
(2004) 08 AHC CK 0248
In the Allahabad High Court
Case No : Second Appeal No. 1769 of 1988

Bir Bahadur Singh

APPELLANT

Vs

Shyam Sunder Shukla and Others

RESPONDENT

Date of Decision : 11-08-2004

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16F

Uttar Pradesh Intermediate Education Regulations, 1975 — Regulation 16, 3, 3(1)

Citation : (2004) 5 AWC 4843 : (2004) 3 UPLBEC 2348

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : R.S. Shukla, R.P. Singh, A.N. Singh, Ravi Pratap and Narendra Pratap, for the Appellant; Ranvijai, B.K. Pandey, V.P. Mathur, V.K. Birla, M.P. Tiwari, B.S. Pandey and Ganga Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—The plaintiff filed a suit alleging that in 1974 there existed a vacancy on the post of lecturer in History and Hindi in B.R. Inter College, Harriya, district Basti,. The selection was held on 12.10.1974 in which the plaintiff was selected as a Lecturer in History and the defendant No. 1 was selected as a lecturer in Hindi. The Committee of Management issued an appointment letter on 18.10.1974. Whereas the plaintiff joined as a lecturer in History on 18.10.1974 itself, the defendant No. 1 joined as a lecturer in Hindi on 10.11.1974. It was further alleged that the Committee of Management sent the recommendations of the Selection Committee to the District Inspector of Schools on 21.12.1974 for approval. The District Inspector of Schools vide letter dated 17.1.1975 granted approval to the appointment of the plaintiff and the defendant from the date of joining of their service. The plaintiff alleged that in order to give the selection grade, the Committee of Management prepared as seniority list on 28.1.1981 in which the plaintiff was shown as senior to the defendant No. 1. It was also stated that no objection was filed by anyone against the said seniority list and the same became final. The plaintiff alleged that the defendant No. 1 made a

representation to the District Inspector of Schools against the seniority list and the District Inspector of Schools by an order dated 27.5.1981 declared the defendant No. 1 as senior to the plaintiff. The plaintiff alleged that the order dated 27.5.1981 passed by the District Inspector of Schools was in gross violation of the principles of natural justice and that the plaintiff was not afforded any opportunity of hearing. The plaintiff, therefore, filed a suit for a declaration praying that the order dated 27.5.1981 passed by the District Inspector of Schools was null and void and that the plaintiff be declared senior to the defendant No. 1 and that the plaintiff was entitled to the payment of the selection grade.

2. The defendant No. 1 contested the suit and denied the plaintiff's allegations. The defendant submitted that he was appointed, as an Assistant Teacher in C.T. grade on 1.7.1970 and subsequently appointed as a Teacher in L.T. Grade in the same institution, which was duly approved by the District Inspector of Schools, Basti by its order dated 7.12.1971. On account of the vacancy occurring on the post of lecturer in Hindi and History, the plaintiff and defendant submitted the applications on the same day. The Committee of Management issued appointment letters on 5.11.1974 to both the plaintiff and the defendant on the condition that their appointment will be effective from the date of approval given by the District Inspector of Schools. On the basis of the appointment letters, both the plaintiff and the defendant joined as Lecturers, with effect from the forenoon of 10.11.1974. The defendant alleged that since his age was more than that of the plaintiff, he was senior to the plaintiff and this fact was recorded in various registers maintained by the institution and that the plaintiff did not raise any objection on it.

3. The defendant No. 1 further contended that a seniority list dated 28.7.77 was prepared by the College in which all the teachers had signed it and no objections were raised by anyone including the plaintiff. In this seniority list the defendant was shown senior to the plaintiff. The defendant contended that the seniority list prepared in the year 1981 was incorrect and he, therefore, made a representation to the District Inspector of Schools, Basti, who by an order dated 27.5.1981 granted selection grade to the defendant. The defendant contended that he was senior to the plaintiff and that the plaintiff was not entitled to any relief and that the suit was liable to be dismissed.

4. The Committee of Management and the Principal, defendant Nos. 2 and 3 also filed their written statement and supported the stand of the plaintiff and contended that the plaintiff was senior to the defendant No. 1. The defendant No. 4 did not file any written statement.

5. On the basis of the pleadings several issues were framed and the trial Court after considering the evidence on the record partly decreed the suit. The trial Court held that the order dated 27.5.1981 passed by the District Inspector of Schools was violative of the principles of natural justice and that the said order was not binding upon the plaintiff inasmuch as, the plaintiff was not given any

opportunity of hearing. The trial Court held that the District Inspector of Schools was duty bound to hear both the parties before passing the order dated 27.5.1981. Since the plaintiff was not heard, the said order was not binding upon the plaintiff. The trial Court further found that the plaintiff was not senior to the defendant. While coming to this conclusion, the trial Court found that the date of appointment and joining of the plaintiff and defendant as given by them are not correct and are not supported by any reliable evidence. The trial Court further held that even the documents submitted by the District Inspector of Schools were all undated. The trial Court held that no appointment letter could be issued by the Committee of Management until and unless their appointment was approved by the District Inspector of Schools and further held that the appointment letters issued to the plaintiff and the defendant No. 1 was in violation of Section 16-F(2) of the Intermediate Education Act, 1921. The trial Court also came to the conclusion that the plaintiff could not have joined on 18.11.1974 and disbelieved the stand taken by the Committee of Management.

6. The trial Court after considering the evidence, came to the conclusion that the papers were forwarded by the Committee of Management to the District Inspector of Schools on 21.12.1974 for approval and that the District Inspector of Schools was required to take a decision within two weeks, which he did not do so. Accordingly, the trial Court held that the District Inspector of Schools could not have issued the approval order on 17.1.1975 as he had not passed the order within two weeks. The trial Court, therefore, came to the conclusion that approval was deemed to have been granted after the expiry of two weeks i.e. from 4.1.1975. The trial Court further observed that since the defendant No. 1 was older to the plaintiff, he was therefore, senior to the plaintiff. The trial Court also held that the suit was not barred by time and that the suit was maintainable and that the trial Court had jurisdiction to try the suit. The trial Court, therefore, partly decreed the suit holding that the order dated 27.5.1981 passed by the District Inspector of Schools, Basti was not binding upon the plaintiff, as it was passed *ex parte* and was issued without hearing the plaintiff and also held that the defendant was senior to the plaintiff and was liable to be considered for selection grade.

7. Aggrieved by the decision of the trial Court, the plaintiff filed an appeal, which was also dismissed with the observation that the date of approval was 17.1.1975 and not 4.1.1975, as held by the trial Court. The plaintiff has now filed the present second appeal.

8. At the time of the admission of the second appeal, the following substantial questions of law were formulated, namely :

(i) "Whether once the order of the District Inspector of Schools dated 27.5.1981 was cancelled as it was against the principle of natural justice and the Court had jurisdiction to decide about the internal management, which was legally barred?

(ii) Whether the approval accorded by the District Inspector of Schools from the

date of joining the institution is permissible under law or not?

(iii) Whether a case can be decided on the basis of inadmissible evidence?"

9. Heard Sri Ravi Pratap Singh, the learned Counsel for the appellant and Sri B.S. Pandey, the learned Counsel for the opposite parties.

10. The learned Counsel for the appellant submitted that the finding of the Court below to the effect that the seniority would be counted from the date of the approval given by the District Inspector of Schools is patently erroneous and that the approval accorded by the District Inspector of Schools once granted would date back from the date of joining of the institution. He further submitted that the seniority should be counted from the date of appointment order or at best from the date of joining of the institution and should not be counted from the date of the approval. In support of his submission the learned Counsel for the appellant has relied upon *S.B. Nath v. Committee of Management, Anglo Bengali Inter College, Allahabad* and Ors. (1994) 2 UPLBEC 761 in which it was held that for the purpose of determining the seniority, the date of appointment of the incumbent is the determining factor.

11. In *Dhananjay Pandey v. The Regional Deputy Director of Education, Varanasi* and Ors. (1999) 2 UPLBEC 1213 it was held that the seniority would be determined from the date of joining the college where the post had been sanctioned with retrospective effect. In *Dr. H.C. Mathur v. State of U.P. and Ors.* (1991) 2 UPLBEC 879 it was held that the seniority is to be determined from the date of initial appointment and not from the date of regularisation.

12. In my view, the judgments cited by the learned Counsel for the appellant are distinguishable. It is relevant to state here that under the provisions of Section 16-F of the U.P. Intermediate Act, 1921 an appointment of a teacher on a substantive basis can only be made by a Committee of Management after seeking prior approval from the Inspector. Therefore, the date of substantive appointment cannot be a date earlier to the date of the approval given by the Inspector. The date of appointment, therefore, has to be a date either on the date when the approval was granted or some other date subsequent to the date of the approval.

13. Section 16-F as it existed prior to the amendment in the year 1975 reads as under :

"16-F. (1) Subject to the provisions hereinafter specified no person shall be appointed as a Principal, Headmaster or the teacher in a recognized institution unless he--

(a) possession the prescribed qualifications or has been exempted under Sub-section (1) of Section 16-F;

(b) has been recommended by Selection Committee constituted under Sub-sections (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 I the case of a teacher by the Inspector;"

14. The aforesaid provision contemplates that the appointment of a teacher can only be made after the approval from the Inspector.

15. Regulation-16 of Chapter-II of the Regulations framed under the Act of 1921 as it stood at the relevant time reads as under :

"16. Order of appointment.--Within two weeks of receipt of approval of the selected candidate for appointment as Principal, Headmaster or teacher the Manager shall, on authorization under a resolution of the Committee of Management issue an order of appointment to the candidate mentioning therein among other particulars, the salary, scale of pay and period of probation and with instructions to join duty within a fortnight of the receipt of the appointment order. The appointment of a candidate failing to report for duty within this period will be liable to termination. A copy of the order of appointment shall be sent to the authority prescribed in Section 16-F(2) read with Section 16-C(5) for information and record to his office."

16. From the aforesaid, it is clear that once approval is granted by the District Inspector of Schools, the Committee of Management is required to issue an appointment letter in accordance with Regulation 16, Chapter (II) of the Regulations. Thus, the appointment letters are required to be issued only after the approval is granted by the Inspector.

17. Regulation 3 of Chapter (II) of the Regulations framed under the Act provides for determination of the seniority of the teachers. Regulation 3(1)(bb) reads as under :

"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)

(b)

(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."

18. From a combined reading of the aforesaid provisions, in my view, the seniority of a teacher will be determined from the date of the approval granted by the Inspector and cannot date back from the date of the appointment or from the date of the joining. In *Prabhu Narain Singh v. Deputy Director of Education, Varanasi* 1977 ALR 381 it was held that the person does not acquire the status of

a teacher unless the approval of his appointment was granted by the Inspector and the mere fact that he was working in the institution would not confer the status of a teacher. In 1993 AWC 1752 I.S. Tome v. District Inspector of Schools, Meerut, it was held that unless the approval was granted, the status of a teacher could not be conferred on the person. In Lalit Mohan Mishra v. District Inspector of Schools 1979 ALJ 1025 it was held that a person gets a status of a teacher only from the date of the approval order. In Ashika Prasad Shukla Vs. District Inspector of Schools, Allahabad and another, a Division Bench of this Court held :

"Appointment if made prior to approval or deemed approval, would become effective from the date of approval."

19. In view of the aforesaid, it is clear that for the purpose of determining the seniority, the relevant date would be the date of the approval and such date could not relate back to the date of the initial appointment or the date of joining. The submission raised by the learned Counsel for the appellant is, therefore, not correct.

20. In the present case, the approval had been granted on 17.1.1975. All the parties have filed the copies of the approval granted by the District Inspector of Schools. Unfortunately, in all the three letters, the contents are different and the original has not been placed before the Court. Neither the plaintiff nor the defendant nor the District Inspector of Schools have proved the approval letter dated 17.1.1975. Consequently, the Courts below have not relied upon the contents of the approval letter. In one letter it was stated that the approval would relate back from the date of the appointment. In another letter, it was stated that the approval had been granted from the date of joining. In a third letter the approval had been given from the date of grant of approval. The Appellate Court has clearly held that none of the documents could be relied upon and that documents filed by the plaintiff as well as by the defendant being unsigned and in some cases undated are unreliable. However, one thing was clear that the District Inspector of Schools, Meerut did issue an order of approval on 17.1.1975. Therefore, in my view, the approval of the appointment of the plaintiff as well as of the defendant would begin from 17.1.1975 for the purpose of determining the seniority.

21. Since, both of them were approved for appointment on the same date. The question to be answered is, who would be senior? Regulation 3(1)(bb) provides the answer to it, which contemplates that in the event the approval of the appointment is on the same date, the seniority would be determined on the basis of age. Admittedly, the defendant was older to the plaintiff and, therefore, the defendant would be senior to the plaintiff. The Court below rightly arrived at this finding and I see no justification to interfere with this finding.

22. In Smt. Omi Bala Nigam v. Regional Inspectress of Girls Schools, Jhansi Region, Jhansi (1986) 1 UPLBEC 69 the Court held that where the date of approval was the same, the age factor would be the determining factor and the

date of joining became irrelevant. The said judgment squarely applies to the present facts and circumstances of the case.

23. In *Bahadur Singh Gaur v. District Inspector of Schools, Kanpur and Ors.* (1995) 3 UPLBEC 1751 it was held that the date of joining is not the determining factor for deciding the seniority and that the age is the relevant factor for determining the seniority where the appointment of two persons had been approved on the same date.

24. In view of the aforesaid, the approval accorded by the District Inspector of Schools, would operate from the date of the order itself and not from the date of the joining of the institution. Issue of law as framed is accordingly decided.

25. The learned Counsel for the appellant submitted that once the order of the District Inspector of Schools dated 27.5.1981, was declared as not binding upon the plaintiff, the Court had no jurisdiction to decide the matter with regard to the inter se seniority and should have remanded the matter back to the District Inspector of Schools, Basti. By not remanding the matter and by deciding the matter itself, the Court below had exceeded its jurisdiction and interfered in the internal affairs of the Committee of Management of the Institution. The submission made by the learned Counsel for the appellant is devoid of any merit. The appellant filed a suit for a declaration to the effect that the order of the District Inspector of Schools, Basti, dated 27.5.1985 be declared as not binding upon the plaintiff. The plaintiff further prayed that a declaration be issued treating the plaintiff as senior to the defendant No. 1. Consequently, the trial Court was competent to decide the issue of seniority between the plaintiff and the defendant No. 1 and as such decision given by the trial Court does not amount to interference in the internal affairs of the institution. It is further submitted that the appellant himself raised this issue, which the trial Court decided and now it is no longer open for him to state or suggest that the Courts below had no jurisdiction to decide the issue of seniority between the plaintiff and the defendant No. 1. No arguments were raised on the third substantial question of law framed and accordingly the same is not being decided.

26. In view of the aforesaid and in view of the concurrent findings of fact given by the Courts below, no interference is called for. The second appeal is devoid of any merit and is dismissed with costs.