

Prem Pal Singh Vs. Additional Director of Education (Secondary), U.P., Allahabad and ors.

Prem Pal Singh Vs. Additional Director of Education (Secondary), U.P., Allahabad and ors.

SooperKanoon Citation : sooperkanoon.com/471073

Court : Allahabad

Decided On : Apr-10-2002

Reported in : 2002(2)AWC1474; (2002)2UPLBEC1666

Judge : S.K. Singh, J.

Appeal No. : Writ Petition No. 40150 of 2001

Appellant : Prem Pal Singh

Respondent : Additional Director of Education (Secondary), U.P., Allahabad and ors.

Advocate for Def. : B.B. Paul, S.C. and ;Mahendra Singh, Adv.

Advocate for Pet/Ap. : V.K. Singh and ;G.K. Singh, Adv.

Disposition : Writ petition dismissed

Judgement :

S.K. Singh, J.

1. The challenge in this petition is the order dated 24.11.2001 [Annexure-6 to the writ petition) passed by the respondent No. 1 by which the transfer of the petitioner

as Principal of Gopi Ram Paliwal inter College, Aligarh from Budhsen Prem Chandra inter College, Bulandshahr, has been cancelled.

2. The petitioner happened to be a selected candidate for the post of Principal and in pursuance of his placement in Budhsen Prem Chandra inter College, Bulandshahr, the petitioner joined. It has been stated that the petitioner's functioning on that post, was satisfactory and after expiry of one-year probation period, he was confirmed as well. The dispute which is now before this Court is about the continuance of the petitioner as Principal in another college, namely, Gopi Ram Paliwal inter College. Aligarh thereafter referred to as the college) where the petitioner came by transfer order dated 30.6.2001, which was the subject-matter of challenge of Writ Petition No. 27754 of 2001 filed by Mahendra Singh, ad-hoc Principal working in the college, who has joined in this petition as respondent No. 5. on the impleadment application filed by him. There remains no dispute about the fact that the post of Principal of college became vacant in the year, 1989 and requisition in that respect was sent to the commission. The aforesaid vacancy was duly advertised in the year 1995-96 and on 14.8.1999 but nobody was selected/recommended for the aforesaid college. It appears that from time to time, the senior most lecturer in the college, namely, Sompal Sharma, Dharendra Kumar Gautam, V. K. Paliwal and lastly Devendra Singh occupied the seat as ad-hoc Principal, who came in succession. The last incumbent, namely, Devendra Singh retired on 30.6.2001. It is before the retirement of Devendra Singh, application for transfer was moved by the petitioner on 14.2.2001 upon which the committee of management of the college on 18.2.2001 (Annexure-2 to the writ petition) appears to have passed a resolution accepting the petitioner to be transferred to the present college. In pursuance of the aforesaid process, the directorate by its order dated 30.6.2001 transferred the petitioner to the present college. The aforesaid order of transfer was challenged by Mahendra Singh before this Court as referred above. In the meantime, a complaint was also made by Mahendra Singh-respondent No. 5 on 17.8.2001 upon which the Additional Director of Education, Agra, directed the Joint Director of Education and other educational authorities to submit their reports. In the enquiry process, a notice was issued to the petitioner, upon which the petitioner submitted his reply on 8.9.2001 (Annexure-11 to the counter-affidavit of Mahendra Singh) On 19.9.2001, the

District Inspector of Schools and thereafter on 27.9.2001. the Joint Director of Education submitted their respective reports. It is on a consideration of the reports which came before the Additional Director of Education (Secondary Education, Allahabad)/respondent No. 1. order dated 24.11.2001, subject-matter of challenge of this petition, was passed.

3. Heard learned counsel for the petitioner, learned counsel who appeared on behalf of the management and learned counsel, who appeared on behalf of Mahendra Singh, who has been permitted to be Impleaded and the learned standing counsel appearing on behalf of State authorities.

4. Learned counsel for the petitioner submits that the order of respondent No. 1 is bad for want of affording of opportunity of hearing. It has been submitted that the impugned action being in violation of principle of natural justice, cannot be maintained. The averments in this respect are contained in paras 20 to 22 of the writ petition. It is further submitted that the reason as given in the impugned order that as the vacancy was notified to the commission, the petitioner's transfer to the college in question is bad, is untenable as irrespective of the notification of the vacancy, the post can be filled by transfer which has been held to be permissible by decisions of this Court. Learned counsel in this connection, has placed reliance on a decision in Narendra Kumar v. State of U. P. and others. 2002 (1) ESC 214, and an unreported decision given in Writ Petition Wo. 12037 of 1996. Smt. Pushpa Sharma v. Director of Education and others.

5. In response to the aforesaid submission, learned counsel appearing on behalf of Mahendra Singh submits that even though, after notification of the vacancy, the placement by transfer may be permissible but in the given set of facts as the petitioner is guilty of concealment and misleading the authorities by not giving correct facts and, therefore, exercise by respondent No. 1 in cancelling the order of transfer as was obtained by the petitioner, cannot be said to be Illegal or unjust in any manner. It has been further submitted that the commission has already issued two letters dated 26.6.2001 and 30.4.2001. (Annexures-3 and 4 to the counter-affidavit respectively) by which as a caution, It has been said that if proceedings for filling up regular vacancy of the post of Principal of a college, is

pending before the commission, the commission should be informed in this respect. It has been argued that as the commission was not apprised about the factum of notification of vacancy and the authorities were not apprised of the correct fact, rather a concealment was made by the petitioner, the action as has been taken by the respondent No. 1 cannot be said to be unjustified, Lastly, it has been submitted that as the petitioner is guilty of fraud and concealment and as he has no vested right of being placed in the college in question, no personal hearing is required to be given.

6. In view of the aforesaid submission as has come across the Bar, pleadings as have been set forth and the materials as have been placed have been examined.

7. There appears to be no dispute about the fact that the post in question was advertised by the commission on 26.12.1995 in Rozgar Digest and daily news paper Amar Ujala. It is for one reason or the other, of course on account of occupation of seat by ad h o c Principal from time to time, the regular selection/placement of permanent Principal in the College could not take place. The last man, who continued as act-hoc Principal is Devendra Singh, who stood retired on 30.6.2001. It appears from record that on 14.2.2001 for his transfer from Budhsen Prem Chand inter College, Bulandshahr, to the present college, the petitioner applied. Petitioner was admittedly selected and recommended for the college at Bulandshahr, where he joined and he was confirmed as well. On 14.2.2001 itself, the management of Budhsen Prem Chand inter College, Bulandshahr passed a resolution in petitioner's favour and simultaneous resolution came to be passed by the management of the present college on 19.2.2001. The application for petitioner's transfer is available before the Court vide Annexure-7 to the counter-affidavit filed by Mahendra Singh. It is on printed format. Column No. 19 of the aforesaid format requires an information to be furnished that whether the post has been notified to the commission. The information as has been furnished by the petitioner states that 'no requisition has been sent for the post of Principal' in respect of the college in question. This format bears the signature of the petitioner with date 14.2.2001. The order of transfer dated 30.6.2001, issued by the Directorate clearly states that if any fact is found to have been concealed while obtaining the order of transfer, then the directorate will be free to cancel the order

of transfer. Although against the order of transfer dated 30.6.2001. respondent No. 5 Mahendra Singh filed writ petition before the Court but at the same time, he also made a complaint to the educational authorities about concealment on the part of the petitioner in obtaining the order of transfer. In view of the complaint as was made, necessary enquiry was conducted and reports were obtained by the Additional Director of Education. The District Inspector of Schools and the Joint Director of Education submitted their reports on 14.9.2001 and 27.9.2001, respectively. The aforesaid reports are Annexures-14 and 15 to the counter-affidavit of Mahendra Singh. It has been clearly stated that the petitioner has concealed material fact and has given incorrect information for the purpose of obtaining transfer order in his favour. It has been clearly stated in the report that the post was duly advertised in 1995-96 and in the year 1998 and. therefore. this fact should have been clearly stated by the petitioner in his application for transfer/format duly filled and signed by him. It is on these premises, the respondent No. 1 found material concealment on the part of the petitioner, while obtaining the order of transfer in his favour and as there was specific mention in the transfer order itself that if any information furnished by the petitioner will be found false or incorrect, his transfer order would be liable to be cancelled, cancelled the order of transfer and such exercise on the part of the respondent cannot be said to be illegal.

8. So far as the argument of learned counsel for the petitioner about want of opportunity of hearing and thus there being violation of principle of natural justice is concerned, suffice it to say that it is not at all required that the petitioner is to get an opportunity of personal hearing in each and every matter. Admittedly, the petitioner received notice relating to complaint against him. he submitted his explanation before the District Inspector of Schools on 8.9.2001, copy of which was sent to the Additional Director of Education and the Joint Director of Education. The opportunity of hearing is required to be given to the aggrieved person only in those cases where some thing more can come out by placing details by him which the authorities may not be in position to screen without his presence. Here is the case where concealment of fact and non-furnishing of correct and complete information by the petitioner, was to be ascertained from the record available with the authorities. The facts which are already on record about

which now there remains no dispute, discloses, It to be clear case of giving incorrect information which is a case of concealment on the part of the petitioner. One cannot say. that in the event of giving complete and correct information by the petitioner, i.e., about the information of vacancy notified to commission, what would have come out of the move of the petitioner about his transfer to the present college. As the result in petitioner's favour has not come after placement of correct fact by him. It is the petitioner, who should blame himself for his misdeeds. It has been repeatedly said that fraud and concealment, vitiate most solemn proceedings and the benefit arrived at by any party becomes void. Reference can be made to the decision as has been given in *Vishwa Vijay Bharti v. Fakhrul Islam and Ors.* 1976 AWC 565 ; AIR 1976 SC 1485 : *S.P. Chengal Varaya Naidu. v. Jagannath and Ors.* 1994 ACJ 355 ; *C. Chenga Reddy v. State of Andhra Pradesh*, JT 1996 (6) SC 739 and *Indian Bank v. Satyam Fibre (India) Ltd.*, JT 1996 (7) SC 136.

9. So far claim of affording opportunity by personal hearing is concerned, there is no rule of natural justice that at every stage, a person is entitled to personal hearing. The object and doctrine of principle of natural justice is only to secure the ends of Justice but at the same time, it is to prevent mis-carriage of Justice. The natural justice only means, the fairness in procedure. The petitioner was admittedly given an opportunity of having his say in the matter. He explained things by filing detail objection/representation. It is thereafter, concerned authorities, after applying his mind, after having found that the petitioner has not been fair in obtaining the order of transfer, as he did not mention the correct facts which was required to be mentioned before the authority, and, therefore, petitioner is not entitled to get the order in his favour maintained. No exception can be taken by this Court to the aforesaid view. The question that whether in each and every case, oral hearing is required to be given has already been matter of decision by Hon'ble Apex Court in series of decisions. Reference can be made to the decisions as has been given in *F. N. Roy v. Collector Customs*, AIR 1957 SC 648 ; *Union of India v. Jyoti Prakash*, AIR 1971' SC 1093 and *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shanker Pant*, 2000 (1) SCC 182.

10. In view of the aforesaid discussions. It appears to be clear case where the petitioner has not stated correct facts before the educational authorities while

seeking his transfer to the present college. The authorities appear to have been misled by giving incorrect information and thus, the petitioner is guilty of his own misdeeds for which if the respondent No. 1 has passed the impugned order, by no means, it can be said to be illegal or arbitrary. The petitioner has no vested right for being placed to the present college. The petitioner was already placed in Budhsen Prem Chand inter College. Bulandshahr where he Joined and he was duly confirmed on his post. The ground as has been given in the Impugned order having been found to be correct,, no interference is required by this Court. The petitioner was duly given opportunity before passing the impugned order as he has placed his version and it is thereafter, the respondent No. 1 has taken the decision.

11. On the facts and circumstances and in view of the foregoing discussions, it is not a fit case for interference by this Court.

12. The writ petition is accordingly dismissed without any order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com