

(1999) 07 AHC CK 0174
In the Allahabad High Court
Case No : C.M.W.P. No. 41652 of 1992

Hari Mohan Singh

APPELLANT

Vs

District Inspector of Schools, Ghazipur and another

RESPONDENT

Date of Decision : 29-07-1999

Acts Referred:

Citation : (1999) 4 AWC 3537 : (1999) AWC 3537 : (1999) 3 UPLBEC 2300

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : S.K. Verma and Sidharth Verma, for the Appellant;

Final Decision : Disposed Of

Judgement

D.K. Seth, J.—The petitioner was promoted to the post of Lecturer in Sociology against a regular vacancy along with one Sri Sital Deen Singh promoted to the post of Lecturer in Economics. Tills promotion was given by a resolution dated 31st October, 1976. But the District inspector of Schools, Ghazipur, did not approve the same on the ground that one of the post was to be filled up by promotion and the other by direct recruitment. Therefore, the school authority should send a revised proposal. This communication was sent to the school authority on 17th January. 1977. Admittedly, the school authority did not send any fresh proposal. However, admittedly, the petitioner continued to take classes in intermediate college and perform the duties of a Lecturer. The petitioner did not come to this Court and did not assert his right. The situation shows that the petitioner was more conscious about his duties but less conscious about his rights. He concentrated on teaching without raising any objection to the injustice perpetrated on him and the inaction of the school authority as well as the respondents. The school authority also did not take any steps.

2. From the counter-affidavit, it is apparent that there were 8 posts of Lecturers, out of which. 3 were filled up by direct recruitment and 2 were filled up by promotion, in respect of promotion to the post of Lecturer in Economics, there

was a dispute of seniority between the said Sital Deen Singh and one Sri Ashok Singh. which accounts forgone post. in such situation, the post of the Lecturer in Sociology remains undisputed. Therefore, the District inspector of Schools ought to have approved the petitioner's promotion in the post of Lecturer of Sociology instead of reopening the whole case. Then again the alleged dispute was never got asserted until 1991. inasmuch as it was only in 1991 the writ petition has been filed in relation to the question of seniority between Sri Ashok Singh and Sri Sital Deen Singh. Therefore, the question of seniority between the two persons would not be a ground of refusal to grant the relief to the petitioner.

A person who suffered silently because of the inaction on the part of the school authority as well as respondents, cannot be made to suffer even when he approaches the Court when admittedly he continued to serve in the post of Lecturer all along since he was less conscious about his rights and did not approach this Court.

Though in equity, it seems that the Court should come in aid of the petitioner but unfortunately the law stands in his way, in fact, in law, no relief could be granted to the petitioner since Mr. K. R. Singh had taken a point that there having been no promotion, the post of Lecturer in Sociology had lapsed and. therefore, no relief can be had.

3. Technically the point taken by Mr. Singh appears to be correct but in the peculiar facts and circumstances where a person has suffered silently because he was less conscious about his right and more conscious about his duties, such person's attitude and endeavour should not go unrewarded. Though the Court cannot grant relief to him in the facts and circumstances of the case by reason of the legal position, but in special circumstances without creating precedence by reason of peculiar situation available in this case, the Court feels that some compensation should be given to the petitioner who had discharged the duty right from 1976 till retirement in the form of granting him the retrial benefits on the basis of pay of Lecturer without granting any relief in the form of payment of salary for the period during which he has not been paid though had performed the duty of a Lecturer. If by virtue of the interim order passed by this Court the petitioner is getting pay of a Lecturer after the interim order was granted, in that event the same should be allowed to be retained by him. Since the petitioner was permitted to work as a Lecturer and received the salary of the post of Lecturer by virtue of the interim order and had retired during the pendency of the writ petition and till the date of retirement he received the salary of the post of Lecturer therefore. It would work injustice if the petitioner is deprived of the retrial benefits of the post of Lecturer's Grade which he had received on the date of his retirement. Such a relief is made available to the petitioner only because of the peculiar facts and circumstances of the case as obtaining in the facts and circumstances herein without creating any precedence.

Having regard to the situation as pointed out by Mr. SIDDHARTH VERMA from paragraph 6 of the counter-affidavit that there has been an injustice by reason of

inaction on the part of the respondents, namely, that out of the 8 posts, only one post was filled up by promotion and two posts were filled up by ad hoc promotion. On this analogy it was pointed out that the promotional quota was full. The promotional quota could not have been deemed to be full by reason of ad hoc promotion in two posts. The ad hoc promotions are ad hoc in nature. The same does not mean to fill up the quota of promotional post. Therefore, there are reasons to believe that the refusal to grant approval of the petitioner in 1976 was wholly misplaced as is apparent from paragraph 6 of the statement made in the counter-affidavit. This is one of the factor which had turned the equity in favour of the petitioner as observed earlier.

4. in such circumstances, the respondents are directed to pay the retrial benefits of the petitioner on the basis of pay in Lecturer's grade last drawn by the petitioner in peculiar facts and circumstances of the case without creating any precedence, as early as possible, if not already paid, preferably within a period of six months from the date a copy of this order is produced before the concerned respondents.

5. The writ petition is accordingly disposed of. No cost.

Let a copy of this order be issued to the learned counsel on payment of usual charges, at the earliest.