

(1987) 05 AHC CK 0011
In the Allahabad High Court
Case No : Writ Petition No. 2037 of 1986

Avadhesh Bahadur Singh

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 21-05-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Intermediate Education Act, 1921 — Section 16E(2), 16E(3), 16F
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 3, 3(1)
Uttar Pradesh Secondary Education Services Commission Rules, 1983 — Rule 9(3)

Citation : (1988) 1 AWC 127

Hon'ble Judges : U.C. Srivastava, J; D.S. Bajpai, J

Bench : Division Bench

Advocate : H.S. Sahai, for the Appellant; C.S.C. and Har Gur Charan, H.N. Telhari, G.S. Sikarwar and S.P. Srivastava, for the Respondent

Final Decision : Allowed

Judgement

D.S. Bajpai, J.—The petitioner, Avadhesh Bahadur Singh, a teacher in the Pratap Bahadur Intermediate College, Pratapgarh (hereinafter referred to as the College) has invoked the jurisdiction of this Court under Article 226 of the Constitution for issuance of a writ of certiorari to quash the order dated 7-3-1986 (Annexure 14) passed by the District Inspector of Schools, Pratapgarh, the opposite party No. 1, by which the appeal filed by the opposite party No. 3, Bishambhar Natb Tripathi, has been allowed and the petitioner directed to be placed junior to the said opposite party. It is not in dispute that the said college is an institution governed by the provisions of the U.P. Intermediate Education Act and the regulations framed thereunder (hereinafter referred to as the Act and Regulations respectively). The petitioner asserts that he was initially appointed as a teacher in L.T. Grade in the said College on 6-8-1965 by the Committee of Management of the College after obtaining approval of the District Inspector of Schools. He further avers that at the time of appointment he was fully qualified being B. A., B. Ed. for appointment in the said grade. Thereafter he stood

confirmed in the said grade with effect from 6-8-1966 by order dated 27-12-1966 passed by the Committee of Management of the said College (Annexure 1). The petitioner stated in the writ petition that the opposite party No. 3, Bishambhar Nath Tripathi was appointed as ad-hoc teacher in L.T. Grade on 20-10-1964 but since he was only B. Sc. (Agriculture) and not possessing training qualification as provided in Appendix "A" to the Regulations he was not qualified for a regular appointment. The case of the petitioner further is that the said opposite party No. 3 thereafter obtained training qualification only in the year 1967 by obtaining L.T. Diploma and he was approved for appointment in L.T. Grade in a substantive post only on 1-7-1967 and thereafter was confirmed by the Committee of Management by order dated 24-12-1969 (Annexure 2). Prior to this, it is averred by the petitioner, the District Inspector of Schools himself by letter dated 30-4-1965 (Annexure 3) had refused approval of appointment of the said opposite party No. 3 in a substantive post on the ground that he did not possess the requisite minimum educational qualifications. This is further fortified by the letter of the Manager of the College dated 15-5-1965 (Annexure 4) indicating that the opposite party No. 3 had been appointed till the end of the current session and that his appointment was purely temporary, whereafter the services of the said opposite party were extended from time to time. For the first time, the petitioner asserts, a seniority list was prepared and circulated in the year 1985 and the opposite party No. 3 was placed above the petitioner as a teacher in L.T. Grade on the mistaken belief that since the said opposite party had been appointed initially on 20-10-1964 he was junior (?) to the petitioner. The petitioner filed a representation against the said seniority list challenging his seniority vis-a-vis the opposite party No. 3, stating, inter alia, that since he had been appointed in a substantive capacity on 6-8-1965 and confirmed on 6-8-1966 and the opposite party No. 3 having been appointed only with effect from 1 ^ 1967 and thereafter confirmed on 24-12-1969 the petitioner was senior to the opposite party No. 3. This representation is Annexure 5 to the writ petition. After considering the report of the Principal and examining records the Committee of Management accepted the representation of the petitioner and directed him to be placed above the opposite party No. 3 by its order dated 2-9-1985 (Annexure 8) and in accordance therewith a seniority list was prepared wherein the name of the petitioner finds place at serial No. 6 and that of the opposite party No. 3 at serial No. 7 and this list was circulated on 14-9-1985 (Annexure 9). Thereafter on the retirement of one Sri Jagat -Narain Srivastava, Lecturer on 30-6-1985 a vacancy occurred in Lecturer's Grade and the said vacancy had to be filled by promotion. The Committee of Management by resolution dated 5-10-1985 (Annexure 10) approved the promotion of the petitioner in Lecturer's Grade. The Manager of the College submitted a report pertaining to the promotion of the petitioner. It appears the opposite, party No. 3 felt aggrieved against the decision of the Committee of Management placing the petitioner senior to him and filed a representation/appeal before the District Inspector of Schools, Pratapgarh. The District Inspector of Schools, Pratapgarh obtained comments from the Committee of Management as to the circumstances

and the material on the basis of which the petitioner had been declared senior to the opposite party No. 3 which information was supplied by letter of the Manager dated 1-11-85 (Annexure 13). Thereafter, the petitioner avers, the District Inspector of Schools passed an order dated 7-3-1986 (Annexure 14) allowing the appeal/representation of the opposite party No. 3 and directed placing the petitioner junior to the opposite party No. 3. This order of the District Inspector of Schools has been assailed before us.

2. We have heard learned Counsel for the parties at some length and perused the affidavits exchanged. The learned Counsel for the petitioner urged that while disposing of the appeal/representation on which the impugned order (Annexure 14) allowing the said appeal/representation had been passed the opposite party No. 1, the District Inspector of Schools, did not afford an opportunity to the petitioner and violated the provisions of law by not affording the petitioner a reasonable opportunity to show cause before considering and allowing the said representation of the opposite party No. 3. The learned Counsel specifically pointed out the averments made in paragraph 22 of counter affidavit wherein it has been stated:

The District Inspector of Schools noticed the foul play. He further noticed that petitioner had himself signed the first seniority list which was maintained from 1979 to 1985 and that he was estopped from challenging the same, as such he allowed the appeal of the deponent (Annexure No. C-7) in which all details have been given and set the matters right.

The second submission of the learned Counsel has been that even otherwise the District Inspector of Schools fell in error in deciding the question of seniority between the petitioner vis-a-vis the opposite party No. 3 and declaring the opposite party No. 3 senior to the petitioner ignoring the provisions of the Act and the Regulations. The error apparent in the impugned order pointed out by the learned Counsel was that the appointment of the opposite party No. 3 was purely on a temporary and ad-hoc basis on 20-10-1984 and even otherwise the said opposite party at that time not being possessed of requisite minimum qualifications as provided in the Act and the Regulations could not be appointed substantively but only as a stop gap arrangement so that the teaching of the institution may not be disrupted and the students were saved from wasting time and from depriving them of being taught the subject concerned. On the other hand the petitioner was appointed on 6-8-1965 and confirmed on 6-8-1966. The learned Counsel urged that for all purposes the date of appointment of the opposite party No. 3 would be 1-7-1967 the date from which the appointment of the opposite party No. 3 was approved by the District Inspector of Schwa* as it was only on that date that he possessed the requisite minimum qualifications prescribed under law having obtained the training qualifications of L.T. Lastly it has been urged on behalf of the petitioner that his appointment by promotion in the Lecturer's Grade is valid in view of the provisions of Rule 9(3) of the U.P. Secondary Education Service Commission Rules, 1983 which made it mandatory

on the District Inspector of Schools to remit the papers regarding promotion of the petitioner to the commission within three weeks from their " receipt from the management and the impugned order is liable to be set aside.

3. A detailed counter affidavit has been tiled on behalf of the contesting opposite party No. 3 rebutting the contentions of the petitioner in the writ petition. The petitioner has filed a detailed rejoinder affidavit.

4. On appraisal of the material placed on record and on consideration of the Act and the regulations the sole question for determination remains as to whether the impugned order contained in Annexure-14 was passed by the District Inspector of Schools after giving an opportunity to the petitioner to show cause. There is no gain-saying the fact that the seniority of the petitioner would not be disturbed by the impugned order and the rights of the petitioner who had already been promoted in Lecturer's Grade effected without supplying the petitioner with a copy of the representation made by the opposite party No. 3 and affording the petitioner an opportunity to defend himself. Unfortunately the District Inspector of Schools has filed no counter affidavit in reply to rebut these allegations and the learned Counsel for the contesting opposite party No. 3, Sri H. N. Tilhari, has fairly conceded that neither the opposite party No. 3 nor the Committee of Management much less the District Inspector of Schools, according to his institutions, supplied a copy of the representation made by the opposite party No. 3 to the petitioner and as such it becomes evident that the petitioner was never afforded an opportunity to show cause" much less defend himself and the order would only be an exparte order prejudicially effecting the right of the petitioner who has been declared junior to the opposite party No. 3 and as a consequence of which the petitioner was not to be treated as a teacher in Lecturer's Grade and paid his salary in the said grade. The learned Counsel for the contesting opposite party, however, further submitted that it was in similar circumstances without affording the contesting opposite party an opportunity to show cause that the representation of the petitioner dated 10-7-1985 (annexure-5) before the Committee of Management disputing the seniority of the petitioner vis-a-vis the contesting opposite party as in the seniority list circulated in 1985 by which the petitioner was placed junior to the opposite party No. 3 was decided in favour of the petitioner by its order dated 2-9-1985 (annexure 8) and as such the said order was also bad and in violation of the principles of natural justice. The learned Counsel on the strength of this submission urged that the writ petition as such was not maintainable since no rights accrued to the petitioner on the strength of the decision of the Committee of Management dated 2-9-1985 (annexure-8) declaring him senior to the A opposite party No. 3. The learned Counsel for the petitioner has not been in position to point out any material to us that may indicate that the opposite party No. 3 was afforded an opportunity to show cause before the Committee of Management which passed the order. Assuming the position that the order of the Committee of Management dated 2-9-1985 contained in annexure-8 and the impugned order of the District Inspector of Schools dated 7-3-1986 contained in annexure-14 were passed in

violation of the principles of natural justice and without giving an opportunity to the opposite party No. 3 and the petitioner respectively the question that would survive for consideration before us would be as to whether the petitioner or the opposite party No. 3 were senior vis-a-vis each other. Provisions for determination of seniority among teachers are contained in Regulation 3 of Chapter II of the Regulations:

3. (1) The Committee of Management of every institution shall cause a seniority list of teachers to be prepared in accordance with the following provisions:

(a) The seniority list shall be prepared separately for each grade of teachers whether permanent or temporary, on any substantive post ;

(b) Seniority of teachers in a grade shall be determined on the basis of their substantive appointment in that grade. If two or more teachers were so appointed on the same date, seniority shall be determined on the basis of age ;

(bb) Where two or more teachers working in A grade are promoted to the next higher grade on the same date, their seniority, inter se shall be determined on the basis of the length of their service to be reckoned from the date of their substantive appointment in the grade from which they are promoted.

Provided that if such length of service is equal, seniority shall be determined on the basis of age. (sic)

(c) A teacher in a higher grade shall be deemed to be senior to a teacher in the lower grade irrespective of the length of service.

(d) If a teacher who is placed under suspension is reinstated on his original post, his original seniority in the grade shall not be affected.

(e) Every dispute about the seniority of the teacher shall be referred to the Committee of Management which shall decide the same giving reasons for the decision.

(f) Any teacher aggrieved from the decision of the Committee of Management under Sub-clause (e) may prefer an appeal to the Inspector within fifteen days from the date of communication of such decision to such teacher and the decision of the Inspector in appeal shall be final and shall be given effect to by the Committee of Management

and the seniority list has to be prepared in consonance with these provisions.

5. In the instant case the petitioner as also the opposite party No. 3 were teachers in L.T. Grade and their seniority has to be reckoned with in terms of the provisions of Regulation 3 (1) (b) which provides that seniority of teachers in a grade shall be determined on the basis of their substantive appointment in that grade. It is clear from a perusal of annexure 2 to the writ petition that the opposite party No. 3 was confirmed in L.T. Grade only on 1-7-1967 since he obtained training qualification only in June, 1967 while vide annexure-1 the

petitioner had been confirmed with effect from 6-8-1966. The confirmation order of the opposite party No. 3 looked along with (the order of the District Inspector of Schools dated 30-4-1965 (annexure-3) informing the Principal of the College that since the opposite party No. 3 did not possess the requisite minimum qualifications laid down in Appendix " A " he could not be confirmed. The fact that the appointment of the opposite party No. 3 was in a purely temporary capacity is borne out from the letter of the Management of the College dated 15-5-1965 (annexure-4) informing that his appointment on the post being temporary and for current session only was to terminate on 30-6-1965 " whereafter his services in this College will not be required. " This is further supported by the contesting opposite party's own document filed as annexure C-4 to the counter affidavit which is a letter dated 23-2-1965 from the District Inspector of Schools, Pratapgarh to the Manager of the College in connection with according approval for appointment to B. Sc. (Ag.) teachers in L.T. Grade and informing that one Akshayvar Nath Pandey and the opposite party No. 3 were being approved for appointment with effect from 1-7-1964 and 20-10-1964 respectively till the end of the academic session on 2/3rd of the L.T. Grade. It will thus appear that the appointment of the opposite party No. 3 was in a purely temporary capacity to last till the end of the academic session of 1964-65 and that the reason for the said appointment in a temporary capacity being that he did not possess training qualifications and could not be appointed in accordance with the provisions contained in Section 16-F of the Act as it stood on the date of the said appointment i.e. 20-10-1964. Section 16-F of the Act then stood as:

16-F. (1) Subject to the provisions hereinafter specified, no person shall be appointed as a Principal, Headmaster or teacher in a recognized 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 candidates 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 weeks of the receipt of the relevant papers, failing which approval shall be deemed to have been accorded.

(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.

(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 Sections 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 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. "

Learned Counsel for the opposite party No. 3 having conceded that the opposite party No. 3 not being possessed of requisite minimum qualifications for appointment as contained in Appendix "A " on the date of his appointment on 20-10-1964, he not being a trained B. Sc. (Agriculture) as laid down at item No. 24 of the said appendix which provides qualifications of a teacher in Agriculture to teach High School classes as under:

For High School (Classes: Trained B. Sc. (Agr.)

IX and X).

his appointment will not be vitiated in view of the first proviso to Section 16-F.

6. The learned Counsel has, however, not been in a position to satisfy us as to whether the petitioner was selected by a duly constituted selection committee under Sub-section (2) or (3) of Section 16E of the Act and even otherwise to attract the provisions of the first proviso, on which he heavily relied, there was nothing to indicate that no candidate answering the prescribed qualifications was physically available for being appointed in the college the College was permitted as a temporary measure to employ a suitable person for a period not exceeding one year and further indicating that such period was extended in the instant case

with the prior approval of the Inspector. Even otherwise assuming that the opposite party No. 3 could derive the benefit of the said proviso his appointment was only in a temporary measure and became a substantive appointment with effect from 1-7-1967 as indicated by annexure-2 he having acquired the requisite minimum qualifications as prescribed in appendix " A " only in June, 1967 while on the other hand the petitioner was appointed as a teacher in the same grade (L.T. Grade) by order dated 6-8-1965 in a substantive capacity and confirmed on 6-8-1966 as indicated by the resolution of the Committee of Management dated 27-12-1966 (Annexure-1) to the writ petition. We, accordingly hold that on the basis of the provisions contained in Regulation 3(1) (b) of Chapter II of the Regulations the petitioner is senior to the opposite party No. 3 as a L.T. Grade teacher and as a consequence the impugned order of the District Inspector of Schools dated 7-3-1986 (Annexure-14) cannot be sustained. In as far as the prayer made for quashing of the order dated 10-4-1986 passed by the Uttar Pradesh Secondary Education Services Commission, Allahabad, which has been impleaded as opposite party No. 4 to the writ petition and which prayer has also been permitted to be added on an amendment application of the petitioner (Civil Misc. Application No. 6213 (w) of 1986) allowed by this Court on 26-9-1986 on the ground that this order had been passed only as a consequential order passed in pursuance to the impugned order of the District Inspector of Schools (Annexure-14) declaring the opposite party No. 3 senior to the petitioner, directing that the opposite party No. 3 is entitled to be promoted in Lecturer's Grade. No counter affidavit has been filed by the Commission in support of the said order and a reading of the order itself indicates that on consideration of the letter of the District Inspector of Schools dated 5-4-1986 based on the impugned order dated 7-3-1986 (Annexure-14) the order dated 10-4-1986 (Annexure-17) approving the promotion of the opposite party no- 3 was passed by the U.P. Secondary Education Services Commission, the opposite party No. 4. The impugned order of 7-3-1987 (Annexure-14) having fallen the said order of 10-4-1986 (Annexure 17) cannot be sustained.

7. In the result the petition succeeds and is allowed with costs. Let a writ of certiorari issue quashing the impugned orders dated 7-3-1986 (Annexure 14) passed by the District Inspector of Schools, Pratapgarh and the order dated 10-4-1986 (Annexure 17) passed by the U.P. Secondary Education Services Commission, Allahabad and the opposite parties 1, 2 and 4 are directed to treat the petitioner as senior to the opposite party No. 3 as per seniority list contained in annexure 9 to the writ petition.