
(1999) 04 AHC CK 0111
In the Allahabad High Court
Case No : Special Appeal No, 664 of 1997

Hari Om Gupta

APPELLANT

Vs

Director of Education (Secondary) U.P.Alld.& Ors.

RESPONDENT

Date of Decision : 20-04-1999

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Chapter 3, 21
Uttar Pradesh Secondary Education Services Commission and Selection Boards
(Amendment) Act, 1991 — Section 33A(1A)

Citation : (1999) 04 AHC CK 0111

Hon'ble Judges : N.K.Mitra, CJ and S.R.Singh, J

Final Decision : Dismissed

Judgement

1. This Special Appeal arises out of judgment and order dated 1481997 passed in Civil Misc. Writ Petition No. 18208 of 1997. It maybe observed that although by means of the said judgment two connected writ petitions being Civil Misc. Writ Petition No. 18208 of 1997 and Civil Misc. Writ Petition 23134 of 1997 were disposed of by the learned Single Judge, but the appeal is confined to the decision in writ petition No. 18208 of 1997 as was stated by Shri Ashok Khare, counsel for the appellant at the time of the admission of the appeal on 391997.

2. Stated briefly the undisputed facts are that the appellant was appointed Lecturer (Biology) on 1571964 in Maharaja Agrasen Inter College, City and District Moradabad; the post of Principal in the college fell vacant on 3061990 due to retirement of the permanent incumbent; the Committee of Management hi its meeting held on 3061990 passed a resolution giving adhoc/officiating promotion to the appellant on the post of Principal inasmuch he was the senior most Lecturer in the institution; pursuant to the resolution passed by the Committee of Management charge was handed over 10 the appellant and a formal letter of promotion was issued on 171990; signatures were attested by the District Inspector of Schools on 971991; and the promotion was approved by the District Inspector of Schools vide order dated 1541991. Subsequently the vacancy in the post of Principal was advertised by the Secondary Education

Service Commission U.P. vide advertisement No. 1 of 1995. Pursuant to the said advertisement the petitioner also applied and was selected for appointment by the Commission vide notification dated 38/1996. The appointment letter was issued in favour of the appellant on 29/8/1996. It may be pertinent to mention here that according to the notification issued by the U.P. Secondary Education Service Commission, Allahabad the appellant's name was at S. No. 1 in the panel of the selected candidates in the institution in question. His name also figured in the panel of the selected candidates in relation to two other institutions. The petitioner, however, preferred to remain in Maharaja Arisen Inter College, Moradabad.

3. The question that arises for consideration is as to whether the appellant after being appointed to the post of Principal was bound by the option he had exercised as Lecturer to retire at the age of 58 years. It is not disputed that the age of superannuation of teacher is 60 years as provided in Regulation 21 of Chapter III of the Regulations made under the U.P. Intermediate Education Act, 1921 and but for the option exercised by the appellant to retire at the age of 58 years he would have been allowed to continue up to the age of 60 years. It may be pertinent to observe that according to the Government orders issued from time to time teachers of Government aided private institutions were given opportunity to exercise option to retire at the age of 58 years and thereby to opt for gratuity which is not available to a teacher retiring at the age of 60 years. On a perusal of the materials on record it would appear and the learned Single Judge has also recorded a finding, that the appellant had submitted his option form on 22/12/1982 which was countersigned by the District Inspector of Schools in token of acceptance on 20/3/1986 and the appellant was informed of his option having been accepted by the District Inspector of Schools.

4. The argument advanced by Shri Ashok Khare, learned counsel for the appellant is that since the appellant was appointed to the post of Principal by direct recruitment on the recommendation made by the U.P. Secondary Education Service Commission and not by promotion, the option exercised by him as a Lecturer to retire at the age of 58 years lost its relevance and the appellant was entitled to continue up to the prescribed age of superannuation i.e., 60 years. The submission made by Shri Ashok Khare has no substance. The reason is that the appellant was initially given adhoc promotion to the post of Principal in 1990 and by virtue of the provisions contained in Section 33A (1A) he stood regularised with effect from the date of commencement of U.P. Secondary Education Service Commission and Selection Boards (Amendment) Act, 1990 i.e., 6/4/1991 and we find substance in the submissions made by Shri V.K. Shukla, learned counsel for the respondent that the selection made by the Commission in 1996 became redundant as held by the Supreme Court in *Munshi Tiwari Dun Pandey v. Ranjit Tiwari and others*, 1997(1) LBESR 961 (SC) inasmuch as subsection (1A) of Section 33A provides that every teacher appointed by promotion on adhoc basis in accordance with the para 2 of the U.P. Secondary Education Service Commission (Removal of Difficulties Order), 1981, as amended

from time to time, who possess the qualification prescribed or is exempted from such qualification in accordance with the provisions of Intermediate Education Act, 1921, shall, with effect from the date of commencement of U.P. Secondary Education Service Commission and Selection Board (Amendment) Act, 1990 "be deemed to have been appointed in substantive capacity provided that such teacher has been continuously serving in the institution from the date of such appointment to the date of such commencement". It is not disputed that the appellant was given adhoc promotion in 1990 and he continued to serve the institution as Principal from the date of his adhoc appointment by promotion even after Amending Act came into force. By virtue of legal fiction created by the legislature under subsection 33 A (1A) the appellant became permanent Principal with effect from 641991 and, therefore, his selection by the Secondary Education Service Commission pursuant to advertisement No. 1 of 199596 was a futile exercise.

5. Second reason why the appellant was bound by the option exercised by him to retire at the age of 58 years is that it is provided in the pension scheme that option once exercised is final and irrevocable. It is an option for the entire service career as a teacher. It cannot be said that the option exercised by a teacher as a Lecturer will not hold the field after such teacher is appointed as Principal. We are of the considered view that it would make no difference whether the appointment to the higher post is by direct recruitment or by promotion for option once exercised will be valid for the entire service career of the teacher concerned. In our considered view the learned Single Judge was right in holding that the appellant was bound by the option exercised by him on 22121982 which was countersigned and accepted by the District Inspector of Schools in token of having approved the option on 2231986 and we find no ground for interference.

6. Before parting with the judgment we may observe that in case the appellant had actually worked in the institution as Principal after attaining the age of 58 years he will be paid salary, if not already paid and in case the salary has already been paid, the same shall not be recovered. The period so spent of duty shall be treated to be an extension in service after retirement.

7. In view of the above discussion the appeal fails and is dismissed subject to aforesaid observations. The parties shall bear their own costs.