

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

**Writ Petition No. 5744 of 2001 (M/S)
(Old CMWP No. 8904 of 1994)**

1. The Committee of Management, Mohan Lal Sah Balika Vidya Mandir Inter College, Nainital through its Manager shri Madan Lal Sah..
2. Shri Madan lal Sah, son of Shri Banshi Lal Sah, resident of Durga Niwas, Ayar Pata, Mallital, Nainital.

..... Petitioners.

Versus

1. The Regional Deputy Director of Education, Kumaon Region, Nainital.
2. The District Inspector of Schools, Nainital.
3. The Deputy Director of Education (Second) Kumaon Region, Nainital.
4. The Prabandh Sanchalak, Mohan Lal Sah Balika Vidya Mandir Inter College, Nainital/Principal, Government Inter College, Nainital.
5. Km. Kalpana Tripathi, D/O Shri Tara Chandra Tripathi, Principal, Rajkiya Inter College, Ramnagar, Nainital.
6. Km. Neeta Vyas D/O Sri B.D.Vyas, Bankey Mension, Mallital, Nainital.

... Respondents.

Sri M.C.Pande, learned counsel for the petitioners.

Sri Gopal Narain Srivastava, Brief Holder for the State-respondents.

Dated April 30, 2007.

Hon'ble B.S. Verma, J.

This writ petition has been filed for issue a writ of certiorari, quashing the order dated 8-3-1994 passed by Regional Deputy Director of Education, Kumaon Region, Nainital, respondent No.1 (Annexure No. 13), whereby under Section 6(3) the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 (*for short the Act*) the Principal Government Inter College Nainital was appointed ex-officio Authorised Controller for a period of six months.

The case of the petitioners was that four posts of lecturers for Intermediate Section were created. In these posts four teachers who were already working in the institution were promoted but out of four teachers, two were approved for promotion and the remaining two were not approved. Those teachers filed writ petition in the Allahabad High Court and obtained stay order on 23.3.1993 against the order of the Regional Inspector of Girls School, Kumaon Mandal, Nainital, dated 19-11-1992. The respondent no.2 (D.I.O.S.) appointed two persons but the Committee of Management has not given charge to them and no duty was taken from them. The Deputy Director of Education passed an order appointing Authorised Controller in not obeying the order of the D.I.O.S. Considering this aspect that there is an order dated 23.3.1993 of the Allahabad High Court in favour of other two teachers for the same post, the interim order dated 19-3-1994 was passed in favour of the petitioners thereby the operation of the order dated 8-3-1994 (Annexure No. 13 to the writ petition) was stayed.

It was found by the Allahabad High Court that there was no prima facie fault of the committee of management, but in view of the interim order dated 23-3-1993 passed in favour of two teachers and the committee of management was bound to comply the order passed by the Allahabad High Court else it had to face contempt at that time. In that premise, the interim order was granted in favour of the petitioners.

Section 6 of the said act reads as under:-

"6. Enforcement of provisions and directions-(1)

Where the Inspector on the basis of an inspection of an institution or its records or otherwise is satisfied that its management has committed default in complying with any direction given under section 4 or with any provision of section 3 or section 5, he may

recommend to the Regional Deputy Director, Education, that action be taken against the institution under sub-section (2).

(2) On receipt of recommendation under sub-section (1) the Regional Deputy Director, Education, may call upon the management to comply with the said direction or provision or to show cause within a week why the management should not be superseded.

(3) Where the management fails to comply as aforesaid or to show cause, or the Regional Deputy Director, Education, considers the cause shown to be insufficient, he may by order supersede the management for such period not exceeding one years as may be specified in the order, and authorize any person (hereinafter referred to as the Authorised Controller) to take over the management of the institution for the said period."

Proviso to sub-section (3) provides that the period of Authorised Controller may be extended from time to time by the Regional Deputy Director, Education, which shall not exceed beyond five years in the aggregate.

In view of the discussion above, the interim order dated 19-3-1994 passed by the Allahabad High Court is made absolute and the writ petition is disposed of in terms of the said interim order.

All applications stand disposed of.

(B.S. Verma, J.)

RCP