
(2013) 02 AHC CK 0098

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7350 of 2013

Davesh Vats

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-02-2013

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 18

Citation : (2013) 3 ADJ 436 : (2013) 4 ALJ 36 : (2013) 4 AWC 3526 : (2014) 2
LLN 76 : (2013) 2 UPLBEC 1016

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

Bench : Single Bench

Advocate : N.L. Pandey and Suyash Pandey, for the Appellant; Y.S. Bohra, for
the Respondent

Final Decision : Allowed

Judgement

A.P. Sahi, J.—This petition raises a challenge to the impugned order dated 24.1.2013 involving a dispute of seniority inter se between teachers of an institution and their claim to officiate as the Head of the Institution. The differences triggered off when the vacancy occurred on the retirement of one Mr. Satyaveer Singh who superannuated on 30th of June, 2012. The petitioner claims himself to be the senior most teacher of the institution and accordingly he was appointed on ad-hoc basis to take charge of the vacant post of Principal in Mahatma Gandhi Inter College Madhyamik Vidyalaya, Gesupur, District Bulandshahar.

2. The dispute between the petitioner and the respondents 5 to 7 arose on account of claim of seniority being made by the said respondents over and above the petitioner. Consequently, they also claimed that they were entitled to take charge of the office of Principal as they were senior to the petitioner. In order to resolve the said dispute the respondents 5 to 7 herein appear to have approached the High Court in writ petition No. 40349 of 2012 that was disposed

of on 13th of September, 2012 directing the Joint Director of Education, Meerut Region, Meerut to resolve the dispute of seniority in accordance with law after providing an opportunity to the contesting parties within a period of two months.

3. It was also provided that the appointment of ad-hoc/officiating Principal in the institution shall abide by the decisions so taken by the Joint Director of Education.

4. In pursuance of the said directions the dispute of seniority between the petitioner and the respondents 5 to 7 has now been finally decided by the Joint Director of Education, First Region, Meerut on 24th of January, 2013 which order has been assailed in the present writ petition.

5. The contention of Sri N.L. Pandey, learned counsel for the petitioner is that the respondent No. 6 Ram Dutt Sharma has been erroneously declared to be the senior most person amongst all the four so as to enable him to take charge as the Principal of the Institution.

6. Sri Pandey submits that the finding recorded in favour of the respondent No. 6 Ram Dutt Sharma is contrary to the weight of evidence on record and is also against the provisions that are attracted in the controversy.

7. He further submits that apart from the fact that the respondent No. 6 is not entitled to the benefit as claimed by him, even otherwise assuming for the sake of argument, he is senior, then too even he does not have a right to claim to officiate on the post of Principal on ad-hoc basis keeping in view the law laid down in the case of Dr Mahak Singh Vs. Chancellor, Ch. Charan Singh University, Meerut and Others, and the decision of the division bench in the case of Brij Raj Swarup Bhatnagar Vs. District Inspector of Schools, Ghaziabad and Another, , as the respondent No. 6 has been charge-sheeted in a criminal case.

8. Sri Pandey has further invited the attention of the Court to the judgment in the case of Smt. Suman Bhatnagar v. State of U.P. and others, 2006 (1) ESC 348, to contend that in view of the said decision, on merits the period of ad-hoc services of the petitioner if counted in the L.T. Grade will add to his seniority and therefore the petitioner will be senior to the respondents 5 to 7.

9. Replying to the submissions of Sri Pandey, Sri Ashok Khare, learned Senior Counsel assisted by Sri Y.S. Bohra for the respondent Nos. 5 to 7 contends that the petitioner is not entitled to function as the Principal of the Institution as he is junior to the said respondents and for that Sri Khare has taken the Court to the findings recorded in the impugned order. Learned counsel as well as the learned Standing Counsel urge that they do not propose to file any counter-affidavit.

10. Having considered the aforesaid submissions, the matter is being disposed of finally at this stage with the consent of the parties except the respondent No. 4 Committee of Management to whom notices are not required to be served at this stage in view of the nature of the order that is proposed to be passed. Learned Standing Counsel has also advanced his submissions on behalf of the respondents 1 to 3 and consented to the final disposal of the matter.

11. The undisputed facts are that the petitioner upon the retirement of Satyaveer Singh was given charge of Principal and a financial sanction was also granted to the said appointment of the petitioner on 18th July, 2012. The appointment on ad-hoc basis is of the senior-most teacher as provided for u/s 18 of the U.P. Secondary Education (Services Selection) Board Act, 1982. According to the petitioner, this was done when two persons senior to the petitioner had declined to take charge of the Principal. It is at this stage that the respondent Nos. 5 to 7 filed writ petition No. 40249 of 2012 that was disposed of on 13th of September, 2012 directing the Regional Joint Director of Education to decide the matter.

12. A seniority list was drawn up in the year 2008 where the petitioner was shown at serial No. 7, the respondent No. 6 at serial No. 8, the respondent No. 7 at serial No. 10 and the respondent No. 5 at serial No. 12.

13. The contention of Sri Pandey is that the respondent No. 5 was appointed on 1st of July, 1991 as an ad-hoc teacher in the L.T. Grade. He filed a writ petition for his continuance and regular appointment which was got dismissed as not pressed being writ petition No. 8221 of 1994. In spite of this, the respondent No. 5 was benefited by way of regularisation on 10th of January, 2007 as an L.T. Grade Teacher through an order to that effect.

14. The respondent No. 6, according to the petitioner was appointed on 26th of July, 1987 in the C.T. Grade which is a grade lower to the L.T. Grade in which the petitioner was appointed. This appointment according to the petitioner was against a short term vacancy and it was in this background that the said respondent succeeded in getting an order from the District Inspector of Schools on 18.8.2004 treating him to have been regularly appointed in the C.T. Grade. Subsequently, vide order dated 8.11.2004, the respondent No. 6 was given the benefit of L.T. Grade Pay Scale after five years of being appointed in the C.T. Grade.

15. Sri Pandey submits that the same does not amount to an appointment in the L.T. Grade which benefit could have been extended after 10 years of completion of service by the respondent No. 6 on substantive basis in the C.T. Grade. Sri Pandey therefore submits that the respondent No. 6 after 10 years would get L.T. Grade in 1997 and therefore the status of L.T. Grade of the petitioner being much prior to the said date, the petitioner was obviously senior to the respondent No. 6. Coming to the claim of the respondent No. 7, it has been pointed out by Sri Pandey that he was appointed on 18th of July, 1991 on ad-hoc basis in the L.T. Grade and the regularization order was passed on 4th of January, 2010.

16. In the aforesaid background, it appears that the Regional Joint Director of Education has mentioned the date of regularisation as 20th April, 1998 in respect of all the three teachers.

17. In the opinion of the Court, this approach is absolutely erroneous, inasmuch as, the date of 20th April, 1998 cannot be the date of regularisation even according to the regularisation rules that are applicable in the controversy. The

date 20.4.1998 is the date of enforcement of Section 33-D of the 1982 Act that provides for giving L.T. Grade to teachers who were appointed in the lower C.T. Grade and have completed ten years of service. The grade is available not automatically but on completion of ten years. Thus the Joint Director of Education in the order impugned has proceeded on some erroneous impression about the applicability of the said date.

18. All the teachers have to be first assessed on the basis of the nature of their appointment and their regularisation orders. The Joint Director of Education has failed to independently assess these claims particularly so far as the respondent No. 6 is concerned. A totally wrong interpretation has been given by the Joint Director of Education to the rules applicable for extending the benefit of L.T. Grade to the respondent No. 6. It is therefore clear that the respondent No. 6 could not have been treated as senior to the petitioner, inasmuch as, he has completed 10 years in the L.T. Grade in the year 1997 whereas the petitioner was appointed against a substantive vacancy on ad-hoc basis in the L.T. Grade on 8th of January, 1991. The petitioner was also regularised on 25.1.2005 which order is prior to that of the respondent No. 5 and respondent No. 7. The order dated 8.11.2004 in favour of the respondent No. 6 cannot be construed to be extending the benefit of L.T. Grade prior to the completion of 10 years. The said order does not confer the right of seniority on the respondent No. 6 on that basis against the petitioner. Similarly the dates of regularisation of the respondent No. 5 and respondent No. 7 have been stated without referring to the provisions of Section 33-C of the 1982 Act. The conclusion drawn is therefore not in conformity with law. The issue of seniority is interwoven with the same.

19. In the aforesaid background the decisions cited by the petitioner's counsel has also to be taken notice of. It is true that the judgment in the case of Smt. Suman Bhatnagar (supra) has been referred to a larger bench but the same has not been overruled as yet.

20. Apart from this, there is yet another argument which has completely remained unnoticed by the Joint Director of Education while allowing the respondent No. 6 to function as an ad-hoc Principal. The said background is about the involvement of respondent No. 6 in a criminal case and having been charge-sheeted by the prosecution. In the aforesaid circumstances, the decision relied on by the learned counsel for the petitioner comes to his aid. This aspect also has not been considered by the Joint Director of Education.

21. Sri Khare then submits that the matter can be decided by the Joint Director of Education afresh and so far as the respondent Nos. 5 and 7 are concerned they are still senior to the petitioner.

22. Since the impugned order is vitiated on account of an incorrect consideration of the relevant provisions and is also founded on an erroneous application of the date of regularisation, therefore the order cannot be sustained.

23. Apart from this, the assumption of the legal provisions applicable for the

purpose of computing seniority of such teachers who have been regularised after ad-hoc appointment has also not been referred to. Accordingly, on all counts the impugned order cannot be sustained. The order dated 24.1.2013 is quashed. The matter is remitted back to the respondent No. 2 for decision afresh in the light of the observations made hereinabove within a period of six weeks from the date of production of a certified copy of this order before him.

24. Needless to say that the Joint Director of Education before proceeding to pass a final order shall also put the Committee of Management to notice to have its version. The writ petition is allowed.