

(2006) 07 AHC CK 0206

Allahabad High Court

Case No: Civil Misc. Writ Petition No"s. 12437 and 19915 of 2006

Sanjay Kumar Sharma

APPELLANT

Vs

Central Board of Secondary
Education and Smt. Shalini Kaul

RESPONDENT

Date of Decision: July 5, 2006

Acts Referred:

- Constitution of India, 1950 - Article 12, 226

Citation: (2006) 7 ADJ 653 : (2006) 7 AWC 7279

Hon'ble Judges: Tarun Agarwala, J

Bench: Single Bench

Advocate: B.N. Tiwari, for the Appellant; V.B. Singh, Udai Pratap Singh, H.N. Pandey and K.C. Sinha and S.S.C., for the Respondent

Final Decision: Dismissed

Judgement

Tarun Agarwala, J.

Heard Sri B.N. Tiwari, the learned Counsel for the petitioner, Sri V.B. Singh, the learned Senior counsel assisted by Sri Udai Pratap Singh for respondent Nos. 2 and 3 and Sri H.N. Pandey, the learned Counsel for the Central Board of Secondary Education.

2. The petitioner is working as a teacher in Air Force School, Bamrauli, district Allahabad. It is alleged that this school is managed by the Indian Air Force Educational and Cultural Society, which is registered under the Societies Registration Act and is also affiliated with the Central Board of Secondary Education. The Society, which is running this school, has framed an "Education Code Air Force School 2005" for effective management and control of the Air Force School. The petitioner submits that from a perusal of this Education Code, the pervasive control vests with the Government. The Officers managing the school and the society are airmen and therefore, the Society as well as the School managed by them, comes

within the meaning of the word "State" as defined under Article 12 of the Constitution of India and, therefore the writ petition is maintainable against the said respondents.

3. The petitioner contends that he was appointed as a teacher in the year 1993 and is now the senior most teacher in the said school. It transpires that the petitioner was directed to officiate as the Principal by a letter dated 31.3.2003 issued by the Wing Commander/the Officer Incharge of the School. A perusal of this letter dated 31.3.2003 [a copy of which has been enclosed as Annexure-9 in the writ petition No. 19915 of 2006] indicates that the petitioner was permitted to work as an Officiating Principal for assessing his ability for the post of Principal for an academic session and if found fit, he could be issued an appointment letter as a Principal on a probation for one year and thereafter his services would be confirmed on the basis of his performance. The said letter also indicated that an advertisement was required to be made in the local newspaper for filling up the post of Principal. It was contended that an advertisement was issued on 4.5.2003 for filling up the post of Principal and, based on this advertisement, the petitioner applied. It further transpires that the Selection Board after interviewing all the candidates recommended the name of the petitioner for appointment on the post of Principal. It is alleged that the petitioner was placed at serial No. 1 and the respondent No. 6, namely, Smt. Shalini Kaul was placed at Serial No. 2 of the select list. The petitioner in paragraph-13 of the writ petition further alleged that a Note was placed on the file by the Officer Incharge to the effect that "The Commerce PGT was officiating as Principal has been selected for the post of Principal". The petitioner submitted that based on this Note the petitioner was allowed to continue as the Principal in a permanent capacity even though no formal letter of appointment was issued. However, the management issued a second advertisement in the Employment News in January 2004 and that a call letter was sent to the petitioner by the management requesting him to appear in the interview, even though, the petitioner had not applied. It was further alleged that thereafter without any issuance of an appointment letter, the respondent No. 6 was placed in the chair of the Principal and the petitioner was ousted from the post of Principal.

4. The petitioner alleges malafidies against the respondents and submits that from the time the respondent No. 6 started functioning as the Principal a concerted effort was made at her behest not only to harass the petitioner, but a deep rooted conspiracy was hatched to oust the petitioner which eventually led to the issuance of the chargesheet. The petitioner contends that initially, a warning letter was issued in which a preliminary enquiry was made and the reply of the petitioner was considered. Thereafter, certain complaints were fabricated from the girls students regarding his behaviour. It is alleged that all these instances eventually led to the issuance of the chargesheet on 23.2.2006. The petitioner consequently, filed Civil Misc. Writ Petition No. 12437 of 2006 on 25.2.2006 praying for the following reliefs:

[i] issue a writ, order or direction in the nature of mandamus commanding the respondents, not to confirm the appointment of the respondent No. 4 Smt. Shalini Kaul as the Principal of the Air Force School Bamrauli, Allahabad;

[ii] Issue a writ, order or direction in the nature of mandamus commanding the respondents to produce the entire record relating to the selection and appointment of the respondent No. 4, including the testimonials and certificate of the respondent No. 4 and also the confidential Annual Reports on probation made by the different officers-in-charge of the School Management Committee and Sri L.S. Bachher the then Chairman of the SMC Air Force School, Bamrauli, Allahabad;

[iii] Issue a writ, order or direction in the nature of certiorari quashing the selection of the respondent No. 4 as the Principal of the Air force School, Bamrauli, Allahabad by the Board of Officers on 1.3.2004 and the appointment/ joining dated 20.6.2004 by the Officer Incharge school management committee AIR Force School Bamrauli, Allahabad;

[iv] issue a writ, order or direction in the nature of mandamus commanding the respondents to replace/reinstate the petitioner as the Principal of the Air Force School, Bamrauli, forthwith and hand over the charge of the Principal and to pay the entire arrears of the allowances admissible to the Principal of a senior secondary school under the law;

[v] Issue any other writ, order or direction which this Hon"ble Court may deem fit and proper in the circumstances of the case;

[vi] to award the cost of the writ petition to the petitioner.

5. On 6.4.2006, the petitioner filed another Writ petition No. 19915 of 2006 praying for the quashing of the chargesheet . The relief claimed in this writ petition is quoted hereunder:

[i] Issue a writ, order or direction in the nature of mandamus commanding the respondents No. 2 to 5 not to proceed with the domestic enquiry on the basis of the chargesheet dated 23.2.2006 issued by the Executive director/Officer Incharge of the School Management Committee AIR Force School, Sri K.C. Taneja, Bamrauli Wing Commander against the petitioner [filed as Annexure-19 to the writ petition.;

[ii] Issue a writ, order or direction in the nature of mandamus commanding the respondents to restrain from proceeding with the enquiry against the petitioner will the disposal of the writ petition No. 12437 of 2006, Sanjay Kumar Sharma v. Central Board of Secondary Education and Ors. pending before this Hon"ble Court;

[iii] Issue a writ, order or direction in the nature of certiorari quashing the chargesheet dated 23.2.2006 filed as Annexure-19 to the writ petition and further be pleased to quash the consequent enquiry proceedings as being fully malafide and malicious;

[iv] Issue any other writ, order or direction which this Hon"ble Court may deem fit and proper in the circumstances of the case;

[v] To summon the record of the enquiry proceedings;

[vi] to award cost of the writ petition to the petitioner.

6. The learned Counsel for the petitioner submitted that the selection process pursuant to the second advertisement issued in the year 2004 was ex-facie, illegal and without jurisdiction and that no appointment pursuant to the said advertisement could be made by the Management on the ground that the petitioner was selected as a Principal pursuant to the first advertisement published in the year 2003. In support of his submission, the learned Counsel for he petitioner relied upon the Note in the file which stated that the petitioner was selected as the Principal. In the light of this noting, the petitioner contends that the question of the issuance of another advertisement in the year 2004 and the question of his participation in that interview did not arise nor such proceedings initiated by the Board of Management for the selection of the Principal was valid in the eyes of law.

7. The learned Counsel for the petitioner further submitted that the respondent No. 6 is the real sister of the Air Vice Marshal of the Air Force and that the said Air Vice Marshal was instrumental in ensuring that the respondent No. 6 was appointed as the Principal of the institution. The petitioner made a complaint to the higher authority which was not liked by the respondent No. 6 or by his brother and therefore, a concerted effort was made on their part to collect frivolous material so that a chargesheet could be issued. The learned Counsel for the petitioner further submitted that the sequence of events indicated that the chargesheet was issued malafidly which was liable to be quashed at the threshold itself inasmuch as, the entire Board of Management was against the petitioner and the chargsheet was based on malafidies. Consequently, the enquiry proceedings should not be proceeded with and was liable to be quashed at the threshold itself. In support of his submission the learned Counsel for the petitioner relied upon the decisions of the Supreme Court in the case of AIR 2001 SC 343 , State of Punjab v. V.K. Khanna and Ors. [Ranjit Thakur Vs. Union of India \(UOI\) and Others](#), . [State of West Bengal and Others Vs. Shivananda Pathak and Others](#), and [Arjun Chaubey Vs. Union of India \(UOI\) and Others](#),

8. On the other hand, Sri V.B. Singh, the learned Senior counsel assisted by Sri H.N. Pandey has raised a preliminary objection, namely, that the writ petition was not maintainable, inasmuch as, the Society as well as the School was not a "State" within the meaning of Article 12 of the Constitution of India. It was further stated that the Rules and Regulations framed by the Society are not statutory Rules and therefore, in the light of the observations made by the Supreme Court in the case of Vaish Inter College AIR 1976 SC 888, the matter between a teacher and the management, being a contract of service, the remedy available was not one under Article 226 of

the Constitution of India, but under a suit. Sri V.B. Singh, the learned Senior counsel further submitted that the petitioner does not get any indefeasible right in challenging the selection proceedings, since he did not participate in the selection proceedings and that the Board of Management had an indefeasible right in issuing the second advertisement and was not bound by the recommendation of the Selection Board. The learned Counsel for the petitioner further submitted that the charges of malafidies are totally baseless and there was not even an iota of any concrete evidence, which could lead to a presumption that the respondents had any bias against the delinquent officer, namely, the petitioner. The allegations made in various paragraphs of the writ petition are based on surmises and conjectures and the Court should be loathe in interfering during the stage when the enquiry proceedings are almost coming to an end.

9. In the light of the submissions made by the learned Counsels for the parties and various judgments which have been placed before me on the question of maintainability of the writ petition, I find that it is not necessary for the Court to dwell upon the various judgments placed by the learned Counsel for the parties. It is sufficient for this Court to hold that the writ petition is maintainable and the Court relies upon a decision of the learned Single Judge dated 31.11.2002 passed in Civil Misc. Writ Petition No. 42416 of 2002 in the case of Uma Shanker Yadav v. School Management Committee Air Force School, Bamrauli, Allahabad and Ors. In this judgment, the Court held that the respondents school is a "State" within the meaning of Article 12 of the Constitution of India, inasmuch as, the said school is discharging a public duty and is imparting education to children and therefore, amenable to a writ jurisdiction under Article 226 of the Constitution of India. Since, this is a judgment directly against the respondent school, I have no hesitation in agreeing with the said decision.

10. Admittedly, in the first advertisement, the petitioner was placed at serial No. 1 of the select list by the Selection Board. The Board of Management decided to issue a fresh advertisement. Admittedly, the petitioner did not apply nor participated in the selection process pursuant to the second advertisement. In spite of not applying, the Board of Management issued a call letter in favour of the petitioner requesting him to appear in the interview. The petitioner did not appear in the interview and the Selection Board issued a fresh select list in which the respondent No. 6 was shown at serial No. 3. The submission of the learned Counsel for the petitioner that the entire selection process, pursuant to the second advertisement, was purely illegal and malafide inasmuch as, the petitioner was "Selected" as the Principal, as per the noting of the Officer Incharge/Appointing authority in the file, in the opinion of the Court, is bereft of merit for the simple reason that the noting on the file was nothing but an endorsement of the recommendation of the Selection Committee. Such an endorsement in the file does not amount to an issuance of an appointment letter in favour of the petitioner on the post of Principal. The said noting does not amount that the petitioner would continue as the Principal of the institution. In the opinion

of the Court, the said noting in the file had no relevance nor did it mean that the petitioner was given a regular appointment.

11. The mere fact that the petitioner was placed at serial No. 1 of the select list does not mean that he gets an indefeasible right for being appointed on the post of Principal. The Supreme Court in the case of [Shankarsan Dash Vs. Union of India](#), has held that a selected candidate does not get an indefeasible right for appointment even against an existing vacancy. The same principle would apply in the petitioner's case which is on a lower footing. The selection committee had only recommended the name of the petitioner and a mere recommendation by the Selection Board does not give the petitioner an indefeasible right for being appointed on the post of Principal. Further, if the management did not agree with the recommendation of the Selection Board, it was always open to the management to issue a fresh advertisement inviting fresh applications on the post of Principal. The Board of Management was not bound by the recommendation of the Selection Board.

12. The petitioner has filed the first writ petition challenging the selection of respondent No. 6 as the Principal and has also prayed that her services should not be confirmed on the post of Principal. It has come on record that the respondent No. 6 took charge as the Principal in the year 2004. The petitioner has filed the present writ petition on 25.2.2006 after almost two years. Nothing has been stated in the writ petition with regard to the delay in approaching the High Court. The learned Counsel for the petitioner submitted that against the selection process and the arbitrary action of the respondent No. 6, he had made a complaint to the higher authorities and had also filed an appeal before the high authority and, in view of the pendency of his complaint and appeal before the higher authority, a delay had occurred, which was liable to be condoned. In the opinion of the Court, apart from the fact that the petitioner has no case on merit, the writ petition is also liable to be dismissed on the ground of laches. The petitioner knew that the respondent No. 6 was functioning as a Principal since the year 2004 and that he himself was no longer working as the officiating principal. If the petitioner was aggrieved by the selection of respondent No. 4 as the Principal, he should have approached the Court at that stage itself in the year 2004 rather than approaching the Court after two years when a chargesheet was served upon him. Consequently, the Court is of the opinion that the writ petition filed by the petitioner was belated and is liable to be dismissed on the ground of laches. Apart from the aforesaid, the petitioner having not applied for the post of Principal, consequently, was not entitled to challenge the selection process before this Court. It is settled law that an aggrieved person can approach the Court for the redressal of his grievance. The petitioner is not an aggrieved person since he did not participate in the selection proceedings. Consequently, the writ petition No. 12467 of 2006, being bereft of merit is dismissed summarily.

13. On the question of malafidies, the entire effort is that the respondent No. 6 is the real sister of the Air Vice Marshal of the Air Force and that after the respondent

No. 6 started functioning as the Principal, a concerted effort was made on her part not only to harass the petitioner but to issue warning letters in order to prepare a ground for the issuance of the chargesheet.

14. The learned Counsel for the petitioner submitted that the circumstances and the chain of events which led from one incident to another is indicative of the malafide attitude of the respondents vis-a-vis the petitioner. The learned Counsel for the petitioner submitted that malafidies have to be culled out from the incidents and if there was an element of malafide coming to the forefront, that would, by itself, be sufficient, to quash the disciplinary proceedings at the threshold itself. The learned Counsel submitted that the issuance of the second advertisement was at the behest of the Air Vice Marshal in order to appoint the respondent No. 6 as the Principal. Further, the petitioner was threatened with dire consequences of his life, if he appeared in the second interview. It has been stated that the Air Vice Marshal was determined to ensure the appointment of respondent No. 6 as the Principal. Further, immediately after the appointment of the Principal, the entire management of the school which was managed by the 29th Wing was changed at the behest of respondent No. 6. It was also alleged that the complaints made by the girls students is written with the same pen and ink which is indicative of the fact that the said complaints were manufactured. It was further alleged that the conduct of respondent No. 6 was totally unbecoming on the post of the Principal since the respondent No. 6 had made an effort to malign his character. In view of the aforesaid, it was submitted that the enquiry proceedings should be quashed.

15. In the opinion of the Court, the submission of the learned Counsel for the petitioner is baseless and bereft of merit. In the opinion of the Court, no charge of malafide can be culled out from these allegations. The mere fact that the respondent No. 6 is the real sister of the Air Vice Marshal does not debar her from applying for the post of Principal. The sole ground which has been stated is that the respondent No. 6 is the sister of the Air vice Marshal and that the Air Vice Marshall was bent upon in ensuring an appointment in favour of respondent No. 6. If that be so, the question which crops up is that the management could have selected respondent No. 6 in the first place itself in the first interview. The management did not do so and issued a fresh advertisement in which the respondent No. 6 was placed at serial No. 3 of the select list. It has been stated that the management had issued letters of appointment first to the candidate at serial No. 1 and when he declined, the offer was given to the candidate at serial No. 2. It has been stated that it is only after the two candidates had declined, that a letter was issued offering an appointment to respondent No. 6 which she accepted. The submission, that the petitioner was threatened and was asked not to appear in the second interview seems to be an after thought for the simple reason that the petitioner did not apply for the post of Principal pursuant to the second advertisement issued in January 2004. It would have been a different matter, if the petitioner had applied and then was threatened not to appear in the interview, but if the petitioner did not apply, the

question of the respondents threatening the petitioner does not arise. On the other hand, the respondents issued a letter to the petitioner to appear for the interview inspite of the fact that the petitioner had not applied. Therefore, the malafidies on this aspect of the matter appears to be an after thought. In view of the aforesaid, this Court is of the opinion that the charge of malafide does not appear to be correct and appears to be frivolous.

16. It is the settled law that the Court should be slow in entertaining the writ petition during the pendency of the disciplinary proceedings and should be loathe in interfering in the disciplinary proceedings.

17. In view of the aforesaid, I do not find any merit in the second writ petition with regard to the quashing of the chargesheet. The writ petition fails and is dismissed summarily. In the circumstances of the case, parties shall bear their own costs.