

(1997) 09 AHC CK 0176

In the Allahabad High Court

Case No : Writ Petition No. 4899 (S/S) 1994 and Writ Petition No. 11517, 12097 (S/S) of 1990 and Writ Petition No. 7669 (S/S) of 1992

Jagat Narain Dwivedi

APPELLANT

Vs

District Inspector of Schools, Pratapgarh and others

RESPONDENT

Date of Decision : 02-09-1997

Acts Referred:

Uttar Pradesh Education Act, 1921 — Section 16E, 16F, 16FF
Uttar Pradesh Education Regulations, 1921 — Regulation 3(1), 3(2)

Citation : (1998) 1 AWC 118 : (1998) 1 UPLBEC 181

Hon'ble Judges : Mrs. Shobha Dikshit, J

Bench : Single Bench

Advocate : A.K. Khan and L.P. Misra, for the Appellant; I.B. Singh, Smt. Mathuri Singh, M.M. Srivastava, H.G.S. Parihar, Alok Mathur, S.K. Gaur and Pankaj Bajpai, for the Respondent

Final Decision : Dismissed

Judgement

Mrs. Shobha Dikshit, J.—The short question which falls for consideration in this writ petition is as to what is the relevant date for the purpose of determining inter se seniority amongst the teachers in the lecturer's grade, i.e., whether the date of joining the post in the grade or the date of approval of the order of appointment or promotion in that grade is the relevant date. In the present case, the teachers Sarva Sri J.N. Dwivedi, S.N. Shukla and S.P. Tripathi were duly selected for the subjects--Economics, Geography and Hindi and their selection was also approved by the concerned District Inspector of Schools vide orders dated 11.7.1973. The appointment of Sri J.N. Dwivedi and Sri S.N. Shukla was by way of direct selection whereas Sri S.P. Tripathi was approved for being promoted to teach the subject of Hindi in lecturer's grade. Pursuant to the aforesaid approval, the Committee of Management issued appointment letters and delivered them personally to Sri J.N. Dwivedi and Sri S.N. Shukla on 23.7.1973. Sri J.N. Dwivedi claims that he joined the post immediately thereafter on 23.7.1973 in the afternoon at 1.30 p.m. whereas Sri S.N. Shukla joined the

post at 10 a.m. on 24.7.1973. Sri S.P. Tripathi also joined the post on 24.7.1973. Since Sri J.N. Dwivedi joined the post in the afternoon, his salary for the said post was paid with effect from 24.7.1973 as per rules. Other two teachers were also paid their salary with effect from 24.7.1973.

2. The District Inspector of Schools who initially approved the promotion of Sri S.P. Tripathi in the lecturer's grade vide orders dated 11.7.1973, subsequently on coming to know that he did not possess the minimum experience of 5 years' continuous service in L.T grade and was lacking in the essential qualifications for being promoted from L.T. grade to lecturer's grade, cancelled the same vide orders dated 24.7.1973. The post of lecturer in Hindi was advertised afresh through direct recruitment. Sri S.P. Tripathi applied for this post and was selected in this direct selection held on 6.8.1973. The District Inspector of Schools approved this selection and appointment of Sri S.P. Tripathi on the post of lecturer in Hindi vide his order dated 7.11.1973. It is in the aforesaid background that the aforesaid three lecturers are claiming seniority over each others and this triangular contest has resulted into filing of the abovenoted writ petitions by each one of them. Sri Jagat Narain Dwivedi has filed Writ Petition No. 11517 (S/S) of 1990 as also Writ Petition No. 4899 (S/S) of 1994, Sri S.N. Shukla Writ Petition No. 7669 (S/S) of 1992 and Sri S.P. Tripathi Writ Petition No. 12097 (S/S) of 1990 along with Committee of Management of the Institution in question.

3. The question of seniority assumed greater importance when the occasion arose for officiation or ad hoc appointment to the post of Head of the Institution, i.e., Principal. Section 16E of U. P. Intermediate Education Act (hereinafter referred to as the Act) provides the manner and mode for making appointment on the post of Head of the Institution and teachers of an Institution. The Committee of Management has been vested with the power to make such appointments in the manner provided in the sub-section (2). Sub-section (3), provides that no person shall be appointed as Head of the Institution or teacher in an Institution unless he possesses the prescribed minimum qualifications. Regulations have been framed under the Act for the purpose of this Sections 16E, 16F and 16FF and are contained in Chapter II. Relevant Regulation 3 dealing with determination of inter se seniority is quoted hereinbelow for reference.

"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) x x x x (d) x x x x (e) x x x x (f) x x x x (g) x x x x (2) The seniority list shall be revised every year and the provisions of clause (1) shall mutatis mutandis apply to such revision."

4. From the perusal of the aforesaid regulations, it is clear that the Committee of Management is obliged to maintain a seniority list of the teachers in each grade separately. In the present case, the seniority list should have been drawn for the teachers in the lecturer's grade and the seniormost teacher in this grade is entitled to officiate or to be promoted on ad hoc basis on the post of Principal against substantive vacancy till such time a duly selected candidate by the U. P. Secondary Education Service Selection Board (hereinafter referred to as the Board) is made available. The relevant rules further provide that the names of two seniormost eligible teachers in the lecturer's grade shall be forwarded by the Committee of Management to the Selection Board for being considered along with the candidates who have applied directly for selection for this post. Therefore, the determination of inter se seniority by the Committee of Management assumes relevance for both the purposes, viz., officiation as ad hoc Principal and regular selection against substantive vacancy.

5. In the light of the aforesaid legal requirement, Sri J.N. Dwivedi addressed a letter to the Principal of the College dated 1.2.1989 calling upon him to issue a seniority list of the teachers in accordance with Regulation 3 (2) of the Regulations framed under Chapter II of U. P. Intermediate Education Act. The Principal in response to the aforesaid letter furnished the following seniority list of the lecturers:

1. Sri S.P. Tripathi. Lecturer in Hindi.
- 2 Sri J.N. Dwivedi, Lecturer in Economics.
3. Sri S.N. Shukla, Lecturer in Geography.
- 4 Sri P. N. Pandey, Lecturer in English.

All the three lecturers, Sarva Sri S.P. Tripathi. J.N. Dwivedi and S.N. Shukla objected to the said list by representing before the District Inspector of Schools (D.I.O.S.). The stand of Sri J.N. Dwivedi was that since he had joined the post in question in the afternoon of 23.7.1973, therefore, he should be placed at serial No. 1 whereas Sri S.N. Shukla who admittedly joined the post on 24.7.1973 should be placed junior to him. The stand of Sri S.P. Tripathi, however, was that his initial appointment through promotion which was approved vide orders dated 11.7.1973 should be treated to be a valid order as the subsequent direct selection was illegal. The District Inspector of Schools after summoning the

record and considering the objections of all the three lecturers came to the conclusion vide his orders dated 6.9.1990 contained in Annexure 14 to the writ petition that the case of Sri S.P. Tripathi was different as his appointment is admittedly subsequent and later in point of time to the appointment of Sri d. N. Dwivedi and Sri S.N. Shukla, with regard to inter se seniority between Sri S.N. Shukla and Sri J.N. Dwivedi, the District Inspector of Schools held that both of them joined the post on the same day, i.e., 24.7.1973 and Sri S.N. Shukla being older in age should be treated senior to Sri J.N. Dwivedi as per sub-clause (bb) of Regulation 3. The Committee of Management also furnished the same information that both Sri J.N. Dwivedi and Sri S.N. Shukla received the appointment letter on 23.7.1973 but they joined the post on 24.7.1973 and their salaries were also paid with effect from 24.7.1973. The seniority position as per order of the District Inspector of Schools dated 6.9.1990 is as follows :

1. Sri S.N. Shukla.

2. Sri J.N. Dwivedi.

3 Sri S.P. Tripathi.

6. Sri S.P. Tripathi and Sri J.N. Dwivedi being aggrieved by the aforesaid order dated 6.9.1990 challenged the same by filing appeal/representation before the District Inspector of Schools. Simultaneously, they also filed writ petitions before this Court being Writ Petition No. 12099 of 1991 preferred by Sri S.P. Tripathi along with Committee of Management as the Committee of Management perhaps by then had changed and Writ Petition No. 11517 of 1990 by Sri J.N. Dwivedi.

7. While the aforesaid writ petitions were pending before this Court, the District Inspector of Schools reviewed his earlier order dated 6.9.1990 and quashed the same and passed a fresh order dated 29.7.1992 contained in Annexure 18 and placed Sri J.N. Dwivedi at serial No. 1 accepting his contention that he had joined the lecturer's post in the afternoon of 23.7.1973, Sri S.N. Shukla at serial No. 2 who joined the post on 24.7.1973 in the forenoon and Sri S.P. Tripathi at serial No. 3 as he was directly appointed subsequently on 7.11.1973. Aggrieved by the same, Sri S.N. Shukla moved an application for recall of the aforesaid order on the ground that the same is illegal and is violative of principles of natural justice because he was not heard before the aforesaid order was passed by the District Inspector of Schools. However, this application was rejected vide orders dated 29.9.1992 contained in Annexure 20. Aggrieved by the same. Sri S.N. Shukla filed Writ Petition No. 7669 (S/S) of 1992. Sri S.P. Tripathi being aggrieved by the said order dated 29.7.1992 again preferred a representation before the Regional Deputy Director of Education who had by then vested with appellate powers in place of the District Inspector of Schools. While the aforesaid dispute regarding the determination of the inter se seniority between these three teachers was under consideration, the post of Principal fell vacant on 30.6.1993 when Sri Shyam Sunder Shukla. the permanent incumbent retired. The changed Committee of Management at this time once again passed an order dated

28.6.1993 contained in Annexure 22 treating Sri J.N. Dwivedi as seniormost teacher and directed him to take over the charge of the post of Principal. Sri J.N. Dwivedi accordingly took the charge on the post of Principal on 30.6.1993 itself on ad hoc basis. The Committee of Management also passed a resolution approving the aforesaid ad hoc promotion of Sri J.N. Dwivedi and intimated the same to the District Inspector of Schools "vide its letter dated 26.7.1993 contained in Annexure 25. The District Inspector of Schools vide its letter dated 2.4.1994 contained in Annexure -?7 also approved the ad hoc promotion of Sri J.N. Dwivedi on the post of Principal till a regularly selected candidate from the Selection Board is made available. After Sri J.N. Dwivedi assumed charge on the post of ad hoc Principal, the Regional Deputy Director of Education before whom the representation/appeal preferred by Sri S.P. Tripathi was pending decided the same vide its order dated 26.5.1994 contained in Annexure 29 quashing the order dated 29.7.1972 earlier passed by the District Inspector of Schools after reviewing its earlier order dated 6.9.1990 meaning thereby that the said Deputy Director upheld the order dated 6.9.1990 thereby restoring the seniority of Sri S.N. Shukla at serial No. 1 and Sri J.N. Dwivedi at serial No. 2. This reversion of seniority position resulted into filing of Writ Petition No. 4899 of 1994 by Sri J.N. Dwivedi. The consequential order dated 3.8.1994 passed by D.I.O.S. contained in Annexure 1 has also been challenged.

8. It is in the aforesaid facts and circumstances that this Court has to decide the controversy with regard to inter se seniority between the aforesaid three teachers.

9. I have heard the learned counsel for all the parties and have perused the writ petitions and affidavits filed by the contesting parties. Parties have agreed to treat Writ Petition No. 4899 of 1994 as the leading case and all the annexures referred to hereinabove are from this writ petition. I have also perused the original service record of all the three contestants produced by the Committee of Management through its Manager for the purpose of ascertaining, if necessary, the date and time of joining the post of lecturer by these three contestants.

10. Dr. L.P. Misra who appeared for Sri J.N. Dwivedi assailed the orders dated 6.9.1990 passed by the District Inspector of Schools and the order" dated 26.5.1994 passed by the Regional Deputy Director of Education, inter alia, on the ground that Sri J.N. Dwivedi had since joined the post in lecturer's grade in the afternoon of 23.7.1973, hence he became senior to Sri S.N. Shukla who admittedly joined the post in the forenoon of 24.7.1973. Therefore, Sri S.N. Shukla cannot claim the benefit of sub-clause (bb) of Regulation 3 (1) of the Regulations. The whole argument is based on the premise that by joining the post in the afternoon of 23.7.1973. Sri J.N. Dwivedi becomes senior to Sri S.N. Shukla and, therefore, the aforesaid sub-clause (bb) shall not be applicable to his case. It has further been contended by him that Sri. S.P. Tripathi has no claim at all for seniority over him as his appointment was subsequent to him ; that the order dated 26.5.1994 passed by the Deputy Director of Education is non est

having been passed by an authority not vested with the power to decide the appeal/representation preferred by two others ; lastly, inter se seniority amongst the teachers of the lecturers" grade having been settled long back on 17.1.1974, therefore, the prevailing position as such could not be unsettled after about two decades.

11. Sri I. B. Singh, learned counsel appearing for Sri S.N. Shukla disputed that Sri J.N. Dwivedi joined the post in the afternoon of 23.7.1993. He alleged tampering in the records. Sri H.G.S. Parihar, appearing for Sri S.P. Tripathi attempted to justify his earlier appointment by way of promotion dated 11.7.1973 as valid and subsequent cancellation dated 24.7.1973 as illegal. He, therefore, contended that he should be treated to be seniormost teacher in this grade.

12. The whole controversy has arisen because the petitioners are treating the date and time of joining the post in lecturer"s grade as the determining factor, whereas a critical analysis of provisions of law and various decisions of this Court leaves one with no doubt in mind that the determining factor for the purpose of fixing inter se seniority is not the date of joining the post but it is the date of accord of approval of appointment by the approving authority. In a somewhat similar situation, a Division Bench of this Court in the case of Smt. Omi Bala Nigam v. Regional Inspectress of Girls Schools, Jhansi Region, Jhansi and others. 1986 UPLBEC 69, dealt with the identical issue in the following manner and held that it is the date of approval alone which is relevant for the purposes of fixing inter se seniority. The findings are in following terms :

"Appointment letters clearly indicated that the service could be joined either on 1.7.1964 or immediately thereafter. It did not mention that the petitioner was required to join on 1.7.1964 itself. It was on account of this fact that the petitioner joined on 6.7.1964. It appears to us that merely because the petitioner joined the service on 6.7.1964 she would not loose her right of seniority, particularly when the date of approval in both the events was the same, i.e., 15.9.1964, joining of service had to be considered in the light of the approval also."

"The date of substantive appointment spoken of in clause (b) of Regulation 3 of Chapter II of the Act should be construed as the date after approval has been accorded by the District Inspector of Schools u/s 16G Inasmuch as requirement is to obtain prior approval to the appointment, a date on which a teacher joins before approval would not be considered a date of substantive appointment. As stated above, approval is a condition precedent to appointment. Without approval, there could be no appointment and joining of service would be in contravention of the provisions of the Act and Regulations framed thereunder. Accordingly, seniority could not be counted with effect from that date,"

13. In yet another case, a learned single Judge of this Court in the case of Bahadur Singh Gaur v. District Inspector of Schools. 1995 (3) UPLBEC 71, while

discussing the scope of Section followed the ratio of abovenoted decision, i.e., the date of approval is the relevant date and where It is same, the age factor will be the relevant factor for determining inter se seniority.

Learned single Judge in the aforesaid decision held as follows :

"The date of birth of the petitioner is 1.1.1937 and date of birth of respondent No. 3 is 26.9.1945. Admittedly, the petitioner is senior to respondent No. 3. The relevant date is the date of approval of appointment by the District Inspector of Schools, The date of joining is not the determining factor for deciding the seniority unless it is shown that the candidate did not join the institution within the time prescribed for joining as given in the appointment letter. The Committee of Management under Regulation 16 is bound to issue appointment letter within two weeks of the receipt of approval to selected candidates for appointment.

The date of birth of petitioner is 1.1.1937 and the date of birth of respondent No. 3 is 26.9.1945. Admittedly, the petitioner is senior to respondent No. 3. The relevant date is the date of approval of appointment by the District Inspector of Schools. The date of joining is not the determining factor for deciding the seniority unless it is shown that the petitioner did not join the institution within the time, prescribed as given in the appointment letter. The Committee of Management under Regulation 16 is bound to issue appointment letter within 2 days to the selected candidates for appointment."

14. In both the decisions, it has been discussed that in case the date of joining is treated to be the relevant date, then it would become the discretion of the Committee of Management to issue an appointment letter to some candidates earlier and to some other candidates later and the result would be that a person who receives the appointment letter earlier would start functioning earlier and the other may join later on, would become junior for no fault of his. Even where letters are issued simultaneously and no date is fixed for joining then merely because a candidate chose to join earlier then and there on receipt of the letter, cannot certainly be granted seniority over the person who takes some joining time and joins the post specially when no fixed date has been mentioned in the letter of appointment for joining. In this regard, some more cases can be referred to where the principle that the date of approval is the relevant date for determining inter se seniority has been laid down. Prabhu Narain Singh u. Deputy, Director of Education, Varanasi 1977 ALR 381 ; I.S. Tome u. District Inspector of Schools, Meerut. 1993 AWC 1752 and Lalit Mohan Misra u. District Inspector of Schools 1979 ALJ 1025.

15. In the present case, it is not disputed that the appointment of both Sri J.N. Dwivedi and Sri S.N. Shukla in the lecturer's grade was approved by the District Inspector of Schools vide its order dated 11.7.1993 and Sri S.N. Shukla is older in age to Sri J.N. Dwivedi. Even otherwise, joining the post in the afternoon of 23.7.1973 is to be treated joining in the forenoon of the next succeeding day, i.e., 24.7.1973. It is not disputed that the salary was paid to both the lecturers

with effect from 24.7.1973. Hence, even assuming that the claim of Sri J.N. Dwivedi, his signatures, entry in the service book showing joining in the afternoon of 23.7.1973 is correct, beyond any kind of doubt whatsoever, he shall be deemed to have joined the post on the next succeeding day. Le., 24.7.1973. In this situation too, the person who is elder in age will get the precedence in the matter of inter se seniority pursuant to Regulation 3 (1) (bb) and shall be treated to be senior to the other teachers whose appointment has also been approved on the same day, I, therefore, find no merit in the arguments raised by the petitioner Sri J.N. Dwivedi and reject the same. In my considered opinion, the view taken by the District Inspector of Schools in its order dated 6.9.1990 is the correct view and the same is upheld. The subsequent orders dated 29.7.1992 and 2.4.1994, both passed by the District inspector of Schools are liable to be quashed not being sustainable in law. All other resolutions passed by the Committee of Management from time to time dated 24.6.1991. 28.6.1993 and 25.7.1993 are, therefore, liable to be held illegal and ineffective.

16. Now, coming to the other ground of challenge raised on behalf of Sri J.N. Dwivedi that the inter se seniority having been determined by the Committee of Management as early as in the year 1974 should not have been unsettled after a lapse of such a long period as the Jaw is settled on this aspect of the matter not to unsettle the said legal position. This ground is also not available to the petitioner Sri J.N. Dwivedi for two reasons ; firstly, the earlier list dated 17.1.1974 contained in Annexure 5 appears to be the seniority list drawn under Regulations 1. 2, and 4 of Chapter 1 drawn by the Committee of Management for the purpose of rotational representation of the teachers in the Committee of Management based on date of initial appointment of the teachers in any grade in the College and is not under Regulation 3 of Chapter II as required for the purpose of promotion/officiation, etc., to be prepared separately for each grade based on date of approval of the appointment. Secondly, it is the petitioner Sri J.N. Dwivedi himself who had vide his letter dated 1.2.1989 called upon the Committee of Management/the Principal to furnish him the requisite information about the seniority position or to draw a fresh seniority list under Regulation 3 (2). He, therefore, cannot be permitted to urge that the seniority list as envisaged under Regulation 3 alleged to be dated 17.1.1974 existed and the same did not require any review under Regulation 3 (2) after the amendment in the Regulations. In these circumstances, the grounds raised by the petitioner Sri J.N. Dwivedi having without any merit are rejected.

17. Sri S.P. Tripathi has no case. His earlier promotion dated 11.7.1973 on the post of lecturer in Hindi and subsequent approval dated 23.7.1973 having been cancelled being illegal cannot be treated to be legal and valid as contended by the learned counsel. It is not disputed that Sri Tripathi himself applied and appeared subsequently in response to a fresh advertisement for direct selection for this post and accepted his selection, appointment orders dated 7.11.1973. This position having become final and conclusive cannot be permitted to be reopened indirectly in the present proceedings with regard to determination of

inter se seniority. The writ petition preferred by Sri S.P. Tripathi is, therefore, liable to be dismissed.

18. During the pendency of these writ petitions, while the petitioners were claiming seniority over each other and the post of Principal fell vacant on 30.6.1993, therefore, in view of a very hot contest between all the three petitioners, this Court by way of interim arrangement passed a detailed order dated 13.1.1995 and directed the Committee of Management as well as the District Inspector of Schools to permit the lecturer at serial No. 4 to officiate as Principal till this dispute is resolved. In these circumstances, one Sri P. N. Pandey, lecturer in English whose name is at serial No. 4 was handed over the charge of the post of Principal by way of interim arrangement and it is informed that said Sri Pandey is working on the post of Principal on purely ad hoc basis. It is, therefore, directed that he shall forthwith handover the charge of the post of Principal in question in favour of the seniormost lecturer Sri S.N. Shukla and make way for him to work as such till a duly selected candidate is made available by the Commission. It is, however, made clear that if Sri Pandey has drawn the salary of the post of Principal for the period he has worked as such under the interim directions of this Court, then it shall not be recovered from him. Similarly, salary already drawn by Sri J.N. Dwivedi for working as Principal with effect from 30.6.1993 till he continued as such shall also not be recovered from him.

19. It is likely that because of the present dispute and pendency of these writ petitions, the Committee of Management might not have forwarded the names of two seniormost teachers along with relevant records to the U. P. Secondary Service Education Board. Hence, the Committee of Management is directed to forward the same afresh, if necessary, in the light of this judgment with relevant records without any further delay at its earliest and the Commission shall also complete the process of selection for the post of Principal in the Institution in question in accordance with law as expeditiously as possible.

20. In the light of the aforesaid findings. Writ Petition No. 7669 (S/S) of 1992 preferred by Sri S.N. Shukla is allowed and the resolutions/orders dated 24.5.1991, 28.6.1993 and 25.7.1993 passed by the Committee of Management are declared illegal and inoperative. The orders dated 29.7.1992 and 2.4.1994 passed by the District Inspector of Schools are hereby quashed and the respondents are directed to give the charge of the post of Principal (ad hoc) to Sri S.N. Shukla forthwith on receipt of the certified copy of this judgment. Sri S.N. Shukla shall, however, be entitled to salary of this post from the date he assumes charge. Writ Petition Nos. 11517 (S/S) of 1990, 12097 (S/S) of 1990 and 4899 (S/S) of 1994 are accordingly dismissed. No order as to costs.