

(2001) 08 AHC CK 0110
In the Allahabad High Court
Case No : C.M.W.P. No. 26176 of 1995

Brahma Pal Singh Randi

APPELLANT

Vs

Dy. Director of Education, Meerut and Another

RESPONDENT

Date of Decision : 17-08-2001

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16E, 16F

Citation : (2001) 4 AWC 2505 : (2002) 1 UPLBEC 794

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : B. Malik Dhan Prakash and Sudhir Agarwal, for the Appellant; S.C. and V.K. Shukla, for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—Heard Sri B. Malik, counsel for the petitioner, Sri V. K. Shukla appearing for the respondent No. 2 and learned standing counsel.

2. Counter and rejoinder-affidavits have been exchanged and with the consent of the parties, the writ petition is being finally decided.

3. This writ petition has been filed for quashing of the order dated 21st August. 1995, passed by Deputy Director of Education 1st Region, Meerut, declaring respondent No. 2 senior to the petitioner.

4. The dispute, in the writ petition, relates to inter se seniority of the petitioner and respondent No. 2. Necessary facts for determining the controversy in the writ petition are as follows ; D.A.V. Inter College, Kishanpur Berar, district Meerut, is a recognised institution governed by provisions of U.P. Intermediate Education Act. 1921 and the Regulations framed thereunder. The petitioner was appointed in the college as Science Demonstrator on 15.1.1971. Respondent No. 2 was appointed as Assistant Teacher L.T. grade on 4th September, 1972. A post of lecturer (mathematics) fell vacant on 30th June, 1993. Petitioner's case is that the management decided to promote him on the post of lecturer.

Respondent No. 2 objected to the seniority of the petitioner on which a letter was written by the Manager holding that petitioner is senior to respondent No. 2. Respondent No. 2 filed an appeal before the District Inspector of Schools which ultimately came to be decided by Deputy Director of Education vide its order dated 21.8.1995. The appeal of respondent No. 2 was allowed and respondent No. 2 was held senior to the petitioner. Against that order, the petitioner has filed the present writ petition.

5. A counter-affidavit has been filed by respondent No. 2 to which the petitioner has filed a rejoinder-affidavit. The petitioner has also filed a supplementary-affidavit annexing copy of the service book, copy of the Government order dated 25th March, 1974, copy of the letter of Director of Education dated 25th June, 1976 and further letter of Director of Education dated 14th December, 1978. An extract from the Government order dated 18th January, 1974, has also been filed by the petitioner.

6. Counsel for the petitioner raised following submissions :

(i) Petitioner's date of appointment as science demonstrator is 15th January, 1971, whereas respondent No. 2 was appointed subsequently on 14th September, 1972, as Assistant Teacher L.T. grade. The demonstrator having been treated as L.T. grade teacher with effect from 1.3.1969, the petitioner is entitled to be treated senior to respondent No. 2 in accordance with their respective date of appointment.

(ii) Demonstrators having been put in grade of L.T. grade teachers with effect from 1.3.1969, all demonstrators appointed after 1.3.1969 are L.T. grade teachers and their seniority has to be determined from the date of appointment as L.T. grade teachers.

(iii) Determination of seniority under Chapter II Regulation 3 of the U.P. Intermediate Education Act, 1921, has to be in accordance with "grade" and both, petitioner and respondent No. 2 being in same grade, the petitioner is senior.

Counsel for the petitioner has also placed reliance on a single Judge judgment of this Court in Smt. Reena Sarkar v. Regional Inspectress of Girls Schools .

7. Counsel for the respondents refuting the submissions of counsel for the petitioner submitted that the order of Deputy Director of Education holding the respondent No. 2 senior is in accordance with law. Counsel for the respondents submitted that the fact that demonstrators were granted L.T. grade with effect from 1.3.1969 will not make them L.T. grade teachers nor it will make them teachers holding L.T. grade post and they cannot reckon their seniority in L.T. grade. Counsel for the respondents relied on Division Bench judgment of this Court in Vipin Kumar v. District Inspector of Schools, Muzaffar Nagar and others, 1993 (2) ESC 456. Counsel for the respondents further submitted that the letter of the Director of Education dated 25th June, 1976. In which it was stated that

science demonstrators are entitled to all benefits of L.T. grade was without any authority. Director of Education, according to him, had no jurisdiction to issue any order.

8. Counsel for the respondents has also placed reliance on two further judgments, namely, *S. K. Saha v. Prem Prakash Agarwal* 1994 (1) SLR 37 and *Smt. Naseem Bano v. State of U.P. and others*. 1993 (4) SCC 522.

9. After having heard counsel for the parties and perusing the record, it is clear that there is no dispute of facts between the parties. It is admitted to both the parties that petitioner was appointed as science demonstrator on 15.1.1971 whereas the respondent No. 2 was appointed as Assistant Teacher L.T. grade on 14.9.1972. The issue which arises in the writ petition is as to whether petitioner who was appointed as science demonstrator on 15.1.1971 can reckon his seniority as L.T. grade teacher from that date.

10. It is relevant to note relevant provisions under the U.P. Intermediate Education Act, 1921, pertaining to seniority, different grade of teachers and other relevant provisions. The U.P. Intermediate Education Act, 1921, defines the institution in Section 2 (b) according to which recognised intermediate colleges or higher secondary schools includes a part of an institution also. Thus, in recognised institutions where classes 1 to 12 are running, teachers teaching in class 1 to 5 will also be part of institution. The provisions of appointment of teachers are contained in Sections 16E and 16F of the U.P. Intermediate Education Act, 1921. Section 16C only refers to head of institution and teachers. Word "teacher" is not defined in the U.P. Intermediate Education Act, 1921. Chapter II of the U.P. Intermediate Education Act, 1921, which was substituted by notification dated 7th July, 1976, provided that minimum qualification for appointment as head of institution and teachers shall be given in Appendix-A. Appendix-A refers to qualification of various grades of teacher. With regard to institution, 4 categories of teacher are contemplated in Regulations 4, 5, 6 and 7 of Chapter II of the U.P. Intermediate Education Act, 1921.

The teachers have been referred in following grade :

- (i) J.T.C./B.T.C. grade
- (ii) C.T. grade
- (iii) L.T. grade
- (IV) Lecturer grade

Prior to insertion of Chapter II with effect from 9.7.1976 the details of grades and right of promotion were mentioned in Regulation 18 of Chapter III which is extracted below :

"18. Teachers with five years continuous substantive service in an institution in the C.T. or J.B.T.C. (trained undergraduate and L.T. trained graduate), grades will be eligible for promotion to the next higher grade (trained graduate and

intermediate class teachers" grade respectively), provided they possess the minimum academic qualifications prescribed for the grade.

Service rendered by a teacher in any other recognised institution will count for eligibility unless interrupted by removal, dismissal or reduction to a lower post."

11. The word "grade" in its dictionary meaning means "rank, position and scale, a class or position in a class according to the value". All categories of teachers in U.P. Intermediate Education Act, 1921, have been divided into aforesaid four grades. Word "grade" has been used in the U.P. Intermediate Education Act, 1921, as rank or cadre. Promotion from one grade to another is governed according to regulations and teachers who are working in the immediately lower grade are eligible for promotion in higher grade. There was one category of teachers known as demonstrator, science demonstrator. With regard to them, different pay scales were sanctioned by State Government from time to time. Science demonstrators were appointed to teach intermediate classes and prior to 1.3.1969 they were appointed on fixed pay of Rs. 140. By Government order dated 18th January, 1974, science demonstrators were granted pay scale of Rs. 300-510 which was pay scale of Assistant Teacher L.T. grade. By the said Government order, it was also provided that in future, science demonstrators will be appointed only with B.Sc. L.T. or equivalent qualification. Prior to 1.3.1969, science demonstrators do not fall in any of four grades as contemplated in Chapter II Regulations 4, 5, 6 and 7. For first time by the Government order dated 18th January, 1974, they were sanctioned pay scale of L.T. grade with effect from 1.3.1969.

12. The question, which has arisen for consideration in the present writ petition, is as to whether the science demonstrators became part of L.T. grade in sense of L.T. cadre or they remained outside that cadre only by sanction of pay scale. The material on record which includes the letters of the Director of Education dated 25th June, 1976 and 14th December, 1978, contemplate that science demonstrators, with effect from 1.3.1969, will be part of L.T. grade/cadre and will be entitled for all benefits including promotion in the higher grade. The letters of the Director of Education dated 25th June, 1976 and 14th December, 1978, do not itself grant any benefit to the science demonstrator but only clarify the position. The aforesaid clarification was issued on the basis of the Government orders issued by the State Government from time to time. Reference has been made also to the Government order dated 25th March, 1974.

13. The above question came for consideration before this Court in several cases. In judgment of this Court in Reena Sartor's case (supra), this Court clearly held that demonstrators are entitled for all benefits of L.T. grade including seniority with effect from 1.3.1969. The relevant portion of the judgment is extracted below :

" 7. The second submission of the learned counsel for the opposite party No. 3 to the effect that the petitioner was not seniormost teacher in the L.T. grade must

also be rejected, for the simple reason that the post of the Demonstrator is in the same grade as the post of teacher in L.T. grade. This is evident from the Government order No. 1469/XV-8-3002 (26) 1969 dated 25.3.1974 which is referred to in the letter No. 39781, 76-77 dated 25.6.1976 issued by the Director of Education, Annexure C.A. 9. In this letter of the Director, it is also specifically mentioned that in consequence of this L.T. grade being given to the demonstrators these persons will be entitled to the same benefits including the benefit of promotion etc. under the U.P. Intermediate Education Act. Therefore, the learned counsel for the petitioner is right in his submission that seniority being determined with reference to a particular grade, and the grade of the petitioner being L.T. grade, she will be entitled to the seniority from the date of her appointment to the grade. This is borne out from Rule 9 (supra) also. According to this Rule "all teachers working in the L.T. grade shall be considered for promotion." It is not disputed that the petitioner was appointed as demonstrator on 20.8.1973. As such she will be senior to the opposite party No. 3 who was appointed on the post of L.T. grade teacher with effect from 1.11.1974. The petitioner has filed a seniority list along with her rejoinder-affidavit wherein the petitioner has been shown at Serial No. 3 while opposite party No. 3 has been shown at Serial No. 4. in view of these facts the petitioner must be held to be senior to the opposite party No. 3."

14. In W.P. Nos. 2420 of 1982 and 18295 of 1992, Ram Deo Prasad v. V. P. Public Service Tribunal, Lucknow and others, learned single Judge of this Court in Its judgment dated 13th November, 1996 after considering the controversy held :

"Now next material question is regarding the position of Mohd. Salam as demonstrator in science. The contention of the learned counsel for petitioner is that on basis of the pay scale of Assistant Teacher in grade given to demonstrators they could not get the status of teacher. Reliance has been placed by learned counsel in case of Vipin Kumar v. District Inspector of Schools, Muzaffarnagar and others 1993 (2) ESC 456 (All) (DB). I have considered the submissions of learned counsel for petitioner. However, it will more depend to the language used in the order conferring the pay scale. In this regard, Annexure-5 to the counter-affidavit filed by Sri Mohd. Salam is very relevant which is a letter dated 25th June. 1976 written by Director of Education. Uttar Pradesh, addressed to all the Regional Inspectress of Girls Schools and all the District Inspector of Schools. By this letter, the position of the demonstrators in science has been dealt with and with reference to the Government order No. 1469/15-8-3002 (26) 1969 dated 25th March, 1974, it has been stated that untrained demonstrator in science shall be entitled for the grade of trained L.T. grade teachers w.e.f. 1st March, 1969. This letter further states that the demonstrators serving in such institutions shall be given all the benefits in respect of appointment, promotion and confirmation as provided under the Intermediate Education Act and they shall also be entitled for all the facilities. From this letter of the Director of Education which was based on the Government order, it is clear that w.e.f. 1st March, 1969, the position of the demonstrators in

science was made equivalent to trained Assistant Teachers in L.T. grade in respect of pay scale as well as the appointment, promotion and confirmation etc. and it does not leave any doubt about their position. It may be remembered that the demonstrators are appointed for the students of intermediate classes. The prescribed qualification for demonstrators in science as provided at Sl. No. 49 is B.Sc. perfectly trained whereas for the Assistant Teachers in Science for High School is trained B.Sc. at Sl. No. 35 in Appendix "A" to Regulations framed under the Intermediate Education Act. The qualifications for the Assistant Teachers and the demonstrators in science are thus identical.

Thus, the Government order dated 25.3.1974, referred to in the circular letter of Director of Education, conferred on demonstrators not only the pay scale but also the status of teachers of L.T. grade, with effect from 1.3.1969, i.e., from before appointment of Mohd. Salam. The case law relied on is clearly distinguishable and does not help petitioner in any way."

15. The above two judgments clearly support the contention of the counsel for the petitioner that demonstrators are entitled to reckon their seniority with effect from 1.3.1969. In the present case petitioner having been appointed on 15.1.1971, i.e., subsequent to 1.3.1969, has to be treated a teacher in L.T. grade and entitled to reckon his seniority from 1.3.1969.

16. The counsel for the respondents has heavily relied on Division Bench judgment of this Court in Vipin Kumar's case (supra). In Vipin Kumar's case (supra), a L.T. grade teacher by virtue of the Government order dated 28th February, 1990, was granted pay scale of lecturers. Post of lecturer (economics) was vacant in the institution and L.T. grade teacher was claiming promotion on the said post. The Committee of Management has directly appointed one Vipin Kumar on the post of lecturers. It was contended before the Court that due to grant of lecturer's pay scale to L.T. grade teachers, he has become lecturer and not entitled for promotion because he was already holding the lecturer's grade. In the aforesaid background, the Division Bench, in the aforesaid case, held that seniority of teacher of lecturer's grade is to be considered from the date of appointment in lecturer's grade and not from the date of payment of lecturer's pay scale.

17. The aforesaid Vipin Kumar's case considered by learned single Judge of this Court in Ram Deo Prasad's case (supra) and was distinguished. Learned single Judge held in the aforesaid judgment that it depends on language used in the order conferring the pay scale.

18. I have also considered above submissions of the counsel for the respondents and have considered the law laid down by the Division Bench. The Division Bench laid down that mere grant of a pay scale does not amount that teacher holds a higher post. A teacher will hold a higher post only when he is promoted in accordance with law. In the present case, there is no issue regarding any promotion. Demonstrators are not claiming L.T. grade on the basis of any

promotion. The demonstrators who were working as Assistant Teachers were treated to be a recognised grade i.e., L.T. grade with effect from particular date. Every demonstrator was holding his own post and with effect from 1.3.1969, he was recognised in L.T. grade. The case of demonstrators is more like a case of merger of one grade into another. Demonstrators who prior to 1.3.1969, were not amongst any of recognised grades under Chapter II for purposes of promotion have been treated to be included in L.T. grade. The moment demonstrators are treated to be in L.T. grade, they become entitled to all consequential benefits including promotion and seniority. In both the cases pertaining to demonstrators as mentioned above, this Court held that demonstrators are entitled for promotion into L.T. grade. Vipin Kumar's case (supra) was a case of sanction of a particular pay scale due to 10 years teaching and the Government order which sanctioned the pay scale never intended that they may be treated part of higher grade nor the post of higher grade i.e.. lecturer's grade were sanctioned to them. The Government order dated 28th February, 1990 was issued more for purposes of removing stagnation of teacher than to grant them benefit of any higher grade/cadre. It is relevant to note that cadre of demonstrators has now become dead cadre. Neither any appointment is now being made in the said post nor the said cadre is in existence. Throughout the State, all demonstrators were treated to be part of L.T. grade and in this regard, the clarification orders were issued by the Director of Education on 25th June, 1976 and the affairs of the educational institutions are being guided for the last more than 25 years accordingly. The aforesaid situation and fact position is continuing for the last several years.

19. With regard to S. K. Saha's judgment (supra) cited by the counsel for the respondents, it is to be noted that aforesaid judgment was with regard to a case in which the appellant was appointed on 4.1.1957 on contract basis for a period of one year and subsequently after advertisement in 1959 appointed on 12.5.1960 with effect from 4.1.1957. The claim of seniority with effect from 4.1.1957 was negatived on the ground that appointment of the appellant was made on 12.5.1960 on the basis of recommendation of the Commission and his appointment earlier to that was on ad hoc basis and during that period post itself was non-gazetted post. The appellant could not have been given seniority with effect from 4.1.1957. It was held by the Apex Court that any officiation on the post when it was non-gazetted, cannot be held to be a continuous officiation on the post so as to entitle the appellant to count that period towards his continuous officiation. The counsel for the respondents has relied on following observations of the aforesaid case :

"This Court has repeatedly struck down and decried any attempt on the part of the appointing authority to give a notional seniority from a retrospective date, especially, when this process affects the seniority of those who have already entered into the service."

20. Applying above proposition as laid down by the Apex Court to the present

case, it is clear that in the present case there is no question of affecting seniority from a retrospective date. Prior to insertion of Chapter II of Regulations in the U.P. Intermediate Education Act, 1921, seniority of all the teachers of an institution was governed by Regulation 2, Chapter I of the U.P. Intermediate Education Act, 1921, which is extracted below :

"2. For the purpose of selection by rotation in order of seniority, a common seniority list of all the teachers in substantive service of an institution shall be maintained by the management in accordance with the Rules."

21. Thus, under Chapter 1, seniority of all the teachers was to be maintained on the basis of substantive service. There was no separate seniority list contemplated in different grade of teachers. In the seniority, which was required to be made under Chapter I, the date of reckoning the seniority was date of substantive appointment. Thus, in the seniority list maintained under Chapter I, the petitioner's name had to be shown above the respondent No. 2 since his appointment is earlier in point of time. Concept of grade by seniority came into regulations by Chapter II, Regulation 3 which was inserted with effect from 9th July, 1976. On 9th July, 1976, when the gradewise seniority was required to be prepared both, petitioner and respondent No. 2, were already in the L.T. grade. Thus. In the present case there was no question of affecting seniority retrospectively. Thus, the proposition as laid down by Apex Court in S. K. Saha's case (supra) is not attracted in the present case.

22. Counsel for the respondents next relied on the judgment of Smt. Naseem Bano (supra). The aforesaid judgment was with regard to minimum qualification for promotion as laid down in the regulations. The question before the Apex Court was as to whether the appellant was eligible for promotion or not. Counsel for the respondents has placed reliance on paragraph 8 of the aforesaid judgment in which it was held that an executive order cannot override the qualification prescribed in by the regulations which are statutory in character. It was held that notification has no effect on Regulation 6 (1). In the present case, there is no occasion of any conflict between any statutory provision or any Government order. In the present case, the Government orders relied by the petitioner, namely, dated 18.1.1974 and 25.3.1973 are not in conflict with any regulations providing for determination of seniority. Counsel for the petitioner has rightly submitted that determination of seniority as contemplated in Regulation 3. Chapter II has to be grade-wise and whoever is in the grade as contemplated under the regulations, has to be considered for determination of seniority. The above case of Naseem Bano is, thus, also not applicable.

23. In view of above discussions, it is clear that science demonstrators are entitled to reckon their seniority after 1.3.1969 as L.T. grade teachers. Admittedly, the petitioner being appointed earlier, in point of time on substantive basis, to respondent No. 2 is senior. The criteria of determination of seniority is substantive service as given in both. Regulation 2. Chapter I as well as Regulation 3, Chapter II of the U.P. Intermediate Education Act, 1921.

24. The Deputy Director of Education in the impugned order took the view that by grant of L.T. grade to demonstrators with effect from 1.3.1969, it cannot be treated that they were treated to be equivalent to L.T. grade or they were absorbed in the L.T. grade. In view of aforementioned judgments of this Court, demonstrators have been treated to be a L.T. grade from 1.3.1969, the view of Deputy Director of Education is clearly against the aforesaid judgments of this Court. The Deputy Director of Education in his order has stated that by Government order dated 18th January, 1974, it was directed that in future their qualification will be B.Sc., L.T. Thus, it can be at best assumed that they become in L.T. grade from 18th January, 1974. In making the aforesaid observations, the Deputy Director of Education failed to notice that the benefit of L.T. grade was given to the demonstrators with effect from 1.3.1969. The subsequent Government order dated 25th March, 1974, clearly mentioned that demonstrators were sanctioned the aforesaid pay scale from 1.3.1969. Normally a Government order or a Rule made in exercise of power of subordinate legislation is prospective unless anything to the contrary is mentioned in the same. The Government order dated 25th March, 1974, clearly mentions that the aforesaid benefit was granted with effect from 1.3.1969.

25. Counsel for the respondents has also submitted that benefits accrued to him cannot be taken away by any subsequent Rule or Government order. In this context, it is to be noted that when one category of teachers is merged in L.T. grade, i.e., demonstrators, they will be entitled to reckon their seniority according to their initial appointment, at least with effect from 1.3.1969 from which date they have been made at par with L.T. grade teachers. The Apex Court in *Shri Anand Chandra Dash Vs. State of Orissa and Ors.*, has held that service rendered on equivalent post in another department counts towards seniority when service rendered on the equivalent post in other department can be held for counting seniority, the service rendered by an incumbent on a post carrying some grade has also to be reckoned for seniority.

26. In view of above discussions, the order impugned in above writ petition is erroneous.

27. The writ petition is allowed. The impugned order dated 21st August, 1995, is quashed and the petitioner is declared senior to respondent No. 2.