
(1997) 07 AHC CK 0095
In the Allahabad High Court
Case No : C.M.W.P. No. 27899 of 1994

Kumari Sushila Joshi

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 28-07-1997

Acts Referred:

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 3

Citation : (1998) 1 AWC 697

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

Bench : Single Bench

Advocate : B.P. Mishra, for the Appellant; S.C. and G.R. Jain, for the Respondent

Final Decision : Allowed

Judgement

D. K, Seth, J.—The petitioner claims that by reason of her appointment and promotion to the post of Lecturer on 8.7.1974 along with one Smt. Savitri Kulve, the petitioner having been placed above the said Smt. Savitri Kulve is senior than the said respondent No. 5. The petitioner was also showed senior to the respondent No. 5 in Annexures-2 and 3, which according to the petitioner are the seniority list. Subsequently, the post of principal became vacant. The school authority was directed to appoint the petitioner on the post of Principal for being the seniormost teacher but the same was disputed by the respondent No. 5. Ultimately, by an order dated 29.6.1988 the seniority was determined, which is Annexure-9 to the writ petition. Subsequently, a further representation was made by the petitioner which was rejected by an order dated 20.6.1994, which is Annexure-11 to the writ petition. These are the orders which are being challenged by the present writ petition.

2. The learned counsel for the respondents, on the other hand, disputes the same. The fact remains that the petitioner was appointed on 18.8.1965 in J.T.C. grade and her date of birth was 11.10.1948. Whereas the respondent No. 5 having born on 15.1.1947 was appointed on 4.9.1967 in the C.T. grade. Thereafter, the petitioner was promoted to the post of L. T. grade on 1.7.1973

whereas the respondent No. 5 was promoted to the post of L.T. grade on 18.4.1968. Thereafter, the respondent No. 5 was promoted to the post of lecturer on 8.7.1974 whereas the petitioner was appointed as lecturer on 8.7.1974.

3. So far as these facts are concerned, these are not in dispute. On the basis of the decision in the case of Jokhu Singh v. District Inspector of Schools. Jaunpur and others 1986 UPIBEC 134 and that of the Sudama Singh v. Nath Saran Singh and others 1988 UPLBEC 31, the counsel for the petitioner contends that the seniority of the petitioner should be fixed above the respondent No. 5 as claimed by her viz., that she being older in age and both having been appointed on the same date on the post of lecturer, the seniority should have been fixed in her favour as was held in the case of Sudama Singh (supra).

4. So far as the decision in the case of Jokhu Singh (supra) is concerned, the same does not help the petitioner inasmuch as there a distinction was drawn about the holding of a post on temporary basis and on permanent or substantive basis. The seniority is to be determined on the basis of holding of a post in substantive capacity and not on temporary capacity. It was borne out on the basis of the records that though the petitioner was older in age and was appointed in the year 1965 but even in 1967 when the respondent No. 5 was appointed in C.T. grade, the petitioner could not be said to be senior to her because she was holding a post in a grade lower than the grade held by the respondent No. 5. Then again the respondent No. 5 was promoted atleast five years earlier than the petitioner in the L.T. grade. Even if it is taken that both of them were appointed on the post of lecturer on 8.7.1974, in that event, the seniority of age cannot be a factor.

5. The provision, for determination of seniority is to be found in Regulation 3, Chapter II of the Regulation framed under U. P. Intermediate Education Act, 1921. The said Regulations provides as follows :

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) A teacher in a higher grade shall be deemed to be senior to a teacher in the

lower grade irrespective of the length of service ;

(d) If a teacher who is placed under suspension is reinstated on his original post, his original seniority in the grade shall not be affected:

(e) Every dispute about the seniority of the teacher shall be referred to the Committee of Management which shall decide the same giving reasons for the decision."

6. The above regulation provides for determination and maintenance of seniority of teachers in each grade separately from among those holding or appointed in substantive post whether temporary or permanent. Where two teachers are appointed in the same grade on the same day, the seniority is to be decided on the basis of age. A teacher working in a higher grade is senior to a teacher in the lower grade irrespective of length of service. Where two teachers are promoted to a higher grade on the same day, the seniority is to be determined according to the seniority on the basis of the length of service counted from the date of substantive appointment in the grade next below. In case of equal seniority in the grade next below, the age would be the determining factor.

7. In the present case, both the petitioner and the respondent No. 5 were appointed/promoted to the post of lecturer grade on the same day, before which both of them were working in L.T. grade. Therefore, in this case, the seniority is to be determined on the basis of respective length of service in L.T. grade. The petitioner was appointed substantively in L.T. grade on 1.7.1973. while the respondent on 13.4.1968. thus having 5 years" longer service in L.T. grade than the petitioner.

8. It is a holding of a post in a substantive capacity in the post immediately below is the determining factor when both were posted in the lecturer grade on the same day. Admittedly, the respondent No. 5 was senior to the petitioner in 1967 because of her holding a post in a grade higher than the post held by the petitioner, coupled with the fact of 5 years" longer service in L.T. grade. Therefore, the reasons given in Annexures-9 and 11 to the writ petition appears to be sound and legal. Therefore. I am not inclined to interfere with this matter. The writ petition, therefore, fails and is, accordingly, dismissed. No order as to costs.