
(2011) 02 AHC CK 0188
In the Allahabad High Court

Case No : Civil Miscellaneous Review Application No. 63576 of 1997 and Writ A No. 388 of 1991

Basic Shiksha Adhikari

APPELLANT

Vs

U.P.P.S.T. and Others

RESPONDENT

Date of Decision : 02-02-2011

Acts Referred:

Education Act, 1972 — Section 73

Citation : (2011) 02 AHC CK 0188

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Tandon, J.—By means of this application the applicant (Respondent No. 2), who is present in-person, seeks review of the judgment dated 14th July, 1997 where under his writ petition was decided along with other similar writ petitions vide a common judgment.

2. Facts giving rise to the present proceedings may be stated in short.

3. Respondent No. 2 to the present petition filed a Claim Petition No. 208/I/84 before the Tribunal seeking a direction that his seniority be determined as Assistant Teacher of a primary school, run at the relevant time by the Nagar Palika Mirzapur, from the date of his joining i. e. 05.08.1959. It was further stated that the applicant completed his B.T.C. Training in 1967 and that his services stood transferred to the Basic Shiksha Parishad on 01.07.1979 after the institution came under the control and supervision of the Basic Shiksha Parishad, constituted under the Basic Education Act, 1972.

4. The claim petition was contested by the Basic Shiksha Adhikari, Mirzapur and it was stated that u/s 73 of the Educational Establishment Service Rules, 1954 no teacher can be appointed unless he is trained and is below the age of 35 years. It was, therefore, contended that the seniority could be determined only from the

date of training and not from any date prior to it. The Tribunal, however, allowed the claim petition vide judgment and order dated 19.05.1990 and it was declared that the seniority of the Petitioner be determined for all practical purposes from 05.08.1959 and his salary etc. be fixed accordingly.

5. Not being satisfied with the judgment of the Tribunal, the Basic Shiksha Adhikari, Mirzapur and the Basic Shiksha Parishad filed the present writ petition. The claimant Respondent No. 2 was represented by a counsel and the writ petition was heard and decided along with bunch of petitions by the Hon''ble Single Judge vide judgment and order dated 14.07.1997.

6. The Hon''ble Single Judge noticed that in the bunch of writ petitions there was a challenge to the determination of seniority on the plea that same was ex parte and even otherwise illegal. The connected petitions were filed by Assistant Teachers who were not a party before the Tribunal. The Single Judge vide judgment dated 14.07.1997 held that in view of the judgment of the Apex Court in the case of U.P. Basic Shiksha Parishad v. Hari Deo Mani Tripathi 1993 (2) E.S.C. 33 , a teacher cannot claim seniority from any date prior to his having become trained. Accordingly, the bunch of cases was decided and it was directed that the Basic Shiksha Parishad shall re-determine the seniority of the Assistant Teachers afresh in accordance with law.

7. By means of the review application the judgment and order dated 14.07.1997 is sought to be reviewed on various grounds raised in the review application.

8. Suffice is to record that a person does not become a member of the main stream unless he possesses the prescribed minimum qualification. It is not in dispute that under the Educational Establishment Service Rules, 1954 a person could be appointed as Assistant Teacher only if he was trained. The Hon''ble Supreme Court of India in the case of Sheetla Prasad Shukla v. State of U.P. and Ors. 1986 UPLBEC 473 has clarified that any services rendered prior to having become qualified for the post cannot be taken into consideration for seniority, inasmuch as a person does not become a member of the main stream till he acquires such qualifications.

9. In view of the aforesaid, no good ground is made out for review of the judgment and order of the Single Judge dated 14.07.1997. Application is rejected.