
(2012) 10 AHC CK 0207

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 21749 of 2006

Gyanendra Singh Chauhan and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-10-2012

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 33D

Citation : (2013) 2 ALJ 7 : (2013) 1 UPLBEC 227

Hon'ble Judges : Arvind Kumar Tripathi, J

Bench : Single Bench

Advocate : V.K. Singh, A.K. Singh, G.K. Singh, Jamwant Maurya and Sanjai Singh, for the Appellant; Ashok Khare, Arun Kumar Tiwari, Siddartha Khare and Sunil Kumar Srivastava, C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Arvind Kumar Tripathi, J.—List revised. Heard learned counsel for the petitioner, learned Standing Counsel, learned counsel for the respondent Nos. 4 to 8 and perused the record. The present writ petition has been filed for quashing of the order dated 5.4.2006 (annexure-1 to the writ petition) passed by Joint Director of Education, Kanpur Region, Kanpur deciding the inter se seniority pending between petitioners and respondent Nos. 4 to 8 by which declared the respondent Nos. 4 to 8 senior to the petitioners.

2. The brief facts of the present case are that B.N.S.D. Inter College, Kanpur Nagar is a recognise institution and governed by the provisions of U.P. Intermediate Education Act, 1921 and various rules and regulations framed. The institution is included in grant-in-aid list of government hence the Act No. 24 of 1971 (Payment of Salary Act) is also applicable. Initially the petitioners were appointed as Assistant Teacher on ad hoc basis in C.T. Grade. The petitioner No. 1, Gyanendra Singh Chauhan and petitioner No. 2, Rajjan Lal Shukla were appointed in C.T. Grade or, 5.12.1981, petitioner No. 3, Ratna Kumar Awasthi on

4.12.1981, the petitioner No. 4, Ram Veer Singh on 5.10.1982, petitioner No. 5, Sripathi Yadav on 2.1.1982, petitioner No. 6, Krishna Pal Singh on 15.10.1982 and petitioner No. 7, Bhanwar Pal Singh was appointed on 28.2.1984. The respondent Nos. 4 to 8 were appointed as Assistant Teacher in L.T. Grade on ad hoc basis. All the petitioners and respondents were appointed by the committee of management. The respondent No. 4, Virendra Kumar Shukla was appointed on 30.7.1986, respondent No. 5, Rajiv Kumar Sharma and respondent No. 6, Diwakar Mishra on 2.7.1990, respondent No. 7, Anwar Singh Yadav on 4.2.1991 and respondent No. 8, Atul Kumar Dixit was appointed on 2.7.1991, in the year 1989 the C.T. Grade cadre was declared by the State Government of U.P. as a dying cadre by government order dated 11.8.1989. Further government order was issued in the year 1990 to the effect that all those C.T. Grade teachers, who have completed 10 years continuous satisfactory service would be given L.T. Grade salary. On 28.2.1990 in the U.P. Secondary Education Services Selection Board Act 1982 by amendment section 33-B was added, which provides for regularisation of ad hoc teachers. In pursuance of the provision u/s 33-B the services of the petitioner Nos. 1 to 6 as well as respondent Nos. 4 to 7 have been regularized w.e.f. 7.8.1993 and service of respondent No. 8 was regularised w.e.f. 20.4.1998 u/s 33-C which was inserted by Act No. 25 of 1998. The U.P. Secondary Education Services Selection Board Act, 1982 was amended by the Act No. 25 of 1998 w.e.f. 20.4.1998 and section 33 C and D were inserted. According to provision of section 33-D, every teacher in C.T. Grade, who is a trained graduate and (a) has completed 10 years continuous satisfactory service in the said grade on or before January 1.1.1986; or (b) completed the said service of 10 years after January, 1, 1986 shall, with effect from the date of completion of the said service of ten years: be deemed to have been appointed in the trained graduate grade. In the year 1990 the seniority list was published by the institution showing the petitioners to be junior to the respondent Nos. 4 to 8 hence objections were filed against the aforesaid seniority list by the petitioners. The committee of management submitted a proposal for promotion of respondent Nos. 4 to 8 along-with other teachers as lecturer. Since objection of the petitioners remain pending hence writ petition No. 34698 of 2001 was filed, which was finally disposed of by order dated 8.11.2001 with the direction that the dispute regarding seniority should be decided by the committee of management within a period of three months, Thereafter, the persons aggrieved would have right to file an appeal before the Joint Director of Education and the promotions made should be subject to the decision of committee of management and Joint Director of Education in appeal. Thereafter, the committee of management after hearing the parties, concerned decided the question of seniority against the petitioners. Being aggrieved by the decision of committee of management an appeal was preferred by the petitioners before the Joint Director of Education, Kanpur Region, Kanpur. The Joint Director of Education after hearing the parties concerned including the committee of management reserved the order on 10.2.2003. In the meantime, writ petition No. 11098 of 2003 was filed before the High Court by the respondent Nos. 4 to 8 in which interim order

was passed. Finally the writ petition was dismissed on 14.12.2005 with observation that the respondent Nos. 4 to 8, who were petitioners in that writ petition should await the decision of the Joint Director of Education. After dismissal of the writ petition the Joint Director, Education fixed 4.2.2006 for further hearing of the matter. After hearing the parties the Joint Director of Education by order dated 5.4.2006 accepted the claim of the respondent Nos. 4 to 8 and rejected the claim of the petitioners for their seniority on the ground that since respondent Nos. 4 to 8 have regularised in L.T. Grade and petitioners have been regularised in C.T. Grade and since L.T. Grade is higher grade, therefore, respondent Nos. 4 to 8 should be treated senior to the petitioners.

3. The controversy involved in the present case is with regard to the inter se seniority in between petitioners and respondent Nos. 4 to 8. The petitioners are claiming seniority on the ground that their services were regularised w.e.f. 7.8.1993 in view of the provisions 33(B). Since the services of the petitioners and respondent Nos. 4 to 8 were regularised on the same day hence in view of chapter II regulation 3, the same has to be decided on the basis of age as their substantive appointment is w.e.f. 7.8.1993.

4. Learned counsel for the petitioners submitted that respondent Nos. 4 to 7 were regularised w.e.f. 7.8.1993 and service of respondent No. 8 w.e.f. 20.4.1998, in view of section 33-D of the U.P. Secondary Education Services Selection Board Act 1982. In view of the Act No. 25 of 1998 after completing 10 years continuous satisfactory service in C.T. Grade, on or before January 1, 1986, will be deemed to have been appointed in the L.T. Grade. Hence after completing the continuous service of ten years prior to 7.8.1993 when they were regularised they will be deemed to have been regularised in L.T. Grade on 7.8.1993. Hence their appointment was on substantive post in L.T. Grade with effect from the date of regularisation. The petitioner No. 7 was regularised in L.T. Grade w.e.f. 28.2.1994. Further contention of the counsel for the petitioner is that when seniority list was prepared showing the respondent Nos. 4 to 8 senior to the petitioners and their name was also proposed for promotion as Lecturer in promotion grade, the objection was raised on behalf of the petitioners before the committee of management and before the Joint Director of Education. The writ petition was filed, the same was disposed of on 8.11.2001. The committee of management decided the question of seniority against the petitioners against which the appeal was preferred before the Joint Director of Education, Kanpur Region, Kanpur. The Joint Director of Education after hearing the parties fixed 10.2.2003 for judgment. In the meanwhile concealing the material facts, Writ Petition No. 11098 of 2003 was filed on behalf of respondent Nos. 4 to 8 in which interim order was passed however, after hearing the parties the petition was finally dismissed with the observation that the respondent Nos. 4 to 8 should await the decision of the Joint Director. After dismissal of the writ petition again the date was fixed 4.2.2006 for hearing of the matter of seniority. Thereafter, impugned order was passed by the Joint Director of Education rejecting the claim of the petitioners. The case of the petitioners before the Joint Director was that

since they have been regularised on 7.8.1993 in L.T. Grade and also the services of respondent Nos. 4 to 8 were regularised w.e.f. 7.8.1993 hence their appointment on substantive vacancy would be the date of regularisation i.e. 7.8.1993. Since petitioners were senior in age to respondent Nos. 4 to 8, therefore, they were entitled to be treated senior to them. He further submitted that as per provision of regulation 3(1)(b) of chapter II framed under the U.P. Intermediate Education Act, 1921, the seniority of a teachers shall be determined on the basis of their substantive appointment in that grade. If two or more teachers were appointed on the same date the seniority would be determined on the basis of their age. Except the petitioner No. 8 all the petitioners were regularised in L.T. Grade w.e.f. 7.8.1993 and respondent Nos. 4 to 7 were also regularised on the same date and respondent No. 8 was regularised on 20.4.1998. The claim of the petitioner was refused and claim of respondent Nos. 4 to 8 was accepted by Joint Director of Education and they were treated senior to the petitioners. Hence the order of committee of management as well as the impugned order passed by the Joint Director of Education, Kanpur Region, Kanpur dated 5.4.2006 are liable to be quashed and the direction be issued to consider the claim of the petitioner and declare them senior and to decide the seniority on the basis of age as they were absorbed in L.T. Grade and regularised w.e.f. 7.8.1993.

5. Learned counsel for the respondent Nos. 4 to 8, Mr. Ashok Khare and learned Standing Counsel opposed aforesaid prayer. Mr. Ashok Khare submitted that the Joint Director of Education, Kanpur Region, Kanpur has rightly held that the petitioners were junior to the respondent Nos. 4 to 8, who were directly recruited on ad hoc basis in L.T. Grade and petitioners were initially appointed on ad hoc basis in C.T. Grade and cadre of the respondent Nos. 4 to 8 was higher to the petitioners hence they were rightly treated senior to the petitioners. He further submitted that services of the petitioner Nos. 1 to 7 were regularised on 7.8.1993, who were appointed as ad hoc teacher in C.T. Grade. Since they have completed 10 years of service their services were regularised on 7.8.1993 in C.T. Grade. The section 33A was added on 6.4.1991, 33-B was added on 7.8.1993, 33-C and 33-D were inserted by amendment on 20.4.1998.

6. Mr. Khare further submitted that the petitioners were appointed and working as ad hoc teachers in C.T. Grade and respondent Nos. 4 to 8 were appointed and working in IT. Grade. The services of petitioners 1 to 6 and respondents 4 to 7 were regularised in view of the section 33-B of the U.P. Secondary Education Services Selection Board Act, 1982 (in short "Act 1982") on 7.8.1993 on the post of C.T. Grade and L.T. Grade respectively. The services of petitioner No. 7 and respondent No. 8 were regularised on 28.2.1994 and 20.4.1998 respectively. Services of the petitioners and respondent Nos. 4 to 8 were regularised on substantive vacancy. The provisions for inter se seniority are provided in chapter II regulations 3. In chapter II regulation 3(1) committee of management has to maintain the seniority list of teachers in accordance with the provisions mentioned in regulation 3(1) (b) (bb) (c) (d) and (e) u/s 3(1) (a) (b) the

seniority list for each grade of teachers whether permanent or temporary on any substantive post shall be prepared separately. However, the seniority of teachers in a grade has to be determined on the basis of their substantive appointment in that grade. If two or more teachers are appointed on the same day seniority has to be determined on the basis of age. Further in view of the regulation 3(1) (c) a teacher in a higher grade shall be deemed to be senior to teacher in a lower grade. As far as the deemed appointments of the petitioners in L.T. Grade are concerned, it was provided u/s 33-D, which came into effect on 20.4.1998. In View of section 33-D the C.T. Grade teachers, who have completed 10 years of continuous satisfactory service on or before January 1, 1986 or who completes the said service of 10 years after 1.1.1986 w.e.f. the date of said services of 10 years be deemed to have been appointed in the trained graduate (L.T. Grade). The seniority list has to be prepared and revised every year. The service of the petitioners and respondent Nos. 4 to 8 were regularised on substantive basis w.e.f. 7.8.1993 and in the year 1993 and even before that the respondent Nos. 4 to 8 were senior to the petitioners because they were appointed as ad hoc teachers in L.T. Grade and petitioners were appointed as ad hoc teachers in C.T. Grade. The respondent Nos. 4 to 8, who were in higher grade will be senior. The deemed appointment of the petitioner in view of the provision of section 33-D of Act, 1982 will be for regularising their services and appointment on the post of L.T. Grade and the seniority will not be affected with retrospective affect. In view of judgment of the Apex Court in case of D.P. Sharma and Others Vs. Union of India and Another, by an amendment of Rule or any subsequent provision added will not be varied disadvantage retrospectively because seniority has already been determined, which has to be maintained every year. Apart from that the seniority, which was maintained for a long period will not be changed by adding section 33-D by which there is a deemed appointment of the petitioner on the post of L.T. Grade from C.T. Grade. That judgment was followed by the full Bench in case of Asha Saxena Vs. S.K. Chaudhari and Others, , however, in that case seniority, which was in existence for the last 17 years was not disturbed after lapse of such a long period and it was held by the Full Bench that the power has to be exercised in reasonable time. Hence on both ground the seniority of the petitioner is not liable to be changed. In view of the fact, petitioners are not entitled for any relief as the impugned order has rightly been passed. Since there is no illegality in the impugned order dated 5.4.2006.

7. Considered the submission of counsel for the parties. Admittedly, the petitioners were appointed as ad hoc Assistant Teachers in C.T. Grade. Petitioner Nos. 1, 2 and 3 were appointed in the year 1981, 4, 5 and 6 in the year 1982 and petitioner No. 7 was appointed in the year 1984. The respondent Nos. 4 to 8 were appointed as ad hoc Assistant Teacher in L.T. Grade. The respondent No. 4 was appointed in July, 1986. Respondent Nos. 5 and 6 in July, 1990 and respondent No. 7 in February, 1991 and respondent No. 8 in July 1991. By the G.O. dated 11.8.1989 C.T. Grade was declared to be a "dying cadre". Thereafter by order dated 10.2.1990 it was provided that C.T. Grade Assistant Teachers,

who were completed 10 years" service would be provided L.T. Grade and the different grade was fixed, who were taking higher classes.

8. Hence by the said Government Order only L.T. Grade was provided and there was no deemed appointment in L.T. Grade and change of grade from C.T. Grade to L.T. Grade. When the C.T. Grade was declared as a dying cadre then appointment was stopped but the C.T. Grade teachers continued in their services on C.T. Grade. Since there was some dispute whether they should be treated as L.T. Grade teacher or only the salary of L.T. Grade teachers has to be provided then a clarification was issued by a Government Order dated 14.12.2001. In which it was clarified that in view of G.O. dated 11.8.1989 and 16.2.1990 the C.T. Grade Assistant Teachers, who have completed ten years of satisfactory services they would be entitled for the L.T. Grade but they would not be treated as L.T. Grade. Subsequently, by the amendment in the U.P. Act No. 15 of 1982 section 33-B was inserted w.e.f. 7.8.1993. The section 33(B), is quoted hereinbelow:--

33-B Regularisation of certain other appointment--

(1) Any teacher, other than the Principal or Headmaster, who --

(a) (i) was appointed by promotion or by direct recruitment in the Lecturer grade or Trained Graduate grade on or before May 14, 1991 or in the Certificate of Teaching grade on or before May 13, 1989 against a short term vacancy in accordance with Paragraph 2 of the Uttar Pradesh Secondary Education Services Commission (Removal of difficulties) (Second) Order, 1981 and such vacancy was subsequently converted into a substantive vacancy; or

(ii) was appointed by direct recruitment on or after July 14, 1981 but not later than June 12, 1985 on ad hoc basis against a substantive vacancy in the Certificate of Teaching grade through advertisement and such appointment was approved by the inspector; or

(iii) was appointed by promotion or by direct recruitment on or after July 31, 1988 but not later than May 14, 1991 on ad hoc basis against a substantive vacancy in accordance with section 18, (as it stood before its substitution by the Uttar Pradesh Secondary Education Services Commission and Selection Boards (Second Amendment) Act, 1992;]

(b) possesses the qualifications prescribed under, or is exempted from such qualification in accordance with, the provisions of the Intermediate Education Act, 1921;

(c) has been continuously serving the Institution from the date of such appointment up to the date of the commencement of the Act referred to in sub-clause (iii) of Clause (a);

(d) is not related to any member of the management or the Principal or Head Master of the Institution concerned in the manner specified in the explanation to

sub-section (3) of Section 33-A;

(e) has been found suitable for appointment in a substantive capacity by a Selection Committee constituted under sub-section (2), shall be given substantive appointment by the management.

(2) (a) For each region, there shall be a Selection Committee comprising --

(i) Regional Deputy Director of Education of that region, who shall be the Chairman.

(ii) One officer holding a Group "A" post (specified as such by the State Government from time to time) in any department other than Education Department, to be nominated by the State Government.

(iii) Regional Inspectress of Girls School of that region:

Provided that the Inspector of the district shall be co-opted as a member while considering the cases the regularisation of that district.

(b) The Selection Committee constituted under Clause (a) shall consider the case of every such teacher and on being satisfied about his eligibility and suitability in view of the provisions of sub-section (1) shall, subject to the provisions of sub-section (3) recommend his name to the Management for appointment under sub-section (1) in a substantive vacancy.

(3) (a) The names of the teachers shall be recommended for substantive appointment in order of seniority is determined from the date of their appointment.

(b) If two or more such teachers are appointed on the same date, the teacher who is elder in age shall be recommended first.

(4) Every teacher appointed in a substantive capacity under sub-section (1) shall be deemed to be on probation from the date of such substantive appointment.

(5) A teacher who is not found suitable under sub-section (1) and a teacher who is not eligible to get a substantive appointment under that sub-section shall cease to hold the appointment on such date as the State Government may by order specify.

(6) Nothing in this section shall be construed to entitle any teacher to substantive appointment, if on the date of commencement of the Act referred to in sub-clause (iii) of Clause (a) of sub-section (1), such vacancy had already been filled or section for such vacancy has already been made in accordance with this Act.

9. In view of provision of 33-B it is clear that by inserting section 33-B w.e.f. 7.8.1993 the teachers, who were appointed in the C.T. Grade, L.T. Grade and Lecturer Grade on or before 12.5.1989 and the vacancy was subsequently converted into a substantive vacancy or appointed by a direct recruitment or on

after July, 19, 1981 but not later than June 12, 1985 on ad hoc basis against a substantive vacancy and they possess the qualification in accordance with the provisions of Intermediate Education Act, 1981, shall be given substantive appointment by the management. There was a provision that who were appointed by promotion or by direct recruitment on or before May 14, 1991, who possess the qualification in view of the provisions of U.P. Act No. 2 of 1921 shall be given substantive appointment by the management. The petitioners when they were regularised on substantive post were working in C.T. Grade and respondent Nos. 4 to 8 were appointed and working in L.T. Grade. In view of the newly added section 33-B, which was inserted w.e.f. 7.8.1993 the services of petitioners and contesting private respondents were regularised on substantive vacancy in C.T. Grade and L.T. Grade respectively. According to the provisions of chapter II regulation 1, the seniority list has to be prepared by the management committee and in view of the regulation 3 (2) the seniority list should be revised every year by the management committee. The chapter II regulation 3(1) and 2 are reproduced hereinbelow:--

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;

(Vernacular matter omitted....Ed.)

(2) The seniority list shall be revised every year and the provisions of Clause (1) shall mutatis mutandis apply to such revision.

10. In view of the provision of chapter II regulation 3(1)(a) the seniority list for each grade of teachers whether permanent or temporary on substantive post has to be prepared separately and under regulation 3(1)(c) a teacher in a higher grade shall be deemed to be senior to a teacher in lower grade irrespective of length of service. On 7.8.1993 the services of petitioners and respondent Nos. 4 to 7 were regularised on substantive post of C.T. Grade and L.T. Grade respectively and respondent No. 8 w.e.f. 20.4.1998 on L.T. Grade. Hence under regulation 3(1) (c) the respondent Nos. 4 to 8 were senior to the petitioners. The regulation 3(1) (bb) would be applicable with regard to the inter se seniority of the petitioner Nos. 1 to 7, whose services were regularised on the same day on C.T. Grade i.e. w.e.f. 7.8.1993 and the inter se seniority of the respondent Nos. 4 to 7 and whose services were regularised on L.T. Grade w.e.f. 7.8.1993 and 20.4.1998. Their seniority has to be decided on the basis of age if their appointment on substantive post is w.e.f. 7.8.1993. The deemed appointment of the petitioner on the post of L.T. Grade is in view of section 30-D, which was inserted by the U.P. Act No. 25 of 1998 and came into effect on 20.4.1998. Hence the seniority of the petitioner and respondents has not to be decided under the provisions of section 30-D by which they were deemed to have been appointed on L.T. Grade. When they have completed 10 years of regular satisfactory service in C.T. Grade would be deemed to have been appointed in L.T. Grade. The seniority of those L.T. Grade teachers, who were senior will not be changed by subsequent provision. Once right vested in that cannot be changed, varied or withdrawn with retrospective effect.

11. According to the judgment of the Apex Court in D.P. Sharma and others (supra) it was held "The general rule is if seniority is to be regulated in a particular manner in a given period, it shall be given effect to and shall not be varied to disadvantage retrospectively".

12. Hence in view of the fact, it is clear that the service of the petitioners were regularised u/s 33-B of the Act of 1982 w.e.f. 7.8.1993 on the post of C.T. Grade and earlier they were given only the scale of L.T. Grade after completing 10 years of service.

13. Service of the contesting teachers-respondents were regularised in L.T. Grade w.e.f. 7.8.1993 in higher grade to the grade of the petitioners. Hence they were senior in the year 1993. When there was amendment and new section 33-D was inserted in April, 1998. The petitioners were deemed to have been appointed in L.T. Grade with effect from the date when they have completed 10 years of service as Assistant C.T. Grade Teacher on substantive post. Before that right vested in favour of respondent Nos. 4 to 8, who were appointed and regularised in L.T. Grade. Hence the seniority of the respondent Nos. 4 to 8 will not be prejudiced by subsequent provision. The subsequent regulation incorporated in the year 1998, will not affect the inter se seniority of the petitioners and respondent Nos. 4 to 8 which was already decided and has to be decided on the basis of rules and regulations prevailing on the relevant dates and during

relevant period. The judgment of the Apex Court in case of D.P. Sharma (supra) was followed by the Full Bench of this Court in case of Dr. Asha Saxena (supra) though in that case the seniority was not disturbed, which was prepared and continued for a long period of about 17 years. Vide Chapter II regulation 3(1)(a) seniority list shall be prepared separately for each grade of teachers whether permanent or temporary on any substantive post. Vide Chapter II Regulation 3(1) (C) A (sic) in higher grade shall be deemed to be senior to a teacher in lower grade irrespective of length of service. Hence the contention on behalf of petitioners, is not acceptable and is against the record and provisions as the services of the petitioners were not regularised on substantive post in L.T. Grade w.e.f. 7.8.1993 but were regularised on C.T. Grade.

14. In view of the aforesaid discussion, there is no illegality in the impugned order dated 5.4.2006 (Annexure-1 to the writ petition) passed by Joint Director of Education, Kanpur Region, Kanpur in deciding that the respondent Nos. 4 to 8 were senior to the petitioners. Accordingly, present writ petition being devoid of merit is hereby dismissed. No order as to cost.