

(1994) 10 AHC CK 0037

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2894 of 1990

Ashok Kumar Singh

APPELLANT

Vs

District inspector of Schools, Ghazipur and Others

RESPONDENT

Date of Decision : 06-10-1994

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Chapter 2 Regulation 6
Uttar Pradesh Secondary Education Services Commission and Selection Boards Rules,
1983 — Rule 9

Citation : (1994) 10 AHC CK 0037

Hon'ble Judges : S.N. Agarwal, J

Final Decision : Dismissed

Judgement

Sudnir Narain, J.—Writ Petition No. 5647 of 1982 and Second Appeal No. 1259 of 1991 are being decided by this common judgment as parties' facts and main controversies involved in both the cases are same. Ashok Kumar Singh, petitioner in the writ petition is defendant/respondent in Second Appeal whereas Sheetal Dan Singh is respondent No. 3 in the writ petition and plaintiff/appellant in Second Appeal. The necessary reference about them shall be made accordingly.

2. The petitioner has challenged the order of the District Inspector of Schools, Ghazipur, dated 15/4/1982 whereby he declined to pay salary to the petitioner of Lecturer's grade on the ground that the matter is pending for consideration.

3. The facts in brief are that Sri Kirtu Rai Inter College, Athagaon, Post Saona, District Ghazipur (hereinafter to be referred as the institution) is a recognised institution, under the provisions of the U. P. Intermediate Education Act.

4. In the year 1976 two new posts of Lecturers in Economics and Sociology were created by the Director of Education. The petitioner and Shetal Dan Singh, respondent No. 3 both were teachers in L. T. grade in the said institution. The petitioner was teaching Biology while respondent No. 3 was teaching Economics. As the post of Lecturer in Economics was created, the appointment was to be made on the basis of promotion of the teachers who were already working in the

institution. The petitioner was teaching Biology while respondent No. 3 was teaching Economics. The Committees of Management considering that respondent No. 3 was teacher in Economics resolved to promote him to the post of Lecturer in Economics in preference to the petitioner who was a teacher in Biology by its resolution, dated 2221977. The Committee of Management was of the opinion that the work, conduct and teaching experience of respondent No. 3 in Economics was very good and he was suitable for promotion. Sri Ashok Kumar Singh was a teacher in Biology and had passed M. A, examination in Economics in the year 1975 but he had never taken any class in Economics. The copy of the resolution was sent to the District Inspector of Schools. The District Inspector of Schools on 1131977 made certain queries from the Management. The Management submitted a reply on 141977. The District Inspector of Schools, however, rejected the proposal of the Management vide its order, dated 2141977.

5. The Committee of Management filed appeal against the decision of the District Inspector of Schools, during the pendency of the appeal the petitioner sent a letter, dated 481977 to the District Inspector of Schools, Ghazipur withdrawing his claim for promotion on the post of Lecturer in Economics as against respondent No. 3. The Committee of Management on 2181977 submitted an application before the Deputy Director of Education for withdrawal of the appeal on the ground that the petitioner had withdrawn his claim for promotion as against respondent No. 3. The appeal was dismissed by the Deputy Director of Education on 11101977.

6. On 1331978 the District Inspector of Schools directed the Committee of Management to promote the petitioner as lecturer in Economics, but subsequently he withdrew his order by his letter, dated 1841978, a true copy of the letter has been annexed as Annexure C to the counteraffidavit filed on behalf of respondent No. 1. Subsequently, it appears on the basis of letter of the Deputy Director of Education, dated 2011979, he again passed order on 242Iy87 directing the Management to pay salary to the petitioner of lecturer's grade. The petitioner in spite of the aforesaid order was not being paid such salary. The petitioner again approached respondent No. 1. On 1541982 respondent No. 1 declined to sanction his salary on lecturer's grade on the ground that the matter is under consideration. The petitioner has challenged the order in this writ petition.

7. In the meantime respondent No. 3 filed Suit No. 220 of 1982 in the Court of Munsif Ghazipur, challenging the order of District Inspector of Schools holding that he was entitled to be promoted to the post of lecturer in Economics. The trial court decreed the suit on 1541988. The petitioner filed an appeal against the said decision. The appellate court allowed the appeal on 1241991. Respondent No. 3 has filed second appeal No. 1259 of 1991.

8. I have heard the learned Counsel for the parties at length in the writ petition as well as in Second Appeal.

9. The main contention of the learned Counsel for the petitioner is that the petitioner is senior to respondent No. 3 and he was entitled to be promoted to the post of lecturer.

10. It is not disputed that the petitioner is senior to respondent No. 3 on the basis of the length of service. The question is, however, whether on the relevant date when the vacancy was to be filled by promotion of a teacher from L. T. grade to the post of lecturer in Economics whether the teaching experience in the subject concerned was to be taken account in making promotion to the post of lecturer in Economics. The petitioner was admittedly a Biology teacher in L. T. grade. He had passed M. A. in Economics in the year 1975 but he never taught Economics. Respondent No. 3 was appointed in July, 1962 in C. T. grade in Janta Vidyalaya, Manjhanpur, district Azamgarh and was promoted in L. T. grade as Economics Assistant Teacher in the year 1965 in the present institution and since then he is continuously working as a teacher in Economics. The Committee of Management considering qualification, teaching experience and conduct of the parties resolved that respondent No. 3 should be promoted as lecturer in Economics. Regulation 6 of Chapter II of the regulations framed under the U. P. Intermediate Education Act, 1921 provide[^] for the manner in which the promotion to the post of lecturer is to be made. Clause 2 of the Regulation 6 provides that "selection for promotion to the next higher grade shall be made on the basis of service standing, achievements in service, academic qualifications and integrity."

11. The learned Counsel for the petitioner submitted that it was not necessary that the promotion should be made taking into consideration the subject concerned in which the teacher is to be promoted. This controversy was considered in a Full Bench decision of this Court in *Smt. Basanti Gaur v. Regional Inspectors of Schools, VIIth Region, Gorakhpur and others*, AIR 1987 All 191, wherein it was held that the teaching experience gained by a teacher in the concerned subject was relevant consideration while judging the merit for suitability of teachers for promotion to higher grade. The Court observed :

"Teaching experience in the subject in which the lecturer's appointment has to be made cannot but be such an attribute. It is indeed inherently necessary to take up the greater responsibility in the higher classes. It is absolutely necessary to bring out an excellence from the teacher for the benefit of students. It is an attribute which always goes with the teacher. Experience of having taught the subject for any length of time should, in our opinion, be regarded as a qualification pertaining to academic."

12. The learned Counsel for the petitioner submitted that Appendix "A" of Chapter II of the regulation prescribes the qualification for appointment of lecturer but experience in teaching of the subject concerned is not a criteria for promotion. The qualification is not only the consideration for making promotion. The Management has to take into consideration all the relevant factors as enumerated in clause 2 of Regulation 6 of Chapter II of the regulations. In the

case of Smt, Basanti Gaur (supra) this Court held that the experience in the subject concerned is a necessary criteria for eligibility for promotion. In view of the aforesaid decision, the submission of the learned Counsel for the petitioner cannot be accepted.

13. The second submission of learned Counsel for the petitioner is that the promotion to the post of lecturer has yet not been made and in the year 1982 U. P. Secondary Education Service Commission and Selection Boards Act, 1982 came into force and in pursuance of powers conferred under Section 35 of the said Act, U. P. Secondary Education Services Commission Rules, 1983 was framed. Rule 9 of the said rules laid down the procedure for appointment by promotion by the Commission. The 1983 Rules was amended on 1st July, 1983 and in Rule 9 the words "in the concerned subject" were omitted. It is urged that after omission of these words it ;is not necessary that a teacher should have teaching experience in the subject concerned in which the promotion is to be made.

14. Rule 9 of the U. P. Secondary Education Services Commission Rules, 1983 has no application to the facts of the present case. The vacancy arose in the year 1976 after creation of the post in that year. The right of parties are to be determined on the date when the vacancy had come into existence. The provisions of U. P. Secondary Education Service Act, 1982 cannot be made applicable retrospectively with regard to a vacancy which had existed earlier and the Committee of Management resolved to make appointment in accordance with Regulation 1982.

15. The learned Counsel for the petitioner placed reliance upon the decision in Syed Ali Adil Zafar v. State of U. P. and others, 1984 UPLBEG 488, wherein the court held that after amendment in Rule 9 of U. P. Secondary Education Service Commission Rules, 1983, the appointment has to made in accordance with amended rule. In this case vacancy had arisen on 171983 the date when amendment had came into force.

16. In Krishna Dutt Singh and another v;. District Inspector of Schools, Gorakhpur and others, 1989 (1) UPLBEC 588, it was held that Rule 9 shall be applicable for promotion. In this vacancy arose on December 31, 1984. Similarly in the case of Sheo Shankar Lal v. Chairman, U, P. Secondary Education Service Commission, Allahabad and another, 1990 (I) UPLBEC 3355 vacancy had arisen after enforcement of Act No. 5 of 1982.

17. The learned Counsel for the petitioner then urged that respondent No. 3 had not been issued appointment letter till the enforcement of Act No. 5 of 1982, the appointment by promotion has to be made in accordance with amended Rule 9 which came into force on 171983. He placed reliance on Prafulla Kumar Swain v Prakash Chandra Misra and others, 1993 (1) JT 360, where the question was relating to the seniority and it was held that the seniority of the direct recruit will have to be reckoned from the date of appointment. The appointment means

actual date of posting a person to a particular office. Recruitment signifies enlistment, acceptance, selection of approval for appointment. In this case the Court was considering meaning of the word "appointment" in the context of determination of seniority.

18. Under Regulation 6 of Chapter II of regulations framed under U. P. Intermediate Act a duty is imposed upon the Committee of Management to make appointment by promotion and the District Inspector of Schools is under a legal duty to accord approval of such appointment if it is in accordance with law. The Assistant Teacher who is entitled to be promoted can claim appointment immediately after occurrence of vacancy. This right cannot be taken away by inaction, omission, negligence or acting in a manner which is untenable under law.

19. The Committee of Management passed resolution on 2221977 for promotion of respondent No. 3. The papers were forwarded to respondent No. 1 for approval. The process of promotion as for the Committee of Management was concerned, completed on the date of its passing resolution on 2221977. It was the order of disapproval of the District Inspector of Schools, dated 2141977, which was subjectmatter of legal scrutiny, If the matter remained pending for any reason that will not take away vested right of respondent No. 3 by subsequent amendment in law.

20. The third submission of the learned Counsel for the petitioner is that the District Inspector of Schools had rejected the proposal of the petitioner vide his order, dated 2141977. The Committee of Management filed appeal and the same was dismissed .on 11th October, 1977. The said order having become final, the matter could have not been reopened by the Deputy Director of Education.

21. The Committee of Management filed an appeal before the Deputy Director of Education. It is not denied that the petitioner wrote a letter, dated 481977 to the District Inspector of Schools stating that he does not claim his right for promotion and he has withdrawn his claim for promotion in favour of respondent No. 35 a copy of which has he on annexed as Annexure "B" to the counter affidavit filed by respondent No. 3. The Committee of Management moved an application on 2181977 before the Deputy Director of Education in appeal stating that as the petitioner has withdrawn his claim it does not want to press the appeal. The appeal was dismissed on 21121977,

22. The learned Counsel for the petitioner urged that the petitioner wrote the letter on 481977 under pressure and it was obtained by force. The petitioner is alleged to have made a representation to the District Inspector of Schools on 2491977 that the Manager of the institution had obtained the letter from him under pressure. No material has been placed to show that the letter was obtained by coercion. Moreover the District Inspector of Schools himself has withdrawn his earlier order, dated 1331978 by order, dated 1841978 whereby he had permitted the petitioner to get salary of lecturer's grade. In these

circumstances no finally can be attached to the order of the District Inspector of Schools, dated 2141977 and 1331978.

23. The 2nd Additional District Judge, Ghazipur allowed Civil Appeal No. 96 of 1988 and set aside the judgment and decree of trial court mainly on three grounds :

(i) The suit was barred by limitation.

(ii) The notice given under Section 80 of the Civil Procedure Code was invalid.

(iii) On merits, the appellate court took the view that teaching experience in the subject concerned was not necessary for considering the appointment by promotion.

24. The appellate court was of the view that cause of action arose on 214197,7 when the District Inspector of Schools refused to accord approval of appointment of plaintiffrespondent No. 3. The appellate court did not take into consideration that the appeal was filed against the said order before the Deputy Director of Education. The Management did not press appeal in view of the fact that petitioner had withdrawn his claim by moving application before the District Inspector of Schools. Subsequently he again passed order on 2421982 in favour of petitioner, but he declined to enforce the said order by his letter, dated 1541^82 which the petitioner himself challenged in the writ petition. These facts Clearly indicate that cause of action arose on 2421982 and the suit was within limitation,

25. Ashok Kumar Singh, the defendant in the suit, himself again submitted representation for consideration but the District Inspector of Schools on 15th April, 1982 passed an order that the matter is still pending for consideration which has been challenged by the defendantrespondent in writ petition No. 5647 of 1982. The suit was thus not barred by limitation.

26. The appellate court further took the view that the suit was barred under Section 80 of C.P.C. as the notice given by the plaintiff to the defendant Nos. 1,2 and 3 was defective. The notice clearly indicates a cause of action and indicates necessary facts. The suit was decreed by trial court and the appeal was not filed by them. The notice was not invalid.

27. The last submission of the learned Counsel for the respondent is that t];c suit was not maintainable as Regulation 7 of Chapter II. of the regulations framed under the Act attaches finality to the orders passed by Regional Deputy Director of Education. The Deputy Director of Education had dismissed the appeal without assigning any reason. Before disposal of the appeal Ashok Kumar Singh had written a letter for withdrawing his claim as against the plaintiff. The Committee of Management filed an application to withdraw the order. It was subsequently on 18th April, 1978 the District Inspector of Schools bad withdrawn his earlier order, dated 21st April, 1977. It was only on 24th February, 1982 that the District Inspector of Schools directed the Managing Committee to pay salary of lecturer"s

grade to the defendantrespondent Sri Ashok Kumar Singh. It was not subjectmatter of decision under Regulation 6 of the regulations framed under the Act.

28. Under these circumstances the suit filed by the plaintiff was maintainable. No other point has been pressed.

29. In the result, second appeal No. 1259 of 1991 is allowed. The judgment and decree dated 1241991 passed by Second Additional District Judge, Ghazipur is sot aside and judgment and decree of trial court is affirmed.

30. Writ Petition No. 5647 of 1982 is dismissed. While considering the facts and circumstances of the case the parties shall bear their own costs.

Decided accordingly.