
(2002) 02 AHC CK 0121

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 433 of 2002

Madhuri Tripathi (Smt.)

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 08-02-2002

Acts Referred:

Citation : (2002) 2 UPLBEC 1026

Hon'ble Judges : Janardan Sahai, J

Bench : Single Bench

Advocate : Namvar Singh, in Civil Misc. Writ Petition No. 433 of 2002 and R.G. Padia and Prakash Padia, in Civil Misc. Writ Petition No. 42359, for the Appellant;

Judgement

Janardan Sahai, J.—The dispute in both these writ petitions relates to the appointment of ad hoc principal in Balika Inter College, a recognised intermediate college. As such both these cases are being disposed of by a common order. The regular Principal of the institution Smt. Shanti Mishra superannuated on 30.6.2001 and on the vacancy so arising, Madhuri Tripathi the petitioner in writ petition No. 433 of 2002 on the one hand and the petitioner in writ petition No. 42359 of 2001, Km. Gopa Banerji, on the other hand, have staked their claim for appointment as ad hoc Principal until a regularly selected candidate from the U.P. Secondary Education Service Selection Board joins.

2. The order impugned in writ petition No. 433 of 2002 is dated 30.10.2001 and was passed by the District Inspector of Schools, Jaunpur. By this order, the District Inspector of Schools has recognised Km. Gopa Banerji as the Karyavahik Principal. Smt. Madhuri Tripathi has prayed for a direction that her signature as ad hoc Principal be attested and further prayer made in the writ petition is that the Joint Director of Education be directed to decide the dispute between the petitioner Madhuri Tripathi and Gopa Banerji.

3. The prayer in writ petition No. 42359 of 2001 is for quashing the order dated 21.11.2001 of the Joint Director of Education, Varanasi Region directing the

District Inspector of Schools, Jaunpur not to give effect to the attestation of the signatures of Km. Gopa Banerji as ad hoc Principal of the institution until a final decision is taken by the Joint Director of Education.

4. Although dispute in these two cases has come up in the form of a dispute relating to the office of the Principal but the central issue in the case is as regards Seniority between the two contending parties inasmuch as senior teacher is entitled to work as ad hoc Principal. The case of the petitioner Smt. Madhuri Tripathi in writ petition No. 433 of 2002 is that she was appointed as L.T. Grade teacher on 8.7.1972 on ad hoc basis against a substantive vacancy and her appointment was approved by the RIGS on 25.4.1973 with effect from 8.7.1972; that she was confirmed in the L.T. Grade on 8.7.1973; that her services were illegally terminated by the management on the basis of a forged letter of resignation which made her institute Original Suit No. 13 of 1981 which was decreed by compromise dated 20.12.1986 and after the decree, she was reinstated and has been working continuously since and was given the charge of ad hoc Principal of the institution on 1.7.2001. Medium Tripathi claims to be Senior to Gopa Banerji on the basis that Gopa Banerji was appointed in L.T. Grade on 10.8.1973 and was approved in that grade after Madhuri Tripathi and that Gopa Banerji was confirmed in the LT Grade on 10.8.1974 after Madhuri Tripathi.

5. The case of Km. Gopa Banerji, petition in writ petition No. 42359 of 2001 is that Madhuri Tripathi had in fact resigned in May, 1973 and consequent to her resignation, Gopa Banerji was appointed at L.T. Grade teacher; that the suit of Madhuri Tripathi was decreed on the basis of a compromise and that the said compromise decree is not binding on her as she was not party in that suit; that there are only three sanctioned posts of L.T. Grade teachers in the institution and that all the three posts have been filled up-one by Km. Gopa Banerji, second by Bhagwanti Mishra and third by Dr. Kiran Yadav and there remains no post of LT Grade against which Madhuri Tripathi could be adjusted after the compromise decree; that in fact under the terms of compromise decree Madhuri Tripathi has been adjusted against an extra post and as she is not working against any sanctioned post, she can not claim any Seniority over Gopa Banerji. Further the order dated 1.7.2001 on the basis of which Madhuri Tripathi is claiming to have been given charge on the post of ad hoc Principal was passed by the Manager and not by the Committee of Management.

6. According to the case of Gopa Banerji no Seniority List has been circulated in the college. On the other hand the case of Madhuri Tripathi is that Seniority List was circulated, copy of which has been filed as Annexure-4 to the writ petition, and that in the attendance register, Madhuri Tripathi is shown as Senior to Gopa Banerji.

7. I have heard Shri Namwar Singh, learned Counsel for Smt. Madhuri Tripathi, the petitioner in writ petition No. 433 of 2002 and Dr. R.G. Padia, learned Senior Counsel assisted by Shri Prakash Padia for Gopa Banerji, petitioner in writ

petition No. 42359 of 2001. Learned Standing Counsel was also heard.

8. It appears that after the order dated 1.7.2001 appointing Madhuri Tripathi as ad hoc Principal, her signatures were not attested. The District Inspector of Schools by his letter dated 8.10.2001 referred the dispute between Madhuri Tripathi and Gopa Banerji to the Joint Director of Education. Pending the reference on 30.10.2001, the District Inspector of Schools attested the signatures of Gopa Banerji as ad hoc Principal. The Joint Director of Education by his letter dated 9.11.2001 called for a report from District Inspector of Schools as to why after making the reference, the District Inspector of Schools attested signatures of Gopa Banerji when the matter was pending at the Office of the Joint Director of Education. By the impugned order dated 21.11.2001 the Joint Director of Education referred to these facts and directed the District Inspector of Schools not to give further effect to the attestation of signatures of Gopa Banerji. From the facts set out, it is clear that the Joint Director of Education is considering the matter.

9. The real dispute, which is to be decided by him, is the dispute of Seniority. In order to decide that dispute issues of fact are involved. While on the one hand it is the case of Madhuri Tripathi that a Seniority list has been circulated in the institution and in that list she is Senior to Gopa Banerji which is corroborated by the order of Seniority of teachers shown in the attendance register, the case of Gopa Banerji is that no Seniority list was at all circulated. The second aspect of the matter is about the number of sanctioned posts in the institution and as to whether Madhuri Tripathi is working against a sanctioned post or against an extra post which has not been sanctioned and whether Madhuri Tripathi is entitled to continuity of service from the date of her initial appointment.

10. Dr. R.G. Padia, learned Senior Counsel appearing for Gopa Banerji submitted that the compromise decree was not binding upon Gopa Banerji as she was not a party in that suit and that Madhuri Tripathi is working against an extra post and not against any sanctioned post and that Gopa Banerji is Senior to her and that no opportunity was given to Gopa Banerji before the impugned order dated 21.11.2001 was passed by the Joint Director of Education.

11. On the other hand Shri Namwar Singh submitted that the appointment of Madhuri Tripathi was made against substantive vacancy on 8.7.1972 which has been approved by Regional Inspectress of Girls Schools with effect from 8.7.1972 and her reinstatement after the decree in the suit would relate back to the date of her initial substantive appointment viz., 8.7.1972 as she would be deemed to have been reinstated on the post held by her as statutory approval with effect from 8.7.1972 was granted by the Regional Inspectress of Girls Schools. It is submitted that the appointment of Gopa Banerji as well as the approval was made after the appointment of Madhuri Tripathi and as such Madhuri Tripathi is Senior.

12. Learned Counsel for the parties placed reliance on various decisions in

support of their respective contentions.

13. Dr. R.G. Padia relied upon *Dinesh v. District Inspector of Schools, Mau* (1990) 3 UPLBEC 1691 ; *Basudeo Tiwary Vs. Sido Kanhu University and Others*, , for the proposition that an order passed without opportunity of hearing was bad in law and *Awadhesh Bahadur Singh v. District Inspector of Schools, Pratapgarh and Ors.*, (in writ petition No. 2207 of 1986, decided on May 21, 1987 by the Lucknow Bench on 21.5.1987) with regard to the criteria for determination of Seniority.

14. On the other hand Shri Namwar Singh relied upon *Smt. Omi Bala Nigam v. Regional Inspectress of Girls Schools, Jhansi Region, Jhansi and Ors.* 1986 UPLBEC 69 , on the criteria for Seniority and upon, *Habib Mian and Another Vs. Mukhtar Ahmad and Another*, on the effect of compromise decree. He further relied upon *Roshan Lal Tandon Vs. Union of India (UOI)*, which was a case of a Government Servant and it was held that the legal position of a Government servant is one of status rather than of contract. In *Pramod Kumar Jindal v. District Inspector of Schools, Meerut and Ors.* 1994 AWC 19, it was held that Seniority is criteria for making promotion.

15. As the dispute relating to Seniority between parties is pending before the Joint Director of Education and it has been stated that the Joint Director of Education has already fixed several dates for hearing, it is not necessary to consider the case on merits on all the points at this stage as disputed questions of fact are also involved.

16. One of the points of dispute between the parties is about the effect of the compromise decree and to what extent Madhuri Tripathi who was a party thereto would be bound by it. Now it is not disputed that Madhuri Tripathi's services were terminated on the basis of her alleged resignation, which according to her was forged. She had instituted the civil suit in which Relief A was for injunction to restrain interference in her working as L.T. grade teacher and "B" alternatively for a decree for reinstatement on post of L.T. Grade and "C" decree for salary from April, 1973 to July, 1973 and for other reliefs. An application for compromise dated 12.11.1986 in the suit Annexure-4 to the petition of Gopa Banerji was filed in which Para 1 provided that the suit in respect of Relief "A" be decreed and acknowledgment that the plaintiff had been paid salary upto June, 1973 from the Management and the salary for the subsequent period that may be due would be payable by the Education Department. Para 3 of the application provides that without affecting Smt. Bhagwanti Misra, Assistant Teacher L.T. Grade, the plaintiff would be deemed to be reinstated on additional post. The suit was decree in terms of compromise against defendants 1, 2 and 4, ex parte against defendant No. 7 and on merits against the remaining defendants. This decree has become final.

17. Shri Namwar Singh, learned Counsel for the petitioner, however, contended that being a compromise decree its effect was no more than a contract with the

seal of the Court superadded and that the decree would be subject to all the incidents of such agreement and in construing its provisions the fundamental principles governing construction of contracts are applicable. Reliance is placed for this proposition on *Habib Mian and Anr. (supra)*. On this basis it was argued that whatever the contract the effect of the statutory approval to the appointment of Madhuri Tripathi granted by the Regional Inspectress of Girls Schools on 25.4.1973 with effect from 8.7.1972 can not be washed away and the statutory approval being the only approval to her appointment the substantive appointment would relate back to her original appointment and not on any additional post mentioned in the compromise.

18. It is no doubt true that a compromise decree is a contract between the parties thereto with the command of the Court superadded, but such a decree continues to bind the parties unless set aside by the Court either by a separate suit or by review. So long as the decree is not set aside it will continue to bind. It is binding upon the parties on the principle of estoppel also. As such it is not open to Madhuri Tripathi to go behind the decree. She is bound by its terms. In case there are only 3 sanctioned posts and Madhuri Tripathi was not adjusted against any of these as is being contended on behalf of Gopa Banerji, Madhuri Tripathi would not be entitled to Seniority over Gopa Banerji. But if Madhuri Tripathi is working against a sanctioned post, the date of her substantive appointment on such post in the grade concerned would be the criteria for reckoning her Seniority and the date of substantive appointment of Gopa Banerji would be the relevant date for the Seniority of Gopa Banerji as provided in Regulation 3 of Chapter II of the Regulations. The Joint Director of Education who is to decide the matter shall apart from a finding on the questions involved record a finding also upon the point as to on what post Madhuri Tripathi was adjusted after the compromise decree.

19. It is appropriate that the matter may be first decided by the Joint Director of Education, as such these writ petitions are being disposed of with the direction that the Joint Director of Education, Varanasi Region may take appropriate decision in the matter after hearing Smt. Madhuri Tripathi, petitioner in writ petition No. 433 of 2002 and Km. Gopa Banerji, petitioner in writ petition No. 42359 of 2001 and such a decision may be taken within a period of one month from the date a certified copy of this order is submitted before him by either of parties/The parties shall appear before the Joint Director of Education on 18.2.2002 and in case that is not a working day for any reason, then on the following working date.

20. Until the matter is decided by the Joint Director of Education, the status quo as it exists today on the position of ad hoc Principal shall continue.

21. With these observations/directions the writ petitions are disposed of. Certified copy of this order be supplied to the Counsel or parties within two days on payment of usual charges. Petition decided accordingly.