

(1977) 12 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1870 of 1972

Kum Dheepada

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-12-1977

Acts Referred:

States Reorganisation Act, 1956 — Section 115

Citation : (1977) WLN 515

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.P. Gupta, J.—The petitioner is a graduate and received the B.T. degree of the Agra University in the year 1953. By the order of the Director of Education of the former State of Ajmer dated May 29, 1953 the petitioner was appointed temporarily as Assistant Mistress, Government Girls Middle School, Kekri in the scale of Rs. 100-250. The petitioner joined her duties Assistant Mistress on June 1. 1953. A few months there after she was promoted as Head Mistress by the order of the Director of Education of Ex-Ajmer State dated August 10, 1953 in the same grade of Rs. 100-250 with special pay of Rs. 25/- per month Then by the order of the Director of Education, dated September 14. 1956 the petitioner was promoted as Officiating Assistant Mistress in the Government Central Girls High School, Ajmer in the scale of Rs. 120-300 It appears that in the former State of Ajmer there were two grades of trained graduates teachers out of which the grade of Rs. 100-250 was meant for teachers employed in the Government Girls Middle Schools situated in the rural areas while the higher grade of Rs. 120-300 was admissible to teachers employed in the Government Central Girls High School at Ajmer. Subsequently the petitioner was confirmed on the post of Head Mistress of Girls Middle School in the grade of Rs. 100-250 with effect from January 1, 1955 by the order of the Director of Education dated October I. 1956 Thus at the time of integration of the former State of Ajmer with the State of

Rajasthan on November 1, 1956, the petitioner was holding the post of Head Mistress in a substantive capacity in the Trained Graduate grade of Rs. 100-250 pertaining to rural areas and was officiating as Assistant Mistress in the Government Girls High School at Ajmer in the grade of Rs. 120-300.

2. The case of the petitioner is that the respondents Nos. 5,6,7,8,10, 12,14 and 16 to 20 were working in the erstwhile State of Ajmer in Trained Graduate grade of Rs. 100-250 or equivalent grade but in a temporary capacity and none of them was confirmed in the aforesaid Trained Graduate grade, at the time of integration of the former State of Ajmer with the State of Rajasthan, while the petitioner was confirmed in the said grade. It is on this basis that the petitioner claims to be senior to all the aforesaid respondents. It may also be pointed out that all the other respondents, except the respondents Nos. 7 and 8. Shrimati Munni Devi and Shrimati Prem Kumari, belonged to the Ajmer Unit. The last-mentioned two persons viz., Shrimati Munni Devi and Shrimati Prem Kumari were employees of the pre-reorganised State of Rajasthan and although Smt. Munni Devi has been treated as a reintegration confirmed employee yet both of them did not possess a degree in Education. According to the State of Rajasthan, the respondents Nos. 7 and 8 were selected by the Rajasthan Public Service Commission for the posts of Social Education Organisers and they had completed the training of Social Education Organisers, which was considered as equivalent to B Ed. Degree for the purposes of giving them Trained Graduate grade.

3. After the integration of the former State of Ajmer with the State of Rajasthan, a uniform scale of N. 110 255 was made admissible to all Trained Graduates and the pre-existing scales of pay Rs. 100-250 and Rs. 120-300 of the erstwhile State of Ajmer were equated with the grade of Rs. 110-225 in the re-organised State of Rajasthan and the petitioner was also placed in the aforesaid Trained Graduate grade.

4. On August 22, 1961. the petitioner was appointed as an Officiating Head Mistress of the Government Girls High School at Karanpur and thereafter she continued to hold the post of Head Mistress of a Government Girls High School. The Rajasthan Education Service Rules, 1970 (hereinafter referred to as "the Rules") came into force with effect from May 28, 1970. Proviso (4) to Rule 6 of the Rules made provision to substantive appointment of teachers who were holding posts included in the Service on an officiating or temporary basis for a period of not less than six months of January 1, 1970, after their being screened by a committee constituted under the Rules for adjudging their suitability for the posts held by them. The petitioner was screened by the committee for adjudging her suitability and as she was adjudged to be suitable, she was appointed as a Head Mistress of a Secondary School in a substantive capacity, although on probation, with effect from July 15, 1970 by the order of the Director of Primary and Secondary education, Rajasthan, dated August 28/29, 1970. Thereafter the petitioner was also confirmed on the aforesaid post of Head Mistress by the order dated April 26, 1971 as amended by the order dated April 29, 1971. Since then

the petitioner is continuity to hold the post of a Head Mistress of a Government Girls" Secondary School.

5. After the formation of the re-organised State of Rajasthan three seniority lists were published in respect of teachers included in the Trained Graduate grade. The first list was published on July 14, 1959 and the second one was published on July 14, 1965. The third list in respect of such teachers was published on August 15, 1967. After the promulgation of the Rules, a fresh and final interlaced seniority list of trained Graduate teachers of the Education Department of Rajasthan as on November 1, 1956 was issued by the Government of Rajasthan by its Notification dated July 25, 1972 and the same was published in the Rajasthan Gazette dated July 27, 1972. In the aforesaid seniority list, the name of the petitioner has been included at serial number 49 and the respondents Nos. 6 to 20 have been shown as senior to her. As mentioned earlier, only the respondents Nos. 7 and 8 belong to the former Rajasthan Unit while all the remaining respondents belonged to the erstwhile Ajmer Unit. The petitioner's case is that she filed representation against each and every seniority list which was published and claimed her seniority over the respondents. According to the petitioner, her representations against the earlier seniority lists were allowed by the order of the State Government dated July 15, 1971 and it was decided that the petitioner should be assigned seniority in the Trained Graduate grade on the basis of length of service with effect from the date of her initial appointment viz., June 1, 1953. But in the seniority list which was published vide notification dated July 25, 1972 this consideration was again overlooked and the petitioner was assigned lower place in the aforesaid final seniority list. The contention of the learned Counsel for the petitioner was that the petitioner should be assigned a proper place in the seniority list of teachers in the Trained Graduate grade according to the length of her service with effect from June 1, 1953 on which date she was initially appointed in that grade. It was further urged by the learned Counsel that the distinction sought to be made between the respondents for assigning a lower position to the petitioner in the seniority list of the employees of the erstwhile State of Ajmer by introducing the criterion of selected and non-selected employees is absolutely without any basis. It was also urged that the criteria laid down for assignment of seniority in the same or equated cadre by the Union Government under Sub-section (5) of Section 115 of the State Re-organisation Act, 1956 namely that of continuous length of service in the same or equated grade and that the inter se seniority of employees of the same State should not be disturbed, should have been followed for the assignment of proper seniority to the petitioner and further that there was no person departing from the aforesaid principles for determination of seniority, as laid down by the Union Government, while determining the seniority of teachers in the Trained Graduate grade or equated grade. The learned Counsel relied upon the principles laid down for determination of inter se seniority of teachers of Ajmer Unit as on October 31, 1956 contained in the letter of the Government of Rajasthan dated April 16, 1971 (Ex. R1) issued with the concurrence of the Government of India, it.

consultation with the State Advisory Committee. It was argued that the State Government had no reason to depart from the criteria contained in the aforesaid letter dated April 16, 1971 and laying down different criteria by its letter dated April 22, 1971.

6. Learned Deputy Government Advocate defended the position assigned to the petitioner in the final inter-laced seniority list published vide notification dated July 25, 1972 on the ground that there was a "well recognised system" of selection of candidates by a Selection Committee before the appointment of teachers was made in the Ex. Ajmer State and that the distinction made between the "selected" and non-selected teachers of the former State of Ajmer was based on real and substantial ground and as the petitioner was never selected by a Selection Committee at any time, she could not be assigned seniority over the respondents. The order of the State Government dated April 22, 1971 in regard to the preparation of the seniority list of teachers of the former State of Ajmer was, according to the learned Deputy Government Advocate, justified and it was argued that the final interlaced seniority list was prepared according to the criteria contained in the aforesaid letter of the State Government dated April 22, 1971.

7. It is not in dispute between the parties that no seniority list of Head Mistress of Government Girls Secondary School or teachers in trained graduate grade as published till the erstwhile State of Ajmer merged into the State of Rajasthan, in accordance with the provisions of the State Re-organization Act, 1956 thereafter to be referred as "the Act". Under Sub-section (7) of the Act, the condition of service applicable immediately before the appointed day, namely, November 1, 1956 to the petitioner could not be varied to her disadvantage without the previous approval of the Central Government. In the former State of Ajmer, rules made by the Chief Commissioner, Ajmer, vide notification dated July 31, 1950 and published in the official Gazette dated August 12, 1950 authorised the Director of Education of the then State of Ajmer to make initial appointment of teachers. The Director could make the appointment by himself or on the recommendation of a selection committee constituted by him for the purpose. However, no rule has been brought to my notice, which might have been prevalent in the former State of Ajmer, whereby the appointing authority was bound to constitute a selection committee before making appointment of teachers in the Ex-Ajmer State. The Director of Education could himself constitute the Selection Committee or may associate with him some other officer or officers and the distinction sought to be made between selected or non-selected teachers of the former Ajmer State does not appear to be based on any substantial basis. Learned Deputy Government Advocate drew my attention to certain orders issued in respect of the appointment of teachers in the former Ajmer State, which were passed on the basis of recommendations of selection committees constituted for the purpose and it was sought to be argued that there was a well recognised system in the former Ajmer State of appointing teachers after adjudging their suitability by a selection committee. I am unable to infer from

the aforesaid order that there was any practice in vogue in Ex-Ajmer State that appointments of teachers were made invariably after selection by a Selection Committee, Even if there was any such practice of selection of candidates by a selection committee, it could not take the place of a statutory rule. Learned Dy. Govt. Advocate was not able to place before me even any administrative instruction, on the basis of which it could be assumed that there was a uniform rule of making all appointments of teachers in the Ex-Ajmer State after selection of the candidates by duly constituted selection committees. In the absence of any statutory rule or even an administrative instruction on the subject, the distinction made between teachers of E-Ajmer State on the ground of alleged selection appears to be unjustified. It may also be pointed out in this connection that no distinction was made either in the emoluments payable to the teachers or in the matter of their confirmation or promotion on the ground of selection or non-selection, in the former Ajmer State. This inference is fully supported from the fact that the petitioner herself was promoted from the post of Assistant Mistress to that of Head Mistress of a Government Girls' Middle School and then she was further promoted as Assistant Mistress in the Government Central Girls' High School, Ajmer in the higher grade of Rs. 120 300 and persons later selected by duly constituted selection committees were considered junior to the petitioner and the petitioner was promoted in preference to such selected candidates. By the order of the Director of Education of the former State of Ajmer dated September 14, 1956, the petitioner and one Kumari Urmila Kaushik were promoted as officiating Mistress in the Government Central Girls High School, Ajmer in the grade of Rs. 120,-300 and although Kumari Urmila was a selected candidate, as appears from the proceedings of the selection committee dated July 23, 1955 (Ex. R.10), the petitioner was considered senior to her on the basis of length of service, notwithstanding the fact of selection or non-selection. The order dated September 14, 1956 specifically states that the two appointees, namely the petitioner and Kumari Urmila will maintain their seniority inter se. It may also be pointed out that the petitioner was confirmed on the post of Head Mistress, Girls Middle School in the grade of Rs. 100 250 with effect from January 1. 1955 by the order of the Director of Education of the erstwhile State of Ajmer dated October 1, 1956 and after the confirmation of the petitioner, the question of selection or non selection became absolutely immaterial. It may also be noted in this connection that at the time of integration of Ex-Ajmer State with the State of Rajasthan, as a result of reorganisation of States, the petitioner was holding the post of a substantive Head Mistress of Government Middle School while other teachers belonging to the former Ajmer State, who have been made respondents in the present writ petition, were not holding substantive posts in the grade of trained graduate teachers, in spite of their selection at the time of initial appointment. Thus, it is difficult to understand the distinction which is now sought to be made on the basis of selection or non-selection of teachers and which did not at all exist in the former State of Ajmer. The State of Rajasthan could not have unilaterally altered the service conditions of the petitioner and neither the seniority of teachers nor the criteria for determination of inter se

seniority of the teachers of the erstwhile State of Ajmer could be altered to the disadvantage of the petitioner after the integration of the Ajmer State with the State of the Rajasthan. The Union Government published the criteria laid down for determination of seniority under Sub-section (i) of Section 115 of the Act as continuous length of service in the same or equated grade. In Union of India (UOI) and Another Vs. P.K. Roy and Others, , it was held by their Lordships of the Supreme Court that it was the Central Government, which had to lay down the principle of integration of service for the employees of the integrating States and an advisory committee may be appointed to ensure fair and equitable treatment to all selected persons. The Government of India decided that in determining the relative seniority, as between the persons holding posts declared equivalent to each other and drawn from different States, the following matters should be taken into consideration,-

- (i) Length of continuous service, whether temporary or permanent, in a particular grade; this should exclude periods for which an appointment is held in a purely stop-gap fortuitous arrangement;
- (ii) age of the person; other factors being equal,
- (iii) the inter se seniority of officers drawn from the same State should not be disturbed.

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factors were taken into consideration while deciding that the teachers actually confirmed in a particular cadre before November 1, 1956 should be included in the seniority list as on October 31, 1956 The petitioner was amongst teachers who were thus held to be entitled for inclusion in the seniority list of the Ajmer Unit of teachers as on October 31, 1956. Inter se seniority of the petitioner determined on the basis of the length of service could not, therefore be disturbed now after integration of Ajmer State with Rajasthan. It may be pointed out that the categorisation of teachers in group A, B, G, as mentioned in the letter of the State Government dated April 22, 1971 was only meant for adjusting the seniority of the Ajmer Unit teachers vis-a-vis the Rajasthan Unit teachers and it does not appear that there was any intention on the part of the State Government to disturb the inter se seniority amongst the Ajmer Unit teachers as existing on October 31, 1956. The Director of Education appears to have committed an obvious error in altering the inter se seniority of the Ajmer Unit teachers on the basis of the State Government dated April 6 1971 and April 22, 1971 which were issued only for the purpose of interlacing the seniority of the Ex-Ajmer State teachers with the Rajasthan teachers and could not have the effect of disturbing the inter se seniority even amongst the Ajmer Unit teachers Once it was (sic) by the State Government that the teachers who although not appointed through selection in the Ajmer Unit, but were actually confirmed before November 1, 1956 will be included in the Ajmer Unit seniority list as on October 31, 1956, their inter se seniority could not have been disturbed subsequently

while deciding the interlaced seniority between to Ajmer Unit teachers and the Rajasthan Unit teachers, in the trained graduate.

8. In the result, the writ petition is allowed and it is held that the Petit loner is entitled to be signed seniority in the trained graduate srade of teachers on the basis of the length of her service with effect from the date of Ex. appointment i.e. June 1, 1953 amongst the Ajmer unit teachers, irrespective of the fact of selection or non-selection and she is also entitled to maintain X same position qua the respondents the Ex-Ajmer employees, while determinist the interlaced seniority along with the Rajasthan employees. The netting is also entitled to future promotions and higher grades on the basis of revised position in the seniority list of trained graduate grade and all consequential including monetary benefits arising from her revised position inerter seniority list of teachers in the trained graduate grade. The respondents are directed to revise the seniority list of trained graduate teachers, so far as may petitioner is concerned, as directed above, within three months. However in the circumstances of the case the parties are left to bear their own costs.