
(2004) 05 AHC CK 0177
In the Allahabad High Court
Case No : C.M.W.P. No. 51523 of 2003

Dr. Shri Kant Mishra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-05-2004

Acts Referred:

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 3

Citation : (2004) 4 AWC 3000

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : C.B. Yadav and G.K. Singh, for the Appellant; Ashok Khare, Anita Tripathi and K.A. Singh and B.G. Bhai, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Sri G. K. Singh for petitioner and Sri Ashok Khare, senior advocate, assisted by Smt. Anita Tripathi for respondent Nos. 5 and 6. Sri K. A. Singh appears for Committee of Management. Standing counsel was heard for State, respondents.

2. Thus, writ petition arises out of seniority dispute between the petitioner and respondent Nos. 5 and 6. The Ratan Sen Inter College, Bans, district Siddharth Nagar is recognised and is regulated by the provisions of U. P. Intermediate Education Act. 1921 and U. P. Secondary Education Services Selection Board Act, 1982. On the retirement of Sri Ram Deo Pandey working as ad hoc Principal objections were filed by petitioner Dr. Shrikant Misra, respondent No. 5 Sri Dinesh Chandra Pandey and respondent No. 6. Sri Pramod Shanker Pandey. One Sri Ram Gopal Misra also filed his objection. All the 4 persons claimed to be the senior-most Lecturers in the college. The Committee of Management by its decision dated 18.7.2002, found that the petitioner Dr. Shrikant Misra is the senior-most amongst all. In the meantime, the outgoing ad hoc Principal forwarded the names of respondent Nos. 5 and 6 for selections for the post of permanent Principal to the U. P. Secondary Education Services Selection Board

on 22.5.2002. The District Inspector of Schools sent a letter to the Board for staying the selection until the management decides the seniority dispute.

3. The respondent Nos. 5 and 6 challenged the orders of the Committee of Management dated 18.6.2002 before the District Inspector of Schools and also filed Writ Petition No. 25338 of 2002 which was decided on 1.7.2002 with a direction to the District Inspector of Schools to decide the objection/grievance, after affording full opportunity to the concerned parties. The District Inspector of Schools by his order dated 31.7.2002 found that respondent Nos. 5 and 6 were not promoted vide any resolution passed by the Committee of Management but was given promotional pay scale on the basis of length of service. He found that the petitioner as well as Sri Ram Gopal Misra were substantively appointed as Lecturers on the same day on 21.7.1970 and thus the petitioner senior to Shri Ram Gopal Misra on the basis of age. Respondent Nos. 5 and 6 filed Writ Petition Nos. 37761 and 37241 of 2002 respectively. Respondent Nos. 5 and 6 also filed appeals before the Joint Director of Education, Basti Division, Basti, on 28.6.2002 and 17.8.2002. respectively. The petitioner requested for copies of the appeal. It is alleged, that these copies were not supplied and that the Joint Director of Education vide order dated 22.10.2003, decided the matter. He found that respondent Nos. 5 and 6 were appointed substantively on 10.1.1967 and 12.7.1979 respectively and are senior to the petitioner and Ram Gopal Misra who was appointed on the same date on 21.7.1970, He held that respondent No. 5, Sri Dinesh Chandra Pandey is the senior-most Lecturer in the college. The District Inspector of Schools passed a consequential order dated 7.11.2003, directing the petitioner to hand over the charge to Sri Dinesh Chandra Pandey. In the writ petition the petitioner has challenged both the orders dated 23.10.2003, passed by Joint Director of Education as well as dated 7.11.2003, passed by the District Inspector of Schools and for restoring the order of the Committee of Management dated 18.6,2002 and the order of District Inspector of Schools dated 1.8.2002 by which he confirmed the seniority drawn by the Committee of Management and had allowed the petitioner to function as Officiating Principal of the college.

4. Regulation 3 of Chapter III of the Regulations made under U. P. Intermediate Education Act, 1921. provides for preparation of seniority list by Committee of Management separately for each grade of teachers whether permanent or in temporary or on any substantive post. Sub-clauses 1 (b) to (g) provide for determination of seniority of teachers in a grade and determine all dispute. Regulation 3 of Chapter III of the Act is quoted as below :

"3. (1) The Committee of Management of every Institution shall cause a seniority list of teachers to be prepared in accordance with the following provisions :

(a) The seniority list shall be prepared separately for each grade of teachers whether permanent or temporary, on any substantive post;

(b) Seniority of teachers in a grade shall be determined on the basis of their

substantive appointment in that grade. If two or more teachers were so appointed on the same date, seniority shall be determined on the basis of age;

(bb) Where two or more teachers working in a grade are promoted to the next higher grade on the same date, their seniority inter se shall be determined on the basis of the length of their service to be reckoned from the date of their substantive appointment in the grade from which they are promoted :

Provided that if such length of service is equal, seniority shall be determined on the basis of age.

(c) A teacher in a higher grade shall be deemed to be senior to a teacher in the lower grade irrespective of the length of service;

(d) If a teacher who is placed under suspension is reinstated on his original post, his original seniority in the grade shall not be affected;

(e) Every dispute about the seniority of the teacher shall be referred to the Committee of Management which shall decide the same giving reasons for the decision;

(j) Any teacher aggrieved by the decision of the Management Committee under sub-clause (c) within 15 days of the date of information of such decision to the teacher, may appeal to concerned Regional Deputy Director and on appeal after giving an opportunity of hearing to the concerned parties, Deputy Director will give his decision with reasons, which will be final and executed by the Management Committee.

(g) Where two or more teachers working in the same grade are prompted on the same date, their inter se seniority shall be length of service in that grade in which they were working but, if the length of service is equal, then in the event of promotion seniority shall be determined on the basis of age;

5. The Scheme under the Regulations provides for determination of seniority on the basis of substantive appointment in that grade and the dispute to be decided by the Committee of Management with reasons, and thereafter an appeal to the Regional Deputy Director. In the present case, the short question to be decided is whether the respondent Nos. 5 and 6 were substantively appointed in Lecturers grade on 10.1.1967 and 12.7.1979, respectively.

6. Sri G. K. Singh appearing for petitioner submits that a copy of the appeal filed by respondent Nos. 5 and 6 was not given to the petitioner and thus the order violates the principles of natural justice. In the absence of copy of appeal the petitioner could not submit his explanation and written submission. He submits that a review petition has been filed by the petitioner before the Joint Director of Education. During the course of the arguments. Sri G. K. Singh fairly stated that the review is not maintainable. The pleadings between the parties in this writ petition are complete, and thus all the parties agreed that the validity of the orders and the seniority matter may be decided by the Court.

7. Sri G.K. Singh submits that the essential qualification for appointment to the post of Lecturers, in item No. 31 of Appendix-A of Chapter II of the Regulations under the Act of 1921 is M.Sc. In Physics with training qualification of Post-Graduate Diploma in Physics, organized by the Education Department in degree colleges along with B.Sc. The respondent Nos. 5 and 6, according to him, are not M.Sc. in Physics. They were appointed as L.T. grade teachers on 30.8.1963 and 21.7.1966 respectively on temporary basis. Respondent No. 5 was sent for training for teaching intermediate classes in physics and was given Lecturer's grade on 10.1.1967. He passed M.A. Examination from Gorakhpur University in 1974 and B.Ed. Examination in 1975. Respondent No. 6 was appointed again on 10.7.1967, on temporary basis. He passed B.P.Ed. Diploma Course from Lucknow University. He resigned to undergo P.G. Diploma Course in Physics from Lucknow on 25.8.1967 and after completing the course he was appointed as science teacher and he was appointed on probation as Lecturer in the college on 12.7.1969. He passed M.A. in Sociology in 1974 and M.Sc. in Physics in 1976. The petitioner, on the other hand, was appointed in L.T. grade on 18.7.1969 and was appointed as Lecturer in Sanskrit on 20.7.1979. He was placed on probation after selection through a selection committee on 21.7.1970 and that Sri Ram Gopal Misra was also appointed substantively as Lecturer on 21.7.1970.

8. Sri G.K. Singh submits that respondent Nos. 5 and 6 were not substantively appointed on the post of Lecturer. They were not qualified to hold the post and that they were in fact given only Lecturer's grade. He has relied upon the Government orders dated 16.1.1966 and 19.4.1966 by which the State Government directed that Science Teachers of the Intermediate Classes of the new Government aided Higher Secondary Schools who are B.Sc. L.T. as have passed, the condensed diploma course may be allowed Lecturers scale of pay of Rs. 175-360 with effect from the date they are appointed to teach science to the intermediate classes. By a second order dated 19.4.1966 clarifying that the Diploma course classes started during 1964-65 and the first batch of teachers attending these classes, received Diploma's in 1964-65 and thus they should be given Lecturers grade from the date of their appointment. By the Government order dated 6.7.1988, it was clarified by the Director of Education that the Post Graduate Diploma holder teachers shall not be treated to be appointed by promotion. He submits that at the time when respondent Nos. 5 and 6 were both the Post-graduate diploma with B.Sc. was not the qualification prescribed for appointment as Lecturers in Physics and thus the benefit of graduate aid to the post-graduate diploma holders does not amount to their substantive appointment in the grade. He has relied upon *Rashmi Smt.(Dr.) v. Vikram University* (1975) 3 SCC 653, in which the Supreme Court was called upon to decide the seniority between the direct recruits and promotees in the universities. The Supreme Court considered the distinction in appointment between the direct recruits and merit promotees. It was found that the promotees under merit promotion scheme of University Grant Commission formulated by University Grant Commission u/s 12 of the University Grant Commission Act stand outside the

cadre and do not fill the posts, since no posts are created the promotion given to them are purely personal and the posts to which they are upgraded do not certify their service career. Such promotees do not fill up any vacancy in the promotional avenue since no post is available by promotion, they are appointed under entirely different schemes and their pay scales are different. They do not hold any officiating or even temporary post, and their working cadre is also different. There is qualitative difference in the process of selection in which the criteria is unfairly distinct and different, and there is no question of (sic) promotee, reader or supervisor to be on probation. On the aforesaid distinguishing features it was held that they are unequals because of the nature and character of their appointment and the posts which they hold. The Supreme Court directed separate seniority list to be prepared and acted upon for the purposes other than seniority and promotion in and to the post available to those in the cadre. It was directed that there will be two seniority list, one in the cadre of appointees and other appointees by merit promotion.

9. Sri Ashok Khare appearing for respondent Nos. 5 and 6 firstly submits that the cases of respondent No. 5 and 6 are not identical. The respondent No. 5 is B.Sc, with Postgraduate Diploma with Physics. M.A. and B.Ed. and respondent No. 6 is B.Sc. with Post-graduate Diploma, M.A. in Economics and M.A. in Sociology. The respondent No. 5 was appointed/promoted on the post of Lecturer in Physics on 10.1.1967 and was confirmed on 8.7.1968. The respondent No, 6 was appointed as Lecturer Physics on 12.7.1967 and is continuously working and is getting salary. His appointment was approved by the District Inspector of Schools on 9.1.1970, by which the approval was given to the recommendation of the selection committee appointing him on probation for one year. In list of seniority prepared by the Committee of Management in the year 1999-2000. The respondent Nos. 5 and 6 were placed above the petitioner and are" at present senior-most Lecturer. In the year 2001 also they were placed senior to the petitioner in the seniority list. Their names were sent as senior-most teachers for interview on the advertised vacancy on the post of Principal by the Board. Regulation 3 of Chapter iI speaks of grade and not the post. He has relied upon the Supreme Court decisions in Prof. S.A. Siddiqui Vs. Prof. M. Wajid Khan and Others, . in which the decision in Dr. Rashmi Srivastava and Dr. B.D. Srivastava Vs. Vikram University and others, and Dr Bal Krishna Agarwal Vs. State of U.P. and Others, , were also considered. The Supreme Court found that Rashmi Srivastava's case is distinguishable as the Merit Promotees under Madhya Pradesh Adhiniyam fall outside the cadre and that the Act was amended introducing merit promotion as additional source of recruitment. The inter se seniority would be ultra vires the Act and of no effect. Whereas the provisions under Aligarh Muslim University Act, 1920, do not prescribe direct recruitment to the regular cadre of teachers in Aligarh Muslim University, the method of recruitment was not prescribed in the Act but was left to be formulated by the Statutes of the University which gives to the Executive Council the power of appointment even otherwise than by direct recruitment. The Merit Promotion

Scheme adopted by the Aligarh Muslim University was accepted by the Executive Council and thus Rashmi Srivastava's case was not made applicable to the case. In Dr. Suman Agarwal (supra) also the amendment of the U. P. State University Act, 1973, by adding Section 31A (I) was taken into consideration and it was found that the post held by promotees becomes a temporary addition to the sanctioned cadre occupied by direct recruits. In the case of personal promotion, so long as the candidate holds the post, the post remains in the cadre. The Court directed the candidates from two streams to be fused into the relevant cadre of Professor or Reader. In Dr. Bat Krishna Agarwal (supra) the same principle was followed, as in Dr. Suman Agarwal's case.

10. Coming to the present case, the record shows that the respondent Nos. 5 and 6 were initially appointed in L.T. grade. There was shortage of Science Teachers at the relevant time and thus the State Government provided for Post-graduate Diploma in science subjects for taking Intermediate classes. The Government order dated 16.1.1966 issued with the concurrence of Finance Department provided that the Science Teachers of Intermediate Classes of the New Government aided Higher Secondary Schools who are B.Sc., L.T. and have passed the Post-graduate Condensed Diploma Course will be allowed Lecturer's scale of pay with effect from the date they are appointed to teach science to the Intermediate Classes. The order was applicable to the teachers who have passed the condensed diploma course in the year 1964-65. The respondent No. 5 was serving as L.T. Grade Teacher and that on 8.7.1967 after he completed condensed diploma course (Postgraduate Diploma in Physics from 19.12.1965 to 9.1.1967) he was made permanent in Lecturers grade on 8.7.1968, and that he was drawing Lecturer grade from 10.1.1967, respondent No. 6 Pramod Shanker Pandey was also serving in L.T. grade. He passed the Post-graduate Diploma in Physics from Lucknow University in 1968 and was appointed in Lecturer's grade in the college and was placed on probation on 9.8.1967 and was made permanent on 12.7.1969. Since thereafter they were treated to have been substantively appointed and were placed above the petitioner and Dr. Ram Gopal Misra in the institution, in the seniority list. They were treated as senior to the petitioner and Dr. Ram Gopal Misra for the last three decades. It was only when the post of Principal fell vacant that the petitioner started making claims for a seniority.

11. It is to be noticed that under the scheme of the Act and the Regulations there is only one cadre and that the appointment can be made either directly or by promotion. The pay scales of those who were given Lecturers grade and those who were appointed directly in Lecturer grade was the same. The post held by the respondent Nos. 5 and 6 was not outside the cadre, nor they were holding any officiating or temporary post. They were placed on probation and were confirmed after completing the probation successfully. There is no pleading or assertion by the petitioner that the work and responsibilities or teaching duties of respondent Nos. 5 and 6 were different than of a Lecturer. The difference in process of selection has not been pointed out. The Regulation 3 (1) (b) speaks of

grade and not the post.

12. In *Hari Nandan Sharan Bhatnagar Vs. S.N. Dixit and Another*, , the Supreme Court upheld the view of the High Court that the word "grade" in Rule 7 of the U. P. Legislative Department Rules suggests of status and did not refer to a class or a particular class. The High Court held that all the officials working in the same scale of pay in the department, although hold the post with different designation, shall be deemed to be held the post in the same grade, because their rank in the same department will be the same and equal to one another. The Dictionary meaning of "grade" is rank or position in scale, a class or position in a class or value.

13. In *A.K. Subraman and Others Vs. Union of India (UOI) and Others*, , the Supreme Court held that the word "grade" has various shades of meaning in the service Jurisprudence. It is some times used to denote the pay scale and some time a cadre. A cadre may consist of only permanent posts and some time also a temporary post. The word "grade" In the context of Assistant Engineer in Central Engineering Service (Class-11) was found by Supreme Court as in the sense of cadre and not scale of pay.

14. There is no dispute that the respondent Nos. 5 and 6 were eligible, qualified and were appointed in Lecturers grade and placed on probation and were subsequently confirmed. They are in the same pay scales as of petitioner and are performing same function, duties and responsibilities. They were all eligible and treated to be senior to the petitioner for last more than thirty years, and all of them are in the same class, and that these long standing seniority was not challenged by the petitioner, until the post of Principal fell vacant recently.

15. From the aforesaid discussion, I find that the Joint Director of Education, Basti Region, Basti did not commit any error of fact or law in finding that the respondent Nos. 5 and 6 are senior to the petitioner as well as Sri Ram Gopal Misra and that amongst the respondent Nos. 5 and 6 Sri Dinesh Chandra Pandey is senior-most as he was substantively appointed on 10.1.1967.

16. The writ petition is consequently dismissed with no order as to costs.