

PETITIONER:
SMT. RAJ KUMARI CECIL

Vs.

RESPONDENT:
THE MANAGING COMMITTEE OF LAXMI NARAIN BHAGWATI DEVIVIDYA MA

DATE OF JUDGMENT: 27/11/1997

BENCH:
SUJATA V. MANOHAR, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:
THE 24TH DAY OF NOVEMBER, 1997

Present:

Hon'ble Mrs. Justice Sujata V. Manohar
Hon'ble Mr. Justice D.P. Wadhwa

Manoj Swarup. Ms. Lalita Kohil, Advs. for M/s. Manoj Swarup & Co., Advs. for the Appellant
S.V. Deshpande, Adv. for the Respondent
K.S. Chauhan, (K.P.S. Dalal) Adv. for R.B. Misra, adv. for the State.,

J U D G M E N T

The following Judgment of the Court was delivered:
D.P. Wadhwa, J.

The appellant who was working as Headmistress in the School of the respondent filed the present appeal against the judgment dated December 19, 1986 of the High Court of Judicature at Allahabad (Lucknow Bench). The judgment of the High Court decides two matters: (1) second appeal filed by the respondent, the Managing Committee of the school arising out of a civil suit filed by the appellant and (2) a writ petition also filed by the appellant in the High court. While the appeal filed by the Managing Committee was allowed, the writ petition of the appellant was dismissed.

The appellant was working as Headmistress of the junior school of the respondent. The school was upgraded and recognised as Higher Secondary School. The Managing Committee published an advertisement inviting applications for the post of Principal. The appellant who was working at that time as Headmistress also applied for the post of Principal. She was called for interview and was selected by the Managing Committee. Her appointment was, however, subject to the approval under the provisions of the Intermediate Education Act, 1921. Appellant was placed on probation for one year from the date of joining of her duty. She joined her post on May 1, 1969. Instead, however, confirming the appellant to the post of Principal the Managing Committee by letter dated May 1, 1970 terminated her services. This was on the ground that the competent authority under the Intermediate Education Act did not approve her appointment to the post of Principal inasmuch as the appellant did not possess the requisite qualifications

as prescribed for the post of Principal in a higher secondary school. This led the appellant to file a civil suit in the court of Munsif North, Lucknow claiming relief for declaration that she was a confirmed Headmistress in the school of the respondent and for mandatory injunction that respondent be ordered to confirm her on the post of Headmistress in the said school and she also prayed for decree of perpetual injunction for restraining the respondent from removing her from the post of Headmistress as also from making new appointment and holding any selection. After the services of the appellant were terminated the respondent also re-advertised for the post of Principal and the appellant again applied for her appointment to that post in pursuance to that advertisement. The trial court granted the appellant decree of declaration as prayed but refused to grant the relief of injunction. The Managing Committee filed an appeal against the judgment and decree of the trial court. The appellate court upheld the judgment and decree of the trial court and dismissed the appeal. Against that the Managing Committee filed second appeal in the High Court which, as noted above, was allowed and the suit filed by the appellant dismissed.

The appellant also filed writ petition in the High Court praying for a writ of mandamus directing the respondents to implement the decision of the court in civil suit filed by her and for payment of arrears of salary and allowances to her. This writ petition was also dismissed. Aggrieved the appellant has filed this appeal.

There is no dispute that the appellant did not possess the qualifications for being appointed as a Principal of the Higher Secondary School. It is also approval of the competent authority under the Intermediate Education act, It is correct that the competent authority has power to relax the qualification but then again it is not disputed that the competent authority did not relax the qualification for the appointment of the appellant as Principal of the Higher Secondary School of the respondent. We may also note that when the respondent filed her civil suit in the court of Munsif and also writ petition in the High Court, she did not implead the competent authority under Intermediate Education Act or the State of U.P. as party defendant or respondent. Recognition and upgradation of the school is done by the Board constituted under the aforesaid Act and aid is provided by the State Government. it was admitted before us that the school of the respondent is an aided school. That would mean that for payment of whole of the salary or part of the salary, the funds are to be given by the State Government. An issue was framed in the trial court if the suit was bad for non-joinder of educational authorities which issue unfortunately was decided against the respondent. Perhaps not much serious thought was given to the issue so raised by the courts below.

To understand the plea raised by the appellant in the civil suit, we may refer to the issues framed therein. These are as under:

- "1, Whether the termination notice to the plaintiff is illegal and without reasonable cause?
2. Whether the plaintiff's appointment was temporary and conditional as alleged in para 12 of the W.S.?
3. Whether the suit is bad for non-joinder of necessary party as alleged in para 20 and 22 of the

W.S.?

4. whether the suit is not maintainable as alleged in para 21 of the W.S.?

5. To what relief, if any, is the plaintiff entitled.?

6. Whether the suit is barred by estoppel as alleged in the W.S.?

From the judgment of the first appellate court, it appears that the trial court decreed the suit for declaration that the appellant continued to be on the post of Principal though her suit for relief of injunction was dismissed.

When the matter came before the first appellate court, it said that the following points were to be considered for the purposes of the decision of the appeal:

"Whether the termination of the plaintiff from the post of Principal is illegal because, no prior approval of the educational authorities was obtained before terminating the services of the plaintiff?

2. Whether the plaintiff is estopped from challenging her termination?

3. Whether the suit is bad for non-joinder of the educational authorities?

4. Whether the learned Munsif acted illegally in decreeing the suit for declaration for which no relief is prayed by the plaintiff."

In the second appeal before the High Court the substantial questions of law which were considered could be gathered from the impugned judgment and these are as under:

"Aggrieved against the decree of the two courts below, the defendant-appellant has come to this court and the two substantial questions of law on which this appeal was admitted by this court were (1) as to whether the appointment of the plaintiff-respondent would be deemed to have been approved under Section 16-F(2) of the U.P. Intermediate Education Act as it stood in 1969 and (2) as to whether the respondent was stopped from challenging the latter dated 1.5.1970 terminating her services on the ground that her appointment had not been approved by the educational authorities whether after the post had been re-advertised and the plaintiff-respondent had applied against the freshly advertised post. Another substantial question of law pressed was as to whether under the provisions of Section 16-G(2) of the Act the approval from competent authority was required in terminating the services of the plaintiff-respondent."

We do not think there can be any dispute that when appointment of the appellant was subject to approval by the competent authority on relaxation of her qualifications for the post of Principal, it is nevertheless necessary for the respondent to seek approval for termination of the employment of the appellant.

Under Section 16-E of the act, qualifications for appointment as Principals, Headmasters and teachers of different subject at different stages of the course shall be prescribed by regulation provided that the Board may after considering the report of the Director exempt any person from the requirements of minimum qualification having regard to his experience, education and other attainments. 'Director' means Director of Education, Uttar Pradesh, as defined under Section 2(aaa). Section 16-F bars the appointment as a Principal, Headmaster or teacher in a recognized institution unless he possess the prescribed qualification or has been exempted under Section 16-E. However, if no candidate possessing the prescribed qualifications is available for appointment, the Inspector of schools may permit the institution to employ as a temporary measure any suitable person for a period not exceeding one year. Such period may be extended with the prior approval of the Inspector. Section 2(bb) of the Act defines 'Inspector' to mean the District Inspector of Schools and includes an officer authorised by the state Government to perform all or any of the duties of the Inspector. Sub section (2) (3) and (4) of Section 16-F provide as to how a person is to be appointed as a Principal etc. There are as under:

"16-

F.9(1).....

(2) The name of the selected candidate shall be forwarded for approval, in the case of a teacher, by the Principal or Headmaster the Inspector, and, in the case of Principal or Headmaster, by the Chairman of the selection committee to the Regional Deputy Director, Education. A statement showing the names, qualifications and other particulars as may be prescribed of all candidates who may have applied for selection shall also be sent along with the name of the selected candidate. The Inspector or Regional Deputy Director, Education, as the case may be, shall give his decision within two weeks of the receipt of the relevant papers, failing which approval shall be deemed to have been accorded.

(3) Where the Regional Deputy Director, Education, or the Inspector, as the case may be, disapproves for reasons to be recorded in writing of any name proposed under sub-section (1), the management may, within three weeks of the receipt of the disapproval, make a representation against it to Deputy Director in the Director, Education, in the case of a

teacher, and the decision of the Director or Regional Deputy Director, Education, as the case may be, in the matter shall be final.

(4) Where the recommendation made under sub-section (2) has been disapproved and the representation of the management, if any, under sub-section (4) has been rejected, the selection committee shall proceed to select and recommend another name for approval as provided under Section 16-E and 16-F. If the selection so made is again disapproved and the representation, if any, against the disapproval has not been accepted, the Regional Deputy Director, Education, in case of a teacher and the Director in case of principal or Headmaster may appoint any qualified person out of the list of the candidates applying for the vacancies and such appointment shall be final".

In this case, when approval of the appointment of the appellant was not forthcoming or appointment had been disapproved, the process for selection of Principal was restarted and advertisement put in pursuance of which the appellant also applied. Reliance had been placed on the provision of Section 16-G relating to conditions of service of teachers which provides that the Principal or Headmaster as the case may be, could not be served with notice of termination of service except with the prior approval in writing of the Inspector. Section 16-G, in relevant part, is as under:

"16-G-

(1).....

..

(2).....

.....

(3)(a) No Principal, Headmaster or teacher may be discharged or removed or dismissed from service or reduced in rank or subjected to any diminution in emoluments, or served with notice of termination of service except with the prior approval in writing of the Inspector. The decision of the Inspector shall be communicated within the period to be prescribed by regulations.

(b) The Inspector may approve or disapprove or reduce or enhance the punishment or approve or disapprove of the notice for termination of service proposed by the management: Provided that in the cases of punishment, before passing orders, the Inspector shall give an opportunity to the Principal, the Headmaster or the teacher to show cause within a fortnight of the

receipt of the notice why the proposed punishment should not be inflicted."

Under clause (e) of Section 16-G, an appeal could be filed before the appellate committee against the order of the Inspector. Under sub-section (4) of Section 16-G an order made or decision given by the competent authority under sub-section (3) shall not be questioned in any court and the parties concerned shall be bound to execute the directions contained in the order or decision within the period that may be prescribed therein.

Considering the pleadings of the parties and the provisions of law set out above the answer becomes quite obvious that the appellant had no case either in the suit or in the writ petition. The appellant ceased to be Headmistress on upgradation of school of the respondent to the Higher Secondary School as the post was upgraded. She did not possess qualifications to be appointed as Principal of the Higher Secondary School. Her qualifications were not relaxed. The Competent Authority under the Intermediate Education Act did not grant approval for her appointment as a Principal which is a pre-condition under the law. Since the appointment itself was not approved it was not necessary for the Managing Committee of the school to get consent of the authority concerned for the termination of her services as a Principal. Her civil suit and the writ petition had no basis and were rightly dismissed by the High Court. However, our attention was drawn during the course of arguments towards the provisions of Regulation 16 of Chapter III of the Regulations under the Intermediate Education Act, which is as under:

"16. The vacancy of a head of an institution shall be filled by direct recruitment for which teachers serving in the institution may apply without upper age-limit, if any:

Provided that when an institution is raised from a High School to an Intermediate College, the post of Principal shall be filled by the promotion of the Headmaster, if he is qualified, possesses a good record of service and is approved in the manner described in the Act. A Headmaster not approved shall be retained as an assistant teacher on the highest post for which he is qualified, provided that his pay shall not be reduced."

It was submitted that the appellant was a confirmed Headmistress of the school of the respondent and on upgradation of the school when she did not satisfy the qualifications of the Principal, she could not be thrown out and she continued as a Headmistress being confirmed employee of the respondent. Perhaps the indication was towards the proviso of the above regulation which says that in such circumstances Headmistress could have continued as an assistant teacher, if she satisfied other qualifications as laid down for a teacher for a Higher Secondary School. We are afraid no such plea was ever raised and record also does not show if at any time the appellant ever based her case on such a plea. We, therefore, find no merit in this appeal.

The appeals are, therefore, dismissed. There will be no order as to costs.

JUDIS