
(1995) 08 AHC CK 0166
In the Allahabad High Court
Case No : C.M.W.P. No. 10666 of 1981

Committee of Management, National Intermediate College
and Another

APPELLANT

Vs

Regional Deputy Director of Education and Others

RESPONDENT

Date of Decision : 28-08-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Intermediate Education Act, 1921 — Regulation 5, 6(6), 16G

Citation : (1995) 3 UPLBEC 1765

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : Ashok Khare, for the Appellant; P.N. Tripathi and V.K. Dwivedi, for the Respondent

Final Decision : Allowed

Judgement

R.H. Zaidi, J.—By means of this petition Under Article 226 of the Constitution of India, Petitioners challenge the validity of the orders dated 11.11.80 and 22.7.81. The District Inspector of Schools by his order dated 11.11.80 allowed the objection filed by Lat Bahadur Singh, Respondent No. 3 and refused to approve the resolution of the committee of management with respect to the promotion of the Petitioner No. 2 to the post of lecturer in Geography in National Intermediate College, Haryana, district Basti (hereinafter referred to as College). The Respondent No. I affirmed the order of D.I.O.S. by his order dated 22.7.81.

2. The relevant facts, which are borne out from the record of the present case are that on account of death of Sri Nirhu Lal Srivastava, post of lecturer in Geography fell vacant on 4.1.80 In the college which was directed to be Oiled up by promotion from amongst the eligible candidates in accordance will) law by the District Inspector of Schools. On 15.6.80, a meeting of the committee of management was held to consider the question of promotion from amongst the eligible candidates working in L.T. grade in the College. On the same day,

committee of management resolved to promote Sri Raj Narain Ojha, Petitioner No. 2 on the post in question, rejecting the claim of Sri Lat Bahadur Singh, Respondent No. 3 who was senior-most teacher in the L.T. Grade in the College. The papers relating to the proposed promotion of Petitioner No. 2 were submitted before the Desalt. Inspector of Schools on 26.6.80 and on the same day, Respondent No. 3 filed an objection against the aforesaid resolution, contending that he was entitled to be promoted to the post in question. On the objection filed by the Respondent No. 3, explanation from the Manager of the College was called for by District Inspector of Schools and the Manager, thereafter, has submitted his explanation.

3. When the matter with respect to the promotion of Petitioner No. 2 was pending disposal before the District Inspector of Schools, the committee of management again on 13.7.80 resolved to appoint Petitioner No. 2 on the post of lecturer in question and again submitted the papers for seeking approval of the said promotion before the Distt. Inspector of Schools. Again against the said resolution objection was filed by Respondent No. 3 on 25.7.80. Since the papers submitted by the committee of management for approval before the District Inspector of Schools were incomplete, therefore the District Inspector of Schools called upon the committee of management of the College to furnish the requisite papers and other details. From the statement of facts made in the order of District Inspector of Schools it transpires that it was on 13.7.80 the correspondence with respect to the papers between the District Inspector of Schools, committee of management and Respondent No. 3 was going on and only on 3.11.80 the papers which were required for the decision of the controversy with regard to the promotion were completed. In the meanwhile according to the Petitioner No. 2 Sri Raj Narain Ojha, he was promoted by the committee of management on 30.11.80 as lecturer on the post in question. Sri Ojha was stated to have taken over the charge of the said post on 1.12.80.

4. The District Inspector of Schools by his order dated 11.11.80 upheld the objection filed by Respondent No. 3 against the promotion of Sri Raj Narain Ojha to the post of lecturer in question and refused to approve his promotion. The order dated 11.11.80 passed by the District Inspector of Schools was alleged to have been delivered to the Manager on 19.12.80. Aggrieved by the said order dated 11.11.80, the Manager has filed an appeal before the Respondent No. 1 on 29.12.80.

5. The Regional Dy. Director of Education VII Region, Gorakhpur Respondent No. 1, after affording an opportunity of being heard to the parties concerned held that Sri Lat Bahadur Singh Respondent No. 3 was senior to Sri Raj Narain Ojha, his over all performance in the College was also comparatively better than Raj Narain Ojha and his confidential report was also better than Ojai, therefore the Respondent No. 1 was pleased to dismiss the appeal by his order dated 22.7.1981. The Petitioners thereafter filed the present petition challenging the validity of orders of District Inspector of Schools as well as the Regional Dy.

Director of Education, VII Region, Gorakhpur as stated above.

6. I have heard the learned Counsel for the parties as well as learned standing counsel.

7. Learned Counsel for the Petitioner urged that the District Inspector of Schools having failed to communicate his decision on the proposal submitted by the committee of management within the statutory period, i.e., three weeks from the date papers were submitted before him, the approval to the proposal of promotion of Petitioner No. 2 shall be deemed to have been accorded, in view of Sub-clause (6) of Regulation 6 of Chapter II of the Regulations framed u/s 16G of the 111 tar Pradesh Intermediate Education Act. He has also submitted that the Distt, Inspector of Schools in any view of the matter had no jurisdiction to direct the cornice of management to promote the Respondent No. 3 on the post in question. He could only approve or disc-approve the proposal submitted by the committee of management.

8. On the other hand, learned Counsel appearing for the contesting Respondents submitted that In the present case, the question of limitation and of deemed approval of the proposal were at all not involved, Inasmuch as immediately after the resolution was passed by the committee of management to promote Petitioner No. 2, objection was filed by the Respondent No. 3 on both occasions, i.e.. 20.6.80 and 25.7.80 against the resolution dated 15.6.80 and 13.7.80 respectively passed by the committee of management, therefore, the District Inspector of Schools was bound to decide the objections after affording an opportunity of hearing to the parties in accordance with law. Therefore, there was no question of deemed approval. It was further submitted that the complete papers as required under Clause (5) of Regulation 6 of Chapter II of the Regulations, were not supplied (ill 3.11.80, the limitation, therefore, if at all shall start running from 3.11 80 and counting from the said date, the order of Distt. Inspector of Schools was well within the time, as order was passed on 11.11.80 by the District Inspector of Schools and communicated to the Manager of the College, it was contended that Under Rules, the preference had to be given to the senior most qualified teacher In the L.T. grade, if more than one teacher in the L.T. grade was eligible for promotion to the post of lecturer. It was contended that the service record, i.e., achievement in service, academic qualification and integrity of the Respondent No. 3, as found by the District Inspector of Schools, were comparatively better than Sri Raj Narain Ojha Petitioner No. 2, therefore, his claim was rightly accepted by the authorities below.

9. For resolving the points raised by the counsel for the parties Clauses (1) to (7) of Regulation 6 of Chapter II of Regulations framed under the Act are relevant, which are quoted below:

6. (1) Where any vacancy in the lecturer's grade or in the L.T. grade as determined under Regulation 5, is to be filled by promotion, all teacher working in the L.T. or the C.T. grade, as the case may be, having a minimum of five years

continuous substantive service to their credit on the date of occurrence of the vacancy shall be considered for promotion by the committee of management without their having to apply for the same provided they possess the prescribed minimum qualifications for teaching the subject in which the teacher in the lecturer's grade or in the L.T. grade is required.

Note. For purposes of this clause, service rendered by a teacher in the L.T. or the C.T. grade in any other recognised institution shall count for eligibility, unless interrupted by removal, dismissal or reduction to a lower post.

(2) Selection for promotion to the next higher grade shall be made on the basis of service standing, achievement in service, academic qualifications and integrity.

(3) Subject to Clause (2) where more than one teacher in the L.T. grade are eligible for promotion to the post of lecturer in any subject preference shall be given to the teacher who is the senior most amongst them in service in that grade.

(4) (a) The claim of any teacher who is eligible for promotion shall not be ignored merely because he has proceeded on long leave or is officiating or working temporarily on a post in the higher grade.

(b) In the case of a teacher who is under suspension the claim for promotion shall not be ignored if he is reinstated prior to the selection for promotion.

(5) In respect of any teacher selected for appointment by promotion in accordance with these Regulations, the Manager of the Institution shall within a week from the date of resolution passed by the committee of management in regard to such appointment forward (the proposal for the concurrence of the Inspector together with) a copy of such resolution and a statement showing the following particulars:-

(i) the total number of sanctioned posts in the grade in which promotion is to be made;

(ii) the number of posts to be reserved for promotion;

(iii) the number of posts already filled by promotion giving names of the incumbents;

(iv) the total number of vacancies which have occurred;

(v) the number of vacancies determined by the committee of management to be filled by

promotion;

direct recruitment;

(vi) the names of all eligible candidates for promotion their qualifications and the length of their service from the date of their substantive appointment in the

grade from which they are to be promoted ; and (iii) names of persons selected for promotion.

Within three weeks from the date of receipt of the proposal under Clause (5) the Inspector shall communicate his decision thereon to the Manager failing which the Inspector shall be deemed to have given his concurrence to the resolution passed by the committee of management.

Where the committee of management feels aggrieved from the decision of the Inspector under Clause (6) it may within two weeks from the date of communication of such decision to the Manager, make a representation against it to the Regional Deputy Director of Education whose decision in the matter shall be final.

10. A perusal of the aforesaid Regulations reveals that where any vacancy in the lecturer grade as determined under Regulation 5, is to be filled by promotion from amongst teachers in L.T. grade having requisite qualification by the committee of management without their having to apply for the same provided they possessed the minimum qualifications as required, the selection for promotion is to be made on the basis of the service standing, achievements in service, academic qualifications and integrity and further the seniority shall have edge over the rest, subject to the condition that all other things are equal. Papers relating to the proposal of promotion made by the committee of management are required to be submitted before the District Inspector of Schools along with the statement of all particulars as mentioned in Clause (5) of the said Regulation. The District Inspector of Schools, on receipt of the papers and particulars, is required to communicate his decision thereon to the management within three weeks. The committee of management aggrieved by the decision of District Inspector of Schools has got right to make a representation to the Dy. Director of Education, whose decision in the matter is final.

11. In the present case as stated above the committee of management has resolved to promote Petitioner No. 2 on the post of lecturer in question twice, i.e., on 15.6.80 and 13.7.80 and on both occasions, against the said proposal of the committee of management, Sri Lat Bahadur Singh Respondent No. 3 filed objections before the District Inspector of Schools, who was, therefore, required to decide the same after following the procedure prescribed under law and after affording an opportunity of hearing to the parties concerned. From the facts stated above, it is clear that some papers were submitted before the District Inspector of Schools for seeking approval to the proposal of promotion but the complete papers were not furnished by the committee of management till 3.11.80. Therefore, under the aforesaid circumstances, there was no question of limitation involved. The District Inspector of Schools gave his decision on 11.11.80 and communicated the same to the committee of management immediately thereafter. In my opinion therefore the proposal made by the committee of management cannot be, deemed to have been approved under

Clause (6) of Regulation 6 of Chapter II of the Regulations. The contention of the learned Counsel for the Petitioner in this regard cannot be accepted.

12. So far as the question of jurisdiction of District Inspector of Schools to direct for appointment of Respondent No. 3 after rejecting the proposal made by the committee of management is concerned, I have carefully gone through the orders passed by the District Inspector of Schools as well as Deputy Director of Education. The District Inspector of Schools and the Deputy Director of Education have rightly compared the merits and demerits of the two candidates. They have also rightly set aside the proposal of committee of management, but they had no jurisdiction to uphold the claim of the Respondent No. 2 for promotion to the said post and issue direction to the committee of management for compliance of the said order.

13. It is well-settled law that under Clause (6) of Regulation 6 of Chapter II of the Regulations, the District Inspector of Schools in exercise of his power can only approve or disapprove the proposal made by the committee of management, he has got no Jurisdiction to direct for promotion or appointment of any candidate.

14. A reference in this regard may be made to the case *Kumari Jitendra Phoolka v. Director of Education U.P. Allahabad* 1994 UPLBEC 21, wherein it was observed as under:

Under the scheme of Regulations 5/6, the proposal emanates from the committee of management upon the consideration of the eligible candidates. It is then alone, question of the approval arises. The committee of management in this case did not put forward the proposal for appointment of Respondent No. 7 at any stage. In absence of any proposal from the committee of management for appointment of Respondent No. 7, it does not appear that R.I.G.S. could give direction in this behalf.

15. Similar view has been taken by this Court in the cases cited by the learned Counsel for the Petitioner, Le. interpretation the provision 68 of the State Universities Act, which for the purposes of the present case need not be referred.

16. In view of the aforesaid discussions, the writ petition deserves to be allowed in part.

The writ petition is allowed in part and the impugned orders dated 11.11.80 and 22.7.81 is quashed to the extent they direct for the promotion of Respondent No. 3 to the post of lecturer in question. It is, however, made clear that it would be open to the committee of management to consider the claim of Respondent No. 3 In the light of observations made by the Respondent No. 1 and 2 in their orders and to make proposal for his promotion to the post in question.