Commission under this Regulation shall be taken by majority of more than half the total number of members of the Commission attending the meeting irrespective of the fact that any member abstains from expressing his opinion or from voting. The proceedings have to be signed by the members present which have to be recorded in Minute Book and the Secretary of the Commission has to send copies of the proceedings to all the members.

10. It is also averred in the supplementary-affidavit that the subcommittee consisting of Sri S. L. Adarsh, a member of the Commission, gave notice to the parties wherein the petitioner submitted his explanation/reply on 17.4.1995 and he

was personally heard on 30.5.1995 and the management was heard on 3.6.1995. Thereafter, the sub-committee submitted its report/decision on 17.7.1995. A copy of the report of the sub-committee has been filed as Annexure-27 to the writ petition and it runs into closely typed 23 long pages. The sub-committee, after examining the entire material, recorded a finding that the charges levelled against the petitioner had been established and accordingly, it recommended for approving the proposal of the management for termination of the services of the petitioner. Thereafter by its resolution dated 17.7.1995, the Commission resolved to approve the proposal of the management for termination of the services of the petitioner.

11. Sri Shyam Narain, learned counsel for the petitioner has submitted that u/s 21 of the Act, it is the Commission which has to grant approval to the proposal of the management to dismiss or remove a teacher from service and in view of the mandate of the section, the said function has to be performed by the Commission itself and not by any other person or body. According to the learned counsel, the entire matter should have been heard by the Commission itself and the procedure adopted by it in appointing a single member sub-committee who gave notice to the petitioner and the management and also personally heard them is contrary to the provisions of Section 21 of the Act. The contention is that the Commission could not have delegated its statutory function to another person or subcommittee and consequently the approval granted by it after considering the report of single member sub-committee is illegal. As noticed earlier, the Commission with the prior approval of the State Government has made U. P. Secondary Education Services Commission (Procedure and Conduct of Business) Regulations, 1983, in exercise of power conferred by Section 34 of the Act. Clause (1) of the Regulation 5 of the Regulations, 1983, empowers the Commission to allocate the work among its members for convenient transactions of its business. Clause (2) of Regulation 5 clearly empowers the Commission to constitute a committee or committees from among its members or authorise any member to perform any specified work or transaction of any specified business. Therefore, the Regulations provide for constitution of committees from amongst members of the Commission and such committees may perform or transact any specified business. The Regulations clearly contemplate that instead of the Commission, the matter may be heard by a committee or a sub-committee and it is not necessary that the Commission as a whole should hear or consider the matter.

12. Where an authority delegates its power to another, it does not follow that the authority thereby divests itself of such authority altogether. In other words, when the delegator delegates its authority to the delegate, its authority by itself does not cease, for, it may choose to revoke such authority which it could not do, if it did not retain the authority itself. However, in case the administrative authority named in the statute has and retains in its hands general control over the activities of the persons to whom it has entrusted in part the exercise of its statutory power and the control exercised by the administrative authority is of a substantial degree, there is

in the eyes of law no delegation at all. If the statutory authority empowers a delegate to initiate preparatory work and to take an initial decision in the matters entrusted to it but retains in its own hands, the power to approve or disapprove the decision, the decision will be held to have been validly made. If the degree of the control maintained by the authority is close enough for the decision to be regarded as the authority's own decision. It is further well-recognised principle that a statutory functionary exercising administrative power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report, i.e., the ordinary mode of exercise of any administrative power. What cannot be delegated except where the law so specifically provides is the ultimate responsibility of such power. In De Smith's Judicial Review on Administrative Action (fourth edition), the law on the subject has been stated as under at pages 299 and 301 :

"..... But, as we have already seen, the Courts will sometimes concede that a public body has an implied power to entrust a group of its own members with authority to investigate, to hear evidence and submissions and to make recommendations in a report, provided that (i) it retains the power of decision in its own hands and receives a report full enough to enable it to comply with its duty to "hear" before deciding and (ii) the context does not indicate that it must perform the entire "adjudicatory" process itself"

At page 301 :

"..... The maxim *delegatus non potest delegare* does not enunciate a rule that knows no exception ; it is a rule of construction to the effect that a discretion conferred by statute is *prima facie* intended to be exercised by the authority on which the statute has conferred it and by no other authority, but this intention may be negated by any contrary indications found in the language, scope or object of the statute. But the Courts have sometimes assumed that the maxim does lay down a rule of rigid application, so that devolution of power cannot (in the absence of express statutory authority) be held to be valid unless it is held to fall short of delegation. In this way an unreasonably restricted meaning has often been given to the concept of delegation. Moreover, sharp differences of opinion have been expressed on the relationship between the concepts of delegation and agency. They have sometimes been treated as being virtually indistinguishable ; but in many cases a distinction has been drawn between them, particularly where the Court is acting on the assumption that an authority can validly employ an agent but cannot delegate its powers."

13. This question was examined by a Constitution Bench in *Pradyat Kumar Bose v. Hon'ble the Chief Justice of Calcutta High Court* AIR 1956 SC 285. Disciplinary proceedings were initiated against the Registrar of the High Court at Calcutta on its original side who had been appointed by the Chief Justice and the enquiry against him was conducted by a Judge of the High Court who was deputed for this purpose

by the Chief Justice. After receipt of the enquiry report, the Chief Justice dismissed him from service. It was urged that if the Chief Justice had the power to dismiss, he was not, in exercise of this power, competent to delegate to another Judge to enquire into the charges but should have made the enquiry himself. The contention was repelled with the following observation (Para 11 of the reports) :

"As pointed out in "Barnard v. National Dock Labour Board" (1953) 2 QB 18 it is true that "no judicial Tribunal can delegate its functions unless it is enabled to do so expressly or by necessary implication". But the exercise of the power to appoint or dismiss an officer is the exercise not of a judicial power but of an administrative power. It is nonetheless so, by reason of the fact that an opportunity to show cause and an enquiry simulating judicial standards have to precede the exercise thereof.....

It is well-recognised that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report. This is the ordinary mode of exercise of any administrative power. What cannot be delegated except where the law specifically so provides is the ultimate responsibility for the exercise of such power ;

As pointed out by the House of Lords in "Board of Education v. Rice" 1911 AC 179 at p 182 (C) a functionary who has to decide an administrative matter of the nature involved in this case, can obtain the material on which he is to act in such manner as may be feasible and convenient, provided only the affected party "has a fair opportunity to correct or contradict any relevant and prejudicial material". The following passage from the speech of Lord Chancellor in "Local Government Board v. Arlidge". 1915 AC 120 at p 133 (D) is " apposite and instructive.

My Lords, I concur in this view of the position of an administrative body to which the decision of a question in dispute between parties has been entrusted. The result of its inquiry must, as I have said, be taken, in the absence of directions in the statute to the contrary, to be intended to be reached by its ordinary procedure. In the case of the Local Government Board it is not doubtful what this procedure is. The Minister at the head of the Board is directly responsible to Parliament like other Ministers. He is responsible not only for what he himself does but for all that is done in his department.

The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials and he has discharged his duty if he sees that they obtain these materials for him properly. To try to extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to impair his efficiency. Unlike a Judge in a Court, he is not only at liberty but is compelled to rely on the assistance of his staff.

In view of the above clear statements of the law, objection to the validity of the dismissal on the ground that the delegation of the enquiry amounts to the delegation of the power itself is without any substance and must be rejected."

14. It is important to note that main object for which U. P. Act No. 5 of 1982 was enacted was to establish a Secondary Education Services Commission for selection of teachers in the institutions recognised under the Intermediate Education Act which is also manifested in the preamble of the Act. The number of High School and Intermediate Colleges in the State is very large and they employ many teachers. The teachers have an age of superannuation and consequently, vacancies keep on arising. The Commission has to perform a stupendous task of making selection of huge number of teachers. Experience shows that there is considerable backlog and even after notification of vacancy, it takes years before the selection is made. If the entire work relating to selection of a teacher or granting approval to the proposal of the management for taking disciplinary action against a teacher is performed by the whole body of the Commission, its working will be totally paralysed. It is for this reason that Regulations have been made for entrusting the work of the Commission to committees consisting of members of the Commission and it is the committees, which perform the main function relating to selection of teachers. Similarly in the matter of grant of approval to the disciplinary action taken by the management against a teacher, initial function of giving a notice and opportunity of hearing to the concerned parties and considering their version is done by a committee. The committee consists of none else but a member of the Commission. Therefore, by adopting such a course of action, the Commission does not delegate its statutory function nor it commits breach of any principle of administrative law.

15. We may now examine the question whether the Commission is required to give reasons while considering the report of subcommittee. It is necessary to keep in mind that Regulation 5 of Regulations, 1983, confers power upon the Commission to constitute a committee or committees from among its members or authorise any member for performance of any specific work or transaction of any specified business with the rider that the decision of the committee shall be subject to the approval of the Commission except in matter in respect of which it has otherwise directed. Regulations 4 and 5 of the Regulations, 1985, enjoin that before submitting a case for approval to the Commission u/s 21, the management shall complete all proceedings as per the procedure prescribed in U. P. Intermediate Education Act, the Rule and Regulations made thereunder and also in accordance with the orders issued from time to time by Education Department and/or Board of High School and Intermediate Education, U. P. Regulation 5 enumerates various documents which have to be submitted to the Commission and they include charge-sheet, explanation given by the charged teacher, full record of proceedings including evidence taken and personal hearing, if any, given by the enquiry committee, report of the enquiry committee, copy of resolution adopted by the management in regard to proposed punishment and up-to-date service book and character-roll of the charged teacher.

Normally the enquiry report would be containing reference to the evidence on record and reasons for the conclusion drawn. The counter-affidavit filed on behalf of the Commission shows that the single member sub-committee gives notice to the parties, namely, the management and the teacher and after giving full opportunity of hearing and considering the explanation and the material, submits its report to the Commission. The report is a reasoned one wherein the material on record is considered and findings are recorded. The case in hand shows that the report runs into closely typed 23 long pages containing discussion of evidence and material on record and also findings on the issues involved. Thus, two reasoned reports-one by enquiry committee appointed by the Management of the Institution and the other by the sub-committee of the Commission would be in existence. Whether in these circumstances, the Commission is still required to give reasons while accepting the report of the sub-committee. Where the Commission accepts the report and takes a decision in accordance with the finding of the sub-committee, no statutory provision or principle of administrative law requires that a third report or an order be made giving reasons. The report of the subcommittee being that of one of its own member in law, it will be deemed to be that of the Commission itself. The Commission is, therefore, fully entitled to accept the report of the sub-committee and accord approval without recording any reasons.

16. In *State of U. P. v. Batuk Deo Tripathi* (for short Tripathi) (1978) 2 SCC 102 a Constitution Bench examined the correctness of the disciplinary action taken against a District Judge on the basis of the recommendation by a Committee of Judges only. Article 216 lays down that every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint. Article 233 of the Constitution provides that appointments of District Judges shall be made by the Governor in consultation with the High Court. At the relevant time, the Rules of the Court 1952 provided that a Committee of Judges composed of the Chief Justice, the Judge in the Administrative Committee and five other Judges to be appointed by the Chief Justice referred to in the Rules as the Administrative Committee, shall act for the Court. The Administrative Committee of the High Court in its meeting held on January 9, 1974, resolved that Tripathi, who was a District Judge, should be compulsorily retired from service. The Governor accepted the recommendation of the Administrative Committee and retired him by an order dated February 27, 1975. This order was challenged by Tripathi by filing a writ petition and one of the main grounds urged was that the order is illegal inasmuch as it was passed on the recommendation of the Administrative Committee, while Article 233 of the Constitution requires consultation by Governor with the entire High Court and not with a committee consisting of a few Judges of the Court. The writ petition was heard by Full Bench of five Judges which held by a majority that a District Judge cannot be compulsorily retired from service on the opinion recorded by the Administrative Committee constituted under Rule 1 of Chapter III of the Rules of the Court. The Supreme Court examined the question on

the premise that other Judges of the High Court were not consulted upon and had no occasion or opportunity to consider the justness, propriety or necessity of the decision taken by the Administrative Committee that Tripathi be retired compulsorily. It was held that decision to compulsorily retire Tripathi was taken by the Judges of the High Court itself though not by all. If some but not all Judges of the High Court participate in a decision relating to a matter which falls within the High Court's controlling Jurisdiction over subordinate courts, the High Court does not efface itself by surrendering its power to an extraneous authority. Rejecting the contention that under Article 216, High Court means the entire body of the Judges appointed to the Court and, therefore, the control over the subordinate judiciary which is vested by Article 235 in the High Court must be exercised by the whole body of Judges, it was held that in fact, it is no exaggeration to say that the control will be better and more effectively exercised if a smaller committee of Judges has the authority of the Court to consider the manifold matters falling within the purview of Article 235. It was also held that it is wrong to characterise as "delegation" the process whereby the entire High Court authorises a Judge or some of the Judges of the Court to act on behalf of the whole Court. It was held as under in para 17 of the reports :

"17. The High Court has not by its Rule authorised any extraneous authority, as in [Samsheer Singh Vs. State of Punjab and Another](#), to do what the Constitution enables and empowers it to do. The Administrative Judge or the Administrative Committee is a mere instrumentality through which the entire Court acts for the more convenient transaction of its business, the assumed basis of the arrangement being that such instrumentalities will only act in furtherance of the broad policies evolved from time to time by the High Court as a whole. Each Judge of the High Court is an integral limb of the Court. He is its alter ego. It is therefore, inappropriate to say that a Judge or a Committee of Judges of the High Court authorised by the Court to act on its behalf is a delegate of the Court."

Again in para 18, it was held as under :

"..... We have pointed out above that the amplitude of the power conferred by Article 235, the imperative need that the High Courts must be enabled to transact their administrative business more conveniently and an awareness of the realities of the situation, particularly of the practical difficulties involved in a consideration by the whole Court, even by circulation, of every day-to-day matter pertaining to control over the district and subordinate courts, lead to the conclusion that by rules framed under Article 235 of the Constitution the High Courts ought to be conceded the power to authorise an Administrative Judge or an Administrative Committee of Judges to act on behalf of the Court. Accordingly, we uphold the minority judgment of the Full Bench that Rule 1 of Chapter III of the 1952 Rules framed by the Allahabad High Court is within the framework of Article 235. The recommendation made by the Administrative Committee that the respondent should be compulsorily

retired cannot therefore, be said to suffer from any legal or constitutional infirmity."

17. The principle laid down in the above-quoted authority is that if the rule so enjoins, a small committee of the main body can act for more convenient transaction of its business and any action on the report of such a committee would be perfectly valid. If we apply the ratio of this case to the case in hand, it is absolutely clear that even if there had been no provision for consideration of the report of the sub-committee by the Commission, the decision of the committee to grant approval to the proposal of the management would have been enough and could not have been faulted on the ground that the same had not been placed before the whole Commission. Under the scheme of the Act, with which we are dealing and the Regulations framed thereunder, a further step is taken whereunder the report of the subcommittee is placed before the Commission for their consideration. In such circumstances, a mere expression of agreement by the Commission with the report of the sub-committee is perfectly valid and it is not at all required to examine the matter all over again and record reasons for accepting the report of the sub-committee.

18. Article 226 confers powers upon the High Court to issue writs. It cannot possibly be conceived that whenever the said power has to be exercised, it should be done by the whole body of the Judges sitting together. So is the case of exercise of power of appeal or revision under the CPC or Code of Criminal Procedure. A single Judge can exercise all such powers and in law, it will be exercise of power by the High Court. Article 315 of the Constitution lays down that there shall be a Public Service Commission for the Union and also for the each State. The Public Service Commission has to perform many functions which have been enumerated in Article 320 like conducting examination for appointment to the services of the Union and the States. Consultation with the Public Service Commission is also necessary in all disciplinary matters affecting a Government servant. If these functions are required to be performed by the whole body of the Commission, its working would be completely paralysed. The U. P. Secondary Education Services Commission is a body somewhat akin to a Public Service Commission and it is not possible that every function which it is required to perform under the Act should be done by the whole Commission. Its functions can always be performed by a sub-committee consisting of one or more of its members and the acts done and the decisions taken by the sub-committee will in law amount to that of the Commission itself. The principles of administrative law are meant for ensuring fair treatment to the parties which will include giving of reasons for the decisions taken in order to avoid arbitrariness. But they should not be interpreted in a manner which has the effect of paralysing the functioning of the administrative bodies.

19. The view we are taking is further reinforced by the fact that the Commission is not hearing an appeal but is performing the function of according approval to the proposal of management. The Commission is not acting like a superior or higher

court for correcting or rectifying the decision of the lower court but is merely consenting to some act or thing done by another, viz., the management of the institution.

20. The problem may be examined from another angle. The jurisdiction exercised by the Commission u/s 21 of the Act pertains to disciplinary matters. It has been held by a catena of decisions that a disciplinary authority is not required to give reasons in support of its order if it agrees with the enquiry report. In [Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others](#), it was held that while it may be necessary for disciplinary authority or administrative authority exercising quasi-judicial functions to state reasons in support of its order, if it differs from the conclusion arrived and the recommendation made by the enquiry officer in view of the scheme of a particular enactment or the Rules made thereunder, it would be laying down the proposition a little broadly to say that even an order of concurrence must be supported by reasons. In [State of Madras Vs. A.R. Srinivasan](#), it was held by a Constitution Bench that the disciplinary proceedings against a delinquent Government servant begin with an enquiry which is followed by a report and the Public Service Commission is consulted where it is necessary. Having regard to the material which is thus made available to the State Government, it is unreasonable to suggest that the State Government must record its reasons why it accepts the findings of the Tribunal. It was also held that if the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposes to impose a penalty on the delinquent officer, It should give reasons why it defers from the conclusion of the Tribunal, though even in such a case it is not necessary that the reasons should be detailed or elaborate but where the State Government agrees with the findings of the Tribunal which are against the delinquent officer, it could not be said as a matter of law that the State Government cannot impose penalty against the delinquent officer unless it gives reasons to show why the said findings were accepted by it. This view was reiterated in [Som Datt Datta Vs. Union of India \(UOI\) and Others](#), In [Ram Kumar Vs. State of Haryana](#), it was reiterated that when punishing authority agrees with the findings of the enquiry officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to again discuss evidence and come to the same findings as that of enquiry officer and give the same reasons for the findings. Thus, it is well-settled that in disciplinary matters the punishing authority is not required to record reasons all over again if reasons are contained in the report of enquiry officer.

21. The question whether administrative authority should give reasons was examined thread-bare by a Constitution Bench in [S.N. Mukherjee Vs. Union of India](#), and it was held that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record reasons for its decision. But with regard to appellate or revisional authority, it was observed as follows in para 35 of

the reports :

".....,..... The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if It affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with reasons contained in the order under challenge."

In the matter of grant of approval u/s 21 of the Act, the Commission is dealing with the disciplinary action taken against a teacher by the Management. Though the scheme of the enactment is slightly different, still the principle discussed above would have application. If the enquiry report and the report of sub-committee contain reasons, there is no occasion for the Commission to reiterate the facts all over again and record reasons.

22. In view of discussion made above, we are clearly of the opinion that while accepting the report of the sub-committee, the Commission Is not required to give reasons and the view taken in *Awadh Narain Tripathi v. U. P. Secondary Education Service Commission 1995 (3) UPLBEC 1891* does not lay down the correct law which is hereby overruled. In case, however, the Commission does not accept the report of the sub-committee and differs from the same, then reasons, which need not be very elaborate, have to be recorded.

23. Our answers to the question referred and the additional question argued before us is as follows :

(i) The Commission, while accepting the report of the sub-committee, is not required to give reasons. In case, however, It does not accept the report of the subcommittee and differs from it, then reasons, which need not be very elaborate, have to be recorded.

(ii) The Commission, while exercising its function of grant of approval to the proposal of Management u/s 21 of the Act can validly direct a single member sub-committee to hear the parties and submit a report and then take a final decision without affording any further opportunity of hearing to the concerned parties.

24. We would like to place on record that Dr. R. G. Padia, who appeared amicus curiae at the request of the Court, rendered valuable assistance.

25. The writ petition may now be listed for hearing before the appropriate Bench.