

(1993) 08 AHC CK 0060

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6211 of 1979

Hari Narain

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 17-08-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Intermediate Education Act, 1921 — Section 16E

Citation : (1994) 1 AWC 48 : (1994) 2 UPLBEC 923

Hon'ble Judges : D.S. Sinha, J

Bench : Single Bench

Advocate : H.S.N. Tripathi, for the Appellant; Sidarth Singh, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Sinha, J.—Heard Sri H.S.N. Tripathi, learned counsel for the Petitioner and Sri Sidharth Singh, learned Special Counsel representing the Respondent no. 1. Other Respondents have not put in appearance.

2. The Respondent no. 4, Sri Ram Singh, a L.T. grade teacher of O. K. Intermediate College, Math, Lar in the district of Deoria, has been Transferred to Swami Daya Nand Intermediate College, Math, Lar, in the same district, where the Petitioner is serving as Assistant teacher in CT. Grade. The proposal of transfer was approved by the Managing Committee of O.K. Intermediate College on 14th January, 1979.

The Managing Committee of Swami Daya Nand Intermediate College also approved the transfer of the Respondent no. 4 vide its resolution dated 18th May, 1979, Finally, the District Inspector of Schools, Deoria accorded requisite permission for effecting the transfer of the Respondent no. 4 vide order dated 10th August, 1979. The Petitioner feels aggrieved by the transfer of the Respondent no. 4 from O. K. Intermediate College to Swami Daya Nand Intermediate College. Hence this petition.

3. The Petitioner contends that the post which will be held by the Respondent no. 4 in pursuance of the transfer order is meant to be filled by promotion and the effect of the transfer is that his chances of promotion to the said post are eclipsed.

4. For upholding the contention of the Petitioner it is necessary to find out as to whether the Petitioner was eligible for the promotion to the post in question.

5. From the averments made in the petition, it appears that the post in question fell vacant on account of promotion of Mr. Nurul Husain to lecturer's grade in December, 1978. It is also pleaded in the petition that the said post has to be filled by promotion. The pleadings in the petition are uncontroverted.

6. For being eligible to L.T. grade from C.T. grade by promotion the candidate has to fulfill the requirements prescribed by Regulation 6 of Chapter II of the Regulations made under the provisions of Section 16-E of the U.P. Intermediate Education Act, 1921. One of the requirements of this provision is that the candidate must have a minimum of five years continuous substantive service to his credit on the date of occurrence of the vacancy. In the instant case, the vacancy on the post arose in December 1978. Therefore, for being eligible to promotion the Petitioner must demonstrate and establish that he had minimum five years continuous substantive service to his credit. in December, 1978. In paragraph 4 of the petition, the Petitioner has pleaded that the management promoted him in C.T. grade after having followed the procedure mentioned in the letter of the District Inspector of Schools dated 19th June, 1974 and the provisions of the. U.P. Intermediate Education Act and the Regulations framed thereunder. Further pleading in the said paragraph is that the promotion of the Petitioner in C.T. grade was done by the resolution dated 1st July, 1974 which was later on approved by the District Inspector of Schools. From this pleading, it is apparent that the period of five years of continuous service in C.T. grade by the Petitioner completed in July, 1979 or thereafter. In December, 1978, when the vacancy on the disputed post arose, the Petitioner did not have the requisite period of five years of continuous service on the substantive post of C.T. grade. Thus he lacked the basic requirement of possessing of minimum of five years continuous service at his credit on the date of occurrence of vacancy. He, therefore, could not be considered for promotion to the post in question. That being so it cannot be said that the impugned transfer of the Respondent no. 4 affected the chances of the promotion of the Petitioner on the post which fell vacant in December, 1978.

7. It cannot be gainsaid that the existence of a right and invasion thereon are conditions precedent- for invoking and exercise of jurisdiction under Article 226 of the Constitution of India. As already demonstrated the Petitioner was ineligible for being considered for promotion to the disputed post of L.T. grade which fell vacant in December, 1978. He had, therefore, no right for either being promoted to the post in question or being considered therefor. The impugned transfer of the Respondent no, 4, therefore, cannot be termed as invasion on any right of

the Petitioner muchless of promotion to the disputed post.

8. For what has been said above, the petition fails and is, therefore, dismissed. However there will be no order as to costs.