

(2009) 11 AHC CK 0330

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 60597 of 2009

Bramha Pal Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-11-2009

Acts Referred:

Citation : (2010) 124 FLR 155

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : N.L. Pandey, for the Appellant;

Final Decision : Dismissed

Judgement

Amreshwar Pratap Sahi, J.—Heard Shri N.L. Pandey, learned Counsel for the petitioner and the learned Standing Counsel for the respondent Nos. 1, 2 and 3.

2. Shri N.L. Pandey contends that the petitioner was initially appointed in a C.T. grade in the year 1981 and thereafter he was accorded L.T. grade vide order dated 22.7.1995 w.e.f. 17.11.1991. The petitioner thereafter on account of his unilateral transfer to the present institution joined herein on 1st September, 1998.

3. The respondent No. 5 was appointed in the year 1982 and has been transferred to the present institution in the year 1996. It is, therefore, admitted to the petitioner that the respondent No. 5 has been transferred to the present institution prior to the transfer of the petitioner.

4. Learned Counsel for the petitioner contends that the petitioner is entitled to be promoted on the post of lecturer in Civics on the strength of his seniority, which has fallen vacant on 30.6.2009 and as such the claim of the respondent No. 5 against the said post cannot be considered. He further submits that as a matter of fact, the post of lecturer in History has fallen vacant on 20.10.2009 on account of the death of the lecturer of History, for which the respondent No. 5 is qualified

and he can be considered against the said post.

5. The contention appears to be that in case such an approach is adopted then the petitioner and the respondent No. 5 both can be adjusted by way of promotion as adequate number of vacancies in the grade of lecturer are available for promotion under 50% promotion quota.

6. The question is as to whether the respondent No. 5-Sarda Ram loses his seniority as against the petitioner for being considered against the post of lecturer in Civics which fell vacant on 30.6.2006 or not. It is undisputed that the petitioner and the respondent No. 5 both have been appointed in the present institution by way of unilateral transfer as contemplated under Regulations 55 to 62 of Chapter III of the U.P. Intermediate Education Act, 1921.

7. A perusal of the Regulation 61(2)(Kha) would clearly demonstrate that the seniority of a transferred teacher has to be determined in accordance with the said provisions which requires that a transferred teacher shall be placed at the bottom of the seniority list in the grade in which he has been appointed.

8. In view of the admitted position that the respondent No. 5 was transferred to the institution prior to the petitioner, the petitioner will obviously upon his placement be placed below the respondent No. 5. In this view of the matter, the petitioner is admittedly junior to the respondent No. 5. Accordingly, the claim of the respondent No. 5, being senior to the petitioner, has to be considered for promotion on the post, which fell vacant on 30.6.2006.

9. So far as, the second submission of the learned Counsel for the petitioner is concerned, it is for the respondent No. 5 to apply for the second post in order to accommodate the petitioner and which can be done only if the respondent No. 5 waives his right for consideration on the post of lecturer in Civics.

10. For this, the petitioner can pursue the respondent No. 5 as well as Committee of Management for passing a resolution in order to accommodate the petitioner as well as respondent No. 5.

11. In view of this there is no ground made out for interference with the impugned order dated 15.10.2009 at this stage. The writ petition is accordingly dismissed.