

**(2016) 05 AHC CK 0297**

**ALLAHABAD HIGH COURT (LUCKNOW BENCH)**

**Case No:** Service Single No. 12474 of 2016.

Prem Chandra - Petitioner  
@HASH State of U.P. Thru Secy.  
Secondary Edu. Gov. of UP  
Lucknow and Others

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** May 31, 2016

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Secondary Education Service Selection Board Act, 1982 - Section 18

**Citation:** (2016) 6 AllJ 397

**Hon'ble Judges:** Rajan Roy, J.

**Bench:** Single Bench

**Advocate:** Ramesh Pandey and Manushresth Misra, Advocates, for the Petitioner; C.S.C., Nagendra B. Singh, Advocate, for the Respondents

**Final Decision:** Disposed Off

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**Judgement**

**Rajan Roy, J.** - Heard.

2. The petitioner herein had earlier approached this court by means of writ petition no.9473(SS) of 2016 seeking a writ of mandamus for being allowed to officiate as Principal in the respondent-Intermediate College in view of the provision contained in Section 18 of the U.P. Secondary Education Services Selection Board Act 1982 (hereinafter referred as "Act of 1982"). The said writ petition was disposed of vide judgment dated 3.5.2016. For the reasons mentioned therein following arrangement was made under the orders of this court:

"In view of the above it is ordered as under:-

(a) Let the committee of management look into the matter and notify the vacancy, if any, on the post of Principal immediately, if, there is no other legal impediment.

(b) If there is a substantive vacancy as claimed let the committee of management appoint the senior most teacher as officiating Principal of the institution in the meantime, within a period of two weeks from the date a certified copy of this order is produced before it.

(c) From the date of notification of vacancy as aforesaid after a lapse of a period of two months, officiating appointment as aforesaid shall be treated as ad-hoc appointment under Section 18 of the Act, 1982.

The consequences shall follow as per law.

The aforesaid arrangement has been made in the peculiar facts and circumstances of the case which have arisen and the fact that the institution can not remain without a Principal. Needless to say that if the committee of management does not act upon the orders of this Court, then the District Inspector of School shall do the same. It is made clear that this Court has not adjudicated the merits of the claim of the petitioner that he is the senior most lecturer and if there is any dispute pending in this regard before any court or authority and any order adverse to the petitioner is operating then the same shall be taken into consideration.

The writ petition is disposed of in the aforesaid terms."

3. It appears that prior to passing of the said judgment on 3.5.2016 the Committee of Management which comprised of the District Magistrate and S.D.M. etc. had already taken a decision on 13.4.2016 for the appointment of opposite party no. 8 as officiating Principal, although the petitioner herein claims that this resolution has been prepared subsequently. The opposite party no. 8 is placed at serial no. 4 in the seniority list of Lecturer Grade; the petitioner is placed at serial no. 1. There is no dispute in this regard that the persons at serial Nos. 2 and 3 namely Sandhya Srivastava and Ram Vilas have not come forward to challenge the decision impugned herein.

4. Contention of the learned counsel for the petitioner is that the impugned decision, more so the consequential order dated 11.5.2016, is apparently in contempt of the observations/directions made by this court in the judgment dated 3.5.2016 referred here in above. In spite of the fact that the aforesaid judgment was brought to the knowledge of the District Magistrate and the District Inspector of Schools (D.I.O.S.), same was not adhered and the petitioner, who, admittedly, is the senior most, was not appointed, instead, the opposite party no. 8 who is at serial no.4 in the seniority list has been appointed/promoted.

5. The learned Standing Counsel appearing for the State and its authorities contended that the Committee of Management resolved on 13.4.2016 to appoint the opposite party no. 4 much prior to passing of the judgment dated 3.5.2016. It

was found that there were certain adverse material against the petitioner as also the persons who were placed at serial Nos.2 and 3 in the seniority list, which related to their work and conduct, therefore, the Committee in its wisdom and in the interest of the institution and the students did not find it suitable to appoint them as Principle, instead, it decided to appoint the opposite party No. 8. In this regard he invited attention of the court to various pronouncements wherein it has been held that though ordinarily the senior most teacher should be appointed, but there was no hard and fast rule as in the event the claimant is found incompetent or otherwise dis-entitled for the post of the Head of the Institution, then junior person can also be appointed.

6. Sri N.B. Singh, Advocate, appearing for opposite party No. 8 placed before the court a Division Bench judgment reported in **2005 (23) LCD 753, Rajendra Prasad Shukla v. Ram Chandra Singh**, the judgment reported in **(1992) 1 UPLBEC 716, Tribhuwan Mishra v. District Inspector of Schools, Azamgarh** as also the decision of the Supreme Court reported in **1995 Supp (3) SCC 170, Ram Murti Singh v. District Inspector of Schools, Deoria & ors.**, to support the stand of the learned Standing Counsel.

7. In response, Sri Ramesh Pandey, learned counsel for the petitioner submitted that the judgment in Ram Murti Singh (supra) was rendered in the context of Rule 4 of the U.P. Secondary Education Service Commission (Removal of Difficulties) Order, 1981 (hereinafter referred as "Removal of Difficulties Order 1981"), and not Section 18 of the Act of 1982. Likewise, the other decisions relied upon by the opposite parties were rendered prior to the amendment in Section 18 of the Act of 1982. He contended that in Rule 4 of the Removal of Difficulties Order 1981 the word used was "may", whereas, the word used in Section 18 of the Act of 1982 was "shall appoint senior most teacher" therefore, he contends that it is mandatory to appoint the senior most teacher especially as according to him sub-Section (2) provides that if the Committee of Management fails to do so, then the D.I.O.S. Shall appoint the senior most teacher. He contends that there is no adverse material against the petitioner which could dis-entitle him from being appointed/promoted as officiating/ad hoc Principal of the institution. In the alternative he also submitted that even if the opposite parties proposed to by-pass him in the matter, the least that was required to be done was to give opportunity of hearing in terms of the judgment of this court in Tribhuwan Mishra's case (supra) which has not been done, therefore, the impugned order, according to him, stands vitiated.

8. Learned Standing Counsel appearing for the State authorities after seeking instructions from the District Magistrate concerned who is also managing the institution at present with the assistance of the district authorities informs the court that the resolution of the Committee of Management had been passed prior to 3.5.2016. So far as compliance of the judgment of this court is concerned, as he was engaged in law and order situations, therefore, he could not comply the same but

he undertakes to do so within next ten days, meaning thereby, he undertakes to revisit the matter afresh in the light of the judgment dated 3.5.2016 passed in earlier writ petition filed by the petitioner.

9. However, on a reading of the earlier judgment passed by this court it is found that certain relevant aspects of the matter could not be taken into consideration while passing the said judgment. One of the questions which could not be considered is whether under Section 18 of the Act of 1982 the senior most teacher is mandatorily to be appointed as ad hoc principal of the institution or in a given situation it is permissible not to appoint him. It is therefore necessary to consider this aspect of the matter.

10. Section 18 of the Act of 1982 as mandated on 30.12.2016 reads as under:

**"18. Ad hoc Principals or Headmasters. -**

(1) Where the Management has notified a vacancy to the Board, in accordance with sub-section (1) of Section 10 and the post of the Principal or the Headmaster actually remained vacant for more than two months, the management shall fill such vacancy on purely ad hoc basis by promoting the senior most teacher.

(a) in the lecturer's grade in respect of a vacancy in the post of "the Principal".

(b) in the trained graduate's grade in respect of a vacancy in the post of the Headmaster.

(2) Where the Management fails to promote the senior most teacher under sub-Section (1) the inspector shall himself issue the order of promotion of such teacher and the teacher concerned shall be entitled to get his salary as the Principal or the Headmaster, as the case may be, from the date he joins such post in pursuance of such order of promotion.

(3) Where the teacher to whom the order of promotion is issued under sub-Section (2) is unable to join the post of the Principal or the Headmaster, as the case may be, due to any act or omission on the part of the management, such teacher may submit his joining report to the Inspector, and shall thereupon be entitled to get his salary as the Principal or the Headmaster, as the case may be, from the date he submits the said report.

(4) Every appointment of an ad hoc Principal or Headmaster under sub-section (1) or sub-section (2) shall cease to have effect from when the candidate recommended by the Board joins the post."

11. This provision has been inserted so as to facilitate the smooth functioning of the educational institutions. A division bench of this court in the case of **Shamshul Zama v. District Inspector of Schools, Chandauli reported in (2001)3 UPLBEC 2181**, has already held that even for ad hoc appointment under Section 18 of the Act of 1982 a person should possess requisite qualifications for the post in question. In

the said case the Division Bench also had the occasion to consider the provisions of Intermediate Education Act 1921, Regulation and Rules made thereunder and thereafter recorded its observations/findings.

12. In paragraph 11 the court after considering the dictionary meaning of the word "Principal" opined that Principal of a college has a leading position and is superior to all other members of the staff, being the Chief Executive Officer of the educational institution. All other teachers look for guidance to him. He has to motivate the students to devote to their studies and to build their character. He should be able to influence the other teachers and students of the institution by his knowledge, wisdom and character. It will look incongruous that an institution is headed by a person who does not possess even the prescribed minimum qualification, as, such a person can never command respect of other teachers.

13. In the case of Ram Murti Singh (Supra) the provision which fell for consideration was Rule 4 of the Removal of Difficulties Order 1981, but the observations made by the Supreme Court apply on all its fours to the present fact situation also. Use of the word "may" in Rule 4 of the Removal of Difficulties Order 1981 and the use of the word "shall in Section 18 of the Act of 1982" does not in any manner persuade the court to hold that the observations in Ram Murti Singh's case do not apply in the matter of appointment under Section 18 of the Act of 1982. There is nothing in the provision to indicate such intent on the part of the legislature. The word "shall" merely implies that if even after two months of the vacancy having been notified the post is vacant, the same is required to be filled up by promoting the senior most teacher on ad hoc basis by the Committee of Management and if it fails by the District Inspector of Schools, but it does not mean the senior most teacher in the Lecturer's Grade is incompetent or otherwise dis-entitled or unsuitable, even then he has to be necessarily promoted. Such an understanding of the provision, apart from being unreasonable, will be detrimental to the interest of the institution and against the spirit of the judicial pronouncements referred here in above and hereinafter.

14. The Supreme Court in Ram Murti's case (supra) while considering the question of ad hoc appointment as Principal observed that ordinarily the senior most person may expect that he would be appointed, but certainly not, if he is not competent. His relationship with teachers and other employees are also to be seen. In the facts of the said case the Supreme Court observed that the appellant before it though the senior most was not found to be competent, his relationship with teacher and other employees not being satisfactory and hence the Management feared that he would not be able to draw the cooperation of the teachers and employees for working as a team. It observed if this was found to be detrimental to the interests of the institution and he was not promoted, though senior most, no fault could be found with the order passed by the D.I.O.S.

15. This judgment was considered by a Division Bench of this court in the case of **Rejendra Prasad Shukla v. Ram Chandra Singh & ors. reported in 2005(23) LCD 753**. In paragraph 19 thereof it was held that the settled position is that ordinarily the senior most teacher is to be given appointment to officiate as Principal of the Institution. However, in case the authorities find an incumbent to be incompetent and the authorities have reasons to believe that neither the senior most incumbent has cordial relations with the staff nor will he be able to take the whole team to achieve the goal of imparting proper education and further his appointment would be against the interest of students and the institution, it would be open for the authorities to ignore the claim of such an incumbent in spite of his seniority but then too, it should be done after recording reasons and affording opportunity to such incumbent. In the said case, the Division Bench had considered Section 18 of the Act of 1982 as amended in the year 2000.

16. A Full Bench of this court in the case of **Radha Raizada v. Committee of Management v. D.G.I.C. reported in (1994) 3 UPLBEC 1551** in para 44 observed that the Management is "ordinarily" under obligation to exercise the power of making officiating/ad hoc appointment as ad hoc Principal/Head Master for benefit of such senior most teacher. The use of the word "ordinary" does not rule out a situation which may require the appointment of another person, if, the senior most is incompetent or his appointment is not otherwise in the interest of the institution or students, as, has been mentioned in the pronouncements discussed here in above.

17. As far as the Single Judge judgment of this court in Tribhuwan Mishra's case is concerned, the provision of Section 18 of the Act of 1982 as existing in the year 1992 or prior to it was considered, wherein also, similar provision for ad hoc appointment of teacher including Principal of an educational institution existed and this court in order to minimise the possibility of arbitrariness held that if the Management wishes to supersede the senior most teacher who is qualified to be appointed Principal it can only do so if (1) there are grave charges against him which are so serious that it will be wholly detrimental to the interests of the institution to appoint him ad hoc Principal or (2) he suffers from such a serious physical disability that he cannot properly perform the function of Principal. In either case the senior most teacher must be given a show-cause notice by the management stating the charges against him (or the physical disability) and stating that it is proposed to supersede him. The hearing to be given by the management need not be a personal hearing, but copies of any material sought to be relied upon (whether contained in the service book or elsewhere) must be supplied in advance so as to enable the teacher to give his reply/explanation. After considering the teacher's reply the Management can supersede him, but only by a reasoned order, and such reasons can be scrutinised by the High Court under Article 226 of the Constitution. In the event of anticipated vacancy process should start and the show-cause notice referred above should be given two months prior to occurrence of such vacancy.

18. On a consideration of all the aforesaid pronouncements on the issues involved which are similar to the one involved in the present case, the legal position that emerges is that though ordinarily the senior most teacher in the lecturer grade should be appointed as ad hoc Principal of an intermediate college, but, in the event of the senior most claimant being incompetent or otherwise unsuitable or his appointment not being in the interest of the institution and the students, he can be superseded, but, only for reasons to be recorded in writing, that too, after giving an opportunity of hearing which need not be personal hearing, but in the nature of being confronted with the adverse material against him along with an opportunity to submit a representation, reply/explanation, which shall be considered.

19. Observation made by the Division Bench in *Shamshul Zama* (supra) in para 11 thereof though made in the context of a qualified or unqualified teacher are also relevant generally for the purposes of ad hoc appointment on the post of Head of the institution.

20. In view of the aforesaid the observations contained in the judgment dated 3.5.2016 passed in the earlier writ petition No.9473(SS) of 2016 are hereby clarified to the effect that while considering ad hoc appointment of the Principal of the respondent-Institution under Section 18 two months after notification of the vacancy to Board, the legal position noted here in above shall be kept in mind and decision shall be taken accordingly.

21. Considering the fact that the resolution dated 13.4.2016 was passed by the Committee of Management prior to the judgment dated 3.5.2016, the same cannot be faulted on the ground of non-adherence to the said judgment, but, certainly it does not stand judicial scrutiny when tested on the anvil of the aforesaid settled legal position, as, if there was adverse material against the petitioner, then he ought to have been confronted with it. Furthermore before passing the impugned resolutions/orders, reply submitted by the petitioner to the notice issued to him has also not been considered, therefore, the said resolutions/orders cannot be sustained and are hereby quashed, however considering the assertion of the opposite parties that the petitioner was allegedly stopped by the Board from examining the answer-sheets for five years on account of alleged tampering of answer-sheets by him, though it is denied by the learned counsel for the petitioner, who asserts that he has been regularly examining the answer-sheets, the court is of the view that the interest of the institutions and ends of justice will be served if the existing arrangement on the post of the Principal under which the opposite party no.8 is functioning is allowed to continue till a fresh decision is taken as aforesaid. It is ordered accordingly. It is also made clear that though the impugned resolution has been quashed, it shall be open for the Management to consider the allegations and material referred therein while taking a fresh decision in the matter.

22. There are several allegations levelled against the petitioner by the opposite parties, which are also denied by him, but the court is not inclined to enter into

these factual controversies, which shall be looked into by the concerned authority/Management in the light of the legal position referred herein above.

23. At this stage Sri N.B. Singh appearing for the opposite party no.8 submits that requisition for the post in question had already been sent to the Commission through the D.I.O.S. which could not be brought to the knowledge of the court in the earlier proceedings and the interview had also been held by the Selection Board for the post in question, though the result is still awaited.

24. If it is so, then the Committee of Management shall not wait for a period of two months nor will it send its requisition again, instead it shall take a fresh decision in the light of the discussion made here in above within ten days from the date a certified copy of this order is submitted.

25. Before parting, there is another aspect of the matter which needs to be dealt with. Even after judgment of this court was brought to the notice of the D.I.O.S., he did not adhere to the same. Once it came to his knowledge he could not have ignored it nor could he have acted in violation thereof. Even if there was adverse material against the petitioner available with the opposite parties and another view of the matter was possible, different from the one taken by this court, the course open to him was to bring these facts to the notice of the court and either to seek a clarification of the judgment or its review, but he could not have just brushed it aside. In future he shall keep this in mind and shall not repeat this audacity.

26. The writ petition is disposed of in the aforesaid terms.