

A.A. CALTON

v.

THE DIRECTOR OF EDUCATION & ANOTHER

March 25, 1983

[E.S. VENKATARAMIAH AND AMARENDRA NATH SEN, JJ.]

U.P. Intermediate Education Act, 1921, s. 16-F (4), as amended by U.P. Act of 1975—Scope of—Amendment not applicable to pending proceedings.

Interpretation—Retrospective operation of statute.

Under s. 16-F(4) of the U.P. Intermediate Education Act, 1921 the Director of Education had the power to appoint the Principal of a recognised institution from amongst the qualified persons who had applied for that post, if the recommendation made under sub-s. (2) by the Selection Committee constituted under s. 16-E had twice been disapproved by the Regional Deputy Director and the representation of the management of the institution, if any, under sub-s.(3) against that disapproval had been rejected. This power of the Director in relation to minority institutions was taken away by the amending Act 26 of 1975 with effect from August 18, 1975.

Respondent No. 2 was appointed Principal of a minority institution by the Director of Education on March 8, 1977 in exercise of his power under s. 16-F(4) of the Act. The process of selection for the post in question had been commenced in 1973 and the recommendation of the Selection Committee had been rejected twice by the Regional Deputy Director of Education. The appellant challenged the appointment on the ground that (i) on the date of appointment the Director had no power to appoint a Principal of a minority institution as it had been taken away by the amending Act ; and (ii) that in any event the Director could not have appointed respondent No. 2 as his selection had been disapproved earlier by the Deputy Director. The High Court dismissed the writ petition.

Dismissing the appeal,

HELD : No retrospective effect should be given to any statutory provision so as to impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have such retrospective effect. The amending Act had no retrospective effect. It did not provide expressly that the amendment in question would apply to the pending proceedings under s. 16-F, nor did it contain any words which by necessary intendment would affect such pending proceedings. The process of selection under s. 16-F commencing from the stage of calling for applications for a post

upto the date on which the Director becomes entitled to make a selection is an integrated one. At every stage in that process certain rights are created in favour of one or the other candidates. [603 B, 602 G-H, 603 A]

In the instant case, the proceedings for the selection had commenced in the year 1973 and after the Deputy Director had disapproved the recommendations made by the Selection Committee twice the Director acquired the jurisdiction to make an appointment from amongst the qualified candidates, who had applied for the vacancy in question. Although the Director exercised that power subsequent to August 18, 1975 on which date the amendment came into force, it cannot be said that the selection made by him was illegal. [603 B-D]

The Act does not state that a person who had been recommended by a Selection Committee once and whose selection had been disapproved by the Deputy Director should not be considered for the post in question by the Director when he exercised his power under s. 16-F(4). The fact that the Deputy Director had disapproved the recommendation of the Selection Committee recommending respondent No. 2 for the post in question once before cannot be construed as amounting to a disqualification. [603 F-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2264 of 1979.

Appeal by Special leave from the Judgment and Order dated the 30th March, 1979 of the Allahabad High Court in Civil Misc. Writ Petition No. 417 of 1977).

R.K. Jain for the Appellant.

Bishamber Lal Khanna and *S.K. Gupta* for the Respondent.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. The appellant who was unsuccessful before the High Court of Allahabad in a writ petition filed by him under Article 226 of the Constitution has filed this appeal by special leave against the judgment of the High Court. In the writ petition the appellant had questioned the validity of the appointment of Mr. A.P. Joseph, respondent No. 2 herein as the Principal of the Ranikhet Intermediate College, Ranikhet, which was a minority institution having the protection of Article 30 of the Constitution in preference to him. The proceedings for the selection of a qualified person to the post in question commenced in the year 1973. The Selection Committee constituted under section 16-E of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as 'the Act') recommended three persons viz. Shri Bindeshwari Prasad,

A Shri S.C. Khyali and the appellant. The appellant was given the third rank in that recommendation. The Regional Deputy Director of Education did not approve of the said selection. The matter was again remitted to the Selection Committee. On the second occasion, the Selection Committee recommended the names of the appellant and respondent No. 2 assigning respondent No. 2 a higher rank.

B That selection also was disapproved by the Deputy Director. The Selection Committee thereafter made a third recommendation. The appellant preferred a writ petition before the High Court questioning the validity of the third selection made by the Selection Committee.

C The High Court by its judgment dated August 19, 1975 allowed his writ petition quashed the selection made by the Selection Committee on the third occasion as being without jurisdiction and having regard to the fact that the post in question was that of the Principal directed the Director of Education to make an appointment in accordance with section 16(F)(4) of the Act. Pursuant to the direction of the High Court, after considering the cases of the qualified candidates who had applied for the vacancy in question, the Director appointed

D respondent No. 2 to the post by his order dated March 8, 1977. The appellant questioned this appointment by the writ petition out of which this appeal arises before the High Court. The High Court dismissed the petition. This appeal by special appeal is filed against the judgment of the High Court.

E Before the High Court the appellant raised two contentions :

- F 1. The appointment made by the Director was opposed to the relevant provisions of the Act as they stood on the date of the appointment since on that day by reason of the amendment made to the Act by U.P. Act 26 of 1975 which had come into force on August 18, 1975, the power of the Director to make an appointment had been taken away in relation to minority institutions.
- G 2. In any event the Director could not have appointed respondent No. 2 for the post since his selection had been disapproved earlier by the Deputy Director.

H Both these contentions were negatived by the High Court. They are again urged before us.

Section 16-F of the Act, as it stood prior to August 18, 1975 read thus :

"16-F. (1) Subject to the provisions hereinafter specified, no person shall be appointed as a Principal, Headmaster or teacher in a recognised institution unless he—

(a) possesses the prescribed qualifications or has been exempted under sub-section (1) of section 16-E,

(b) has been recommended by selection committee constituted under sub-section (2) or (3), as the case may be, of the said section and approved, in the case of Principal or Headmaster by the Regional Deputy Director, Education and in the case of a teacher by the Inspector :

Provided that if the Inspector is satisfied that for any institution, no candidate, who possesses all the prescribed qualifications, is available for appointment, he 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 :

Provided also that in the case of leave vacancy or of a vacancy occurring for a part of the session of the institution, it shall be lawful for the Committee of Management to appoint a Principal, Headmaster or teacher if information of such an appointment is immediately conveyed to the Inspector.

(2) The name of the selected candidate shall be forwarded for approval, in the case of a teacher, by the Principal or Headmaster to 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

A weeks of the receipt of the relevant papers, failing which approval shall be deemed to have been accorded.

B (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 the Director in the case of a Principal or Headmaster and to the Regional Deputy Director, Education, in the case of a teacher, and the decision of the Director or the Regional Deputy Director, Education, as the case may be, in the matter shall be final.

C (4) Where the recommendation made under sub-section (2) has been disapproved and the representation of the management, if any, under sub-section (3) 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 the case of a 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."

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F It is no doubt true that the Act was amended by U.P. Act 26 of 1975 which came into force on August 18, 1975 taking away the power of the Director to make an appointment under section 16-F (4) of the Act in the case of minority institutions. The amending Act did not, however, provide expressly that the amendment in question would apply to pending proceedings under section 16-F of the Act. Nor do we find any words in it which by necessary intentment would affect such pending proceedings. The process of selection under section 16-F of the Act commencing from the stage of calling for applications for a post upto the date on which the Director becomes entitled to make a selection under Section 16-F(4) (as it stood then) is an integrated one. At every stage in that process certain rights are created in favour of one or the other of the candidates. Section 16-F of the Act cannot, therefore, be construed

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as merely a procedural provision. It is true that the Legislature may pass laws with retrospective effect subject to the recognised constitutional limitations. But it is equally well settled that no retrospective effect should be given to any statutory provision so as to impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have such retrospective effect. In the instant case admittedly the proceedings for the selection had commenced in the year 1973 and after the Deputy Director had disapproved the recommendations made by the Selection Committee twice the Director acquired the jurisdiction to make an appointment from amongst the qualified candidates who had applied for the vacancy in question. At the instance of the appellant himself in the earlier writ petition filed by him the High Court had directed the Director to exercise that power. Although the Director in the present case exercised that power subsequent to August 18, 1975 on which date the amendment came into force, it cannot be said that the selection made by him was illegal since the amending law had no retrospective effect. It did not have any effect on the proceedings which had commenced prior to August 18, 1975. Such proceedings had to be continued in accordance with the law as it stood at the commencement of the said proceedings. We do not, therefore, find any substance in the contention of the learned counsel for the appellant that the law as amended by the U.P. Act 26 of 1975 should have been followed in the present case.

In so far as the second contention is concerned, it is to be stated that the Act does not state that a person who had been recommended by a Selection Committee once and whose selection had been disapproved by the Deputy Director should not be considered for the post in question by the Director when he exercises his power under sub-section (4) of section 16-F of the Act. That provision merely states that in such an event, where the post to be filled up is that of a Principal or a Headmaster, the Director may appoint any qualified person from amongst the candidates who had applied for the vacancy and that such appointment shall be final. The respondent No. 2 satisfied the requirement of sub-section (4) of section 16-F of the Act. The fact that the Deputy Director had disapproved the recommendation of the Selection Committee recommending him for the post in question once before cannot be construed as amounting to a disqualification. It is also to be noticed

A that under section 16-F(4) of the Act it is the Director who is authorised to make the appointment of a Principal and not the Deputy Director. There is, therefore, no ground to interfere with the judgment of the High Court.

B In view of the foregoing, the appeal is dismissed. There shall be no order as to costs.

H.S.K.

Appeal dismissed.