

HIGH COURT OF UTTARAKHAND, AT NAINITAL

Writ Petition No.55 of 2011 (S/B)

Kanti Prasad Dadpuri & 3 others ... Petitioners

Versus

State of Uttarakhand & others ... Respondents

Dated:- 20th June, 2012

**Coram: Hon. Tarun Agarwala, J.
Hon. B. S. Verma, J.
Hon. Sudhanshu Dhulia, J.**

Hon 'ble Tarun Agarwal, J. (Per)

1. In Writ Petition No.1155 of 2008 (S/S) Suresh Chand Sharma Vs. State of Uttarakhand & others 2009 (2) Uttaranchal Decision 241, a learned Single Judge, by a judgment dated 13.07.2009, held that the petitioner officiating on the post of Principal was liable to be paid the salary of the post of Principal w.e.f. the date he took charge as Officiating Principal. Against this judgment, Special Appeal No.45 of 2010 was filed by the State of Uttarakhand & others. The Division Bench, by its decision dated 15.04.2010 dismissed the appeal and affirmed the judgment of the learned Single Judge. While dismissing the appeal, the Division Bench took into consideration Regulation 2(3) of Chapter II of the Regulation framed under the Intermediate Education Act, 1921 (hereinafter referred to as the 'Regulations').
2. A Division Bench, while hearing the present writ petition, doubted the correctness of the decision dated 15th April, 2010 contending that Regulation 2(1) of Chapter II of the Regulations had not been considered. Accordingly, the writ petition was placed before the larger Bench and, this is how, this petition has come up before this Full Bench.

3. The petitioners have filed the present writ petition praying for a writ of mandamus commanding the respondents to pay them the salary of the post of Principal from the date when they took charge as Officiating Principal.
4. The facts leading to the filing of the writ petition is, that one Mohan Singh Bhandari retired as Officiating Principal on 05.12.2006, but continued to work till the end of the academic session i.e. 31st March, 2007 in Inter College Devikhal Bagyansu, District Pauri Garhwal. The Committee of Management passed a resolution dated 04th March, 2007 recommending the appointment of petitioner no.1 as Officiating Principal upon the retirement of Mohan Singh Bhandari since the petitioner No.1 was the senior-most Lecturer in the institution. Pursuant to the said resolution, the Manager, by an order dated 31st March, 2007 directed the petitioner No.1 to take charge as Officiating Principal of the institution w.e.f. 01.04.2007. The petitioner no.1 took charge on 01.04.2007 and his signatures were duly verified by the authorities. His appointment as Officiating Principal was subsequently approved by the District Education Officer. The petitioner no.1 while working as Officiating Principal retired from service upon reaching the age of superannuation.
5. One Narendra Singh Rawat retired on 04.04.2005, but continued to work in the Inter College, Gadghot Madhu, District Pauri Garhwal till the end of the academic session, i.e. till 30th June, 2005. The Committee of Management passed a resolution recommending the appointment of petitioner no.2 as Officiating Principal of the college. Accordingly, the petitioner no.2 took charge as Officiating

Principal w.e.f. 01st July, 2005. The papers were forwarded to the District Education Officer for necessary approval, which was granted by the District Education Officer by an order dated 29.12.2005. The petitioner no.2 is still working as Officiating Principal in the institution.

6. One Mahi Pal Singh Aswal retired on 08.05.2005 as Principal of the Inter College Ramadang, District Pauri Garhwal, but continued to work till the end of the academic session, i.e., till 30th June, 2005. The Committee of Management passed a resolution recommending the appointment of the petitioner no.3 as Officiating Principal since he was the senior-most Lecturer in the institution. The petitioner no.3 took charge as Officiating Principal on 01st July, 2005 and his appointment was approved by the District Education Officer by an order dated 29.12.2005.
7. Similarly, the petitioner no.4 was given charge as Officiating Principal on 01st July, 2005 in the Janta Inter College, Budholi, Pauri Garhwal upon the retirement of Chet Singh Negi on 15.04.2005, who continued to work till 30th June, 2005. The appointment of petitioner no.4 was duly approved by the District Education Officer by an order of 29.12.2005.
8. The approval of the appointment of petitioner no.2 by the District Education Officer by an order dated 29.12.2005 has been brought on record, which indicates that the petitioner no.2 was appointed as the Officiating Principal of the institution subject to the condition that the vacancy on the post of Principal would be filled up in accordance with the provision provided under Chapter II Regulation 2(1)

read with Regulation 10 of the Regulations within the stipulated period, failing which the post would be deemed to have been surrendered under Chapter II Regulation 20 of the Regulations. The respondents admit that similar approval letters were issued by the District Education Officer to the other petitioners.

9. The petitioners contend that having been promoted as Officiating Principal are entitled to the benefits accruing on that post and, are consequently entitled to be paid the salary of the post of Principal.

10. On the other hand, the respondents contended that the petitioners have only been appointed to officiate as Principal and there is no provision under the Act or under the Regulations framed therein to pay salary of the post of Principal to a person officiating as the Principal of an institution. The respondents further contended that the appointment of the petitioners were approved by the District Education Officer with a clear stipulation that the vacancy was required to be filled up in accordance with the provisions of the Act and the Regulations framed therein and that it was the bounden duty of the Committee of Management to take steps to fill up the post of Principal within the stipulated period. It was contended that since the post was not filled up by direct recruitment by the Committee of Management, the post was surrendered to the State and consequently, the State respondents were not obliged to pay the salary of the post of Principal to the petitioners.

11. In rejoinder, the petitioners contended that the State Government issued a ban order restraining the Committee of Management to fill up the post of Principal and accordingly the State Government cannot blow hot and cold and deny the petitioners' the salary of the post of Principal.

12. In the light of the contention raised by the rival parties, the court has heard Mr. Paresh Tripathi, the learned counsel assisted by Mr. C. K. Sharma & Ms. Puja Banga, the learned Advocates for the petitioners, Mr. B. D. Upadhyaya, the learned Additional Advocate General for the State respondent no.1, 2 & 3 and Mr. Rajendra Dobhal, the learned senior counsel assisted by Mr. D. C. S. Rawat, the learned counsel for the respondent nos.4 to 7.

13. Before dwelling into the rival contention of the parties, it would be appropriate to refer to a few provisions of various Acts. Pursuant to Section 15 of the Intermediate Education Act, 1921 the Board framed Regulations for the purpose of carrying into effect the provisions of the said Act. Chapter II Regulation 2(1) of the Regulations provides that the post of the head of the institution shall be filled up by direct recruitment. The proviso indicates that where a temporary vacancy is created by grant of leave to an incumbent for a period not exceeding six months or by death or retirement or suspension, the said post of the head of the institution shall be filled up by promotion from the senior-most qualified teacher. Regulation 2(3) of the Regulations provides that where a temporary vacancy in the post of head of institution has been created which does not exceed 30 days, in that case, the senior-most teacher in the higher

grade may be allowed to work as the acting head of the institution and that the said teacher would not be entitled to the salary of the post of Principal. Regulation 2(4) of the Regulations provides that where such promotions are made, a copy of the resolution of the Committee of Management together with the particulars and proforma prescribed in Appendix-B shall be forwarded by the Manager to the educational authority. For facility, Regulation 2(1), 2(3) & 2(4) of Chapter II of the Regulations is extracted hereunder:-

“2(1) The post of Head of Institution shall, except as provided in clause (2), be filled by direct recruitment after reference to the Selection Committee constituted under sub-section (1) of Section 16-F or, as the case may be, under sub-section (1) of Section 16-FF:

Provided that in the case of any institution not being an institution referred to in Section 16-FF a temporary vacancy caused by the grant of leave to an incumbent for a period not exceeding six months or by death, retirement or suspension of an incumbent occurring during an educational session in the post of the Head of Institution shall be filled by the promotion of the senior-most qualified teacher, if any, in the highest grade in the institution.

(3) Where the temporary vacancy in the post of head of institution is for a period not exceeding thirty days, the senior-most teacher in the highest grade may be allowed to work as acting head of institution, but he shall not be entitled

to pay in a scale higher than the scale of pay in which he is drawing salary as such teacher.

(4) In all cases in which promotions are made under this regulation a copy of the resolution of the Committee of Management together with particulars in the proforma prescribed in Appendix 'B' shall be immediately forwarded by the Manager to the Inspector as well as the Regional Deputy Director of Education.”

14. The procedure for filling up the vacancy of the head of the institution by direct recruitment has been provided under Regulation 10 of Chapter II of the Regulations. The procedure is that the vacancy is required to be determined, the post is required to be advertised by the Manager in at least two newspapers, which newspapers is required to be approved by the educational authority. Applications received by the educational authority are required to be processed and forwarded to the Committee of Management. A Selection Committee is constituted and the candidates are interviewed and, thereafter, the Selection Committee makes the recommendations on which basis the appointment is made.

15. Regulation 20 of Chapter II of the Regulations contemplate that where the Committee of Management fails to advertise any sanctioned post, which has fallen vacant in accordance with the Regulations within three months from the date of occurrence of the vacancy, such post shall be deemed to have been surrendered and shall not be filled up unless its creation is sanctioned afresh by the authority.

16. Regulation 21 of Chapter III of the Regulations provides that the Principal would retire at the age of 60 years. If the Principal retires on any date between 02nd July and 30th June and if he applies for extension of service, the services would be extended upto 30th June. It means that a person retiring in mid session is allowed to work till the end of the academic session. Under Part-2 (B) Chapter I Regulation 15 of the Regulations, the academic year has been defined as 01st July to 30th June which has now been amended as 01st April to 31st March.
17. In the light of the aforesaid Regulations, it is clear that the Committee of Management was bestowed with the onerous task of filling up the vacancy of the head of the institution by direct recruitment. The Committee of Management was required to advertise within three months from the date of the occurrence of the vacancy and take steps in accordance with the provisions of the Regulations to fill up the vacancy after seeking necessary approval from the educational authorities, failing which the post in question was deemed to have been surrendered. However, this power to make appointments by direct recruitment was taken away from the Committee of Management upon the enforcement of U.P. Secondary Education Service Selection Board Act, 1982 (*hereinafter referred to as the Act of 1982*) whereby the power to make appointment on the post of head of institution was given to the Selection Board under Section 18 of the Act.
18. Upon the creation of the State of Uttarakhand on 09th November 2000, the said Act continued to remain applicable in Uttarakhand as per the provisions of the U.P.

Reorganization Act, 2000. However, this Act of 1982 was repealed by the State of Uttarakhand on 27th January, 2005. The U.P. Intermediate Education Act 1921, which was also made applicable in the State of Uttarakhand, was subsequently repealed w.e.f. 22.04.2006 upon the enforcement of Uttarakhand School Education Act, 2006 which came into force w.e.f. 22.04.2006. Section 40 of the Uttarakhand School Education Act, 2006 provided that the Officiating Principal appointed by the Committee of Management on temporary promotion prior to 26.01.2005 would be appointed in a substantive capacity.

19. Even though, the U.P. Intermediate Education Act, 1921 was repealed on 22.04.2006, the Regulations framed under Section 15 of the said Act continued to remain in force since the said Regulations were not repealed by the Uttarakhand Government.

20. Consequently, upon the repeal of the U.P. Secondary Education Services Board Act, 1982 the power to make appointments by direct recruitment by the Committee of Management revived. Thus, from 27.01.2005, the Committee of Management had the power to make appointments by direct recruitment on a vacant post under the Regulations.

21. The Uttarakhand School Education Act, 2006 came into existence on 22.04.2006 and on the same date, the U.P. Intermediate Education Act was repealed. The Uttarakhand School Education Act initially did not frame any Regulations under Section 24 of the Uttarakhand

School Education Act, 2006. Eventually, the same were framed which came into force w.e.f. 10th July, 2009.

22. Consequently, between the period 27th January, 2005 and 10th July, 2009 the Regulations framed under Section 15 of the U.P. Intermediate Education Act continued to remain in force and the Committee of Management had the power to make appointment by direct recruitment. The petitioner no.1 took charge as Officiating Principal on 01st April, 2007. The petitioner nos.2, 3 & 4 took charge as Officiating Principal on 01st July, 2005 during the period when the Act of 1982 stood repealed and the Regulations framed therein were in force.

23. The court finds from the pleadings of the Committee of Management in so far as the educational institution of petitioner no.3 is concerned, an advertisement dated 22.12.2006 was issued inviting applications for the post of head of the institution. This advertisement was issued after due approval was given by the educational authorities, but, subsequently further steps to fill up the post got scuttled on account of an order dated 27th June, 2007 issued by the State Government which provided that no appointment by direct recruitment in an aided institution would be made till such time the Regulations were not framed under the Uttarakhand Education Act, 2006. As we have said earlier, the Regulations were framed subsequently, which came into effect from 10th July, 2009, inspite of which, a fresh order dated 11.12.2009 was issued by the State Government restraining the Committee of Management from taking any steps to fill up the post under the new Regulations till further orders. The learned Additional Advocate General

for the State has conceded that the ban on appointments is still continuing.

24. In the light of the aforesaid, the petitioner no.1 took charge on 01st April, 2007 and the ban came into existence on 27th June, 2007. In so far as the petitioner nos.2 & 3 are concerned, they took charge on 01st July, 2005 and their appointments were approved on 29.12.2005 by the District Education Officer. The Intermediate Education Act was repealed on 22.04.2006 and the ban on appointments was imposed by the State Government on 27th June, 2007. In the light of the aforesaid, the respondents submitted that once the Act of 1982 stood repealed, the Committee of Management ought to have taken steps to fill up the post and, consequently, the State Government was not responsible to make any payments to the petitioners of the post of Principal.

25. The submission of the learned counsel for the State respondent is not tenable. There was a confusion in the mind of the State Government as to whether the Regulations framed under the U.P. Intermediate Education Act, 1921 continued to remain in force or not even after the repeal of the U.P. Intermediate Education Act on 22.04.2006. The State Government was of the opinion that the Regulations also stood repealed automatically and this reason can be clearly deciphered from the ban order dated 20th June, 2007 whereby the State Government restrained the Committee of Management from making any appointments on a vacancy till such time the Regulations were not framed under Section 24 of the Uttarakhand School Education Act. In the light of the aforesaid, it does

not lie in the mouth of the State respondent to contend that after the repeal of the Act of 1982 and thereafter the repeal of Intermediate Education Act, the ban on appointment by the Committee of Management stood lifted and, accordingly, the Committee of Management ought to have taken steps to fill up the vacancy. In the opinion of the court, there was total inaction on the part of the State respondent in not issuing clear directions to the educational authorities as well as to the Committee of Management for making appointments.

26. Having heard the learned counsel for the parties at some length, the court finds that the appointment of the petitioners was made under the proviso to Regulation 2(1) of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921. A substantive vacancy had occurred upon the retirement of the Principal and the post was required to be filled up by direct recruitment. Since a vacancy on the post of head of the institution has come into existence, the said post was temporarily filled up by way of promotion of the senior-most qualified teacher. The petitioners being the senior-most teacher in their institutions were accordingly given charge as Officiating Principal and, in this regard, the resolution of the Committee of Management and the appointment of the petitioners was approved by the District Education Officer subject to the condition that the substantive vacancy should be filled up by direct recruitment as provided under Regulation 2 (1) and Regulation 10 of Chapter II of the Regulations. But, before any steps could be taken, the State Government issued a ban order dated 27th June, 2007 restraining the Committee of Management from taking any

steps to fill up any vacancy in their institution. This ban on appointments is still continuing. As a result, the petitioner nos.2, 3 & 4 are still working as Officiating Principal in their institutions. The petitioner no.1 has already retired.

27. The proviso to Regulation 2(1) Chapter II of the Regulation visualizes various situations in which the senior-most teacher of the institution could be promoted as Principal. The words used under the proviso is “post of the head of institution shall be filled up by promotion of the senior-most qualified teacher”, which indicates that by virtue of seniority, the senior-most teacher is entitled to move up the ladder by way of promotion. The proviso does not permit the senior-most teacher to look after the work of Principal, but provides for promotion. Therefore, it automatically follows that the promottee is entitled to the benefits of the post of Principal. Regulation 2(3) of Chapter II of the Regulations only clarifies that where the vacancy of Principal does not exceed 30 days in that eventuality, the senior-most teacher may be allowed to work as acting head of the institution. The said regulation further provides that he would not be entitled for the salary on the post of Principal when he is allowed to work as the acting head of the institution for a period which does not exceed 30 days.

28. A combined reading of Regulation 2(1) alongwith the proviso and Regulation 2(3) of the Regulations leaves no room for doubt that if the vacancy on the post of Principal is for more than 30 days, then the senior-most teacher would be entitled to be promoted and, consequently, would be entitled to all the benefits of the post of Principal, namely, the salary of the post of Principal.

29. In **Dhaneshwar Singh Chauhan Vs. District Inspector of Schools, Badaun 1980 UPLBEC 286**, a Division Bench of the Allahabad High Court held that a teacher officiating on the post of Principal was entitled to receive the salary in the Principal's grade as provided by the Government Order dated 18.01.1974. In **Narbdeshwar Mishra Vs. The District Inspector of School, Deoria & others 1982 UPLBEC 171**, the Division Bench of the Allahabad High Court held that where a temporary vacancy on the post of the head of the institution exceeds thirty days, the senior-most teacher would be allowed to work and would be entitled for salary. In **Soloman Morar Jha Vs. District Inspector of Schools, Deoria & others 1985 UPLBEC 113**, a Division Bench of the Allahabad High Court held that the proviso to Regulation 2(1) of Chapter II of the Regulations does not prohibit the payment of salary to a Lecturer in the Principal's grade for the period during which he officiates on that post. In **Smt. Rama Rati Vs. State of U.P. through Education Secretary, Lucknow & others 1987 UPLBEC 1009**, a Division Bench of the Allahabad High Court held that the promotion made under the proviso to Regulation 2(1) of the Regulation indicates that the promotee is entitled to all the benefits of the post and therefore entitled to salary in the grade of Principal. In **Pushkar Singh Verma Vs. District Inspector of Schools, Meerut & others 1999 (3) UPLBEC 1728**, it was held that the petitioner is entitled to the salary of Principal for the period he officiated on the post of Principal.

30. The aforesaid decisions support the petitioners' contention.

31. In the light of the aforesaid, the learned Single Judge in **Suresh Chand Sharma's** case (supra) considered the provisions of Regulation 2(1), its proviso and Regulation 2(3) and, thereafter, issued a direction that since the petitioner was appointed as Officiating Principal of the college on a vacancy, which exceeded 30 days, the respondents were directed to make the payment of salary to the said petitioner from the date when he started officiating as the Principal in the college. The said decision of the learned Single Judge was affirmed by the Division Bench in Special Appeal No.45 of 2010 by its decision dated 15th April, 2010. The Division Bench while affirming the judgment of the learned Single Judge considered Regulation 2(3) of the Regulation and found that since the said petitioner continued to officiate as Principal for more than 30 days uninterruptedly, he was entitled for the salary on the post of Principal on which he had rendered uninterruptedly service for more than 30 days. The Division Bench held that if such pay was not given, it would be violative of Article 14 of the Constitution of India. The Division Bench held that an employee was entitled to the pay of the post against which he was required to render services.

32. In the light of the aforesaid, we are of the opinion that the decision rendered by the Division Bench in Special Appeal No.45 of 2010 dated 15th April, 2010 was in consonance with the provisions provided in Regulation 2(1) and Regulation 2(3) of the Regulations. We are in complete agreement with the said decision.

33. In view of the aforesaid, the court finds that the petitioners were appointed on a vacancy which was more than 30 days. The appointment as Officiating Principal was approved by the District Education Officer. The petitioners are working on the post of Principal, which has exceeded 30 days, and therefore became entitled for the salary on the post on which they were rendering the services. Since appointments by direct recruitment by the Committee of Management was stayed by a Government Order, the petitioners were allowed to continue to officiate as Principal and, consequently, the petitioners are entitled to receive the salary on the post of Principal.

34. In view of the aforesaid, the writ petition is allowed. A writ of mandamus is issued to the State respondents to pay to the petitioner's the salary of the post of Principal from the date when the petitioners took charge as Officiating Principal in the institution concerned. Such arrears of salary shall be paid to the petitioners within three months from the date of production of a certified copy of this order. In the circumstances of the case, parties shall bear their own cost.

(Sudhanshu Dhulia, J.) (B. S. Verma, J.) (Tarun Agarwala, J.)

Dated 20th June, 2012

LSR