

Jharkhandey Singh Vs. Additional Director of Education (Secondary) and ors.

Jharkhandey Singh Vs. Additional Director of Education (Secondary) and ors.

SooperKanoon Citation : sooperkanoon.com/482204

Court : Allahabad

Decided On : May-23-2002

Reported in : 2002(3)AWC2494; [2002(95)FLR494]; (2002)3UPLBEC2390

Judge : S.K. Singh, J.

Appeal No. : Writ Petition No. 18443 of 2001

Appellant : Jharkhandey Singh

Respondent : Additional Director of Education (Secondary) and ors.

Advocate for Def. : Bheem Singh, S.C.

Advocate for Pet/Ap. : A.K. Singh and ;Gajendra Pratap, Advs.

Disposition : Writ petition dismissed

Judgement :

S.K. Singh, J.

1. By means of this writ petition, the petitioner has prayed for quashing the order dated 27.4.2001 (Annexure-1 to the writ petition) passed by respondent No. 1 by which the respondent No. 5 has been transferred to the petitioner's College as

Principal.

2. There is an Intermediate College in the name of Nand Kishore Singh Inter College, Rampur Majha, Ghazipur (hereinafter referred to as the College). The post of Principal in the aforesaid College fell vacant on 30.6.2000, on account of retirement of its permanent Principal Sankatha Prasad. The vacancy was intimated to the Board on 16.3.2000. It has been stated in the writ petition that the management of the College proposed transfer of respondent No. 5 who was working as Principal in the Inter College, Tarighat, Ghazipur but the same was turned down by the District Inspector of Schools but thereafter, by the impugned order dated 27.4.2001, the respondent No. 5 was placed as Principal in the present College, which is impugned in this petition.

3. The ground of challenge in this petition is the transfer of respondent No. 5 to the present College, on the ground that the respondent No. 5 could not be treated to have been substantively appointed as Principal in the Inter College, Tarighat, Ghazipur and as such, his transfer on the post of Principal in the present College, is not permissible under law. It has been submitted that it is only regular and validly appointed Principal who can be transferred to the present College. It has been argued that the respondent No. 5 is said to have been appointed as Principal on ad hoc basis on 30.4.1991 who is said to have been regularised w.e.f. 7th August, 1993. Referring to the provisions of Section 33B as inserted in U. P. Secondary Education Services Selection Board Act, 1982, it has been submitted that any teacher appointed by promotion or by direct recruitment on or after July 31st, 1988 but not later than May 14, 1991 on ad hoc basis, against substantive vacancy in accordance with the provisions of Section 18, shall be given substantive appointment by the management of the institution, if he has been found suitable for appointment in a substantive capacity by a selection committee constituted under Sub-section (2). In view of the aforesaid, it has been submitted that firstly a selection committee has to be constituted, the petitioner has to be found suitable for appointment, only then, the appointment could be given as Principal. It has been pointed out that this provision has come w.e.f. 7th August, 1993 and, therefore, by no stretch of imagination, the petitioner can be said to be regularised w.e.f. that very date, i.e., 7th August, 1993. As giving of appointment/

regularisation under the provision of Section 33B of the Act, is not a deeming provision and as it has to take place on completion of some process in that regard, there has to be some gap after 7.8.1993. In view of the aforesaid, the very claim of the respondent No. 5 for having been regularised w.e.f. 7.8.1993 and the order in this respect is not only illegal but is void and is a nullity. It has been further submitted that in view of insertion of Section 33B under the aforesaid Act, If a teacher is appointed by promotion on or after 31.7.1988 but not later than 6.8.1993 on ad hoc basis against substantive basis on the post of Principal or Head Master, in accordance with Section 18, shall be given substantive appointment by the management, if he is found suitable for giving appointment by the selection committee constituted under Sub-section (2). It has been submitted that firstly, the appointment of respondent No. 5 on the post of Lecturer w.e.f. 7.8.1993 was invalid and thereafter in any view of the matter, his ad hoc promotion on the post of Principal cannot be regularised as ad hoc appointment on the post of Principal must be on or before 6.8.1993. Admittedly, the respondent No. 5 was appointed as Lecturer in his substantive capacity, w.e.f. 7th August, 1993, which too is under serious dispute, the respondent No. 5 cannot be said to have been regularised on the post of Principal. On the aforesaid premises, it has been submitted that the transfer of respondent No. 5 to the petitioner's College is liable to be quashed.

4. In response to the aforesaid submission, learned counsel who appears for the respondent No. 5 has submitted that the petitioner has no locus standi to challenge the order of transfer which is in favour of respondent No. 5 in view of the fact that the petitioner has already attained the age of superannuation in October, 2001 and now he is continuing on account of sessions benefit and, therefore, he has no right to claim the post of Principal. Reference was made by learned counsel to a decision of the Apex Court in *S. K. Rathi v. Prem Hari Sharma and Ors.* 2000 (4) AWC 2713 (SC) : (2000) 3 UPLBEC 2433. It has been further argued that the respondent No. 5 was already regularised by order dated 28.12.1994, w.e.f. 7.8.1993 as Lecturer and by order dated 14.6.2000 as Principal w.e.f. 20.4.1998, which has been filed as Annexures-3 and 4 to the counter-affidavit, which has not been challenged before this Court and therefore, in this writ petition, regularisation of respondent No. 5 as Lecturer and Principal cannot be subject-matter of scrutiny. It has been further submitted that the petitioner is

admittedly claiming to work as ad hoc Principal and as the respondent No. 5 was transferred as regular Principal to the College, the petitioner has no right to challenge the order of transfer and on this very ground, a writ petition filed by an ad hoc Principal was dismissed by this Court. This view has been taken in the writ petition filed by Darshan Singh in *Darshan Singh v. State of U. P.*, 1996 AWC 1153. Lastly, it has been pointed out that the respondent No. 5 has admittedly joined in the college pursuant to the order of transfer and the petitioner is admittedly working as Lecturer after October, 2001 on account of session benefit as he stood superannuated and, therefore, now a direction cannot be given in petitioner's favour, permitting him to work as ad hoc Principal. In view of the aforesaid submission as has come before this Court, the rival claims have been examined.

5. The Apex Court in the case of *S.K. Rathi* (supra), has clearly laid down that senior most teacher working as ad hoc Principal, attaining age of superannuation in mid sessions, is permitted to work till the end of session but at the same time, as ad hoc Principal, he cannot be permitted and he has to continue on his original post. On account of sessions benefit, a teacher will continue till the end of session on the post on which he has been substantively appointed, but a post which he has been occupying on ad hoc basis, the next incumbent has to take over. Although the submission of learned counsel for the petitioner that if regularisation of respondent No. 5 on the post of lecturer and that of Principal, if found nullity, that can be examined by this Court in a collateral proceeding, has substance but in the given set of facts, as the orders of regularisation on the post of Lecturer and Principal have been passed long back, they have been acted upon and the challenge in this respect, is not to give any benefit to the petitioner in respect to his right in this writ petition, this Court feels that no useful purpose will be served by adjudicating this issue. Admittedly, the respondent No. 5 has Joined as Principal on transfer to this College and the petitioner who stood superannuated in October, 2001, is working as Lecturer in view of sessions benefit, the matter in issue as raised on behalf of the petitioner do not require serious attention of this Court on merit. On the facts that the petitioner was just working as ad hoc Principal and the respondent No. 5 was transferred to the College as regular Principal and in view of his attaining the age of superannuation, it is held that the petitioner is not entitled

to get any relief in this writ petition. The challenge by petitioner in respect to regularisation of respondent No. 5 as Lecturer and the Principal on the ground as has been raised before this Court, can be said to be a matter of scrutiny in a proper proceeding by a person having livingrights if raised either before this Court or, before the educational authorities can be examined but so far this writ petition is concerned, no interference is required in respect to the impugned order of transfer in relation to respondent No. 5 in the College.

6. In view of the aforesaid discussions, this writ petition fails and it is accordingly dismissed, without any order as to costs.

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