
(1992) 05 AHC CK 0015

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2496 of 1987 and 12128 and 18885 of 1991

Lakshmi Shanker Verma

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 06-05-1992

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 17, 3, 55, 56, 57

Uttar Pradesh Intermediate Education Rules, 1921 — Rule 4

Citation : (1992) 3 AWC 1329

Hon'ble Judges : S.P. Srivastava, J

Bench : Single Bench

Advocate : S.N. Singh and R.N. Singh, for the Appellant; R.G. Paedia, for the Respondent

Judgement

S.P. Srivastava, J.—In the district of Azamgarh there is an educational institution being run in the name and style of D.A.V. Inter College which imparts education up to the standard of Intermediate classes and is recognised under the provisions of the U.P. Intermediate Education Act and the regulations framed there under. In the educational session 1985-86 a seniority list of the teachers employed in the aforesaid institution was published in accordance with the provisions contained in regulation 3 of Chapter II of the Regulations framed under the U.P. Intermediate Education Act. In the aforesaid seniority list pertaining to the Lecturers the name of Sri Sita Ram Lal, Respondent No. 4 was placed at serial No. 6 and the name of the Petitioner was placed at serial No. 8.

2. Feeling aggrieved by the decision of the Committee of Management regarding his placement in the seniority list, the Petitioner filed an appeal before the District Inspector of Schools, Azamgarh claiming seniority over the respondent No. 4 and asserting that his name should have been placed at serial No. 6. He claimed seniority over and above Shri Raj Kishore Singh, Respondent No. 3 as

well as Shri Sita Ram Lal.

3. The aforesaid appeal was decided by the District Inspector of Schools vide his order dated 19-1-1987, where under he upheld the decision of the Committee of Management.

4. Feeling aggrieved by the decision of the District Inspector of Schools, the Respondent No. 1, the Petitioner filed Civil Misc Writ Petition No. 2496 of 1987 praying for the quashing of the order dated 19-1-1987 and for a direction to the Respondent Nos. 1 and 2 not to treat him as junior to Raj Kishore Singh and Sita Ram Lal.

5. During the pendency of the aforesaid writ petition, a clear vacancy in the post of the principal of the D.A.V. Intermediate college came into existence on 1-7-88. The proceedings for filling up of the aforesaid vacancy were started under the provisions of U.P. Act No. V of 1982 and the vacancy was advertised in the year 1990 on 26-12-1990. Names of Sita Ram Lal and Raj Kishore Singh were sent to the Commission in accordance with the Rule 4 of the Rules framed under U.P. Act No. IV of 1981.

6. At the above stage, one Raj Mani Varma, who was also a Lecturer in the aforesaid college-filed a Civil Misc. Writ petition in this Court being Civil Misc. Writ Petition No. Nil of 1991, claiming seniority over Sita Ram Lal, the Respondent No. 4 and praying that he was eligible for being considered for appointment as principal of the College on the basis of seniority but his name had not been forwarded by the Committee of Management to the U.P. Secondary Education Service Commission.

7. Considering the above claim, a learned Single Judge of this Court directed that Raj Mani Varma should make a representation before the Committee of Management, which shall decide the matter of seniority of the Petitioner at the earliest, if possible before 30-4-1991 and if Rajmani Varma was found eligible his name shall be forwarded to the Commission for consideration of appointment on the post of principal. This writ petition was decided on 24-4-91.

8. While the Civil Misc. Writ Petition No. 2496 of 1987 was pending, the U.P. Secondary Education Services Commission issued an order where-under Shri Raj Kishore Singh was called for interview in the proceedings relating to the selection of a suitable person for appointment on the post of principal of the college.

9. As has already been pointed out above, the Petitioner was claiming seniority over Raj Kishore Singh as well as Sita Ram Lal. He, therefore, filed Civil Misc Writ Petition No. 12128 of 1991 on 24-9-1991, praying for the quashing of the order dated 9-4-1991 calling Sita Ram Lal for appearing at the interview to be held by the Commission and for the issue of a direction to the Committee of Management to forward the service record of the Petitioner for being considered by the Commission for appointment on the post of principal, being the seniormost teacher in the institution. The Petitioner also prayed for a writ of Mandamus

commanding the Respondent-Commission to interview the Petitioner along with Shri Raj Kishore Singh and Shri Sita Ram Lal for appointment on the post of the principal of the Institution. The aforesaid writ petition was directed to be listed along with the Civil Misc Writ Petition No. 2496 of 1987.

10. During the pendency of the aforesaid two writ petitions, the U.P. Secondary Education Services Commission published a panel on 28-6-1991. containing the names of its recommendees for appointment on the post of principal of the College and in that panel the name of Shri Sita Ram Lal, Respondent No. 4 was placed at serial No. 1.

11. It may be noted that the question of seniority of the Lecturers had to be decided by the Committee of Management by 30-4-91, if possible, as directed under the order of this Court dated 24-4-1991. The Committee of Management had intimated the U.P. Secondary Education Services Commission vide its letter dated 27-4-91 that the matter relating to the determination of seniority of Lecturers was under consideration and the seniority list could not be finalised before the month of July, 1991. However, inspite of this intimation the Commission proceeded to complete the selection and published the panel as indicated above on 28-6-91,

12. In the aforesaid situation, the Petitioner filed the third writ petition being writ petition No. 18885 of 1991, praying that the selection proceedings including the panel published by the U.P. Secondary Education Services Commission on 28-6-91 selecting Shri Sita Ram Lal, Respondent No. 4 and putting him at serial No. 1 in the panel be quashed. He also prayed for a direction in the nature of mandamus directing the U.P. Secondary Education Services Commission to hold fresh interviews and interview the Petitioner treating him to be seniormost Lecturer and consider his claim for the appointment on the post of principal, D.A.V. Inter College, Azamgarh.

13. The Commission had issued a Circular on 19-12-90 that those Lecturers, who had attained the age of superannuation and were being continued on extension of service till the end of educational session were not eligible for consideration inspite of their seniority. While the selection proceedings indicated above were in progress before the Commission the Committee of Management started proceedings for determining the relative seniority of the Lecturers as directed by this Court in its judgment and order dated 24-4-1991.

14. The Committee of Management published a tentative seniority list on 25-6-1991 and informed the Commission that the matter relating to determination of seniority of the Lecturers was under consideration in accordance with the direction issued by the High Court, therefore, the Commission should not treat Sita Ram Lal and Raj Kishore Singh as the senior most teachers and should defer the selection proceedings till the matter relating to the seniority was finally decided by the Committee of Management.

15. Inspite of this information having been furnished to ,the Commission, the

Commission published the panel of its recommendecs on 28-6-91, wherein the name of Shri Sita Ram Lal, Respondent No. 4 was put at serial No. 1.

16. Before the aforesaid panel could be implemented the Committee of Mangement had appointed the Petitioner as acting principal of the College vide an order dated 30-6-91. On the stay application filed in Civil Misc. Writ petition No. 18885 of 1991, this Court suspended the operation of the panel with the result that Sita Ram Lal, Respondent No. 4 could not get appointment on the basis of the recommendations of the Commission.

17. As has already been indicated above, the Committee of Management had published the tentative seniority list on 25-6-91, inviting objections against the determination of seniority of various Lecturers. In the aforesaid seniority list the Petitioner was placed at serial No. 1 and Raj Kishore Singh was placed at serial No. 3. Sitaram Lal, Respondent No. 4 was placed at serial No. 8, in the aforesaid seniority list. No objections to the determination of the seniority as done by the Committee of Management was filed by any Lecturer excepting Sita Ram Lal and Vijay Dhari Pandey. Raj Kishore Singh, Respondent No. 3 and not file any objections challenging the determination of his seniority vis-a-vis the Petitioner and Sita Ram Lal and submitted to the decision of the Committee of Management. The Committee of Management after hearing the Lecturers finalised seniority list vide its resolution dated 23-8-91, whereunder the Petitioner was placed at serial No. 1 in the seniority list, while Raj Kishore Singh was placed at serial No. 3 and the Respondent No. 4 was placed at serial No. 8.

18. The determination of seniority vis-a-vis the Petitioner and Raj Kishore Singh having thus, become final, the dispute in the present case, which survives for consideration is only in regard the question of seniority vis-a-vis the Petitioner and Shri Sita Ram Lal, Respondent No. 4.

19. It is not disputed that Shri Sita Ram Lal had initially been appointed as an Assistant Teacher in S.B. Inter College, Terahi, Azamgarh on 8-8-1960, It is further not disputed that clear vacancy in the post of an Assistant Teacher came into existance in D.A.V. Inter College, Azamgarh in the year 1966. The aforesaid vacancy was advertised and applications were invited for selecting suitable candidate for being appointed on the post. The advertisement was made in this connection on 3-7-1966 The Respondent No. 4 had applied for being considered for appointment on the post in question vide his application dated 5-7-1966 The Committee of Management selected Respondent No. 4 for appointment and issued an appointment letter in his favour of 16-7-1966 It is also not disputed that the Respondent No. 4 joined the post on 20-7-1966. This appointment was duly approved by the District Inspector of Schools vide his order dated 18-3-1967. It is further not disputed that an order was passed by the District Inspector of Schools, Azamgarh on 30-11-1967 purporting to grant sanction for the transfer of Shri Sita Ram Lal form S.B. Inter College, Terahi. Azamgarh to D.A.V. Inter College, Azamgarh on same post, salary and pay scale with all benefits, which were available to him in M.B. Inter College, Terahi

20. It has not been disputed before me that in case the period of service rendered by Respondent No. 4 in the M.B. Inter College, Terahi, Azamgarh is excluded from consideration and the said service is not taken to be a service rendered under D.A.V Inter College, in that event, Sri Sita Ram Lal could not be taken to be senior to the Petitioner.

21. In the back drop of the facts and circumstances indicated above, the questions, which arise for consideration in these three writ petitions, are; as to whether the Respondent No. 4 is entitled to the benefit of the service rendered by him in S.B. Inter College, Terahi, Azamgarh prior to his appointment on 20-7-1966 in D.A.V. Inter College, Azamgarh and whether the order passed by the District Inspector of Schools, Azamgarh dated 30-11-1967 relied upon by the Respondent No. 4 is without jurisdiction and void. The other question, which arises for consideration is as to the validity of the selection proceedings and the panel published by the U.P. Secondary Education Service Commission on 28-6-1991 for appointment on the post of principal in question and the effect of the omission to consider the claim of the Petitioner for that post.

22. I have heard Shri R.N. Singh Advocate for the Petitioner and Dr. R.G. Padia for the Respondent No. 4 at some length. Counsel for the parties have jointly requested that these cases be decided finally at the admission stage. Taking into consideration the facts and circumstances, I am of the opinion that it is a fit case. In which the writ petitions may be finally disposed off at this very stage under the second proviso to Rule 2(1) of the Chapter XXII of the Rules of the Court.

23. It has been asserted by the Counsel for the Petitioner that the Respondent No. 4 was not entitled to claim the benefit of the period of service rendered by him in the Institution, where he was working prior to his appointment and joining the post in D.A.V. Inter College on 20-7- 1966. The contention raised by him is that the order passed by the District Inspector of Schools dated 30-11-1967 was clearly without jurisdiction null and void and could not have the effect of providing a benefit envisaged under regulation 59-A (C) of Chapter III of the Regulations framed under the UP. Intermediate Education Act. His further contention is that the Petitioner, in the circumstances of the case, was to be deemed to be senior to the Respondent No. 4 and it was incumbent upon the Commission to consider his claim for appointment on the post of principal of the College and the omission of the management to forward the name of the Petitioner to the Commission as required under Rule 4 of the Rules framed under the provision of U.P. Act No. V of 1982 has vitiated the entire selection including the notification of the panel on 28-6-91, which in the circumstances of the case is rendered manifestly illegal on account of this fatal defect and deserves to be quashed It has been further contended that the order passed by the District Inspector of Schools dated 19-1-1987 is manifestly illegal as Respondent No. 1 has not considered the rival claims on merits and has proceeded on the assumption that the order dated 30-11-1967 having attained finality, it was not

open for the Petitioner to claim seniority over the Respondent No. 4 as on account of this order of transfer there could not be any justification for denying the benefit of the services rendered by Respondent No. 4 in the S.B. Inter College, Terahi, Azamgarh.

24. The Counsel for the Respondent No. 4 has urged that the order dated 30-11-67 had attained finality and was well within jurisdiction. It has further been asserted that the question of seniority could not be raked up after the expiry of a period of twenty years, specially when the seniority list published by the Management during period 1971-1984 has gone unchallenged. It has further been urged that the redetermination of seniority by the Committee of Management on 25-6-1991 was clearly without jurisdiction and objections having been filed by the Respondent No. 4, challenging the aforesaid seniority list and the matter being pending consideration before the District Inspector of Schools, the Petitioner can not derive any benefit out of the aforesaid re-fixation of the seniority.

25. I have given my thoughtful consideration to the rival contentions of the learned Counsel for the parties and have further carefully perused the material brought on the record of these writ petitions.

26. Seniority relates to the place, which an employee occupies in the service in relation to the other employees. It means a higher place in the service in comparison with another employee. Further, seniority ordinarily reflects the length of service in a particular cadre or grade. The Regulations framed under the provisions of the U. P, Intermediate Education Act provide the method of determination of seniority of teachers working in a grade in an institution, recognised under the provisions of U.P. Intermediate Education Act.

27. The Regulations contained in Chapter 2 of the Regulations as in force prior to 7th July, 1976 did not have any provision for determination of seniority like the provisions contained in Regulation 3 of Chapter II of the Regulations, which was brought in force with effect from 7th July, 1976. The aforesaid Regulation 3 of Chapter 2 provides that the Committee of Management of every institution shall publish a seniority list of teachers prepared in accordance with the provisions contained in the Regulation. It provides that the seniority list shall be prepared separately for each grade of teachers, whether permanent or temporary, appointed on any substantive post and that seniority of teachers in a grade shall be determined on the basis of their substantive appointment in that grade.

28. A perusal of the aforesaid provisions makes it clear that the aforesaid regulation provides for an "institution-wise" seniority, taking into consideration the date of substantive appointment of a teacher, employed in an institution in a particular grade. It contemplates the date of substantive appointment of a teacher in that particular institution, where a teacher is continuing in employment, to be the only relevant factor, which has to be considered for the purpose of the determination of the seniority in a particular grade of teachers

working in that institution. Obviously the date of substantive appointment of a teacher in any other institution is wholly irrelevant for the purposes of determination of his seniority vis-a-vis other teachers employed in the same grade in the same institution

29. Section 16-G of the U.P. Intermediate Education Act, 1921 provides for the conditions of service of heads of institution, teachers and other employees, Section 16-G (2)(c) provides for transfer of service from one recognised institution to another. The provisions regulating the transfer of service from one recognised institution to another are contained in Regulations 55 to 62 of Chapter 3 of the Regulations framed under the U.P. Intermediate Education Act.

30. Transfer is one of the incidence of service. The word "conditions of service" has not been defined. It includes conditions regulating determination of seniority. Appointments are of various kinds. The conditions of service can differ from case to case.

31. If we compare the provisions contained in the Regulation 55 to 62 Chapter 3 of the Regulations as in force in the year 1966-67 and Regulations 55 to 62 as brought into force in the year 1976, we will find a noticeable departure from the policy relating to transfer and its consequences:

Regulation 58 of Chapter 3 of the Regulations as in force in the year 1966-67 provided as follows:

As soon as a substantive vacancy or a temporary vacancy likely to be made permanent which is to be filled by direct recruitment is advertised, the Manager shall send a copy of the advertisement along with particulars mentioned at "A" in regulation 17 of Chapter II to the Inspector or Regional Inspectress as the case may be. The Inspector or Regional Inspectress will promptly arrange with the Management to see whether the vacancy can suitably be filled by one of the applicants for transfer. When the vacancy is not filled by transfer, the Management may proceed to fill it by direct recruitment.

32. Regulation 60 of the Regulations referred to above, which continues to be retained even after 1976 provides that on transfer to a new institution an employee will be given an order of appointment mentioning along-with other particulars prescribed the fact of his transfer and the name of his institution from which he has been transferred.

33. In the Scheme of the Regulations regulating the transfers, as in force prior to 1976, there was no such provisions as contemplated in Regulation 59-A of the Regulations, Regulations 55 to 62 of Chapter III, which was brought in force from the year 1976. Regulation 59-A is to the following effect:

59-A. Upon the transfer of any person under Regulation 59 the following consequence shall ensue, namely;

(a) such person shall become an employee of the institution to which he is

transferred and shall hold office of the same tenure, at the same remuneration and upon the same other conditions of service as he would have held if the transfer had not taken effect, and shall continue to do so, unless and until such tenure, remuneration and other terms and conditions are duly altered;

(b) the seniority of such person in relation to other employees in the same cadre and grade serving in the said institution shall be subject to re-fixation in accordance with law;

(c) any service rendered by such person before the date of transfer in the institution from which he is transferred shall, for the purpose of this regulation, be deemed to be services rendered under the institution to which he is transferred.

34. It will be noticed from the above that under the new Scheme/policy referred to above, upon the transfer of any person under Regulation 59 various consequences ensue one of which is to the effect that any service rendered by such person before the date of transfer in the institution, from which he is transferred shall, for the purpose of the regulation be deemed to be service rendered under the institution, to which he is transferred.

35. Regulation 59-A obviously in the nature of a proviso to Regulation 3 of Chapter 2 of the Regulations framed under the U.P. Intermediate Education Act, to which a reference has already been made above and is clearly an exception to the general rule that seniority of teachers working in the same grade in an institution shall be determined on the basis of their substantive appointment in that grade in the said institution. It may be noted that seniority is one of the conditions of service of the incumbent and it is for that purpose that Regulation 59-A (c) had been framed. The Regulations 55 to 62 deal with transfer of teachers which is an incidence of service and Regulation 59-A has to be treated as a condition of service prescribed u/s 16-G of the U.P. Intermediate Education Act. It can not be doubted that a transfer can result in an appointment. There may be a recruitment by transfer. The difference between the transfer "simpliciter" and a transfer, which may result in an "appointment" was considered by a Full Bench of this Court in the case of Raghunandan Prasad Bhatnagar v. Administrator, Committee of Management Gandhi Vidyalaya Intermediate College, Kherkhra, District Meerut 1985 UP LB EC 346. Every transfer presupposes a reciprocity or exchange or mutuality between two incumbents serving in different institutions. In the process of such interchange no vacancy in the eye of law occurs. Such transfer only results in a change of places. There is no notional or legal vacancy in such a case. The essence of an appointment on the other hand is the prior existence of a notional or legal vacancy and the Full Bench observed that the essential ingredients of appointment are;

(a) occurrence of a vacancy

(b) assignment of a person to that post i.e. filling of the vacancy.

36. It was held by the Full Bench that an appointment is synonymous with filling up a vacancy, while the incidents of transfer "simpliciter" are that service remains the same and the employer does not change. Some times an ostensible transfer may be actually a case of appointment. The Full Bench was of the view that on a correct interpretation of regulations 55 to 62 of the Regulations as brought in force in the year 1976, the term "transfer" as contained there under had to be given a different meaning as distinguished from the term "appointment". The Full Bench was of the view that since legislature use two different terms in the same statute, "transfer" and "appointment" can not be placed at par. It was observed that in the case of "transfer" contemplated under the Regulations even the employer is changed. The person so transferred becomes an employee of the transferee institution and so it becomes a case of appointment under the guise of transfer. It was further indicated that Regulation 60 speaks of appointment in the new institution. The effect of regulation 59-A is that the employer changes and the teacher concerned becomes an employee of the transferee institution.

37. In the present case, the Respondent No. 4 has tried to claim a benefit envisaged under Regulation 59-A(c) of the Regulations now in force. In the Regulations, which were in force prior to 1976, there was no such provision. There is nothing in the notification dated 9-12-1976, which brought into force the Regulation 59-A, which may lead to an inference that the aforesaid provisions had been given any retrospective effect. It may further be noticed in this connection that Regulation 59-A (c) could not be deemed to impair the existing rights of the teachers, who had been appointed long before the enforcement of the said Regulations.

38. In the case of D.P. Sharma v. Union of India AIR 1989 SC 1071, it has been observed as below:

...The general rule is if seniority is to be regulated in a particular manner in a given period, it shall be given effect to and shall not be varied to disadvantage retrospectively...

39. In the present case, the Respondent No. 4 himself had applied for a fresh appointment to the post of teacher in the D.A.V. Inter College as a direct candidate. This appointment was duly approved by the District Inspector of Schools vide the order dated 8-3-1967. The Petitioner was at that time already in the employment in the D.A.V. Inter College as a teacher. The inter-se seniority of the Petitioner and Respondent No. 4 therefore, had to be governed by the Regulations in force at that time. The subsequent amendment and introduction of Regulation 59-A (c) could not be deemed to vary, the seniority vis-a-vis the Petitioner and the Respondent No. 4 by giving it a retrospective effect to the disadvantage of the Petitioner.

40. In this connection, it may further be noticed that taking into consideration, the manner, in which the Respondent No. 4 was appointed to the post in the

D.A.V. Inter College, it is difficult to accept any contention that his status was that of a transferee teacher", which is entitled to the benefits contemplated under Regulation 59-A (c) of the Regulations.

41. The Respondent No. 4 had undergone the entire proceedings prescribed for selection by direct recruitment. A similar situation came up for consideration by the Hon'ble Supreme Court in the case of K. Rajaiah v. State of Andhra Pradesh 1987 SCC (Suppl.) 345. In this case, the Hon'ble Supreme Court held:

...a government servant can be transferred from one post to another, but when he chooses to get himself recruited to that another post after subjecting himself to all the requirements and formalities of direct recruitment along with other independent candidates and. is confirmed after satisfactory completion of the probationary period, his appointment as a direct recruit cannot be substituted by an order of transfer to the prejudice of the other direct recruits in the matter of computation of seniority...

42. The learned Counsel for the Petitioner, while assailing the impugned order has asserted that in the present case, the Respondent No. 4 himself had applied for appointment to the post of teacher in D.A.V. Inter College as a direct candidate and accepted the fresh appointment on 20-7-1966. The order dated 30-11-1967 passed by the District Inspector of Schools conferred on the Respondent No. 4 the status of a "transferee teacher. The said conferment of status was clearly without jurisdiction and could not alter, the seniority position vis-a-vis Petitioner and Respondent No. 4, which had come into existence in the year 1966.

43. In this connection it may be noticed that Regulation 58 of Chapter III of the Regulations as was in force in the year 1967 required certain conditions to be satisfied before a transfer could be sanctioned. The first condition was the availability of a substantive vacancy or a temporary vacancy likely to be made permanent. The second condition was that the application for transfer had to be made prior to the occurrence of the vacancy and had to be got registered with the Inspector. The third condition was that the sanction for the transfer must have preceded the filling up of the vacancy.

44. In the present case, the fact that the Respondent No. 4 had not made any such application for transfer is apparent in as much as in the presence of such an application, he would not have moved the application dated 5-7-1966, offering himself as a candidate for direct recruitment and he would not have accepted a fresh appointment. It may further be noted, that the mere fact that the District Inspector of Schools had granted the approval to the fresh appointment amply indicates that no decision to sanction any transfer had been taken before the filling up of the vacancy on 20-7-1966 or in any case, before according approval to this appointment, which was done by the District Inspector of Schools under the order dated 8-3-1967.

45. It is therefore, clear that the pre-requisite conditions contemplated under the

relevant Regulations governing the case of transfer had not been satisfied and there could be no occasion to sanction a transfer on 30-11-1967. The apex Court in its "decision in the case of State of Punjab Vs. Jagdip Singh and Others, has observed as below:

...In our opinion where a Government Servant has no right to a post or to a particular status, though any authority under the Government acting beyond competence had purported to give that person a status, which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given a particular status, (emphasis supplied).

From the observations made by the Hon'ble Supreme Court referred to above, I feel fortified in my view that the Respondent No. 4 could not, in law, be deemed to have the status of a "transferee teacher" simply on the strength of the order passed by the District Inspector of Schools dated 30-11-1967 and this order could not have the effect of altering his status from that of a fresh appointee teacher" to a "transferee teacher. As has already been indicated above, the status of fresh appointee teacher" of the Respondent No. 4 stood recognised with the issuance of the order of approval by the District Inspector of Schools on 8-3-1987. which order had attained finality. The subsequent order dated 30-11-1967 could not take away or nullify it so as to vary the seniority position of the Petitioner vis-a-vis Respondent No. 4,

46. In the facts and circumstances of the case, it is apparent that the order dated 30-11-1967 had been passed in excess of jurisdiction vested in the District Inspector of Schools. The pre-requisite conditions for the exercise of the power in this regard having not been satisfied, the order was clearly without jurisdiction.

47. It has been observed by the Hon'ble Supreme Court in its decision in the case of The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others, that an order, which is without jurisdiction is void. It has further been observed that if an order is void i.e. as passed without jurisdiction, it did not require to be set aside, since it is to be treated as non-est. In the case of Chet Singh Vs. State of Punjab and Others, , the Court has observed that the orders, which are non-est can be ignored at any stage. Such orders have no legal existence and do not require to be set aside. Observations to this effect have been made in the cases of State of Madhya Pradesh v. Syed Qamarali SLR 1967 (1) 228 and Kiran Singh and Others Vs. Chaman Paswan and Others, .

48. The District Inspector of Schools, Respondent No. 1 however, while passing the impugned order dated 19-1-1987 has recorded a finding that incase, the transfer order, passed in favour of Respondent No. 4 could be shown to be vitiated in law, in that event, the Petitioner could be deemed to be senior to the Respondent No. 4 but he has omitted to go into the question of validity of the transfer order simply on account of the fact that the transfer order had been issued 20 years back and the question in regard to its validity, in his view, could not be allowed to be raised at such a late stage. In face of the decision of the

Hon"ble Supreme Court, referred to above and the legal position, that emerges, this view of the Respondent No. 1 appears to be manifestly illegal.

49. In view of the foregoing discussion, there is no escape from the conclusion that the order of transfer dated 30-11-1967 was clearly without jurisdiction null and void and therefore, could be ignored at any stage.

50. The contention of the learned Counsel for the Respondents that the question of seniority could not be raked up after such a long gap of time appears to be misconceived. From the materials on the record, it does not appear that the seniority list was ever prepared as required under the provisions contained in Regulation 3 of Chapter II of the Regulations framed under the U.P. Intermediate Education Act and communicated to the teachers concerned prior to the circulation of the seniority list giving rise to the impugned order. Even the District Inspector of Schools in his order dated 19-1-1987 has no where recorded any finding about the circulation of the seniority list prior to 1985-86 or there being any determination by the Committee of Management in regard to the seniority vis-a-vis the Petitioner and the Respondent No. 4 after affording opportunity of hearing to the Petitioner, prior to the initiation of the present proceedings. The Petitioner had not been negligent and had immediately challenged the erroneous fixation of his seniority position as soon as he came to know about the same. The ratio of the full Bench decision in the case of Dr. Asha Saxena v. Smt S.K. Chaudhary 1991 (2) UP LB EC 1202 has therefore, no application to the facts and circumstances of the present case and it can not come to the rescue of the Respondent.

51. While examining the effect of the action of the Management where it ignores the senior most teachers, while complying with the requirements, envisaged under Rule 4 of the Rules framed under the U.P. Act No. 5 of 1982 in the proceedings relating to the selection of suitable candidates for the appointment on the post of the principal of the institution and the panel published by the Commission on 28-6-1991, the decision of the Division Bench of this Court in the case of Kedar Nath Awasthi v. Administrator Nagar Palika As Manager of Aminabad Intermediate College 1984 UP LB EC (2) 914 can not be overlooked. This Court in the above case has already examined the effect of such omission and has laid down that the Management is put under the legal obligation to forward the names of two senior most teachers for such selection. In case, the Management does not comply with the Rules and fault lies on its part, in that event the entire selection made by the Commission is vitiated The Division Bench has held that if, on account of the fault of Management, the Commission does not issue any interview letter to the teachers, whose names ought to have been forwarded by the Management as required under Rule 4 of the Rules framed under the U.P. Act No. 5 of 1982 and if an eligible candidate is not considered by the Commission, it is not open to the Commission to proceed to make the selection for appointment on the post in question. Such an action of the Commission to proceed to make the selection for appointment on the post in

question, disregarding the candidature of an eligible senior most teacher has been held to be illegal and vitiated in law on account of material irregularity. The ratio of the aforesaid decision of the Division Bench of this" Court is clearly applicable to the facts and circumstances of the present case.

52. In the circumstances of the case, since no investigation into any question of fact is involved and the controversy involved in this case had to be decided on the question of law only and further, considering the fact that sufficient time has elapsed and the regular appointment on the post of principal of the college is being unnecessarily delayed. I do not think that any useful purpose will be served by remitting the case back to the District Inspector of Schools for reconsideration of the matter so far as it relates to the determination of seniority vis-a-vis the Petitioner and the Respondent No. 4 is concerned.

53. In view of the conclusions indicated hereinbefore, the writ Petition No. 2496 of 1987 is allowed and the order passed by the District Inspector of Schools dated 19-1-1987, a true copy of which has been filed as Annexure-VI is quashed.

54. The Civil Misc. Writ Petition No. 18885 of 1991 is also allowed and the order of the Commission, Respondent No. I dated 28-6-1991, a true copy of which has been filed as Annexure-9 to the writ petition is quashed.

55. The writ Petition No. 12128 of 1991 is allowed in part and the Committee of Management is directed to take proper steps without any further delay for the appointment of the principal of the college in accordance with law, considering the Petitioner senior to the Respondent No. 4.

56. The parties are directed to bear their own costs.

57. Before parting with this judgment, it is necessary to add that on 19-10-1983 a special audit report had been submitted, where under it was reported that the order passed by the District Inspector of Schools dated 30-11-1967 could not entitle the Respondent No. 4 to get an enhanced amount of salary on account of the counting of the period of service rendered by him in the M. V. Inter College, Terahi, Azamgarh and it was recommended that proceedings for the recovery of excess payment of salary made to the said Respondents be initiated.

58. It may be noticed that inspite of the report nothing was done and the mistake was not rectified at the earliest. The Respondent No. 4 continued to get his salary as fixed by the Respondent authorities. It will be too harsh, if at this late stage re-fixation of salary is made and proceedings for recovering the" alleged over payments in the monthly salary paid to the Respondent No. 4 are initiated.

59. In the facts and circumstances of the case, since, it was on account of the fault of the Educational Authorities that the excess payment referred to in that report had been made to the Respondent No: 4, it will not be in the interest of justice to deprive the said Respondent of the payment of any amount of salary, which had been made to him so far. It is therefore, directed that the Respondent

No. 4 will not be required to refund any amount of salary already paid to him by the Respondent authorities acting on the basis of the aforesaid audit report.