

(1988) 04 AHC CK 0067

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No's. 11718 of 1984 and 5938 of 1987

Bashishth Pandey

APPELLANT

Vs

The District Inspector of Schools and Others

RESPONDENT

Date of Decision : 18-04-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1(3), Order 23 Rule 1(4)
Constitution of India, 1950 — Article 141, 226
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 3(1), 3(8), 5(2)
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 18

Citation : (1988) 2 AWC 857

Hon'ble Judges : K.K. Birla, J;B.L. Yadav, J

Bench : Division Bench

Advocate : Gyan Chandra Dwivedi, for the Appellant;

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—Both these petitions, Writ Petition No. 11718 of 1984 Bashishth Pandey v. District Inspector of Schools (for short the first petition) and Writ Petition No. 5938 of 1987 Bashishth Pandey v. District Inspector of Schools, (for short the second petition) involve similar questions of law and fact. Consequently it is convenient to dispose them of by a common judgment.

2. By the first petition filed under Article 226 of the Constitution of India the Petitioner has prayed for a writ of Certiorari quashing the order dated 19-5-84 (Annexure 8 to the first petition) holding Respondent No. 3 to be senior teacher in L.T. Grade in the institution known as L.D. Intermediate College, Ballia whereas by the second petition a prayer has been made for a writ of Certiorari quashing the order dated 19-5-84 (Annexure 2 to second petition) and the order dated 26-8-86 (Annexure 7 to second writ petition).

3. A portrayal of essential facts are these. The institution is governed by U.P.

Intermediate Education Act, 1921, (for short the Act) and the regulations framed thereunder. The Petitioner was appointed on 23-7-1965 in the aforesaid College in L.T. Grade, whereas Respondent No. 3 Shambhu Nath Upadhyaya was appointed in the beginning as C.T. Grade teacher on 23-7-65 and was appointed in L.T. grade teacher in History and both of them were accorded approval by the District Inspector of Schools on 4-8-65. One Sri Balram Tiwari retired as Lecturer in Hindi on 30-6-84, but he was given extension for one year and he continued to work as Lecturer upto 30-6-85. Thereafter the vacancy of a Lecturer in Hindi arose in the institution. This vacancy was within 40% quota in lecturer's grade and was to be filled by promotion from amongst the teachers working in the institution in L.T. Grade as provided under Regulation 5(2) of Chapter II of the Regulations framed under the Act, (for short the Regulations). As by the time vacancy arose in 1985 U.P. Secondary Education Service Commission & Selection Boards Act, 1982 (for short the Service Commission Act) has come into force, Hence the appointment could have been made only through the Secondary Education Service Commission, (for short the Commission). But the ad hoc appointment by promoting L.T. Grade teachers to lecturer's grade was to be made by the Committee of Management as required u/s 18 of the Service Commission Act. As there was only one vacancy of Lecturer, hence the senior most teacher in L.T. Grade was to be promoted. The seniority of Respondent No. 3, Sri Shambhu Nath Upadhyaya in L.T. Grade was decided much earlier under Regulation 3(1) of Chapter II. The Petitioner if he was feeling aggrieved, must have preferred an appeal within 15 days. But he did not prefer any appeal. Respondent No. 3 Shambhu Nath Upadhyaya was appointed on ad hoc basis as Lecturer u/s 18 of the Service Commission Act and the recommendation to fill up vacancy was made to the Service Commission. The Petitioner filed a representation before the District Inspector of Schools alleging that he was senior to Respondent No. 3, but the District Inspector of Schools held by the impugned order dated 19-5-84 that Respondent No. 3 was senior in L.T. Grade to the Petitioner. The Petitioner did not file any appeal against the order determining seniority much earlier, and that the Petitioner was appointed on 23-7-65 whereas Respondent No. 3 was appointed on 10-7-65 and made permanent on 12-7-65 whereas Petitioner was confirmed on 23-7-65. On the basis of these two dates G.P.F. etc. was sanctioned to Petitioner and Respondent No. 3 and even the selection grade was also granted to them on the basis of these dates of confirmation and they have accepted their pay scale by taking these dates as date of confirmation.

4. Learned Counsel for the Petitioner urged that the Petitioner was senior as he was senior in age. Even assuming the date of confirmation to be 23-7-65 and confirmation was made by the order of District Inspector of Schools dated 4-6-65, that there was no order of Distt. Inspector of Schools approving L.T. Grade to Respondent No. 3 since 12-7-65 and that the Petitioner being senior to Respondent No. 3 deserves to be promoted as Lecturer under 40% quota and deserves to be selected by the Service Commission.

5. Learned Counsel for the Respondents on the other hand, urged that the Petitioner was not senior to Respondent No. 3 as the Petitioner was appointed on 23-7-65 and Respondent No. 3 was appointed on 10-7-65. Respondent No. 3 was, however, confirmed on 12-7-65 whereas the Petitioner was confirmed on 23-7-65 and these dates have been taken to be final even by the parties and G.P.F. and selection grade etc. were sanctioned to Petitioner and Respondent No. 3 on the basis of these dates. It was further urged that earlier the Petitioner has filed a writ petition (being Writ Petition No. 3829-87) which was withdrawn by the Petitioner as not pressed. The present petition has been filed on the same cause of action, whereas the order of Division Bench of this Court dismissing earlier writ petition as not pressed has become final and the subsequent writ petition was not maintainable on the analogy of provisions of Order 23 Rule 1(3) and (4) CPC that the Petitioner did not file any appeal when earlier seniority was determined between the Petitioner and Respondent No. 3. The appeal must have been filed within 15 days under Regulation 3(8)(f) of Chapter II of Regulations framed under the Act. But he did not file any appeal and now he cannot challenge the question of seniority. Nevertheless the Petitioner has made several representations, the seniority has finally been determined by the District Inspector of Schools considering all the facts and circumstances of the case by the impugned order dated 19-5-84. Reliance was placed on *Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others*, .

6. Having heard the learned Counsel for the parties there are three questions which fall for our determination in the present petition. The first is as to what was the effect of order of withdrawal passed on the earlier writ petition filed by the Petitioner against the same cause of action. The second question is as to what was the effect of non-filing of appeal by the Petitioner within 15 days as contemplated by Regulation 3(8)(f) of Chapter II of the Regulations framed under the Act, and the third is even though urged half heartedly on behalf of Petitioner, that as the matter has been referred to Service Commission for order of appointment on the post of Lecturer in Hindi in the institution and the Petitioner being second to Respondent No. 3, at present just on ad hoc basis u/s 18 of the Service Commission Act, Respondent No. 3 has been appointed, hence it would be obligatory on the part of Service Commission to consider the case of Petitioner also.

7. As regards the first question, as the earlier writ petition was withdrawn, hence on the same cause of action no subsequent petition could be filed unless there were some special new facts leading to new cause of action. The provisions of CPC may not be applicable in latter to writ jurisdiction of this Court in Civil proceedings. But the analogy and concept of Sub-rules (3) and (4) of Rule 1 of Order 23 of CPC could be made applicable. If the Petitioner withdraws a writ petition filed by him without any permission having been obtained from the Bench concerned to file second writ petition on the same cause of action, he shall be precluded from filing fresh writ petition in respect of the same cause of action and same subject matter. In the present case as the Petitioner did not obtain

permission to file a fresh writ petition in respect of the same cause of action and same subject matter, hence he is now precluded from filing the second writ petition on the same cause of action. We accordingly invoke the rule of stare decisis as the ratio of the case *Sarguja Transport Service v. State Transport Appellate Tribunal* (supra) relied upon by the learned Counsel of Respondents, is squarely applicable to the present case. Apart from Article 141 of the Constitution, where the law declared by the Supreme Court is binding on High Courts, we must follow the ratio of the case decided by the Supreme Court being the highest court on land, on principles of public policy also as the public interest requires that there must be certainty about the legal position and there must not be any perpetual threat of litigation.

8. As regards the next question as the seniority between the Petitioner and Respondent No. 3 has been determined much earlier by the District Inspector of Schools and against which the Petitioner did not prefer an appeal within IS days as contemplated by Regulation 3(8)(f) of Chapter II of Regulations, hence the same question of seniority cannot be re-agitated by the Petitioner. There is a discussion in Jurisprudence by R.W.M. Dias, IV Edn. page 286 to the effect that in legal matters some degree of certainty is at least as valuable a part of justice as perfection.

9. In *Geelong Harbor Trust Commissioners v. Gibbs Brights & Co.* 1974 AC 810, the following observations appear to be relevant:

If the legal process is to retain the confidence of the nation, the extent to which the High Court exercise its undoubted power not to adhere to a previous decision of its own must be consonant with the consensus of opinion of the public, of the elected legislature and of the judiciary as to the proper balance between the respective roles of the legislature and of the judiciary as lawmakers...Such consensus is influenced most of all by the underlying political philosophy of the particular nation as to the appropriate limits of the law making function of a non-elected judiciary.

10. We are accordingly of the opinion that as earlier decision of seniority between the parties was left to operate as final, the propriety and certainty of rules require that the Petitioner must not have agitated the same again. Recently in *G.C. Gupta v. N.K. Pandey* AIR 1988 SC 654 it has been held that in case the seniority has been determined and that order has been left to operate as final and in case the same is challenged with inordinate delay and laches, the Petitioner would not be entitled to any relief.

11. Reverting to the last question, as the matter is pending before the Service Commission about the appointment of Lecturer in Hindi and Respondent No. 3 as also the Petitioner are the Applicants and they would have made applications, hence the decision rendered by the Service Commission would be decisive as to whether the Petitioner or Respondent No. 3 was entitled to be appointed on substantive basis as Lecturer in Hindi. At present u/s 18 Respondent No. 3 has

been appointed as ad hoc lecturer. We are accordingly of the opinion that justice would be done by decision of the Service Commission. In case the Petitioner has not made any application, he may make an application to the Service Commission and we hope that the same would be decided by deciding the question of best candidate duly qualified available for the appointment to the post of Lecturer in Hindi in the institution.

12. We accordingly do not find any merit in these petitions and both the petitions are dismissed. But there shall be no order of costs.