

(1992) 10 AHC CK 0019

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 26814 of 1992

Bhagwan Das Mishra

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 01-10-1992

Acts Referred:

Citation : (1992) 4 AWC 136 Supp : (1993) 1 UPLBEC 330

Hon'ble Judges : N.L. Ganguly, J;Anshuman Singh, J

Bench : Division Bench

Advocate : S.V. Mishra, for the Appellant;

Final Decision : Allowed

Judgement

N.L. Ganguly, J.—This petition is directed against the order dated 9-7-92 passed by the District Inspector of Schools, Basti determining the seniority between the Petitioner and the Respondent No. 3. The Petitioner claimed himself to be Lecturer appointed by promotion on 8-7-68. It has been stated that initially the Petitioner was appointed on L.T. grade teacher on 16-7-62. The Petitioner has not disputed that Respondent No. 3 Sri Chandrika Prasad Pandey was directly appointed on 8-7-1968. The date of birth of the Petitioner is 1-1-1940 and that of Respondent No. 3 is 1-7-1938. The Petitioner stated in the writ petition that Petitioner is senior-most Lecturer after the Principal and the seniority list was officially prepared in the year 1975 and 1978. The Petitioner pleaded that there was no occasion for disputing the Petitioner's seniority in the grade of Lecturer as it had already been finalised. The Respondent No. 3 in the counter affidavit stated that he was appointed as L.T. grade teacher on 11-7-1967. There were several posts of Lecturer vacant in the Institution which were duly advertised by the Committee of Management for being filled up directly. The advertisement was published in the newspaper "Swantantra Bharat" inviting applications for appointment of Lecturers. The Petitioner and Respondent No. 3 alongwith number of other persons had applied for direct appointment as Lecturer in the Institution. The Petitioner and the Respondent No. 3 were selected and appointed

on the same day i.e. on 8-7-68. It has been stated that the Respondent No. 3 being senior in age was entitled to be declared as senior as both were appointed on the same day. The Respondent No. 3 in the counter affidavit stated that the Petitioner had filled up option form at the time of fixation of seniority. In the option form it was indicated that the Petitioner had been appointed directly, and not claimed to be promoted from L.T. grade to the Lecturer's grade. The question of grant of selection grade to one of the Lecturers in the Institution out of 12 Lecturers was considered on 31-3-79 and Sri Raj Deo Yadav, who alongwith Petitioner and Respondent No. 3 had also been appointed on the same day was granted selection grade only on the ground of his age. The opposite party no. 3 has annexed copy of the seniority list prepared at the time of consideration of the selection grade. The copy of the resolution and the list prepared have been annexed as Annexure CA 5 with the counter affidavit. The Respondent No. 3 has filed number of documents as Annexures CA 5 and 6 showing that the Petitioner was appointed as Lecturer directly in the Institution on 8-7-68 alongwith the Respondent and others.

2. The Respondent No. 3 stated that the he had made representations to the Committee of Management and the principal for deciding inter se seniority of the Lecturers in the Institution. The copy of the representation dated 4-11-79 is annexed as Annexure CA 8. Similar representations were also sent to the Manager on 15-1-81, 18-4-81 and large number of representations dated 8-9-84, 12-11-84, 8-10-84 and number of representation tations in 1992. Copy of the last reminder dated 12-4-92 has been annexed as Annexure CA 11.

3. The Respondent No. 3 stated in the counter affidavit that the various representations sent by the Respondent No. 3 were never decided by the Committee of Management. In fact the Manager of the Committee of Management by a letter dated 4-5-92 to the D.I.O.S. to decide himself the question of seniority between the Petitioner and the opposite party no. 3 and others. A copy of the letter dated 4-5-92 has been annexed as Annexure 12 with the writ petition.

4. The learned Counsel for the Petitioner pointed out that seniority list prepared in the year 1975 and thereafter in 1978 in regard to the Lecturers, C.T. grade and L.T. grade became final as no appeal against them was filed by either the Petitioner or any other person. Copies to the alleged seniority list have been annexed with the writ petition as Annexures 2, 3, and 4, respectively. A perusal of Annexure 2 with the writ petition shows that Sri Bhagwan Das Misra, Petitioner was shown at serial no. I as Hindi Lecturer and opposite party no. 3 at serial no. 3 as Lecturer in Civics. This list shows that it was prepared on 6-4-1981 in connection of fixation of selection grade amongst the Lecturers. Annexures 3 and 4 of the writ petition are not very relevant as it relates to L.T. grade and C.T. grade's seniority. The Petitioner has also filed copy of the certificate by the Principal dated 16-3-80 as Annexure 5 which shows that Petitioner was appointed for the first time in substantive capacity on 16th July 1962, in L.T.

grade and he was promoted on 8th July 1968, as Lecturer from L.T. grade. Since then he is working as Lecturer in the Institution. Copy of the resolution dated 24-6-68 of the Committee of Management shows that there was a resolution for promoting the Petitioner to the post of Lecturer w.e.f. 8-7-68 in the Institution. A copy of the selected persons for the post of Lecturers dated 6-7-68 is annexed as Annexure 9 with the writ petition to show that the Petitioner was promoted, to the post of Lecturer in Hindi. The Petitioner himself has annexed a copy of the letter dated 1-7-68 sent by the D.I.O.S. as Annexure 13 with the, writ petition which shows that Petitioner Sri B.D. Misra was appointed for a period of one year probation in the year 1968 alongwith Respondent No. 3.

5. The learned Counsel for the Petitioner placed the order of the D.I.O.S. in detail and submissions, as stated above, were advanced. He further submitted that the D.I.O.S. while considering the question of seniority of petitioner ioner and opposite party no. 3, referred in three evidence which only related to the question whether Petitioner was appointed Lecturer by direct recruitment or by promotion. He examined the publication of advertisement in daily news papers "National Herald" dated 12-6-1968 inviting applications for appointment of Lecturers, Service record of the Petitioner and opposite party no. 3 and staff statement for 1977-78 in proforma signed by the Manager and Principal. Sri V.C. Mishra, Senior Advocate for the Petitioner, pointed out from the impugned order that the D.I.O.S.

Kewal is vindu se sambandhit sakshayon ka parikshan karne se sthiti spast ho jata hai anya anavashyak prastut patrajyaton par vichar ka koi auchitya nehi hai.

6. The learned Counsel for the Petitioner submitted that the D.I.O.S. has not applied his mind on the evidence and relevant documents filed before him. He has failed to exercise the discretion in law and Petitioner's case was highly prejudiced. The learned Counsel Sri R.N. Singh for the Respondent No. 3 urged that judgment and order of D.I.O.S. is just and according to law. There was no necessity to refer and record reasons for wholly useless documents which had no relevance to the present dispute. He submitted that seniority in the Cadre of Lecturer is to be determined in accordance of amendment of 1976. The earlier position prior to amendment in 1976 is of no consequence It is strenuously urged that justice has been done and Respondent No. 3 who is senior in age, appointed the same day is senior according to settled law. So far the submission of learned Counsel for Respondent No. 3 is concerned, he may be right in contending that seniority in the cadre has to be examined after 1976 Amendment in Chapter III Rule 2 of Regulations framed under the Intermediate Education Act. But we cannot ignore to consider the case of a person or ignore the documents of a person only on ground that D.I.O.S. considered that 3 documents of the person was sufficient to decide the controversy before him. The authorities while adjudicating a case has not only to decide a case and do justice between parties, it is also settled that justice should not only be done but should appear to have been done. There was no difficulty in considering the documentary evidence filed

by the Petitioner before the D.I.O.S. which was not innumerable. After considering the documentary evidence, the D.I.O.S. had the jurisdiction to appreciate it after due application of mind and record findings in respect to them. In our opinion, the D.I.O.S. failed to exercise the jurisdiction vested in "him, in not considering the documents filed by the Petitioner. The order of the D.I.O.S. dated 10-7-92 Annexure 1 to the writ petition, is hereby quashed. The District Inspector of Schools, Basti is directed to decide the question of seniority between the Petitioner and the Respondent No. 3 afresh in the light of observations made in this judgment within six weeks from the date of presentation of a certified copy of this order.

7. The writ petition, thus, succeeds and is allowed. The parties to bear costs.