

Allahabad High Court

C/M Brij Hitkari Inter College ... vs State Of U.P. Thru' Secretary ... on 23 July, 2010

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Court No. - 32

Case :- SPECIAL APPEAL No. - 1130 of 2010

Petitioner :- C/M Brij Hitkari Inter College Thru' Manager &
Another

Respondent :- State Of U.P. Thru' Secretary Secondary
Education & Others

Petitioner Counsel :- Vinod Kumar Singh

Respondent Counsel :- C.S.C., Vashistha Tiwari

Hon'ble R.K. Agrawal, J.

Hon'ble Abhinava Upadhya, J.

The present special appeal has been preferred against the judgment and order dated 1st July, 2010 passed by the learned Single Judge whereby the writ petition preferred by the present appellant has been dismissed. In the writ petition the petitioner-appellant has challenged the order dated 7th September, 2009 passed by the District Inspector of Schools, Mathura (in short the DIOS) directing for single operation of the salary account of the institution, namely, Brij Hitkari Inter College, Bajna, District Mathura under the provisions of Section 3(3) of the Uttar Pradesh High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 (in short the Act).

It appears that in the said college the elections of the Committee of Management were not held within the specified period prescribed under the Scheme of Administration and the Authorized Controller was appointed to hold elections. The elections were held on 22.2.2009 in which Sri Santosh Kumar Agarwal was elected as manager and his signature was also attested by the DIOS on 28.2.2009. However, before the recognition of the election of the Committee of Management and attestation of the signature of the duly elected manager, the Additional Director of Education (Secondary) vide order dated 9.1.2009 transferred one Sri Virendra Singh, who was the Principal of Sri Lakha Uchchattar Madhyamik Vidyalaya, Beerbala, Harnaul, District Mathura as Principal of the College in question. The Authorized Controller, who was managing the affairs of the College, allowed Sri Virendra Singh to join the institution as Principal on 17.1.2009 and his signatures were also attested by the DIOS on 20.1.2009.

The transfer of Sri Virendra Singh was challenged by Sri Chandra Pal Sharma, who was the senior most teacher of the College in question by means of Civil Misc. Writ Petition No. 5128 of 2009. The Court vide order dated 30.1.2009 directed the parties to maintain status quo, as a result of which, Sri Chandra Pal Sharma continued to act as Officiating Principal. Sri Chandra Pal Sharma retired on 30.6.2009. Thereafter, the next senior most person, namely, Sri Nahar Singh Verma approached this Court by means of Civil Misc. Writ Petition No. 32540 of 2009 in which this Court vide order dated 3.7.2009 passed an order of status quo. As the DIOS had attested the signatures of Sri

Virendra Singh on 20.7.2009, Shri Nahar Singh Verma was not recognized as Officiating Principal by the DIOS whereupon he preferred another writ petition, being Civil Misc. Writ Petition No. 36826 of 2009 which was dismissed by this Court on the ground that if the order of status quo is not being complied with, the remedy lies by way of filing petition for contempt. For the reasons best known to him, Sri Nahar Singh Verma did not file any contempt petition and he was satisfied with the affairs. In the meantime, the teaching and non-teaching staff of the college who were not getting the salary since February, 2009 on account of on going dispute between the Committee of Management and Sri Virendra Singh, approached this Court by means of Civil Misc. Writ Petition No. 39768 of 2009 commanding the respondents to pay their salaries as also the revised pay-scale as per 6th Pay Commission. This writ petition was disposed of by this Court vide judgment and order dated 4th August, 2009 with the direction to the DIOS to look into the grievance and do the needful. The DIOS in order to ensure the payment of salary to the teaching and non-teaching staff passed an order dated 7th September, 2009 directing single operation of the salary account. The order dated 7th September, 2009 was challenged before this Court by means of a writ petition by the present appellant, which has been dismissed.

We have heard Sri V.K. Singh, learned counsel for the appellant, Sri Vashistha Tiwari, learned counsel for respondent no.5 and the learned Standing Counsel who represents respondent nos. 1 to 4 and have perused the judgment and order dated 1.7.2010 passed by the learned Single Judge giving rise to the present appeal as also the grounds taken in the memo of appeal and the documents filed along with it including the copy of the writ petition.

Sri V.K.Singh, learned counsel for the appellant submitted that as this Court in the writ petition filed by Chandra Pal Sharma had directed for maintaining the status quo on the post of Principal which post was held by Sri Chandra Pal Sharma as Officiating Principal till his retirement to 30.6.2009 and thereafter on 3.7.2009 another order of status quo was passed by this Court in the writ petition filed by Sri Nahar Singh Verma and as such he has not been appointed as Principal of the said college. He further submitted that Sri Virendra Singh was transferred during the period when the Authorized Controller was appointed to hold election and, therefore, it cannot be said that the order of transfer is illegal as the Committee of Management has not given its consent. He, therefore, submitted that the order of single operation of the salary account is clearly illegal and without authority of law.

Having given our thoughtful consideration to the various plea raised by the learned counsel for the appellants, we find that it is not in dispute that the present appellant had not challenged the order of transfer of Sri Virendra Singh on the post of Principal of the College in question. That being the position, the signature of Sri Virendra Singh having been attested by the DIOS on 20.1.2009 that has to be given full effect to and the order of status quo passed in the writ petition filed by Sri Chandra Pal Sharma became in effective after the retirement of Sri Chandra Pal Sharma on 30.6.2009. The order of status quo passed by this Court in the writ petition of Sri Nahar Singh Verma on 3.7.2009 would not come to the rescue of the present appellant as from 1.7.2009, Sri Virendra Singh would be deemed to be the Principal of the said College because there was no interim order in favour of Sri Nahar Singh Verma at that point of time. Moreover the writ petition filed by Sri Nahar Singh Verma challenging the action of the education authorities in not permitting

him to continue as officiating Principal and on the other hand permitting Sri Virendra Singh to continue as Principal came to be dismissed by this Court on 23.7.2009.

The appellant cannot be permitted to blow hot and cold in the same breath. On the one hand it had chosen not to file any petition or application to challenge the transfer and appointment of Sri Virendra Singh as Principal of the College in question and on the other hand not sending the salary bills of teaching and non-teaching staff with Sri Virendra Singh, Principal of the said college which cannot be permitted under law.

That being the position, we are of the considered opinion that the Committee of Management ought to have sent the salary bills of the teaching and non-teaching staff under the Principal ship of Sri Virendra Singh and that having not been done, the DIOS was fully justified in passing the order of single operation of the salary account. We, therefore, do not find any legal infirmity in the order passed by the learned Single Judge.

The appeal fails and it is, accordingly, dismissed.

However, if the appellants Committee of Management undertake to send the salary bills of the teaching and non- teaching staff of the college including the salary bill of Sri Virendra Singh as Principal of the College and under joint signature of the Principal and the Committee of Management then after receiving the salary bill the order of single operation shall be withdrawn by the DIOS as the same has been passed only on account of not submitting the salary bills.

Order Date :- 23.7.2010 SKM