

(1988) 08 AHC CK 0010

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1856 of 1981

Chandra Bali Singh

APPELLANT

Vs

The District Inspector of Schools and Others

RESPONDENT

Date of Decision : 26-08-1988

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16F, 16F(2)
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 13, 16, 18,
6, 6(1)
Uttar Pradesh Intermediate Education Rules, 1921 — Rule 10, 9

Citation : (1988) 2 AWC 1523

Hon'ble Judges : V.K. Khanna, J;K.K. Birla, J

Bench : Division Bench

Advocate : G.C. Dwivedi, for the Appellant; D.P.S. Chauhan and Reghubir Singh Chauhan, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Birla, J.—This writ petition has been preferred by Sri Chandra Bali Singh, Lecturer, Jawahar Lal Nehru Intermediate College Sarsawan Allahabad (hereinafter referred as the institution) for quashing the order dated 23-12-80 of the District Inspector of Schools, Allahabad (hereinafter referred as Inspector) (Annexure-VII to the writ petition) allowing selection grade to Sri Ram Naresh Lal, Respondent No. 3, Lecturer in the institution and also for issue of an order fixing the Petitioner senior to the Respondent No. 3 and award him selection grade.

2. In brief the Petitioner was selected and appointed as Lecturer in English in the institution on 16-7-66 in pursuance of the interview dated 10-7-66. He joined in the institution on the same date namely 16-7-66. Sri Ram Naresh Lal, Respondent No. 3 was appointed in L.T. grade on 5-8-61 and was serving in the institution since then. According to the Petitioner Sri Ram Naresh Lal was appointed as Lecturer in Economics on 18-4-66 on temporary measure for one year, while he was appointed on substantive basis. Respondent No. 3 was

promoted to the post of Lecturer in Geography on 15-7-67 on the substantive post and his promotion was approved by the Inspector (vide its letter dated 27-12-67). According to the Petitioner he was confirmed on 16-7-67, while Respondent No. 3 on 15-7-68 and he is senior to the respondent No. 3. At the time of the "grant of the selection grade the controversy regarding seniority arose. The stand of the institution was that Respondent No. 3 was working continuously as Lecturer since 8-7-66 and as such he was senior to the Petitioner (Annexure-V to the writ petition). A representation was made by the Petitioner to the Inspector against this stand of the institution. The District Inspector of Schools has by the impugned order treated Respondent No. 3 senior to the Petitioner and has been made entitled to the selection grade. Being aggrieved by this order Sri Chandra Bali Singh, Petitioner has filed this petition.

3. The affidavit, counter affidavit, rejoinder affidavit, supplementary counter affidavit and supplementary rejoinder affidavit have been exchanged between the parties.

4. The learned Counsel for the Petitioner has contended that the Respondent No. 3 had been promoted, and under the regulations in force at that time, before a teacher in L.T. grade could have been promoted to the post of Lecture he should have been in 5 years continuous service, that in the instant case this period expired on 5-8-66 as such the Respondent No. 3 was not eligible for promotion in July 1966 and, therefore, he could have not been promoted on 8-7-66.

5. Annexure-III to the counter affidavit is a letter dated 16-8-66 written by the Inspector according approval of the appointment of the teachers on the initial salary of the scale shown against each from the date of their taking over charge in the institution. In this letter Sri Ram Naresh Lal at serial No. 1 and Sri Chandra Bali Singh at serial No. 2 have been shown on probation. The contention on behalf of the Respondent No. 3 is that he is also a direct appointee, that he was already working as Lecturer in the institution, that approval of appointment of both was accorded by the Inspector on the same date, that he is older than Ghandra Bali Singh in age and, therefore, under law in any case he is senior to the Petitioner. It was also contended that even if his appointment is taken on promotion, for these reasons he is senior to the Petitioner and the impugned order is proper. It was further contended that he was being treated senior all along but no objection was raised by the Petitioner and he has been rightly held to be entitled to the senior grade.

6. The learned Counsel for the parties have addressed us at length in support of their respective contentions.

7. The first point for consideration arise whether Respondent No. 3 (hereinafter referred as the Respondent) was promoted to the post of lecturer or was appointed by direct recruitment. The learned Counsel for the Petitioner contended that the Respondent was promoted and has relied on certain documents in support. On the other hand the learned Counsel for the

Respondent contended that he was also appointed by direct recruitment. Admittedly he could not support this contention by any document. Annexure-V to the writ petition is a letter from the Manager to the Petitioner in which it is mentioned that the Managing Committee had promoted the Respondent as Lecturer (Economics) from the L.T. grade on the basis of resolution dated 19-7-66. In the impugned order Annexure-VII to the writ petition as well it is mentioned that the Respondent number 3 had given out in his application that he was promoted as Lecturer from 8-7-66 and since then he was working on that post. Therefore, the Respondent's own case before the District Inspector of Schools appeared to be that of promotion. In paragraph 6 of the counter affidavit of Sri Chandra Pal Singh, Manager of the Respondent No. 2 also it is asserted that Respondent (Sri Ram Naresh Lal) was promoted in Lecturer grade on 8-7-66. Therefore, it is clear that the Respondent was promoted to the post of Lecturer and it was not a case of his appointment by direct recruitment.

8. It has been vehemently contended by the learned Counsel for the Petitioner that on 8-7-66 or for that matter even in the month of July 1966 the Respondent was not eligible for promotion as he had not put in 5 years continuous substantive service. Therefore, even if the appointment has been made on that date, that was illegal and on the basis of such appointment he cannot be deemed senior to the Petitioner. This has been rebutted on behalf of the Respondent. The parties will be governed by the U.P. Intermediate Education Act and the regulations made thereunder which were in force at that relevant period. It may be pointed that the Act and the regulations made thereunder have been extensively amended in 1976 and thereafter.

9. It is not in dispute that the Respondent was in service in the institution from 5-8-61 and that the Petitioner had joined as Lecturer on 16-7-66 after being successful in the interview held on 19-7-66. Before entering into discussion on this point the relevant provisions of the Intermediate Education Act and the regulations made thereunder in force in 1966 may be pointed out. Section 16-F provides that no person was to be appointed as a teacher unless he...possessed the prescribed qualifications and had been recommended by the selection committee and approved by the Inspector. According to Sub-section (2) of the Section the name of the selected candidate was to be forwarded for approval in the case of teacher to the Inspector, the Inspector was to give a decision within two weeks failing which approval was to be deemed to have been accorded.

10. It may be pointed here that in the present case the approval for appointment of both the candidates have been given by the Inspector by his letter dated 16-8-66 (Annexure III to the counter affidavit of the Respondent).

11. Chapter II Rule 9 provided for the procedure for the post to be filled by direct recruitment. In brief the post was to be advertised, the applications were to be numbered and entry to be made in the Register and then the same to be sent to the Chairman of the Selection Committee. The selection committee was to send the name of the selected candidate along with two others in the waiting list to

the Inspector for approval. Under Rule 10 of Chapter II the procedure of receiving the applications, serial numbering them sending the same to the Chairman of the Selection Committee and the Selection Committee to send the name of selected candidate to the Inspector for approval was also to be followed in the case where the vacancy was to be filled by promotion. Regulation 9(c)(d) (e) was to apply to a case of promotion also. Therefore, whether the case be of promotion or of direct recruitment, the Selection Committee was to send the name for approval to the Inspector. Regulation 13 of the Chapter II provides for the sending of the name of the selected candidate for approval to the officer concerned (who will be Inspector in the case of teacher in view of the provisions given above). Regulation 16 of Chapter II provides that "within two weeks of receipt of approval of the selected candidate for appointment as...teacher the Manager shall, on authorization under a resolution of the Committee of Management, issue an order of appointment to the candidate mentioning therein...." According to this regulation the order of appointment was to be issued within two weeks of receipt of approval of the Inspector. In view of these provisions after the selection of the candidates whether by direct recruitment or promotion the Petitioner and the Respondent in the instant case, the approval of the Inspector should have been obtained and then the appointment letters issued. In the instant case this approval has been given by letter dated 16-8-86, the appointment letters of either candidates have not been brought on record by any party.

12. There is a dispute between the parties about the date the Respondent had been working as Lecturer. In Annexure V to the writ petition it is mentioned that the Respondent had started working as Lecturer from 8-7-66. In the impugned order Annexure VII as well it is mentioned that the pay of the respondent in the Lecturer's pay was fixed w.e.f. 8-7-66 and he had been given the increments accordingly. In paragraph 3 Clause (b) of the counter affidavit of the Respondent it is stated that the revision of pay scale had taken place in 1969 whereunder the Regional Deputy Director of Education had fixed the pay of the Respondent w.e.f. 8-7-66 and according to that the regular increments were given to him. Annexure I to this counter affidavit is the statement of fixing the pay of the Lecturers in the new scale against the name of the Respondent such date is shown as 8-7-66. Sri Chandra Pal Singh, Manager had also supported the Respondent, in the counter affidavit filed by him. Therefore, on the material on record it comes out that the Respondent was in fact working as Lecturer w.e.f. 8-7-66.

13. It is on these facts that the question of the seniority of the respective parties should be considered.

14. Under Regulation 18 of Chapter III teachers with 5 years" continuous substantive service in an institution in the CT or JBTC (trained under graduate and LT trained graduate) grades were to be eligible for promotion to the next higher grade provided they possessed the minimum academic qualifications

prescribed for the grade. It is not in dispute that the Respondent possessed the minimum academic qualification. Rather he was qualified for being appointed not only in one subject but in two subjects, namely, Economics and Geography. The contention on behalf of the learned Counsel for the Petitioner is that on the date when the vacancy for being filled by promotion arose or even on the date of appointment the Respondent did not satisfy the stipulated period of service and as such he was not eligible for promotion.

15. Reliance is placed on the case of *Dinesh Pratap Singh v. State of U.P.* 19146 UP LB EC 85. In that case it has been held that "according to Regulation 6(1), the relevant date for considering minimum qualification is the date of occurrence of vacancy...The creation of vacancy is not dependent on the appointment to the said post as and when it is made." In the cited case on the date of the occurrence of the vacancy, the opposite party had neither completed 5 years continuous substantive service nor had the minimum educational qualification. Therefore, it was held that he had no locus standi to lay claim for the post. It was further held that as he was not qualified, he had no right to question the appointment of the Petitioner. Relying on this decision it is contended by the learned Counsel for the Petitioner, that the Respondent not being eligible for promotion in July 1966, his appointment from the alleged date could not be made and as such the Petitioner who had joined on 16-7-66 was senior to the Respondent.

16. In our opinion this contention cannot be accepted. This Chapter II of the Regulations had been substituted by notification 3183/XV/7-76-2 (18)-75 published in U.P. Gazette Extra Ordinary dated 7-7-76. In the cited case, the provisions as they stand after amendment in 1976 were applied. In the case before us admittedly the provisions standing prior to the amendment will be applicable and the case has been argued on that basis. Therefore the case before us will not be governed by Regulation 6(1). It may be pointed that in this Regulation 6 of Chapter II the qualification of the teacher in case of the vacancy to be filled by promotion is that he should have a minimum 5 years substantive service to his credit on the date of occurrence of the vacancy. On the other hand at the relevant time the relevant provision was Regulation 18 of Chapter HI. It did not specifically mentioned that the minimum qualification at the time of the occurrence of the vacancy was to be considered. There is clear distinction in both these provisions. A person could have been validly appointed earlier even if at the time of the occurrence of the vacancy he did not possess the minimum 5 years continuous substantive service, though he cannot be now so appointed under the new provision provided under Regulation 6 of Chapter II.

17. As already pointed above, under the provisions standing at the relevant time the name of the selected candidate was to be sent to the Inspector who was to approve the same and then the appointment letters were to be issued. In the instant case such names including those of the Petitioner and the Respondent were so sent and the same were approved by him on 16-8-66. In fact under

Regulation 16 of Chapter II the appointment letter was to be issued thereafter. It is clear that on the date of approval of the candidature of Petitioner and the Respondent for the appointment, the Respondent was qualified to have been so appointed, therefore, the appointment of the Respondent cannot be held to be invalid on this ground. The approval of the Petitioner and the respondent is of the same date. Even if the seniority is to be determined on that basis, the Respondent will be deemed to be senior to the Petitioner. In his affidavit the Petitioner has given his age as 35 years while in the counter affidavit Sri Ram Naresh Lal has given his age as 46 years. Therefore, whether the seniority is considered from the date of working or from the date of approval, the Respondent has been rightly held to be senior.

18. There are certain other facts and circumstances which need be mentioned in this regard. In the order of approval Annexure III to the counter affidavit the Respondent is shown at serial No. 1 and the Petitioner at serial No. 2. Secondly at the time of the revision of the pay scale in 1969 the Respondent's pay was fixed w.e.f. 8-7-66 and the increments etc. were being given to him accordingly this too was a clear pointer that the Respondent was being treated as senior. Clearly enough, no objection had been raised by the Petitioner in this regard at that time. This point has been raised by the Petitioner for the first time when the question of the grant of selection grade had arisen. Sri Chandra Pal Singh, Manager of Respondent No. 2 has stated in paragraph 3 Clauses (f) and (g) of his counter affidavit that no objection by the Petitioner was raised at the time of revision of pay scale and fixing of seniority and that the fixation of the seniority of Respondent No. 3 was not challenged by the Petitioner since 1967. In view of the facts given above this assertion appears to be correct and also goes against the Petitioner's contentions.

19. Sri Kapoor Nath Singh was Principal of the institution in 1977. In paragraph 18 of the Supplementary rejoinder affidavit the Petitioner has stated that the then Principal of the institution Sri Kapoor Nath Singh had also issued a letter that the Respondent, Sri Ram Naresh Lal was appointed on 18-7-66 (vide photo copy Annexure II to this Supplementary rejoinder affidavit). This photostat copy of certificate is dated 20-5-77. Sri Kapoor Nath Singh has filed an affidavit in January 1983 in which he has stated that he never gave such letter and this letter is forged. In our opinion there appears no reason why Sri Kapoor Nath Singh will file a false affidavit and as such no reliance could be placed on the Petitioner's contention that the papers regarding Respondent working since 8-7-66 are forged. It also affects his conduct.

20. It has been contended by the learned Counsel for the Petitioner that the Respondent was in fact appointed as Lecturer in Geography on substantive basis on 15-7-67, he worked earlier as Lecturer of Economics on temporary basis and as such that period had not to be counted for the purposes of seniority. In our opinion this contention cannot be upheld. It is not in dispute that in the beginning the Respondent was working as Lecturer (Economics) and was later on

transferred as Lecturer Geography. Annexure II to the counter affidavit of Sri S.D. Behere filed on behalf of the Inspector is the copy of the resolution dated 15-7-67 of the Management Committee of the institution. According to this resolution the appointment of the Respondent, was made permanent, he was transferred on the post of Lecturer (Geography) and his services were to be counted from the same date on which he had worked as Lecturer (Economics). Thus according to this resolution his appointment as Lecturer Geography was not an independent appointment but was a mere transfer from one subject to another. It may also be pointed that even in cases of fresh appointment the services rendered by a candidate in other institution in the same grade are counted. In the approval order dated 16-8-66 he is shown on probation. Therefore, the contention on behalf of the Petitioner in this regard has no force and the seniority will have to be determined from the first promotion as Lecturer Geography.

21. In view of the above discussions we are of the opinion that the impugned order does not appear to suffer from any infirmity or any illegality and on the facts and circumstances of the case the Respondent has been rightly held senior to the Petitioner.

22. In the result the petition is dismissed. In the circumstances of the case the parties are directed to bear their own costs.