

(1997) 05 AHC CK 0209**Allahabad High Court****Case No:** C.M.W.P. No. 20272 of 1988

Chandrika Ram

APPELLANT

Vs

General Manager, U.P. State
Cement Corporation Ltd. and
Others

RESPONDENT

Date of Decision: May 20, 1997**Acts Referred:**

- Uttar Pradesh Basic Education Act, 1972 - Section 9
- Uttar Pradesh Intermediate Education Act, 1921 - Section 16G, 16H
- Uttar Pradesh Recognized Basic School (Recruitment and Conditions of Service of Teachers and Other Conditions) Rules, 1975 - Rule 9
- Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Services of Teachers) Rules, 1978 - Rule 18

Citation: (1997) AWC 354 Supp**Hon'ble Judges:** Aloke Chakrabarti, J**Bench:** Single Bench**Advocate:** Ashok Bhushan, for the Appellant; A.K. Misra and S.R. Misra, for the Respondent**Final Decision:** Allowed**Judgement**

Aloke Chakrabarti, J.

U.P. State Cement Corporation Limited, the Respondent No. 2, a Government Company, runs several cement factory units and for convenience of the children of the employees of the cement factory, several recognised institutions were established, including two Primary Schools at Churk and Gurma. Both the said institutions are recognised institutions. The Petitioner was aggrieved when one Shri Sitaram Singh, the Head Master of the Primary School, Purani Churk retired and one Sri Bhola Prasad was appointed as Head Master thereof. As Petitioner was entitled to be promoted on the said post, Writ Petition No. 13181 of 1984 was moved by the

present Petitioner which was decided by the Division Bench on 21.12.1984 with a direction for promotion of the Petitioner to the said Post of Head Master of the Primary School at Churk. An order was passed promoting the Petitioner to the Post of Head Master and by subsequent amendment, the effect of such promotion was given from 12.7.1984. A subsequent order dated 7.9.1988 was passed by the General Manager of U.P. State Cement Corporation Limited transferring the Petitioner to the Primary School of Gurma and transferring the Respondent No. 4 to Primary School at Churk. Challenging the same, the present writ petition was filed.

2. The U.P. State Cement Corporation Limited filed a counter-affidavit contending, *inter alia*, that the Petitioner was originally appointed in the Primary School, Gurma in year 1966 and thereafter from time to time transfer orders were passed in respect of the Petitioner and as such, the Petitioner cannot challenge such power of transfer from one institution to another institution. It is stated that the service of the Petitioner is transferable among the schools of Cement Corporation and teachers are also paid emoluments at much higher rate than the emoluments governed by the provisions of the Basic Education Act. Petitioner filed his rejoinder-affidavit.

3. Heard the learned Counsel for the parties. The main contention of the learned Counsel for the Petitioner is that the Petitioner's service is governed by the U.P. Basic Education Act, 1972 and the U.P. Recognised Basic Schools (Recruitment and Conditions of Service of Teachers and other Conditions) Rules, 1975. It is stated that neither the said Act nor the said Rule permits transfer. Reference has also been made to the provision of U.P. Recognised Basic Schools (Junior High Schools)(Recruitment and Conditions of Service of Teachers) Rules, 1978. Rule 18 thereof provides for transfer of a permanent Head Master or Assistant Teacher of a recognised school. It is stated that in view of the application of law as aforesaid, the recognised Primary Institutions are separate units and the Petitioner holding the post of Head Master of one of such Units cannot be transferred to another Unit. Rules applicable to the said U.P. Cement Corporation Limited do not govern transfer matter of the teachers and Head Master of such institution. Reference was made to the case of Om Prakash Rana Vs. Swarup Singh Tomar and Others, for the proposition that in similar circumstances relating to Intermediate College of the State, appointments have been held to be in relation to a specific college and different colleges even owned by different bodies or organisations. On filling the Post of Principal to a college a new contract of employment has been held to have come into existence. It was also taken into consideration that there is no State level service to which Principals are appointed.

4. Reference was also made to the case of B.D. Mehta v. I.D.P.L. (1990) 3 UPLBEC 1570, wherein also Section 16H of U.P. Intermediate Education Act, 1921 was interpreted and it was held that the colleges run by Indian Drugs and Pharmaceuticals Limited will not be considered to be maintained by Central Government for the purpose of Section 16H though the organisations running the

same are under the Central Government. Further reference was made to the case of *Bhagwati Prasad Srivastava v. General Manager U.P. State Cement Corporation Limited and Ors.* 1995 AWC 985, wherein a Principal of an Intermediate College run by the U.P. State Cement Corporation Limited was held entitled to the benefit of superannuation at the age of 60 years as provided in the education law and not the age of superannuation applicable for the employees of U.P. State Cement Corporation Limited.

5. Learned Counsel for the Respondents No. 1,2 and 3 contended that the relevant educational Rules do not have any prohibition against the transfer and service Rules of the Corporation permit transfer and in such circumstances when Section 16G of U.P. Intermediate Education Act does not apply in the case of the Petitioner, the impugned order is valid and proper. It is further stated that Section 9 of the U.P. Basic Education Act, 1972, though does not provide for transfer but it implies power of transfer. Further contention was made that the concerned Primary School being in the same area the transfer order is not in any way illegal.

6. Reference was also made in this connection to the case of *Mrs. Shilpi Bose and others Vs. State of Bihar and others,* .

7. After considering the respective contentions of the parties, I find that the U.P. Basic Education Act and the U.P. Recognised Basic Schools (Recruitment and Conditions of Service of Teachers and other Conditions) Rules, 1975 do not permit transfer. The provision of Section 9 of U.P. Basic Education Act, 1972 only provides for transfer of teachers and Officers and other employees serving under a local body exclusively in connection with Basic Schools immediately before the appointed day to become a teacher, officer or other employee of the Board on or from the appointed day and also consequence of such transfer. This section does not provide for any other transfer subsequent to such appointed day. Similarly, the aforesaid Rules of 1975 do not provide for any transfer. Rule 9 of the said Rules provides for appointment of a teacher in any recognised school. The natural consequence of the same is that there is master and servant relationship created by such appointment in respect of specific recognised school. In such circumstances, the transfer to any other recognised school amounts to an appointment in another school and for such purpose unless specific provision for transfer is provided by law, it appears that the principal of a particular recognised institution cannot be transferred to another recognised institution. The principle in this respect, as decided, in the aforesaid case of *Om Prakash, B. D. Mehta and Bhagwati Prasad Srivastava (supra)* will also apply in this case though the present case is not governed by the provision of U.P. Intermediate Education Act. Applying the principle is laid down in the aforesaid cases, the Principals of such recognised institution are to be governed by the provision of educational law and not the service Rules of U.P. Cement Corporation for the purpose of power of transfer. Payment of higher salary does not create any right in favour of said Respondent in view of the fact that the educational law does

not prohibit payment of higher emolument at a role higher than the emoluments payable under the law to the educational institution governed by the U.P. Basic Education Act and the Rules framed thereunder.

8. In the aforesaid view of the matter, this writ petition succeeds and is allowed. The impugned order dated 7.9.1988 at Annexure No. 5 to the writ petition is hereby quashed. There will be no order as to costs.