

(2014) 05 AHC CK 0235

Allahabad High Court

Case No: Special Appeal No. 476 of 2014

Committee of Management, Shri
Maharshi Balmeek Inter College

APPELLANT

Vs

Rajesh Kumar Singh

RESPONDENT

Date of Decision: May 13, 2014

Acts Referred:

- Uttar Pradesh Intermediate Education Act, 1921 - Section 16E(10), 9

Citation: (2014) 6 ADJ 1 : (2014) 3 ESC 1778

Hon'ble Judges: Vivek Kumar Birla, J; Sunil Ambwani, J

Bench: Division Bench

Advocate: Ashok Khare and Vinod Kumar Singh, Advocate for the Appellant; N.L. Pandey and V.P. Shukla, Advocate for the Respondent

Final Decision: Allowed

Judgement

1. We have heard Shri Ashok Kharre, Sr. Advocate assisted by Shri Vinod Kumar Singh, learned counsel for the appellant. Shri N.L. Pandey and Shri V.P. Shukla appears for the respondents. Shri Rajesh Kumar Singh, the respondent was selected for appointment as Principal by the U.P. Secondary Education Services Selection Board constituted under the U.P. Secondary Education and Services Selection Board Act, 1982 (the Act of 1982) and was recommended for appointment as a Principal in Maharshi Balmeek Inter College, Khimdeha, Chitrakoot.

2. It appears that the management did not allow him to join despite repeated directions issued by the District Inspector of Schools on which a writ petition was filed by him in which directions were issued to the District Inspector of Schools to decide his representation. After protracted litigation ultimately on the threat of appointment of Authorised Controller the Committee of Management of the (sic) appellant allowed the respondent to join on 21.2.2011 and immediately thereafter the Management started making enquiries about the eligibility of the respondent to

be selected by the Board for appointment as Principal of the college.

3. The Committee of Management suspended the petitioner on the basis of the letter of the District Inspector of Schools dated 5.3.2014. The suspension was approved by the District Inspector of Schools on which Shri Rajesh Kumar Singh filed Writ-A No. 25422 of 2014, which has been decided by learned Single Judge with the findings that so far as appointment of the Principal is concerned, only the State Government has authority u/s 16E(10) of the Intermediate Education Act, 1921 to consider the validity of his appointment. The learned Single Judge disposed of the writ petition with directions that Shri Rajesh Kumar Singh, the petitioner in the writ petition as well as the Committee of Management will approach the State Government within three weeks making a representation and the same shall be considered and decided in accordance with law, Learned Single Judge further directed that till such time the decision is taken by the State Government, the operation of the order dated 29.3.2014 suspending the petitioner as well as approval of suspension dated 30.4.2014 shall be kept in abeyance.

4. It is submitted by Shri Ashok Khare that the Committee of Management-the appellant is the employer of the respondent. If there was any doubt on the eligibility of the respondent namely that he did not have requisite four years' experience as teacher serving on substantive post, the Management was authorised to take action against him. In the present case the Management has taken action by suspending the petitioner, which has been approved by the District Inspector of Schools, and thus there was no error in the order passed by the Management and the District Inspector of Schools to interfere. He submits that Section 16E(10) is not applicable to the present case in as much as the entire Section has become redundant after the enactment of the Act of 1982, which provides for procedure of appointment of teachers and principles in Intermediate Colleges. He submits that Section 16E(10) is applicable to the appointment made under this Act, which means the U.P. Intermediate Education Act, 1921, and not the Act of 1982 and thus the State Government will not have powers to decide the question of validity of the appointment of the respondent with reference to his eligibility.

5. Shri N.L. Pandey on the other hand submits that Section 16E(10) is applicable after the selection has been made by the Board and recommendation has been made for appointment. The Management may be the employer for disciplinary control but the State Government retains ultimate control over employment as the salaries are paid by the State Government, and that all the matters relating to selection and appointment have to be Finally dealt with by the State Government.

6. We have examined the provisions of the Act of 1921 and the provisions of the Act of 1982 and find that the Act of 1982 is supplementary to the Act of 1921. The powers of the Board under the Act of 1982 u/s 9 are in supplemental to the powers of various authorities under the Act of 1921. It is also significant to note that the Act of 1983 vests the ultimate powers of approving the dismissal of the teachers in the

Board. Section 21 of the Act of 1982 provides as follows:

"21. Restriction on dismissal etc. of teachers.--The Management shall not, except with the prior approval of the Board dismiss any teacher or remove him from service or serve on him any notice of removal from service, or reduce him in rank or reduce his emoluments or withhold his increment for any period (whether temporarily or permanently) and any such thing done without prior approval shall be void."

7. We have gone through the Act of 1983 and find that procedure for selection u/s 12 also provides in sub-section (2) that it is the board, which shall scrutinise the applications before the selections are made.

8. The eligibility of the teacher is not the matter of discipline and conduct, which may be subjected to procedure of discipline and appeal rules by the Committee of Management as an employer. The Management did not scrutinise the applications regarding eligibility of the qualifications nor has been given any power under the Act of 1921 and the Act of 1982 and the Rules and Regulations framed thereunder to question the eligibility and qualifications of the Principal or the teachers, as the case may be.

9. After considering the provisions of the Act of 1921 and the Act of 1982 we find that the powers of appointment, which includes following the selection procedure and in which scrutiny of applications is one of the essential functions is vested with the Board and that the power of approval of dismissal will include the power to find out whether any of the candidates is selected as Principal or teachers as the case may be without being eligible or valid qualification. In such case powers to question and to decide any dispute regarding the eligibility and the qualifications will also necessarily vests in the Board. We agree with the submission of Shri Ashok Khare that Section 16E(10) of the Act of 1921 would not apply. The powers in such case would be deemed to be vested in the State Government. All questions of eligibility and qualifications raised by any person including the Management of the college or educational authorities will thus have to be exercised by the Board for consideration and for taking final decision in the matter. The special appeal is allowed. The judgment dated 5.5.2014 as well as the order of suspension dated 29.3.2014 passed by the Management and the order dated 30.4.2014 passed by the District Inspector of Schools are set aside. The appellant may approach the U.P. Secondary Education Services Selection Board with a representation with regard to examining and deciding the eligibility of the petitioner. If such a representation is made, the Board shall decide it in two months after giving opportunity of hearing to the Management as well as Shri Rajesh Kumar Singh, the respondent.