

Dr. Ramji Dwivedi

Vs

State of Uttar Pradesh and Others

Civil Appeal No. 1340 of 1982

(D. A. Desai, O. Chinnappa Reddy JJ)

26.04.1983

JUDGMENT

DESAI, J.-

1. Even with an ever-widening control of the State on the private management of educational institutions, the minimal residuary power still enjoyed by private management can be used to successfully harass a highly qualified teacher is the tragic lesson of this litigation.
2. Appellant, a double M. A. and holding a Doctorate applied in response to an advertisement that appeared in Hindi daily Bhrigu Chetna and Dainik Jagram dated May 18, 1980 for the post of a Principal of Shrinath Intermediate College, Garhmalpur Sahulie, District Ballia ('Colleges' for short) issued by the Committee of Management of the College. The Education Act, 1921 ('Act' for short) held the interview on April 12, 1981. The Selection Committee consisted of Shri Sudhakar Tiwari, Manager/President of the Selection Committee, Shri Ram Dularey Tripathi, Principal, Nagrik Degree College, Jaunpur and Dr. Gauri Shanker Misra, Principal, Narishsun Degree College, Harihaun, District Jaunpur. The Selection Committee unanimously selected the appellant for appointment to the post Principal. Pursuant to this decision of the Selection Committee the Manager of the Committee of Manager of the College issued an appointment order dated April 27, 1981 to the appellant informing him that Committee of Management of the College vide its Resolution No. 3 dated April 19. 1981 has appointed the appellant as Principal on one-year probation in the scale of Rs 550-1200 at initial pay along with DA admissible under the Rules. The appellant was required to present himself before the Manager of the College and take over the charge within 10 days of the receipt of the order of appointment failing which the appointment would be void. On receipt of this letter of appointment the appellation would be void. On receipt of this letter of appointment the appellant presented himself at the college on May 1, 1981 and requested the Manager to hand over charge to him. There is an endorsement below this communication by the Manager that the appellant was permitted to take charge. On the same day, the appellant wrote to the Manager of the College that as permitted by him he has assumed charge of the post of Principal at 7.30 a.m. and has started functioning. An intimation of the same was also sent to the District Inspector of Schools, Ballia. The appellant on the same day circulated a notice to the staff intimating to them that he has assumed charge of the post of Principal and he has convened an urgent meeting of the staff to be held on the same day after college hours in the teachers' room.
3. It appears that the State Government was contemplating to bring about a radical change in the mode, method and power of appointment of the teaching staff in non-government aided schools and accordingly Secretary to the Government of U. P. Education Department issued an order dated April 7, 1981, communicated by a radiogram to the various authorities. It reads as under :

From Secretary to Govt. of U. P. Education Department.

G. O. No. 1701/15-7-FI-1 (27)/81 dated April 1, 1981

STOP ALL FRESH SELECTIONS AND APPOINTMENTS OF PRINCIPALS, HEAD-MASTERS AND TEACHERS INCLUDING RECRUITMENT BY PROMOTION IN ALL NON-GOVERNMENT AIDED SECONDARY SCHOOLS EXCEPT MINORITY INSTITUTIONS PENDING FURTHER ORDERS (.) DISTRICT INSPECTORS TO ENSURE NON-DRAWAL OF PAY OF TEACHERS APPOINTED AFTER THIS DATE (.) DETAILED INSTRUCTIONS FOLLOW (.)

4. Pursuant to the receipt of this radiogram, the District Inspector of Schools, Ballia had sent a copy of it to the College. There is some dispute between the parties as to whether this copy of the radiogram was received by the Management of the College but there is a letter dated May 1, 1981 addressed by the District Inspector of Schools, Ballia to the Manager of Shrinath Intermediate College which reads as under :

#Letter No. 2/26-62/80-81 dated May 1, 1981 Sub. : In Ref. : Appointment of Principals##

Sir,

In reference to letter No. Shrinath Inter College dated April 27, 1981 regarding the above mentioned subject, it is informed that as soon as G. O. No. 1701/15-7F-I-1 (27)/81 dated April 7, 1981 in regard to the prohibition on appointments is received in this office, it has been sent by letter No. 60/81-82 dated April 8, 1981 and it has been received by the clerk of your office on April 8, 1981 and the message of the G. O. have been sent to the experts by telegram.

Hence in such a situation there is no question of appointment on the post of Principal.

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Sd/- B. N. Pandey,

District Inspector of Schools,

Ballia. May 1, 1981

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5. Serious dispute arose whether the appellant's appointment as Principal was valid. The controversy was accentuated by the conduct of one Jagannath who was aspiring to be the Principal and who, it is alleged, has some local influence. The Management did not pay any salary to the appellant though he functioned as the Principal and ultimately the appellant approached the High Court under Article 226 of the Constitution praying for a writ of mandamus directing the 5th respondent, the Committee of Management of the College, not to interfere with the work of the appellant discharging his duties as Principal of the College and also to pay salary. Pursuant to the interim relief granted by the High Court the appellant was paid his salary. To the writ petition filed by the appellant he had impleaded five respondents including the State of U. P. the Director of Education, U. P. the Deputy Director of Education, VI Region, Varanasi, District Inspector of

Schools, Ballia and the Committee of the Management of the College. The petition was primarily contested by the 5th respondent, the Committee of Management. One Shri Phul Deo Pandey filed an affidavit in opposition on behalf of the Committee of Management inter alia contending that the appointment of the appellant was not valid as the power to appoint was withdrawn by the State Government. Reliance was placed on the radiogram in this behalf.

6. The High Court held that the radiogram dated April 7, 1981 contained an order of the State Government in discharge of its executive functions suspending or withdrawing power of appointment of teaching staff including Principal and therefore the Committee of Management of the College had no power to set up a selection committee nor the selection committee had any power to make any appointment and therefore the appointment of the appellant alleged to have been made on May 1, 1981 was not valid. The High Court accordingly dismissed the writ petition. Hence this appeal by special leave.

7. Mr. G. L. Sanghi, learned counsel who appeared for the appellant canvassed two contentions at the hearing of this appeal. It was urged that the day i.e. May 1, 1981 on which appointment of appellant was made as Principal of the College, the Committee of Management had the power to make the necessary appointment and the order contained in the radiogram had no effect on the validity of appointment. It was next contended that assuming such a power to issue radiogram was available to the State Government, if the appointment was made without the knowledge of the order contained in the radiogram, the appointment would be valid. Alternatively, it was contended that in any case once appointment was made unless the procedure prescribed in sub-section (10) of Section 16-E of the Act is followed, the appointment of the appellant could not be invalidated, and therefore it may be declared that the appellant continues to hold the post of the Principal of the College.

8. Before we deal with these submissions, a brief reference to the relevant provision of the Act would be advantageous. The Act is a pre-Constitution Act enacted in 1921 with a view to acquiring power to establish a Board to take the place of the Allahabad University in regulating and supervising the system of High School and Intermediate Education of the United Provinces. It was more or less an innocuous enactment. The power and authority enjoyed by private managements of educational institutions was left untouched. But there was a comprehensive amendment of the Act by U. P. Act 26 of 1975. For implementing the provisions of the Act, Section 3 envisaged the constitution of a Board. Section 7 Prescribes the power of the Board which would also imply duties and functions of the Board Section 9 preserves and protects the powers of the State Government. Sub-section (4) is material and may be extracted :

Whenever, in the opinion of the State Government, it is necessary or expedient to take immediate action, it may, without making any reference to the Board under the foregoing provisions, pass such order or take such other action consistent with the provisions of this Act as it deems necessary, and in particular, may by such order modify or rescind or make any regulation in respect of any matter and shall forthwith inform the Board accordingly.

Section 13 confers power on the Board to appoint various committees. Section 15 confers power on the Board to make regulations with the previous sanction of the State Government (see Section 16) for the purpose of carrying into effect the provisions of the Act. Section 16-A to Section 16-I were inserted by U. P. Act 35 of 1958. Section 16-A provides for a scheme of administration for every institution whether recognised before or after the commencement of U. P. Act 35 of 1958. The scheme of administration was to inter alia provide for constitution of a Committee of

Management vested with authority to manage and conduct the affairs of the Institution. Section 16-F (1) provides for setting up a selection committee for appointment of Head of an institution and sub-section (2) provides for setting up of a committee for selection of candidates for appointment as teachers. Section 16-D confers power on the Director of Education to cause inspection of recognised institution to be made from time to time and clause (ii) to sub-section (3) inter alia requires ascertaining in course of inspection whether the Committee of Management has failed to appoint teaching staff possessing such qualifications as are necessary for the purpose of ensuring the management of academic standards in the institution or has appointed or retained in service any teaching or non-teaching staff in contravention of the provisions of the Act or the Regulations.

9. Having browsed through the relevant provisions let us turn to the contentions raised by Mr. Sanghi.

10. The contention which was put in the forefront was that the date on which appellant was appointed as Principal, the Committee of Management had the power to make appointment notwithstanding the fact that the order contained in the radiogram had suspended or withdrawn its power. While setting out the chronology of events leading to the petition we have pointed out that at the meeting of the Selection Committee held on April 12, 1981 appellant was selected as a Principal. The question is whether the Selection Committee had any power to make the selection on April 12, 1981 and whether the Committee of Management pursuant to selection had any power on April 27, 1981 to issue appointment order. It is conceded that relevant regulations conferred power on the Committee of Management to make appointment upon the recommendation of the Selection Committee. The power to make appointment is conferred by the regulations. The Board has the power to make regulations. Under Section 15 and this power can be exercised only with the previous sanction of the State Government. Thus the State Government has authority to sanction or not to sanction the regulation proposed by the Board. Every such recognised institution must have a scheme of administration as envisaged by Section 16-A and the scheme of administration envisages the setting up of a Committee of Management and the Committee of Management has the power to set up a Selection Committee for selecting the candidate for appointment as Head of an institution as provided in Section 16-F. This power is being regulated by the Regulations.

11. Thus it becomes clear that the Board enacts Regulations. The Regulations confer power of appointments including of the appointment of a Head of the institution and of the teachers.

12. Sub-section (4) of Section 9 which has been extracted herein before confers power on the State Government without making any reference to the Board to make an order or take such other action consistent with the provisions of the Act as it deems necessary and in particular, may by such order modify or rescind or make any regulation in respect of any matter. It would thus unquestionably transpire that while enacting the Regulations prior sanction of the State Government is necessary and under sub-section (4) of Section 9 the State Government enjoys the power to make, modify or rescind any regulation. Armed with this power the State Government issued an order dated July 7, 1981 stopping all fresh selections and appointments of Principals etc. in all non-government-aided schools. Shrinath Intermediate College is a non-government-aided school. The effects of the order conveyed by the radiogram would be to rescind the regulation conferring power on the Committee of Management to make appointment and withdrawing and/or suspending power of appointment of Principal and teachers. The issuance of the order is not in dispute. The arguments, in the High Court, was that the State Government had no such power and that even if sub-section (4) is deemed

to confer such a power it has to be read in juxtaposition with the power conferred on the State Government by sub-section (1), (2), (3) preceding sub-section (4) of Section 9. The High Court therefore had to examine the width and ambit of the executive power of the State Government in exercise of which, according to the High Court. The order contained in the radiogram was issued. We need not go that far because in our opinion sub-section (4) specifically confers power on the State Government without making any reference to the Board to make, modify or rescind any regulation as also make such other order consistent with the provisions of the Act. This power of wide amplitude will comprehend the power to stop all appointments for the time being. And the power appears to have been exercised as Government was contemplating taking away the power of private management of non-government-aided schools to make appointment of teachers including Principals. In order to avoid forestalling of governmental action by private managements, the power to make appointments was suspended for the time being. As pointed out earlier, the regulation confers power on the Committee of Management to make appointment. That Regulation was enacted by the Board with the prior sanction of the State Government. The State Government could be said to have rescinded that Regulation conferring power of appointment or at any rate suspended the power conferred on the Committee of Management to make appointment. The order became effective the moment it is issued. The effect of this order is that the Selection Committee had no right to select the appellant nor the Committee of Management had any power to make the appointment.

13. Mr. Sanghi further contended that this order was never received by the institution and therefore the power of the Committee of Management notwithstanding the fact that its power to make appointment was suspended remained intact and therefore the appointment of the appellant would be valid. There is no merit in the submission because the letter dated May 1, 1981 which has been extracted hereinbefore clearly shows that on April 7, 1981 the order contained in the radiogram was communicated to the Manager of the Institution. There is no affidavit in opposition of the then Manager of Institution or any responsible person then in charge of the management denying the receipt of the letter dated May 1, 1981. This letter shows that on April 8, 1981 the institution had received the order that the power of appointment of Principal has been withdrawn or suspended. If the order was valid and power to make appointment was withdrawn or suspended it would not be open to the Selection Committee to make and select appellant nor the Manager on behalf of the Committee of Management can issue appointment order dated April 27, 1981 to the appellant and the appointment of the appellant would be by a body not authorised to make the appointment and hence ineffective though it may not be invalid.

14. In view of the finding that sub-section (4) of Section 9 did confer power on the State Government to make, modify or rescind the regulation or make any other order consistent with the provisions of the Act, the second contention of Mr. Sanghi is equally bound to fail.

15. It is therefore necessary to turn to the alternative contention based on sub-section (10) of Section 16-E. The marginal note of Section 16-E reads : "Procedure for selection of teachers and head of institutions." Sub-section (1) confers power on the Committee of the Management to make appointment.

16. Sub-section (10) provides as under :

Where the State Government, in case of the appointment of Head of Institution, and the Director in the case of the appointment of teacher of an institution, is satisfied that any person has been appointed as Head of Institution or teacher, as the case may be,

in contravention of the provisions of this Act, the State Government or, as the case may be, the Director may, after affording an opportunity of being heard to such person, cancel such appointment and pass such consequential order as may be necessary.

17. It was urged that if the State Government is satisfied that any person has been appointed as Head of an institution in contravention of the provisions of the Act, the State Government after affording an opportunity of being heard to such person cancel such appointment and pass such consequential order as may be necessary. Mr. Sanghi vehemently contended that if the appointment of appellant is in contravention of the provisions of the Act, the State Government was bound to hear the appellant before making any consequential order. Sub-section (10) provides for a contingency where an appointment is made and the State Government later on comes to know that the appointment has been made in contravention of the act in respect of a particular individual that the rules of natural justice require that he may be heard before making an order, adverse to such person. The present case is not one which can be dealt with or was required to be dealt with by sub-section (10). The situation is that the power of appointment conferred by Regulation on Committee of Management of all non-government-aided institution was withdrawn or suspended. The Committee of Management had no power to make the appointment. It cannot be said that the appointment was in contravention of any provision of the Act. Therefore sub-section (10) is not attracted in this case and the contention must fail.

18. Undoubtedly appellant is a highly qualified person. There was nothing hanky-panky in his appointments. If the power to make appointment was not suspended we would have no difficulty in upholding the appointment of the appellant and we are not oblivious to the machinations (sic) of Sri Jagannath, who possibly thought that the appellant would be a formidable rival and wanted him to be out of way. The private management, at the instance of Sri Jagannath appears to have subsequently backed out from the appointment of the appellant which at one stage they were willing to defend. But as there was no power of appointment, we are unable to help the appellant. However, we would like to make it very clear that the appointment was otherwise valid, though ineffective and if appellant under the orders of the High Court functioned as Principal, discharged his duties and was paid, no question of recovery of amount paid to him could arise and neither the Government nor the Committee of management nor the Institution would be entitled to recover any salary paid to the appellant.

19. The State Government promulgated the U. P. Secondary Education Services Commission and Selection Boards Ordinance, 1981 (U. P. Ord. 8 of 1981) Which was replaced by the Act bearing identical name. The Act envisages setting up of a Commission for selecting and recommending appointments of teachers including Heads of Institution. The College is topless and an unfair advantage is being taken of this situation by Jagannath whose credentials to be appointed as Principal are still to be investigated. It is the statutory duty of the Commission to proceed to take effective steps to fill in the post of Principal of the College. It is imperative that the State Government should direct the Commission to take necessary steps to fill in the post of principal of Shrinath Intermediate College, Garhmalpur, Ballia within three months from today. Appellant would be eligible to apply for the same. We direct accordingly.

20. As we find no merit in any of the contentions canvassed on behalf of the appellant, the appeal fails and is dismissed subject to the directions in the preceding paragraph but in the circumstances of the case with no order as to costs.

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