

Court No. - 10

Case :- WRIT - A No. - 3096 of 1997

Petitioner :- Devta Rai

Respondent :- State Of U.P.And Others

Counsel for Petitioner :- H.M.Singh,Arvind Srivastava,H N Singh

Counsel for Respondent :- C.S.C.

Hon'ble Kshitij Shailendra,J.

1. Heard Sri Arvind Srivastava, learned counsel for the petitioner and Sri Deepak Chauhan, Additional Chief Standing Counsel for the Respondent No.1, 2, 3 and 4.
2. On 24.11.2023, this Court passed following order:-

"1. Sri Arvind Srivastava, learned counsel for the petitioner, submits that by the order impugned the services of various teachers, namely, Saras Chandra and Surendra Kumar Srivastava and others including the petitioner were terminated in purported exercise of power under Section 16-E(10) of U.P. Intermediate Education Act, 1921 and whereas the writ petition filed by other teachers identically placed as that of the petitioner, have been allowed by this Court setting aside the orders impugned and granting benefits of services to them, this petition could not be decided for certain reasons. He has referred to following orders:-

"(i) Saras Chandra, Runwa Pokhar Bhinda, Maharajganj Vs. Director of Education (S) UP, Allahabad and others in Writ-A No.3353 of 1997, decided on 06.05.2016; and

(ii) Surendra Kumar Srivastava and another Vs. State of U.P. and others in Writ-A No.3280 of 1997, decided on 08.02.2017."

2. Sri Arvind Srivastava is directed to handover copies of the aforesaid orders to the learned Standing Counsel, who is present in Court, today itself.

3. Learned Standing Counsel submits that his file has not been sent by the office.

4. List peremptorily on 05.12.2023 in top 10 cases.

5. The office of Chief Standing Counsel shall examine the orders passed by this Court, as referred to herein above, and shall address the Court as to why this writ petition should not be allowed on the same lines."

3. Learned Standing Counsel admits that the order impugned also mentions the name of the petitioner along with Saras Chandra and Surendra Kumar Srivastava and there appear to be no distinctive features in the cases of all the three persons.
4. Learned counsel for the petitioner submits that the orders impugned have already been set-aside by this Court in the aforesaid cases and the reason assigned for

setting-aside the same is that the power under Section 16-E (10) of the Act can be exercised within only a reasonable period of time and cannot be exercised after more than 16-17 years and that after enforcement of U.P. Secondary Education Service Commission Board, 1982, the power under Section 16-E (10) of the Act cannot be exercised. It is necessary to reproduce the order dated 6.5.2016 passed in Writ-A No.3353 of 1997 as below:-

"An order passed in exercise of jurisdiction under Section 16-E(10) of the U.P. Intermediate Education Act, 1921 has been challenged by the petitioner in the present writ petition. The order records that there was no vacant post in existence and petitioner had obtained appointment, on the basis of misrepresentation and fraud in the year 1975. Proceedings under Section 16-E(10) of the Act had been initiated on 5.6.1991, stating that petitioner's appointment as well as order of regularization dated 12.11.1982 are illegal. Petitioner submitted reply to this notice and thereafter, the respondent kept the matter pending with them and it was only on 9.12.1996 that petitioner's appointment has been held to be illegal and consequently cancelled. The order passed under Section 16-E (10) of the Act is challenged by filing the present writ petition. An interim order came to be passed on 28.1.1997. It is stated that petitioner has continued to work pursuant to such interim order and is about to retire.

The order is challenged essentially on two grounds;

(i) It is contended that exercise of power under Section 16-E (10) of the Act could be within a reasonable period of time, and such power cannot be exercised after lapse of more than 16-17 years. In order to substantiate this submission, reliance is placed upon Para-16 of the Full Bench decision of this Court in Dr. Asha Saxena Vs. Smt. S.K. Chaudhary and others 1991(2) UPLBEC, 1202, which is reproduced:-

"16. In our opinion, the exercise of power by the Regional Inspectress of Girls Schools on the facts and circumstances of the case is wholly arbitrary as that power could not be exercised after lapse of 17 years. The objections filed by Dr. Asha Saxena in the year 1986 which are contained in Annexure "3" to the writ petition are liable to be rejected inasmuch as the ground that she did not know the provision of Clause 3(1)(bb) in Chapter II was of no avail to her. The seniority lists were being prepared year after year after 1975-76 and the objection filed by Dr. Asha Saxena after the lapse of nearly 11 years was not liable to be entertained as has been held by the Supreme Court in the case of Malcom Lawrence Cecil D'Sousa (1975 L.I.C. 816) (supra). In any view of the matter, the appointments which were existing for the last 17 years could not be set aside after a lapse of such a long period. Even the earlier Full Bench had quashed the order of the Regional Inspectress of Girls Schools referring the matter under Section 16-E(10) of the Act we are also of the opinion that the aforesaid order is liable to be quashed. It is true that there is power under Section 16-E (10) of the Act to cancel the appointments but the power has to be exercised within a reasonable time. The appointments had been made in the year 1973 and by no stretch of imagination it can be said that the exercise of that power after the /apse of 17 year by the Director of Education under Section 16-E(10), on the facts and circumstances of the case can be said to be exercise of a power within a reasonable time. In our opinion, the order of the Regional Inspec-tress of Girls Schools referring the matter to the Director of Education under Section 16-E(10) is thus liable to be quashed."

(ii) It is next contended that after the U.P. Secondary Education Service Commission Board Act, 1982 came into being, the power of appointment vests with the Board and, therefore, the provisions of Section 16-E (10) of the Act could not have been pressed in service. For such contention reliance has been upon the judgment of this Court in Writ Petition No.14978 of 2016, referring to an order passed in Special Appeal No. 427 of 2014. In Writ Petition No. 14978 of 2016 also a similar question arose before the Court and while referring to the observations made by the Division Bench, following has been stated:-

"Petitioner is seeking quashing of the notice dated 10.2.2016 issued by the Director of Education (Secondary), U.P., Allahabad, calling upon to Regional Joint Director of Education, Lucknow to submit all the documents point wise with regard to appointment of the petitioner as Principal on the complaint of one Maiku Lal dated 28.12.2015 in view of the provisions of Section 16-E (10) of the U.P. Intermediate Education Act, 1921 (the Act, 1921).

The submission of learned counsel for the petitioner however, is that after coming into force of the U.P. Secondary Education Services Selection Board Act, 1982 (the Act, 1982) all the powers in the matter of approval of dismissal of teachers vests in the Board and therefore, the provisions of Section 16-E (10) of the Act, 1921 will become redundant in so far as they are in conflict with the provisions of Section 21 of the Act, 1982. This controversy has already been settled by a Division Bench judgment of this Court dated 13.5.2014 passed in Special Appeal No.476 of 2014, C/M Shri Maharshi Balmeek Inter College Vs Rajesh Kumar Singh and Others 2014(3) ESC 1778 (All). The operative portion of the judgment read as under:-

"After considering the provisions of the Act of 1921 and the Act of 1982 we find that the powers of appointment, which includes following the selection procedure and in which scrutiny of applications is one of the essential functions is vested with the Board and that the power of approval of dismissal will include the power to find out whether any of the candidates is selected as Principal or teachers as the case may be without being eligible or valid qualification. In such case powers to question and to decide any dispute regarding the eligibility and the qualifications will also necessarily vests in the Board. We agree with the submission of Shri Ashok Khare that Section 16E (10) of the Act of 1921 would not apply. The powers in such case would be deemed to be vested in the State Government. All questions of eligibility and qualifications raised by any person including the Management of the college or educational authorities will thus have to be exercised by the Board for consideration and for taking final decision in the matter.

The special appeal is allowed. The judgment dated 5.5.2014 as well as the order of suspension dated 29.3.2014 passed by the Management and the order dated 30.4.2014 passed by the District Inspector of Schools are set aside. The appellant may approach the U.P. Secondary Education Services Selection Board with a representation with regard to examining and deciding the eligibility of the petitioner. If such a representation is made, the Board shall decide it in two months after giving opportunity of hearing to the Management as well as Shri Rajesh Kumar Singh, the respondent."

The learned Standing Counsel could not dispute the legal position settled by the Division Bench of this Court but however, submits that the petitioner has filed the writ petition only against a show cause notice and he can always submit his reply before the Deputy Director of Education.

This submission of learned Standing Counsel has no force inasmuch as once the Division Bench has already held that the provisions of Section 21 of the Act, 1982 will over ride the provisions of Section 16-E (10) of the Act, 1921, the Deputy Director or the Director of Education have no right to issue a show cause notice and any such show cause notice issued would be without jurisdiction".

Learned Standing Counsel submits that the appointment and regularization, in the present case, were obtained by playing fraud. However, on facts learned Standing Counsel has not been able to dispute that the exercise of power under Section 16-E (10) of the Act have been resorted to after a gap of more than 16 years, for which no justification has been brought on record. On the second submission also, it has not been shown that the power under Section 16-E (10) of the Act could be exercised after the Act of 1982 had come into being.

In the peculiar facts and circumstances of the present case, where the petitioner has continued under an interim order and is due to retire, this Court is of the opinion that the order impugned cannot be sustained.

For the reasons aforesaid, impugned order dated 9.12.1996 as well as consequential order dated 3.1.1997 are set aside. Petitioner shall be entitled to all consequential benefits."

5. Sri Arvind Srivastava, learned counsel for the petitioner, further submits that in so far as the exercise of powers under Section 16-E(10) after enforcement of 1982 Act is concerned, Full Bench of this Court, in the case of Maiku Lal Sen Vs. Jay Jay Ram Upadhyay and 7 others, 2019(6)ADJ 136, has clearly held that there is no inconsistency between Section 16E(10) of the Act and any provision of the Act of 1982.

6. In view of the decision of the Full Bench though it is found that power under Section 16E(10) is independent of any provision of 1982 Act, this Court is of the view that the said power could be exercised within a reasonable period of time and once, on the said ground, the order impugned has been set in the writ petitions filed by the two persons identically placed and working along with petitioner in the same department, the petitioner cannot be discriminated.

7. The appointment of petitioner has already been otherwise held valid under an order dated 5.5.2008 passed in Civil Misc. Writ Petition No.6171 of 1983, Surendra Kumar Srivastava Vs. State of U.P. and others, the petitioner being one of the petitioners.

8. Learned counsel for the petitioner further submits that the petitioner has retired from his post after completing entire tenure of service.

9. In view of the above, the writ petition succeeds and is **allowed**.

10. The orders impugned dated 9.12.1996 and 3.1.1997 are **set-aside**.

11. The petitioner shall be entitled to all consequential benefits including his post

retiral benefits which shall be released in his favour within three months from the date of production of certified copy of this order before the concerned authority.

Order Date :- 5.12.2023

Gaurav Kuls