
(2002) 05 AHC CK 0040

In the Allahabad High Court

Case No : C.M.W.P. No. 29135 of 1991 with other writ petitions

Laxmi Shanker Pathak and Another

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 24-05-2002

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Regulation 3(1)(bb), 6
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 33A(1)

Citation : (2002) 4 AWC 2699 : (2002) 2 UPLBEC 1883

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : D.S.M. Tripathi and Rajesh Kumar, for the Appellant; Indra Raj Singh and Ashok Khare and Pradeep Chandra, S.C., for the Respondent

Judgement

Sunil Ambwani, J.—All these connected writ petitions raise dispute relating to seniority of petitioners Laxmi Shanker Pathak, Fateh Chandra Lal, Laloo Chauhan, Rama Shanker Pandey, and Krishna Narain Singh in Uchchar Madhyamik Vidyalaya, Durgaganj, Varanasi. The facts in all these petitions are common, and as such all the above writ petitions are being decided by a common order.

2. Writ Petition No. 29135 of 1991 has been filed by Laxmi Shanker Pathak and Krishna Narain Singh for a writ of mandamus directing respondents to treat petitioners as permanent L.T. grade teachers in view of U. P. Ordinance No. 28 of 1999 dated 6.4.1991, and to fix their salaries as L.T. grade Teachers and further to pay arrears of salaries from April, 1991, till date.

3. Writ Petition No. 39767 of 1993, has been filed by Fateh Chandra Lal praying for a writ of certiorari for quashing order dated 8.10.1993 by which the District Inspector of Schools, Varanasi decided seniority dispute between the parties in pursuance to directions given by High Court dated 1.1.1991, 18.11.1991 and 6.1.1992, and for a writ of mandamus directing the respondents to treat and

promote petitioner as Assistant Teacher in L.T. grade w.e.f. 1.4.1984 and further to declare promotion of respondent Nos. 3 and 4 as Assistant Teacher in L.T. grade by Committee of Management as null and void.

4. Writ Petition No. 42598 of 1993 has been filed by Laloo Chauhan for quashing order dated 8.3.1993 passed by District Inspector of Schools deciding the dispute regarding seniority between him and other petitioners and for a direction to the respondents to treat and promote petitioner as Assistant Teacher in L.T. grade with effect from 1.4.1984 and to pay him salary and further to declare promotion of Rama Shanker Pandey, Laxmi Shanker Pathak and Krishna Narain Singh as null and void.

5. Writ Petition No. 30484 of 2000. has been filed by Laxmi Shanker Pathak, for quashing order dated 17.4.2000 passed by the Joint Director of Education, Mirzapur Region, Mirzapur, and to command respondents to treat him as senior most L.T. grade Teacher of the institution.

6. Writ Petition No. 26480 of 2001. has been filed by Laxmi Shanker Pathak, for quashing order of Joint Director of Education, Vindhyachal Region, Mirzapur dated 11.7.2001 by which he cancelled order of Sri Basudeo Yadav dated 27.6.1991 regarding seniority and for commanding respondents to reconsider the order dated 17.4.2000 passed by earlier Joint Director of Education on the representation of petitioner dated 12.2.2001 and further for a writ of mandamus commanding respondents not to interfere in petitioner's functioning as Officiating Principal.

7. Writ Petition No. 34780 of 2001, has been filed by Laloo Chauhan, for quashing the order dated 23.8.2001 passed by the Joint Director of Education, Vindhyachal Region, Mirzapur, and for a direction to the respondent to treat him as senior most teacher in the institution with all consequential benefits and to permit him to function as officiating/ad hoc Principal and to pay him regular monthly salary.

8. Writ Petition No. 36469 of 2001, has been filed by Laxmi Shanker Pathak for quashing the order of Joint Director of Education, Vindhyachal Region, Mirzapur, dated 23.8.2001 and the order dated 4.8.2001 passed by District Inspector of Schools, Sant Ravidas Nagar and for a writ of mandamus commanding the respondents to treat him as senior-most L.T. grade teacher and allow him to continue as Officiating Principal till regularly selected candidate comes and joins the post.

9. Writ Petition No. 40180 of 2001, has been filed by Rama Shanker Pandey, for quashing the order dated 23.8.2001 passed by Joint Director of Education, Vindhyachal Region, Mirzapur, deciding the issue of seniority between petitioners and for a writ of mandamus declaring petitioner senior to Sri Laloo Chauhan.

10. Brief facts common in all petitions are as follows. Intermediate College Durgaganj, Sant Ravi Das Nagar, Bhadohi is a recognised educational institution

receiving grant-in-aid and is regulated by the provisions of U. P. Intermediate Education Act, 1921, U. P. High Schools and Intermediate College (Payment of Salaries of Teachers and Other Employees) Act, 1971 and U. P. Secondary Education Services Commission and Selection Board Act, 1982. Prior to 21.1.1982, the institution was recognised as Junior High School and was receiving grant-in-aid. By order dated 21.1.1982, it was recognised for imparting education in class IX and X in eight subjects namely, Hindi, Maths, History, Economics, Civics, Geography, Sanskrit and English and by order dated 6.3.1987, it was given permission to run classes of class IX and X. On 18.1.1984 one post of Head Master, three posts of L.T. grade teachers, seven posts of C. T. grade, clerks and peons were sanctioned by the Director of Education. With effect from 1.7.1979, all the C.T. grade Teachers were given L.T. grade pay-scales and were paid from grant-in-aid. From 1.4.1991 the institution was brought in grant-in-aid and the salary was paid through the District Inspector of Schools. The District Inspector of Schools, in pursuance of the orders passed by this Court decided dispute with regard to seniority by his order dated 8.10.1993 in which he found Fateh Chandra Lal as senior-most, Sri Rama Shanker Pandey as next in seniority and, Sri Laloo Chauhan at Sl. No. 3. He found that all the three teachers were given C.T. grade on the same date and thus seniority has to be reckoned from the respective age. In Writ Petition No. 17184 of 1999 filed by Sri Rama Shanker Pandey, as above, this Court vide its order dated 26.4.1999 directed Joint Director of Education to decide the seniority dispute, in pursuance of which after hearing all the parties, he passed an order dated 17.4.2000, in which he found Sri Fateh Chandra Lal (Ist place) Rama Shanker Pandey (IIInd place), Laxmi Shanker Pathak (IIIrd place), Laloo Chauhan (IVth place) and Sri Krishna Narain Singh at (Vth place).

11. In Writ Petition No. 22233 of 2000 by Order dated 12.6.2000, this Court directed the Joint Director of Education to decide the representation of Sri Laxmi Shanker Pathak dated 12.3.2001 within a month. The then Joint Director of Education vide his order dated 27.6.2001 suspended the operation of the order dated 17.4.2001 deciding the seniority issue between the parties. Fresh hearing took place upon which the suspension of order dated 27.6.2001 was cancelled. Shri Laxmi Shanker Pathak challenged this cancellation order dated 11.7.2001 in Writ Petition No. 26480 of 2001, in which once again, this Court vide its order dated 6.8.2001 directed Joint Director of Education to pass appropriate reasoned order and thus the last of the impugned order dated 23.8.2001, challenged in these writ petitions came to be passed by the Joint Director of Education, Vindhyachal Region, Mirzapur.

12. By the impugned order dated 23.8.2001, the Joint Director of Education has found that Fateh Chandra Lal was appointed on 20.7.1973 in C.T. grade (100-250), he was adjusted as Teacher in High School on 16.10.1984 and was given L.T. grade on 1.1.1992. Sri Laloo Chauhan was appointed in B.T.C. grade (84-180) on 1.7.1972 and was adjusted as a teacher in High School from 16.10.1984, and was given L.T. grade on 1.1.1992. Sri Rama Shanker Pandey

was appointed in C.T. grade on 20.12.1977 and was adjusted at High School level on 16.10.1984. His promotion in the year 1984 was not approved by the District Inspector of Schools and the aforesaid writ petition in that regard is pending. His pay was fixed in L.T. grade on 1.1.1992. Sri Laxmi Shanker Pathak was appointed in C.T. grade on 12.2.1979 and was adjusted as a teacher in High School on 16.10.1984. His promotion in 1984 by the Manager was not approved by the District Inspector of Schools, and his writ petition as above, is also pending. His pay was fixed in L.T. grade on 1.1.1992.

13. The Joint Director of Education on the aforesaid facts found that Fateh Chandra Lal and Laloo Chauhan have been absorbed from C.T. grade to L.T. grade whereas Sri Rama Shanker Pandey and Laxmi Shanker Pathak and Krishna Narain Singh have neither been absorbed in L.T. grade nor they have been promoted. Sri Fateh Chandra Lal and Laloo Chauhan were absorbed on the same date and that on the ground of age, Sri Fateh Chandra Lal is senior. He has as such determined seniority between the parties treating Fateh Chandra Lal as senior most and thereafter Sri Laloo Chauhan, Rama Shanker Pandey, Laxmi Shanker Pathak and Krishna Narain Singh on the basis of substantive appointment in C.T. grade.

14. Heard Sri Anil Bhushan for Fateh Chandra Lal, Sri Ashok Khare, senior advocate for Laloo Chauhan, Sri D.S.N. Tripathi for Laxmi Shanker Pathak and Sri Rajesh Kumar for Rama Shanker Pandey as well as learned standing counsel.

15. On behalf of Sri Fateh Chandra Lal, it is submitted that he was appointed in C.T. grade on 20.7.1973. In view of Clause-4 (3) of U. P. Secondary Services Commission (Removal of Difficulties) Order, 1981, only senior most C.T. grade teacher is entitled to be promoted in L.T. grade. The District Inspector of Schools, rejected the alleged promotion of Laxmi Shanker Pathak dated 17.9.1985. The said order has not been challenged and has thus become final. It cannot be challenged now after seventeen years. As against Laloo Chauhan, who has claimed seniority over Sri Fateh Chandra Lal, on the basis of length of service before promotion in L.T. grade, it is submitted that Regulation-3 (1) (bb) has been inserted in Chapter-II of the regulations made under U. P. Intermediate Education Act, 1921 with effect from 10.9.1976 and that in view of Full Bench decision in Smt. S. K. Chawdhary v. Manager, Committee of Management Vidyawati Darbari Girls Inter College, Lookerganj, Allahabad 1991 (1) UPLBEC 250, the provisions of Regulation 3 (1) (bb) are not retrospective in nature and that the vested right of seniority determined earlier cannot be taken away. This decision has also been cited in support of the submission that a seniority list which has remained in existence for a long time and which has become final cannot be challenged after a long gap of period and that appointments made long ago do not call for interference.

16. The case of Laloo Chauhan in brief is that the institution originally Junior High School was brought under grant-in aid as Junior High School in 1979, as High School in 1982 and was given "vitta viheen" recognition as Intermediate

College in 1991. The fixation of seniority on the ground of age between Fateh Chandra Lal and Laloo Chauhan, who were both appointed in L.T. grade on the same date on 1.1.1992 is wholly irrelevant. Length of service in the next lower grade is the determinative factor. Fateh Chandra Lal, as found by District Inspector of Schools in his order dated 8.10.1993 was initially appointed in Junior High School in B.T.C. grade and was given C.T. grade on 1.7.1991. This finding has not been challenged. The initial date of appointment of Laloo Chauhan is 2.7.1972 whereas the initial date of appointment of Fateh Chandra Lal is 20.7.1973. According to Sri Ashok Khare, Regulation 6 of Chapter-II as substituted by Notification dated 18.12.1997 and Section 33-1 of U. P. Act No. 5 of 1982 makes it clear that the date of placement in L.T. grade is the date of substantive appointment in the said grade. He claims that Laloo Chauhan is senior on the ground of length of service prior to substantive appointment in L.T. grade and relies upon Regulation 3 (1) (bb). of Chapter-II of the Regulations made under the Act.

17. Coming to the case of Laxmi Shanker - Pathak, it has been submitted that on 18.1.1984, three posts in L.T. grade and seven posts in C.T. grade were sanctioned. On 24.1.1984, Committee of Management notified vacancies to the Selection Board after waiting for about sixty days before proceeding to fill up three posts u/s 18 of U. P. Act No. 5 of 1982. On 1.4.1984, after considering the suitability of all teachers under Rule 6 (i), 6 (ii), 6 (iii) and Rule 9 of U. P. Secondary Education Services Commission Rules, 1982, Laxmi Shanker Pathak, K. N. Singh, and Rama Shanker Paridey were promoted. Fateh Chandra Lal was not qualified for Economics subject, hence he was not promoted even though he was senior-most. Laloo Chauhan was also not qualified and was not promoted. Documents relating to promotion, were forwarded to District Inspector of Schools on 7.4.1984 but he did not communicate any decision and thus under Regulation 6 (6) of Chapter-II, there shall be deemed concurrence to the appointment by the District Inspector of Schools. He has relied upon Smt. Prem Balika Rai v. R.I.G.S. and Ors. 1993 (2) AWC 872 : 1993 (2) UPLBEC 922 ; Smt. Kuswn Agrawal v. Uma Rani Misra and Ors. 2000 (2) AWC 1183 (LB) : 2000 (2) ESC 1244 and Smt. Jaitoon Fatima v. Director of Education 1999 (2) ESC 1271. On 20.4.1984 he was given appointment letter and he joined on 28.4.1984. No objection was filed to these promotions. Writ petitions were filed after about seven years in which orders were passed to decide representation. He claims to be regularised u/s 33A (1-c) of Act No. 5 of 1982 with effect from 6.4.1991. Order dated 17.4.2000 was passed by Joint Director of Education without affording any opportunity to him. On 29.6.2000 he was appointed by Committee of Management as Officiating Principal w.e.f. 30.6.2001 and is still working. According to him for promotion in higher grade, seniority is not the only criteria. The Committee of Management has to take into account the suitability of the teacher for promotion and has relied upon the judgment in Smt. Basanti Gaur v. R.I.G.S., VII Region, Gorakhpur 1987 (1) AWC 363 : 1987 (1) UPLBEC 121 (FB) : Ram Bali Srivastava v. Committee of Management. 1987 (1) UPLBEC 293 ; B. P.

Tripathi v. State of U. P. 1985 UPLBEC 669 and Pati Ram Pal v. D.I.O.S. 1993 (1) UPLBEC 319. According to him, there was no necessity to seek approval for ad hoc promotion as neither in Section 18 of Act No. 5 of 1982 nor in U. P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981, there is any provision of seeking prior approval or subsequent approval for ad hoc promotion. For this purpose, he has relied upon the judgment in Radha Raizada v. Committee of Management 1994 (4) UPLBEC 1551 and Laxman Dundeeppa Dhamanekar v. Management, 2001 (4) ESC 604. Replying to the argument that L.T. grade pay-scale was not given after the said promotion till November, 1992. he submits that institution was taken into grant-in-aid list vide order dated 27.4.1993 and as such, payment of salary was not made to petitioner in L.T. grade. The payment of salary in L.T. grade, according to him, has any effect on the promotion made in accordance with Section 18 of U. P. Act No. 5 of 1982 and has relied upon the judgment in Vipin Kumar v. D.I.O.S. 1994 (1) AWC 116 : 1993 (3) UPLBEC 1800.

18. Sri Rama Shanker Pandey submits that u/s 33D of the U. P. Act No. 5 of 1982, it is provided that a teacher working in C.T. grade is entitled to promotion on completion of 10 years. The institution was upgraded w.e.f. 1.1.1982 and thus all the teachers were entitled for L.T. grade w.e.f. 1.1.1992 and that all of them have been absorbed in L.T. grade with effect from the said date and hence, the age will be criteria to decide their seniority under Regulation 3 (1) (bb) of Chapter-II. According to him, he is elder to Laloo Chauhan and thus claims seniority over him.

19. Regulations 3 and 6 of Chapter-II of the regulations made under the Act are quoted as below :

"3. (1) The Committee of Management of every institution shall cause a seniority list of teacher 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 infer 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.

2. The seniority list shall be revised every year and the provisions of Clause (1) shall mutatis mutandis apply to such revision.

6. (1) Where any vacancy in the lecturer's grade or in the L.T. grade as determined under Regulation 5. is to be filled by promotion, all teachers working in the L.T. or the C.T. grade, as the case may be, having a minimum of five years continuous substantive service to their credit on the date of occurrence of the vacancy shall be considered for promotion by the Committee of Management without their having to apply for the same provided they possess the prescribed minimum qualifications for teaching the subject in which the teacher in the lecturer's grade or in the L.T. grade is required.

Note.--For purposes of this clause, service rendered by a teacher in the L.T. Or the C.T. grade in any other recognised institution shall count for eligibility, unless interrupted by removal, dismissal or reduction to a lower post.

(2) Selection for promotion to the next higher grade shall be made on the basis of service standing, achievements in service, academic qualifications and integrity.

(3) Subject to Clause (2) where more than one teacher in the L.T. grade are eligible for promotion to the post of lecturer in any subject, preference shall be given to the teacher who is the senior-most amongst them in service in that grade.

(4) (a) The claim of any teacher who is eligible for promotion shall not be ignored merely because he has proceeded on long leave or is officiating or working temporarily on a post in the higher grade.

(b) In the case of a teacher who is under suspension, the claim of promotion shall not be ignored if he is reinstated prior to the selection for promotion.

(5) In respect of any teacher selected for appointment by promotion in accordance with these regulations, the Manager of the Institution shall within a week from the date of resolution passed by the Committee of Management in regard to such appointment forward the proposal for the concurrence of the Inspector together with a copy of such resolution and a statement showing the following particulars :

(i) the total number of sanctioned posts in the grade in which promotion is to be made ;

(ii) the number of posts to be reserved for promotion ;

(iii) the number of posts already filled by promotion giving names of the incumbents ;

(iv) the total of vacancies which have occurred ;

(v) the number of vacancies determined by the Committee of Management to be filled by ;

(a) promotion ;

(b) direct recruitment ;

(vi) the names of all eligible candidates for promotion, their qualifications and the length of their service from the date of their substantive appointment in the grade from which they are to be promoted ; and

(vii) names of persons selected for promotion.

(6) Within three weeks from the date of receipt of the proposal under Clause (5), the Inspector shall communicate his decision thereon to the Manager failing which the Inspector shall be deemed to have given his concurrence to the resolution passed by the Committee of Management."

20. The Supreme Court in *Malcom Lawrence Cecil D'souza Vs. Union of India (UOI) and Others*, and the Full Bench in *Smt. S. K. Chaudhari* (1991) 1 UPLBEC 250, and in *Dr. Ganesh Prasad v. Chancellor, Puruanchal University. Jaanpur* 1996 (3) AWC 1627 : 1996 (3) ESC 488, have cautioned against interference with seniority list standing for long periods of time. The Court must be slow and reluctant to scrutinize validity of appointments which have remained unchallenged for long years, unless they are void or obtained by practicing fraud.

21. In this case, all the petitioners were in C.T. grade. Three posts in L.T. grade and seven posts in C.T. grade were sanctioned in 1984. Laxmi Shanker Pathak, Krishna Narain Singh and Rama Shanker Pandey claimed to be promoted in L.T. grade by Committee of Management on 1.4.1984. According to them, others who were senior to them were not eligible for want of educational qualification. Their appointments by way of ad hoc promotion were not approved by the District Inspector of Schools and they were not given pay scales until the college came under grant-in-aid in 1991 and w.e.f. 1.1.1992, all petitioners were given pay scale in L.T. grade,

22. There was no dispute with regard to their seniority in C.T. grade. The ad hoc promotions in 1984 were starting points of dispute between them. Representations were filed by those who were superseded. However, no one decided the validity of ad hoc promotions. In earlier writ petition filed by Lalloo Chauhan in the year 1991. by an order dated 6.1.1992 and thereafter in Writ Petition No. 25162 of 1992. by an order passed on 7.7.1992. the representations were directed to be decided. The District Inspector of Schools applied his mind and decided seniority dispute on 8.10.1993 and thereafter on 17.4.2001 and lastly by impugned order dated 23.8.2001. the Joint Director of Education passed

orders. Throughout this period from 1984 till date, the seniority stood as it was. In *Radha Raizada v. Committee of Management*, 1994 (3) UPLBEC 1551, this Court held at page 1573 that there is no provision either in the Act or Removal of Difficulties Order for approval of ad hoc appointment by promotion. If a senior-most teacher has not been promoted, adequate power is, given to Inspector under Payment of Salaries Act, 1971 to make inquiries and stop payment of salary. In the present case, since the documents were sent for approval and that District Inspector of Schools did not pass any order, promotions will be deemed to have been approved under Regulation 6 to Chapter-II as held in *Smt. Jaitoon Fatima v. Director of Education* 1999 (2) ESC 1271. In *Vipin Kumar u, D.I.O.S. Muzaffarnagar* 1994 (1) AWC 116 : , the Division Bench held that word "Grade" in Removal of Difficulties Order, 1981. Rule 9 of the U. P. Secondary Education Services Commission Rules, 1993 and Regulation 6 of Chapter-II of regulations made under Intermediate Education Act, 1921, must be taken as "post" and not pay-scale. It was further held that seniority in the "grade" is to be counted from the date of appointment in the grade, and not the award of pay-scale.

23. The ad hoc appointment made by the Committee of Management on 1.4.1984, therefore, did not require any approval and that want of pay scale did not arrest seniority of those who were promoted on ad hoc basis. These ad hoc appointments were deemed to be regularised u/s 33A (1) (c), with effect from 6.4.1991, as they were made on substantive post and the incumbents were serving in the institution since the date of such ad hoc appointment.

24. Regulation 3 (1) (bb), will be attracted in a case provided the appointment made on the same date. Laxmi Shanker Pathak and Rama Shanker Pandey, were appointed in L.T. grade by ad hoc promotion on 1.4.1984. These ad hoc promotions were on substantive posts and have not been set aside by any competent authority. Their seniority as such will be counted from 1.4.1984 and they shall be treated to be senior. On the basis of age, Sri Laxmi Shanker Pathak is senior to Sri Rama Shanker Pandey. Coming to the seniority between Fateh Chandra Lal, Laloo Chauhan and Krishan Narain Singh, it is found that they were appointed in C.T. grade on the same date and that they were absorbed in L.T. grade with effect from 1.1.1992. when they completed ten years of service in C.T. grade. Their seniority as such will be governed in accordance with their age and since the date of birth of Fateh Chandra Lal, Laloo Chauhan and Krishna Narain Singh is 4.6.1943, 16.8.1952 and 12.5.1953, they shall be given seniority according to their respective age. The Court thus find that Laxmi Shanker Pathak is the senior-most, Rama Shanker Pandey is next in seniority and that Fateh Chandra Lal, Laloo Chauhan and Krishna Narayan Singh are entitled to third, fourth and fifth place in the order of seniority.

25. Petition No. 29135 of 1991 filed by Laxmi Shanker Pathak and Krishna Narain Singh is allowed, Writ Petition Nos. 30484 of 2000, 26480 of 2001, 36469 of 2001, filed by Laxmi Shanker Pathak and Writ Petition No. 40180 of 2001, filed by Rama Shanker Pandey are also allowed, and that the orders passed by District

Inspector of Schools dated 8.10.1993 ; and the orders dated 17.4.2000 and the order dated 23.8.2001 passed by the Joint Director of Education are set aside and the seniority between petitioners is declared as above. Writ Petition No. 39767, filed by Fateh Chandra Lal and Writ Petition Nos. 42598 of 1993 and 34780 of 2001, filed by Lalloo Chauhan are dismissed. There shall be no order as to costs.