
(1998) 02 AHC CK 0092
In the Allahabad High Court
Case No : C.M.W.P. No. 2745 of 1989

Dhanesh Kumar Srivastava	Vs	APPELLANT
Director of Education, Allahabad and others		RESPONDENT

Date of Decision : 18-02-1998

Acts Referred:

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 2, 3(1)

Citation : (1998) 2 AWC 1208

Hon'ble Judges : Alope Chakrabarti, J

Bench : Single Bench

Advocate : V.B. Khare, for the Appellant;

Final Decision : Allowed

Judgement

Alope Chakrabarti, J.—This writ petition was heard along with Civil Misc. Writ Petition No. 7848 of 1980.

2. Dispute involved herein is regarding seniority between the petitioner and the respondent No. 4.

3. The contention of the petitioner is that several posts of lecturer in Economics, Sociology, Civics and other courses in Rama Nath Uma Shanker Inter College, Phulmanha, Lehra, Goraknpur were advertised in July, 1971. Several candidates applied in response and the petitioner and the respondent No. 4 also were applicants. Interview was held on 11.7.1971 and the petitioner was appointed as lecturer in Education and the respondent No. 4 was appointed as lecturer in Economics. One Keshav Lal Srivastava was also appointed as lecturer in Civics. Such appointments were approved by the respondent No. 2, District Inspector of Schools, Goraknpur (hereinafter referred to as D.I.O.S.). A copy of the said order of approval dated 2.9.1971 has been annexed at Annexure-4 to the writ petition. Petitioner has also annexed a seniority list prepared in the year 1976 showing the said Sri Keshav Lal Srivastava as seniormost, present petitioner being the next in seniority followed by respondent No. 4 at serial No. 3 therein.

4. The respondent No. 4 made representation before the Committee of Management which was rejected on 25.11.1976. Appeal filed by the respondent was allowed by the D.I.O.S. on 26.9.1977. Committee of Management filed representation as the order dated 26.9.1977 was passed without hearing it. On 4.10.1977 D.I.O.S. recalled the said order but again on 31.1.1978 D.I.O.S. upheld the order dated 26.9.1977. The said Sri Keshav Lal Srivastava filed representation against the order dated 26.9.1977 as he was not heard although he was seniormost lecturer in the institution and the same was decided by the order dated 1.8.1980 wherein the D.I.O.S. accepted the claim of Sri Keshav Lal Srivastava. At this stage, the respondent No. 4 challenged the said order dated 1.8.1980 by filing Civil Misc. Writ Petition No. 7848 of 1980 (hereinafter referred to as the first writ petition).

5. The said Sri Keshav Lal Srivastava died on 10.11.1988 and then the petitioner filed the application for impleadment in the said writ petition as on the death of Sri Keshav Lal Srivastava the petitioner became the seniormost lecturer in the institution. The D.I.O.S. by his order dated 18.12.1987 did not accept the representation of the said Sri Keshav Lal Srivastava. Thereafter the D.I.O.S. passed another order dated 13.1.1989 holding that appointment of the respondent No. 4 was by promotion making it clear that the said order will be subject to decision in the first writ petition.

6. The Committee of Management directed the Principal of the institution to change the seniority list and place the respondent No. 4 at Serial No. 1 and this order was dated 28.1.1989 and was passed following the direction contained in the order dated 13.1.1989.

7. Challenging both the aforesaid orders dated 13.1.1989 at Annexure-10 and dated 28.1.1989 at Annexure-11, the present writ petition has been filed.

8. The respondent No. 4 filed counter-affidavit and the petitioner filed rejoinder-affidavit.

9. In the first writ petition also counter-affidavit was filed by the said Sri Keshav Lal Srivastava as also on behalf of the Committee of Management. Rejoinder-affidavit was also filed by the petitioner.

10. Heard Mr. G. K. Singh. learned counsel for the petitioner and Mr. R. K. Kakkar. learned counsel for the respondents. Mr. D. S. M. Tripathi the learned counsel who filed the first writ petition did not appear at the time of hearing.

11. Learned counsel for the petitioner contended that the petitioner and the respondent No. 4 both were appointed on direct recruitment in the post of lecturer and their appointments were approved on the same date by the same order a copy whereof is appearing at Annexure-4 to the writ petition. Seniority list of the institution prepared long back in the year 1976 also shows that the petitioner is senior to the respondent No. 4. It has been contended that subsequent attempt of the respondent No. 4 to show that he was appointed as

lecturer on promotion is contrary to actual facts. Learned counsel for the petitioner also contended that admittedly approval of appointment of the petitioner and the respondent No. 4 was by same order of the same date and. therefore, irrespective of the nature of appointment of the respondent No. 4 as lecturer, either by direct recruitment or by promotion, seniority in this respect is to be decided on the basis of the seniority in age and admittedly the petitioner is elder than the respondent No. 4 in age.

12. In this connection learned counsel for the petitioner referred to various provisions regarding the seniority in particular Regulation 2 of Chapter I and Regulation 3 (1) (b) of Chapter II of the Regulation framed under the U. P. Intermediate Education Act. 1921. Reliance was also placed to the case of Ishwar Singh Tome Vs. District Inspector of Schools and Others, .

13. Further contention of the petitioner is that by order dated 13.1.1989 D.I.O.S. merely held that the respondent No. 4 was appointed by promotion and in the said order there was no finding that the respondent No. 4 was senior to the petitioner and. therefore, the impugned order dated 28.1.1989 at Annexure-11 to the writ petition passed by the Committee of Management for treating the respondent No. 4 as senior to the petitioner cannot stand as the said direction was passed on the sole basis of the order of the D.I.O.S. dated 13.1.1989.

14. The learned counsel for the respondent No. 4 contended that the respondent No. 4 was appointed as lecturer on promotion and, therefore, he is entitled to be treated as senior to the petitioner. It is the contention of the respondent No. 4 that the petitioner cannot be treated as senior to the respondent No. 4 although he is elder in age as the respondent No. 4 having been appointed on promotion is entitled to be treated as senior to the petitioner who was appointed directly.

15. After considering the aforesaid contentions, I find that the sole basis of the claim of the respondent No. 4 regarding seniority is on the allegation that he was appointed as lecturer on promotion. The respondent No. 4 has failed to produce any material whatsoever showing his appointment either by promotion or approval of such promotion.

16. The learned counsel for the respondent No. 4 relied on the order of approval dated 2.9.1971 at Annexure-4 to the writ petition for the purpose of showing that the respondent No. 4 was at Serial No. 1 therein and. therefore, he was treated as seniormost.

17. Considering the aforesaid order of approval, it appears that the same was in fact on the grant of approval in respect of selection and it did not indicate inter se seniority. Admittedly, the said Sri Keshav Lal Srivastava was senior to the petitioner but in the aforesaid order of approval he was shown below petitioner at Serial No. 4. Therefore, the said order of approval cannot be relied on for the purpose of finding out seniority between the contesting parties.

18. Annexure-2 to the writ petition indicates that the advertisement was made

for appointment of various posts of lecturers as also other posts and therein the post of lecturer in Economics was also advertised along with the posts of lecturers for Sociology, Civics, Education and Mathematics. The order of approval at Annexure-4 Indicates that approval was being granted in respect of selection for all the aforesaid posts. These materials support the contention of the petitioner that both the petitioner and the respondent No. 4 were appointed directly in the posts of lecturer.

19. The order dated 13.1.1989 at Annexure-10 to the writ petition does not disclose any acceptable ground or material on which the respondent No. 4 can be treated as appointed lecturer on promotion. On the contrary, the said order clearly indicates that the said respondent No. 4 was deemed to have been appointed on promotion after clearly recording that the approval was granted to the respondent No. 4 because of his appointment on direct recruitment. Therefore, existence of vacancy in promotional quota did not entitle the D.I.O.S. to treat the original appointment on direct recruitment as an appointment on-promotion and that too long after the approval of such direct recruitment. Therefore, the said order dated 13.1.1989 cannot stand. Thus, on facts it is found that the respondent No. 4 was appointed as direct recruitment.

20. With regard to rules also, it appears that on the relevant date the Regulation 3 (1) (b) of Chapter II of the said Regulations was applicable in view of the findings in the case of I. S. Tome (supra) that in old cases the said provisions are applicable. These provisions do not indicate that any separate rule is applicable in the case of appointment on promotion. Therefore, the said claim of seniority by respondent No. 4 cannot be accepted both on facts and law.

21. Learned counsel for the respondent No. 4 could not show any provision of law in support of his contention that the respondent No. 4 is entitled to be treated as senior to petitioner on the sole ground of his alleged promotion.

22. The order dated 28.1.1989 at Annexure-11 to the writ petition passed by the Committee of Management has solely relied on the order dated 13.1.1989 of the D.I.O.S. and, therefore, the same also cannot stand.

23. The stand taken by the institution in its counter-affidavit filed in the first writ petition also supports the aforesaid facts. Therefore, the petitioner is senior to the respondent No. 4.

24. In view of the aforesaid findings, the writ petition is allowed. The order dated 13.1.1989 at Annexure-10 and the order dated 28.1.1989 at Annexure-11 to the writ petition are hereby quashed. There will be no order as to costs.