

Om Prakash Rana

Vs

Swarup Singh Tomar and Others

Civil Appeal No. 2072 of 1985

Uday Partap Singh

Vs

Subedar Singh Chauhan and Others

Civil Appeals Nos. 2628, 2696 of 1985

District Inspector of Schools

Vs

Raghunandan Prasad Bhatnagar and Others

Civil Appeals Nos. 4091-92 of 1985

Shashi Pal Singh

Vs

State of U.P. and Others

Special Leave Petition (Civil) No. 9542 of 1985

(CJI P. N. Bhagwati, R. S. Pathak JJ)

09.05.1986

JUDGMENT

PATHAK, J. –

1. The principal question in these appeals is whether, in view of the enactment of the U.P. Secondary Education Services Commission and Selection Boards Act, 1982 and the Rules framed thereunder, the provisions contained in Section 16-G(2)(c) of the U.P. Intermediate Education Act, 1921 and Regulations 55 to 62 in Chapter III of the Regulations framed under that Act in respect of the transfer of a Principal from one Intermediate College to another continue to be operative and effective.

2. The Intermediate Education Act, 1921 (shortly referred to as 'the Education Act') and the Regulations framed thereunder provide inter alia for the conditions of service of Heads and of the teachers of such educational institutions. The appointment of the Heads and of teachers of

educational institutions in the State continued to be governed by the Educational Act for several years, but with the passage of time it came to be felt that the selections of teachers under the provisions of that Act and the Regulations were not always free and fair and moreover the field of selection was greatly restricted. As this adversely affected the availability of suitable teachers and the standards of education the Government of Uttar Pradesh promulgated the U.P. Secondary Education Services Commission and Selection Boards Ordinance, 1981 on July 10, 1981 with a view to establishing a Secondary Education Services Commission and six or more Secondary Education Selection Boards for the selection of teachers in institutions recognised under the Education Act. The Ordinance was replaced subsequently by the enactment of the U.P. Secondary Education Services Commission and Selection Boards Act, 1982 (conveniently referred to as 'the Service Commission Act'). Thereafter the State Government framed Rules for carrying out the purposes of the Act. It was some time before the Services Commission and the Selection Boards could be constituted and therefore a number of Removal of Difficulties Orders were made by the State Government pursuant to power conferred under the aforesaid Ordinance and thereafter under the Commission Act.

3. We propose to take the appeal filed by Om Prakash Rana against Swarup Singh Tomar (Civil Appeal 2072 of 1985) as representative of the factual context in which the appeals arise. The Veer Smarak Intermediate College is an educational institution in Baraut in the district of Meerut. It is an institution recognised under the provisions of the Intermediate Education Act, 1921. On June 30, 1982 the post of Principal of the college fell vacant on the retirement of the outgoing Principal, Jai Singh. The Committee of Management resolved that Bhopal Singh, the then Principal of the Adarsh Vedic Intermediate College, situated in the same district, should be invited to join the post of Principal in the college. It was intended that the vacancy should be filled in accordance with the provisions of the Education Act and the Regulations made thereunder which permitted the transfer of a Principal from one institution to another. As the transfer could be effected only with the approval of the District Inspector of Schools, an application was made to the District Inspector of Schools. He refused to grant approval. On July 13, 1982 the District Inspector of Schools directed the Committee of Management to give charge of the post of Principal to the respondent Swarup Singh Tomar as officiating Principal. Three days later, the District Inspector of Schools superseded that order and directed that the respondent Swarup Singh Tomar should be appointed as ad hoc Principal under the Removal of Difficulties Order issued under the Services Commission Act. The Committee of Management of the college filed a writ petition in the Allahabad High Court against the order of the District Inspector of Schools, and during its pendency the High Court made an interim order in which it was recognised that Swarup Singh Tomar was functioning already as ad hoc Principal of the institution. About this time, the appellant Om Prakash Rana, who was Principal of the B.P. Intermediate College at Bijwara in the district of Meerut, requested the Committee of Management of his college to relieve him in order to enable his transfer as Principal to the Veer Smarak Intermediate College. On November 22, 1982 the Committee of Management passed a resolution accordingly. On December 3, 1982 the Committee of Management of the Veer Smarak Intermediate College resolve on accepting the appellant as Principal of the college on transfer from the other institution. On February 19, 1983, the District Inspector of Schools accorded his approval to the transfer.

4. Tomar now filed a writ petition in the Allahabad High Court. He obtained an interim order restraining the Committee of Management from permitting Rana to fill the post of Principal of the college, but the interim order was vacated on March 9, 1983 and Rana has been working as Principal of the college ever since. On April 9, 1985 the High Court allowed the writ petition and quashed the order dated February 19, 1983 under which the District Inspector of Schools had

accorded his approval to transfer of Rana. In allowing the writ petition the High Court followed the judgment of a Full Bench of the Court pronounced in Raghunandan Prasad Bhatnagar v. Administrator, Gandhi Vidyalaya Intermediate College, Khekra (Civil Misc. Writ Petition No. 10301 of 1983). That was a case where the High Court re-examined the correctness of the views expressed by two Division Benches of the High Court in Ratan Pal Singh v. Deputy Director of Education (1983 U.P. Local Bodies and Educational Cases 34) and the Committee of Management, National Intermediate College, Adali Indara, District Azamgarh v. District Inspector of Schools, Azamgarh (1983 U.P. Local Bodies and Educational Cases 198). The three learned Judges who heard the case were unable to come to a unanimous opinion, and by majority the Full Bench held that it was not permissible for the Committee of Management of an Intermediate College to fill the post of Principal of the college by the transfer of a Principal from one Intermediate College to another after the commencement of the Services Commission Act.

5. To appreciate the scope and range of the contentions raised before us by the parties it is appropriate to set forth at the outset the relevant provisions of the two statutes and the pertinent Regulations. Section 16-G of the Education Act provides :

16-G. Conditions of service of Head of Institutions, teachers and other employees. -

(1) Every person employed in a recognised institution shall be governed by such conditions of service as may be prescribed by regulations and any agreement between the management and such employee insofar as it is inconsistent with the provisions of this Act or with the regulations shall be void.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the regulations may provide for -

(a) the period of probation, the conditions of confirmation and the procedure and conditions for promotion and punishment, including suspension pending or in contemplation of inquiry or during the pendency of investigation, inquiry or trial in any criminal case for an offence involving moral turpitude and the emoluments for the period of suspension and termination of service with notice,

(b) the scales of pay, and payment of salaries,

(c) transfer of service from one recognised institution to another,

(d) grant of leave and provident fund and other benefits, and

(e) maintenance of record of work and service.

The Regulations 55 to 62 detail the procedure to be followed when a permanent employee of an institution desires his transfer to another institution. An application for transfer is made to the Inspector of Schools. All applications for transfer are entered in a register. As soon as a substantive vacancy or a temporary vacancy likely to be made permanent and which is to be filled by direct recruitment is advertised, the manager of the institution has to send a copy of the advertisement to the Inspector. The Inspector will arrange with the management to see whether the vacancy can be filled suitably by one of the applicants for transfer. When the vacancy is not filled by transfer, the management may proceed to fill it by direct recruitment. To enable the transfer to take place it is necessary that the management of the institution where the applicant is serving should be willing to release him and that the management of the institution to which the applicant seeks transfer is

willing to accept him. Apparently the appellant Rana relied on these provisions of the Education Act and the Regulations to obtain a transfer as Principal from the B.P. Intermediate College, Bijwara to the Veer Smarak Intermediate College, Baraut.

6. In anticipation of the promulgation of the Services Commission Ordinance the U.P. Government issued a radiogram to all District Inspectors in the State directing them to stop all fresh selections and appointments of Principals, Headmasters and teachers including recruitment by promotion in all non-government aided Secondary Schools, except minority institutions, pending further orders. This was followed on July 19, 1981 by the Services Commission Ordinance. Clause 16 of the Ordinance provided that the appointment of a teacher (the expression 'teacher' being defined to include a Principal) could be made by the management only on the recommendation of the Commission and any appointment made in contravention of the clause would be void. Thereafter, the Services Commission Act was enacted. Section 3 provides for establishing a commission to be called the "Uttar Pradesh Secondary Education Services Commission". It is to be a body corporate and entitled to exercise power throughout the State. Section 10 provides :

10(1) For the purposes of making appointment of a teacher specified in the Schedule, the management shall notify the vacancy to the Commission in such manner and through such officer or authority as may be prescribed.

(2) The procedure of selection of candidates for appointment to the posts of such teachers shall be such as may be prescribed :

Provided that the Commission shall, with a view to inviting talented persons, give wide publicity in the State to the vacancies notified under sub-section (1).

Section 11 details the procedure to be followed by the Commission after the notification of a vacancy under Section 10 for the purpose of holding interviews of the candidates and preparing a panel of those found most suitable for appointment. The names on the panel are to be forwarded to the management of the institutions in accordance with the prescribed procedure and the management is to appoint a candidate accordingly. Section 16 declares :

16(1) Notwithstanding anything to the contrary contained in the Intermediate Education Act, 1921 or the regulations made thereunder but subject to the provisions of Sections 18 and 33 -

(a) every appointment of a teacher specified in the Schedule shall, on or after July 10, 1981, be made by the management only on the recommendation of the Commission;

(b) every appointment of a teacher (other than a teacher specified in the Schedule) shall, on or after July 10, 1981, be made by the management only on the recommendation of the Board :

Provided that in respect of retrenched employees, the provisions of Sections 16-EE of the Intermediate Education Act, 1921, shall apply with the modification that in sub-section (2) of the aforesaid section, for the words 'six months' the words 'two years' shall be deemed to have been substituted.

(2) Every appointment of a teacher, in contravention of the provisions of sub-section

(1), shall be void.

Where a person is entitled to appointment as a teacher in any institution but is not so appointed by the management, he is given the right to apply to the Director of Education, Uttar Pradesh for a direction to the management to appoint him forthwith and to pay him salary from the date specified in the order. Section 22 provides for the imposition of a penalty on any person appointing a teacher in contravention of the provisions of the Act. Such contravention constitutes an offence punishable with imprisonment which may extend to three years or with fine up to Rs. 5,000 or with both. Section 32, of which much will be said hereafter, provides :

32. The provisions of the Intermediate Education Act, 1921 and the Regulations made thereunder insofar as they are not inconsistent with the provisions of this Act or the rules or regulations made hereunder shall continue to be in force for the purposes of selection, appointment, promotion, dismissal removal, termination or reduction in rank of a teacher.

7. Section 33 enables the State Government to pass orders for a period of two years from the date of commencement of the Act for the purpose of removing difficulties.

8. The central question is whether the enactment of the Services Commission Act results in the repeal of the provisions of Section 16-G(2)(c) of the Education Act and the regulations made thereunder. If that is so, no transfer to the office of Principal in Intermediate Colleges can be made except, if at all, in accordance with the provisions of the Services Commission Act. In this connection, one point which arises is whether the transfer of a Principal from one college to another constitutes an appointment to the latter. It is the case of the appellants that the power relating to appointments conferred on the Commission under the Services Commission Act does not in any way curtail the provisions regarding transfer set forth in the Education Act and its Regulations. It is urged that the right to apply for transfer is a condition of service of an employee, and neither expressly nor by necessary implication can it be said that the Services Commission Act has abrogated that right. It is a facility provided to every employee and, it is said, there must be clear language before that right can be taken away. It is contended that it is perfectly possible to read the Education Act and its Regulations side by side with the Services Commission Act and infer therefrom that the power of transfer continues to co-exist under the former with the power relating to appointments conferred on the Commission under the latter. There is no inconsistency between the two powers, it is submitted, and that is apparent when Section 32 of the Services Commission Act deals with the effect of the inconsistency between the provisions of the Education Act, and the regulations made thereunder, and the provisions of the Services Commission Act, and its rules and regulations, in regard to the "selection, appointment, promotion, dismissal, removal, termination or reduction in rank of a teacher". This submission is based on the premise that the power of transfer is not encompassed within the power of appointment. So it is said that Section 16 of the Services Commission Act which provides that the appointment of a Principal can be made by the management only on the recommendation of the Commission does not bar the transfer of a Principal from one college to another.

9. As is clear by now, the fundamental basis of the contention that the power of transfer under the Education Act and its Regulations continues in force even after the enactment of the Services Commission Act rests on the assumption that the power of appointment does not include the power of transfer. In our opinion, the assumption is unsustainable. The scheme under the Education Act envisages the appointment of a Principal in relation to a specific college. The appointment is in

relation to that college and to no other. Moreover, different colleges may be owned by different bodies or organisation, so that each Principal serves a different employer. Therefore, on filling the office of a Principal to a college, a new contract of employment with a particular employer comes into existence. There is one State-level service to which Principals are appointed. Had that been so, it would have been possible to say that when a Principal is transferred from one college to another no fresh appointment is involved. But when a Principal is appointed in respect of a particular college and is thereafter transferred as a Principal of another college it can hardly be doubted that a new appointment comes into existence. Although the process of transfer may be governed by considerations and move through a machinery different from the considerations governing the appointment of a person ab initio as Principal, the nature of the transaction is the same, namely, that of appointment, and that is so whether the appointment be through direct recruitment, through promotion from the teaching staff of the same institution or by transfer from another institution.

10. It is pointed out that when Section 10 of the Services Commission Act requires that for the purposes of the making of an appointment of a teacher the management must notify the vacancy to the Commission, it does not speak of "every vacancy", and designedly leaves the possibility open of some vacancies being filled by transfer. This submission is also without substance. A survey of the provisions of the Services Commission Act makes it abundantly clear that the entire matter of selecting teachers for recognised institutions is intended to be governed by the Services Commission Act. As the Preamble of the Act itself suggests, that is the whole purpose of establishing the Services Commission. Section 3 envisages the Commission as a body corporate, an entity of continuing existence, manned by persons of eminence and distinction from the judicial services and the educational services and selected academicians with a superior level of teaching experience, and armed with carefully delineated power to select teachers, through a detailed procedure intended to select the best. No wonder then that Section 16(1) mandates that "every appointment" of a Principal can be made by the management "only on the recommendation of the Commission". Section 16(2) goes further. It declares that every appointment made in contravention of Section 16(1) shall be void. It is only in exceptional cases, where the Commission has failed to recommend the name of a suitable candidate for appointment within one year from the date of notification of the vacancy, or the post has actually remained vacant for more than two months then, under Section 18(1), the management may appoint, by direct recruitment or promotion, a teacher on a purely ad hoc basis from amongst the persons possessing qualifications prescribed under the Education Act or the regulations made thereunder. Section 22 demonstrates how absolute is the ban on appointing a teacher through a procedure outside the provisions of the Services Commission Act, for the section provides that any person who appoints a teacher in contravention of the provisions of that Act shall, on conviction, be punished with imprisonment for a term which may extend to three years or with fine which may extend to Rs 5000 or with both. Any doubt remaining is removed completely by Section 32 of the Services Commission Act which permits the provisions of the Education Act and its Regulations to continue in force insofar only as they are not inconsistent with the provisions of the Services Commission Act, its rules and its regulations in the matter of the selection and appointment, among other things, of a teacher.

11. We are firmly of opinion that no duality in the source of power is contemplated in the matter of filling the office of Principal of a college. It is not possible to contemplate that transfers can be effected with the approval of the District Inspectors of Schools under the Education Act and its Regulations, while appointments (other than by transfer) can be made upon the recommendation of the Commission. The control over all appointments is exercised by a single source of power, namely the Commission under the Services Commission Act. It is no longer possible to invoke Section 16-G(2)(c) of the Education Act and its Regulations and transfer a Principal from one institution to

another. The context in which those provisions operate, the authority conferred for that purpose and the conditions subject to which it can be exercised stand completely superseded by the corresponding provisions of the Services Commission Act, its rules and regulations. That is amply demonstrated by the declaration in Section 16 of the Services Commission Act which mandates that the appointment of a Principal shall be made only on the recommendation of the Commission 'notwithstanding anything to the contrary contained in the Intermediate Education Act, 1921 or the regulations made thereunder". The scheme set forth in the Services Commission Act enacts a complete code in the matter of selection of teachers, and resort is no longer permissible to the provisions of the Education Act and its Regulations for that purpose. Where the Services Commission Act and its Regulations for that purpose. Where the Services Commission Act intended that any provision of the Education Act pertaining to the appointment of a teacher should continue in force, it expressly provided for such saving. For example, the proviso to Section 16(1) of the Services Commission Act enacts that the provisions of Section 16-EE of the Education Act which provide for the absorption of retrenched employees against permanent vacancies shall apply with certain modifications.

12. A submission on behalf of the appellant is that the power to transfer the service of a teacher from one institution to another under Section 16-G(2)(c) of the Education Act is a condition of a service and should not be identified with the power of appointment. We have already explained that in its essential nature the transfer of a teacher from one institution to another implies the cessation of his appointment in the former institution and his appointment to the latter. It will also be noticed that the selection of teachers of the categories mentioned in the Schedule to the Services Commission Act has been considered by the State legislature of such manifest importance that a high powered Commission has been envisaged for discharging that function. It is a Commission consisting of persons holding positions of eminence in the Judicial Services or in the State Education Services or with teaching experience as University Professors and College Principals. It is intended that whenever a vacancy arises in the post of a teacher the Commission must be notified of it. In the selection of a teacher the Commission has been charged with the responsibility of inviting talented persons and selecting the best from among them. The selection has to be made in the context of the particular needs and requirements of the college. It is a responsibility of grave magnitude, the appointment of the head of an educational institution, and therefore most appropriately entrusted to the vision, wisdom and experience of a high powered body, the Commission. To contemplate that a vacancy can be filled by transfer, even subject to the approval of the District Inspector of Schools, is to admit the possibility of an appointment which does not measure up to the high standards and norms which the Commission can, having regard to its composition and status, be expected to apply. The Commission, as we have mentioned earlier, is envisaged as a corporate body constituted for the entire State, and in the selection of teachers as Principals and Lectures of Intermediate Colleges and as Headmasters of High Schools and Trained Graduate Grade teachers of Higher Secondary Schools (the categories of teachers detailed in the Schedule), it can also be expected to bear in mind the needs and standards of education designed for the entire State. The object of the Services Commission Act would be defeated if vacancies to posts of such responsibility and obvious importance in the field of education can be filled by bypassing the Commission and making appointments by transfer under Section 16-G(2)(c) of the Education Act. As the Services Commission Act stands today, no appointment by such transfer can be envisaged to those vacancies which fall within the responsibilities of the Commission.

13. Our attention has been invited to the circumstance that even after the coming into force of the Services Commission Act the State Government has made amendments to the Regulations under the Education Act relating to the transfer of service under Section 16-G(2)(c) of the Education Act. It is

urged that the making of such amendments indicates the belief in the State Government that Section 16-G(2)(c) of the Education Act continues to be operative. It is permissible to say, we think, that the making of those amendments cannot alter the true construction of the scope of the enactments under consideration. It may have been another thing if an amendment had been made to Section 16-G(2)(c) of the Education Act itself, from which an inference may have been possible that the State legislature, when amending that provision on the basis that it continues in operation, has given clear indication thereby that it was never intended that the provisions of the Services Commission Act should supersede Section 16-G(2)(c) of the Education Act.

14. In view of the aforesaid considerations, we hold that upon the constitution of a Commission under the Services Commission Act it is no longer possible for a vacancy in the post of Principal, Headmaster or teacher of the categories mentioned in the Schedule to the Services Commission Act to be filled by the process of transfer under Section 16-G(2)(c) of the Education Act and its Regulations. On this point we find ourselves in agreement with the majority opinion of the Full Bench of the High Court in Raghunandan Prasad Bhatnagar (Civil Misc. Writ Petition No. 10301 of 1983) and are unable to agree with what has been said by the Division Benches of that Court in Ratan Pal Singh (1983 U.P. Local Bodies and Educational Cases 34) and the Committee of Management, National Intermediate College, Adali Indara, District Azamgarh (1983 U.P. Local Bodies and Educational Cases 198).

15. As the mandate imposed by Section 16(1)(a) of the Services Commission Act that the appointment of a Principal of an Intermediate College shall, on or after July 10, 1981 be made only on the recommendation of the Commission, and inasmuch as the appointment by transfer of the appellant as Principal of the Veer Smarak Intermediate College took place after that date, the appointment of the appellant must be regarded as void.

16. The majority in Raghunandan Prasad Bhatnagar (Civil Misc. Writ Petition No. 10301 of 1983) has observed that Section 16-G(2)(c) of the Education Act should be limited to cases of mutual transfer of services between teachers serving in different institutions. We find it difficult to accept the accuracy of that observation, having regard to the view taken by us that Section 16-G(2)(c) of the Education Act cannot be pressed into service at all now in regard to vacancies intended to be filled on the recommendation of the Commission under the Services Commission Act.

17. An attempt was made by the appellant to show that respondent Tomar is not entitled to continue as Principal of the Veer Smarak Intermediate College and our attention was invited to the provisions of successive U.P. Secondary Education Services Commission (Removal of Difficulties) Orders. Having regard to the finding that the appellant can have no claim to the office of Principal of that college on the basis of the transfer effected in his favour, we do not think it is open to him to challenge the continuation of the respondent Tomar in that office.

18. Civil Appeal 2072 of 1985 fails and is liable to be dismissed.

19. Civil Appeals 4091-4092 of 1985 have been filed by the District Inspector of Schools, Meerut in support of the claim of Om Prakash Rana and as they raise the same questions as Civil Appeal 2072 of 1985 filed by Om Prakash Rana, learned counsel for the District Inspector of Schools adopts the submissions made by learned counsel for Om Prakash Rana.

20. Civil Appeals 2628 and 2696 of 1985 arise out of substantially similar facts, and those appeals will also be governed by the view taken in the appeal preferred by Om Prakash Rana.

21. A special leave petition (SLP (C) 9542 of 1985) has been filed by Shashi Pal Singh praying for special leave to appeal against the judgement and order of the Allahabad High Court in which the High Court, following its view in Raghunandan Prasad Bhatnagar (Civil Misc. Writ Petition No. 10301 of 1983) has quashed the appointment of the transferee Principal.

22. Upon the considerations which have found favour with us, the aforementioned appeals and the special leave petition must fail.

23. In the result, all these appeals and the special leave petition are dismissed. There is no order as to costs.

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