

(1992) 07 AHC CK 0021

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 23643 of 1991

Nand Kumar Srivastava

APPELLANT

Vs

Distt. Inspector of Schools and Others

RESPONDENT

Date of Decision : 06-07-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115
Uttar Pradesh Intermediate Education Act, 1921 — Section 16E, 16E(1), 16E(2), 16E(4), 16F

Citation : (1992) 3 AWC 1704

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : Sudhir Agarwal, for the Appellant;

Final Decision : Dismissed

Judgement

S.R. Singh, J.—Petitioner, who is a lecturer in Sewa Samiti Bhawar Lal Intermediate College, Deoria (In short the College) has filed this petition under Article 226 of the Constitution of India with the prayer to issue a writ of certiorari quashing the order dated 13-8-1991 (Annexure 12 to the writ petition) passed by the District Inspector of Schools, thereby declaring the Respondent No. 2 Sri S.N. Srivastava, Senior to the: Petitioner in the grade of lecturers paving the way for the charge of the post of Principal, which fell vacant due to death of the permanent incumbent Sri Udai Narain Rao on 10-7-1991, to be made over to the aforesaid Respondent No. 2, in preference to the Petitioner.

2. Undisputed matrix of the facts is that both the Petitioner and the Respondent No. 2 together with certain others were selected for appointment as teaches in the lecturer grade in the aforesaid institution pursuant to an interview held on 3rd July 1966 as per advertisement No. 202-1-9-6 66 appearing in the News Paper "The Leader" in its issue of June 16, 1966. The recommendation made by the Selection committee was approved of by the District Inspector of Schools by

means of the order contained in his letter dated August 11, 1966. A copy of the order is annexed as Annexure C.A. 5 to the Counter Affidavit filed by the Respondent No. 2. To paraphrase, the Petitioner's selection for appointment as Lecturer in Mathematics and that of the Respondent No. 2 in Biology was approved of by the District Inspector of Schools by means of the order referred to above. The approval so according to the selection was followed by the appointment letters dated 8-9-1966 6-9-1966 issued, in favour of the Petitioner and Respondent No. 2 respectively under the authorisation of the Committee of Management vide (sic) dated 12-8-1966.

3. The Petitioner's case, however, is that a number of vacancies in the posts of lecturer in different subjects were lying vacant in the year 1965-66 and since the selection in accordance with Section 16-P of the U.P. Intermediate Education Act, 1921 (in short the "Act") was to take sometime, the Committee of Management appointed the Petitioner as also the Respondent No. 2 besides certain others as lecturers in different subjects. The Petitioner, it is alleged, joined the service as lecturer in Mathematics on 1-7-1966 while the Respondent No. 2 took over as lecturer in Biology on 9-7-1966. According to the Petitioner the period of probation of one year in respect of him commenced with effect from July 1, 1966, the date he was first appointed by the Committee of Management in anticipation of his selection and appointment in accordance with Section 16-P of the Act and he was, it is alleged, accordingly confirmed with effect from 1-7-1966, whereas the period of probation in respect of the Respondent No. 2 commenced from 9th July 1966 on which date, he was first appointed likewise in anticipation of his selection and approval in accordance with the said provisions of law and therefore, it is alleged, his confirmation was subsequent to the date of Petitioner's confirmation as aforesaid. The Respondent No. 2 on the other hand, has denied that he himself was appointed on 9th July 1966 and the Petitioner on 1st July 1966. His case is that he was appointed on 6th Sept. 1966 after the selection was duly approved of by the District Inspector of Schools vide letter dated 11-8-66 whereas the Petitioner was appointed on 8th Sept 1966 pursuant to the approval accorded to his selection by the District Inspector of Schools vide letter aforesaid. It is on these averments that each one of them is claiming precedence over the other.

4. The moot point requiring adjudication is with regard to who amongst the Petitioner and the Respondent No. 2 is the senior most lecturer entitled to be appointed Adhoc/officiating Principal of the college.

5. The learned Counsel for the Petitioner contended before me that the Petitioner has been in continuous service since 1-7-1966 and that throughout in the service record of the Petitioner including the contract of service, 1st July 1966 stood out as the date of his appointment, whereas the date of appointment with regard to Respondent No. 2 was shown to be 9th July, 1966, the dates on which they were first appointed! by the Management in anticipation of their selection and appointment in accordance with Section 16-F of the Act and. therefore, it is

contended, the Petitioner's seniority is reckonable with effect from 1-7-1966 and that of the Respondent No. 2 with effect from 9th July 1966. Alternatively, it is contended by the learned Counsel for the Petitioner that the date of Approval i.e. 11th August, 1966 should be ear-marked as the date of substantive appointment for all purposes including the purpose of determining seniority. Lastly, it is also contended by Sri S.C. Budhwar, learned Counsel for the Petitioner that the Respondent No. 2 was estopped by principles of estoppel and acquiescence from challenging the seniority list published by the Committee of Management from time to time showing the Petitioner as senior to the Respondent No. 2 by reckoning their seniority with effect from 1st July 1966 and 9th July 1966 respectively and that his representation to the District Inspector of Schools giving rise to the impugned order, was not maintainable and further that the District Inspector of Schools had no jurisdiction to entertain the representation and re-juvenate the controversy regarding seniority which stood determined finally by the Committee of Management.

6. In controversion, Sri A.N. Tripathi, learned Counsel for the Respondent No. 2 submitted that the Petitioner as also the Respondent No. 2 acquired the status of lecturer only after they joined their duties pursuant to respective appointment letters issued in their favour on the approval to their selection being accorded by the District inspector of Schools by order contained in his letter dated 11-8-1966 and since, it is contended, the appointment order in favour of the Respondent No. 2 was issued earlier in point of time, he was rightly held senior to the Petitioner. The quintessence of his contention is that any service rendered by the Petitioner or the Respondent No. 2 prior to their substantive appointments was not to be taken into account for any purpose whatsoever, inasmuch as prior approval by the District Inspector of Schools was a sine-qua-non for a valid substantive appointment in accordance with Section 16-F(1) of the Act. As to the plea of estoppel by acquiescence and lack of jurisdiction, Sri Tripathi contended before me that the conditions pre-requisites for applicability of the principle of estoppel by acquiescence are not made out and that nothing precluded the District Inspector of Schools from deciding the controversy as to seniority in accordance with law. He also contended that the so called appointment of the Petitioner prior to its approval by the District Inspector of Schools, was void and non-est and that there is no estoppel against a plea being raised by the responde o 2 on the premise of Section 16-F(1) of the Act.

7. In order to appreciate the contrivery in proper perspective, it would be necessary to traverse upon the relevant provisions of law relating to appointment as contained in the Act an it stood at the relevant time. Section 16-F of the Act being relevant is quoted as below.

16-F (1) Subject to the provisions hereinafter specified, no person shall be appointed as a Principal, admaster or teacher in a recognised institution unless he-

(a) possesses the prescribed qualifications or has been exempted under Sub-

section (1) of Section 16-E.

(b) has been recommended by selection committee constituted under Sub-section (2) and (3), as the case may be, of the said section and approved, in the case of Principal or Headmaster by the Regional Deputy Director, Education, and in the case of a teacher by the inspector:

Provided that if the Inspector is satisfied that for any institution no candidate, who possesses all the prescribed qualifications is available for appointment he may permit the institution to employ as a temporary measure any suitable person for a period not exceeding one year. Such period may be extended with the prior approval of the Inspector:

Provided also that in the case of leave vacancy or of a vacancy occurring for a part of the session of the institution it shall be lawful for the committee of Management to appoint a Principal, Headmaster or teacher if information of such an appointment is immediately conveyed to the Inspector.

(2) The name of the selected candidate shall be forwarded for approval, in the case of a teacher, by the Principal or Headmaster to the Inspector, and, in the case of Principal or Headmaster, by the Chairman of the selection Committee to the Regional Deputy Director, Education. A statement showing the names, qualifications and other particulars as may be prescribed, of all candidates who may have applied for selection shall also be sent along with the name of the selected candidate. The Inspector or Regional Deputy Director, Education, as the case may be, shall give his decision within two weeks of the receipt of the relevant papers, failing which approval shall be deemed to have been accorded.

(3) Where the Regional Deputy, Director, Education or the Inspector as the case may be disapproves for reasons to be recorded in writing of any name proposed under Sub-section (1), the management may, within three weeks of the receipt of the disapproval make a representation against it to the Director in the case of a Principal or Headmaster and to the Regional Deputy Director, Education, in the case of a teacher, and the decision of the Director or the Regional Deputy Director, Education, as the case may be, in the matter shall be final

(4) Where the recommendation made under Sub-section (2) has been disapproved and the representation of the management, if any, under Sub-section (4) has been rejected, the selection committee shall proceed to select and recommend another name for approval as provided u/s 16-E and 16-F. If the selection so made is again disapproved and the representation, if any, against the disapproval has not been accepted, the Regional Deputy Director, Education in case of a teacher and the Director in case of a Principal or Headmaster may appoint any qualified person out of the list of the candidates applying for the vacancies and such appointments shall be final.

8. Related provisions in the regulation could be found out in regulations 1 to 16 of Chapter II of the Regulation as it stood at the relevant time in the year 1966.

Regulation 16 being relevant for the purpose of the discussion of the controversy involved in the case is quoted below.

16. Order of appointment within two weeks of receipt of approval of the selected candidate for appointment as Principal. Head Master, or teacher the Manager shall, on authorisation under a resolution of the Committee of Management, issue an order of appointment to the candidates mentioning therein among other particulars the salary, scale of pay and period of probation and with instructions to join duty within a fortnight of the receipt of the appointment order. The appointment of a candidate failing to report for duty within this period will be liable to termination. A copy of the order of appointment shall be sent to the authority prescribed in Section 16-F(2) read with Section 16-G for information and record to his office.

9. A conspectus of the aforesaid provisions of law indicates that selection followed by its approval by the Competent authority followed by an order of appointment to be issued under the authorisation of the Committee of Management further followed by joining of duty by the appointee alone can confer status of Principal, Head Master or Teacher as the case may be. The acquisition of the status of "teacher" may become an accomplished fact upon the happening of the last of the aforesaid events in succession to the earlier events of selection and its approval by the Competent authority and not before that.

10. The expressions "no person shall be appointed" and "unless approved" occurring in Section 16-F(1) of the Act, cropped up for consideration before a Division Bench of this Court in *Arya Kanya Pathshala, v. Smt. Manorma Devi Agnihorti* 1971 ALJ 983. the Division Bench has construed the aforesaid expression in the sense of "prior approval" as would be evident from the following observations of the Division Bench.

5. Section 16-F(1) provides that no person shall be appointed as a Principal unless inter alia, the selected candidate for the post has been approved by the Regional Deputy Director of Education. Two expressions in Sub-section (1) are significant. The first expression is "shall be appointed" the second is "unless he has been approved". These two expressions show that the act of approval should precede the act of appointment. In same context the word approved may mean ratification. But in Sub-section (i) the word "approval" would not mean ratification as it is the condition precedent for appointment of a person as the Principal of an institution. There it means permission of prior approval.

6. We think that Section 16-F(1) is mandatory and not directory. The section is expressed in a prohibitory language no person shall be appointed as a Principal unless has been approved by the Regional Deputy Director, Education. Secondly, the object of the section is to ensure higher academic standards in an institution. An efficient teaching staff of an institution, will improve the academic standards. It is well known...the object will largely be frustrated.

7. Our view is also suggested by Sub-section (2) of Section 16-F. As already

stated, it provides that the Inspector or the Regional Deputy Director Education, as the case may be, shall give his approval within two weeks of the receipt of the relevant papers. If the approval is not accorded within the said period, it shall be deemed to have been accorded. As Sub-section (1) of Section 16-F puts a ban on appointment without prior approval, an irrebuttable presumption that approval has been accorded. The quick approval and the irrebuttable presumption are designed to ensure a quick appointment so that the education of students may not suffer unnecessarily. If the legislature had intended that appointment may precede approval, we fail to understand the legislative anxiety for a quick approval and the provision for an irrebuttable presumption.

11. In the aforesaid case of Arya Kanya Pathshala, the Division Bench concluded that appointment without prior approval by the Competent Authority will not be deemed to confer the status of Head Mistress on the concerned teacher. That being so, the Petitioner could not be said to have acquired the status of a lecturer on 1-7-66 on the basis of his appointment made without prior approval of the Inspector of Schools. The Petitioner is, therefore, not entitled to make his seniority reckonable with effect from 1-7-1966 as contended by his learned Counsel.

12. The next question coming up for consideration is whether the Petitioner was entitled to claim seniority with effect from 11-8-1966, the date on which his selection was approved of by the District Inspector of Schools or it should be reckonable with effect from 8-9-1966, the date on which the appointment letter was issued in his favour under the authorisation of the Committee of Management on the basis of the Petitioner's selection for appointment being approved of by the Inspector vide letter dated 11-8-1966?. For correct appreciation of this question, it would be worthwhile to advert to regulation 16 of Chapter II of the regulations made under the provisions of the Act as it stood at the relevant time. The regulation as it then stood contemplated that "within two weeks of receipt of approval of the selected candidate for appointment as Principal, Head Mistress/Master or teacher the Manager shall on authorisation under a resolution of the Committee of Management, issue an order of appointment to the candidate mentioning therein among other particulars, the salary, scale of pay and period of probation and with instructions to join within a fortnight of the receipt of the appointment order." It is further contemplated that "appointment of a candidate failing to report for duty within this period, will be liable to termination " The provisions contained in Section 16-F read with regulation, 16, make it abundantly clear that selected candidate could acquire the status of Teacher, Principal or Head Master as the case may be, only on his joining the post pursuant to an order of appointment issued under regulation 16 of Chapter II of the Regulations as it then stood. It is clear from these provisions that the first important stage in the acquisition of the status of a teacher, is the selection followed by its approval and the second stage is the issuance of the appointment order and joining of service in pursuance thereof. A candidate duly selected and approved for appointment could acquire in the absence of any

specific provisions in the regulations conferring the status with effect from the date of approval, the status of a teacher only a his joining the post pursuant to the appointment order issued in his favour. The section and the Regulation referred to above, do not, in my opinion, lead to an inference that status of teacher etc. could be acquired on the date of approval itself.

13. There are decided cases such as Shankarsan Dash Vs. Union of India, , propounding that a selection does not provide absolute right to get appointment although refusal to appointment must be based on valid grounds. That apart, there may be cases where the selected candidate due to vicissitudes of life or vis-major, may not be able to join the post or in a given case, the selected candidate may voluntarily decline to join the post even after issuance of appointment order in his favour. Under these circumstances I am not inclined to hold that status of lecturer was acquired by the Petitioner on 11-8-1966 the date on which his selection was approved of by the District Inspector of Schools.

14. The Petitioner's counsel has placed reliance on a decision of a Division Bench of this Court in Lalit Mohan Misra v. District Inspector of Schools 1979 ALJ 1025 (LB) and contended that since the Petitioner was working in the Institution from before approval of his selection for appointment, he acquired the status of a teacher in the Institution with effect from the date of approval. In the case referred to above, it was observed by the Division Bench as below:

Provisions of the U.P. Intermediate Education Act make it clear that no person can be appointed as Principal or teacher in the institution unless he is approved by the District Inspector of Schools or the Deputy Director of Education as the case may be. Without approval the person does not get the status of a teacher even though the approval is to be followed by a formal letter, but in the absence of formal letter, a person gets the status of a teacher after the approval to the appointment is given by the Distt. Inspector of Schools. The appointment of a person as a teacher becomes effective only from the date, approval is given and even if a person is allowed to work before that, the same has no recognition under the U.P. Intermediate Education Act.

15. In the above mentioned case of Lalit Mohan Misra the Committee of Management of the concerned Institution had passed a resolution on 23rd July, 1971 appointing both the contesting teachers and transmitted the papers to the District Inspector of Schools for approval in anticipation of which the Committee of Management allowed them to join on 31st July 1971. Approval to the appointment of both the teachers was given on 3rd August 1971, where after the appointment letters were issued to both of them on 4th August 1971 and they joined the Institution on that very day. The observation of the Division Bench quoted as above, has to be read in light of these facts. In the instant case, the appointment letter pursuant to approval, was issued to the Respondent No. 2 on 6th September 1966 whereas it was issued to the Petitioner on 8th September 1966 The decision in Lalit Mohan's case has therefore no applicability to the facts of the present case. Even otherwise the expression "but in the absence of formal

letter, person gets the status of a teacher, after the approval" occurring in the passage extracted above, makes the same distinguishable from the present case, where the appointment letters pursuant to approval were issued to the Petitioner and the Respondent No. 1 on different dates. Further the Division Bench was not called upon to adjudicate upon the question involved in the present case as to whether despite appointment letters issued to the Petitioner and the Respondent No. 2. On different dates, they can be said to have acquired the status of a teacher from the date of approval. The Division Bench, in the case of Lalit Mohan Misra, was concerned with the question as to whether the order dated 9th November 1976 passed by the District Inspector of Schools directing that the Petitioner of that case would be treated as having been placed on probation with effect from 31st July 1971 i.e. 3 days before the approval to his appointment, was legally justified. The passage extracted hereinbefore from the decision in the case of Lalit Mohan Misra has to be appraised in the context of said question.

16. The next decision relied upon by the learned Counsel for the Petitioner is Smt. Omi Bala Nigam v. Regional Inspectress of Girls School 1986 UP LB EC 69. In that case, the Division Bench was construing Clause (b) of Regulation 3 of Chapter II of the Regulations made under the U.P. Intermediate Education Act, 1921. Appointment letters to both the concerned teachers in that case were issued on one and the same day indicating therein that the service could be joined on 1-7-1964 or immediately thereafter. One of the two contesting teachers, joined the service on 1-7-64 while the other on 6-7-1964. Approval to appointment was granted much later on 15-9-1964. It was held by the Division Bench that joining of service had to be considered in the light of the approval and also having regard to the fact that they were not required to join positively on 1-7-1964. However, the Division Bench held that since the approval was accorded on 15-9-1964, the concerned teachers were not entitled to claim the service rendered by them before that date, to be prefixed towards reckoning of their seniority. It was held that "the date of substantive appointment spoken of in Clause (b) of Regulation 3 of Chapter II of the Act (Regulation in question) should be construed as the date after approval has been accorded by the District Inspector of Schools u/s 16-F inasmuch as requirement is to obtain prior approval to the appointment and the date on which a teacher joins before approval, could not be considered a date of substantive appointment. As stated above, the approval is a condition precedent to appointment. Without approval, there could be no appointment and joining of service would be in contravention of the provisions of the Act and Regulations made there under. Accordingly, seniority could not be counted with effect from that date." It is evident from these observations that the decision in Smt. Om Bala's case supra, too is of no assistance to the Petitioner. It is too well settled that observations in the nature of obiter cannot be cited as binding precedents.

17. The learned Counsel for the Petitioner then placed reliance upon explanation to paragraph 4 of the U.P. Secondary Education Service Commission (Removal of Difficulties) Order, 1981 and contended that the expression "continuous service"

occurring in the explanation enables the Petitioner to compute the service rendered by him prior to 11th August 1966 and in any case it is contended that at least the service rendered between August 11, 1966 and September 8, 1966 (both dates inclusive) should be conjoined towards reckoning of the seniority. This submission advanced by the learned Counsel for the Petitioner does not carry conviction with me. As noticed hereinbefore, the candidates selected for appointment as teachers acquires the status of teachers only after they joined or they are deemed to have joined their duties on the basis of appointment letters issued in their favour pursuant to approval to their selection by the District Inspector of Schools and not earlier. The Petitioner cannot be deemed to have joined service prior to 8-9-1966. Phrase "longest continuous service in the lecturer grade" occurring in the explanation to Paragraph 4 of the aforesaid Removal of Difficulties Order, does not in my opinion recognise a service which cannot be treated as a service in the eye of law. The purpose of the explanation to my mind is that the seniority for the purposes of adhoc promotion has to be determined on the basis of continuous valid service. The letter of appointment issued in favour of the Petitioner, is of a latter date than that of the one issued in favour of the Respondent No. 2. The Petitioner cannot therefore, be said to have longest service in the lecturer grade as compared to the Respondent No. 2 for the purpose of adhoc promotion to the post of Principal under Paragraph 4 of First Removal of Difficulties Order, 1981.

18. The learned Counsel for the Petitioner next placed reliance on the decision of Supreme Court in G.P. Doval and Others Vs. Chief Secretary, Government of U.P. and Others, . In the said case, Hon"ble Supreme Court has held that where officiating appointment is followed by confirmation unless a contrary rule is shown, the service rendered as Officiating appointment cannot be ignored in reckoning length of continuous officiation to determining the place in the seniority list. The said decision to my mind cannot be pressed into service in the present case in view of the fact that the service rendered on the basis of an appointment order issued prior to the date the Petitioner joined his duties on the basis of an appointment letter issued pursuant to approval to his selection for appointment, by the Distt. Inspector of Schools, has to be ignored. I have already held that the Petitioner acquired the status of a teacher for the first time on 8-9-1964 when he joined or is deemed to have joined the service on the basis of appointment order issued in his favour pursuant to approval being given to his selection by the District Inspector of Schools vide letter dated 11-8-1966. The contention of the learned Counsel for the Petitioner that the expression "you have been appointed" occurring in the appointment letter dated 8-9-1966 should be construed to mean that the Petitioner was appointed with effect from the date he had already joined, cannot be lapped up for the reason that any such construction would frustrate the effect of Section 16-F(I) of the U.P. Intermediate Education Act, 1921, requiring prior approval as a condition precedent for a valid appointment. The decision of the Supreme Court referred to above is, therefore, of no help to the Petitioner.

19. The learned Counsel for the Petitioner then contended before me that where initial appointment is irregular or illegal, the seniority must be made to run with effect from the date it assumes the mangle or regularity irrespective of any other factors. In this view of the matter, the learned Counsel contended, the Petitioner is entitled to his seniority at least with effect from 11-8-1966, the date on which his selection was approved of by the District Inspector of Schools. The learned Counsel for the Petitioner has placed reliance upon a Division Bench decision of this Court in Sheetla Prasad Shukla v. State of U.P. 1984 UP LB EC 461. In that case, the Division Bench, while construing the provisions of regulation 3. Chapter II of the Regulations made under the U.P. Education Act, 1921, has held that inter-se seniority between the teachers in the same grade is determined with reference to the date of substantive appointment of a teacher in that grade. In the case before the Division Bench, the concerned teacher was entrusted with the teaching work in a grade for which he did not possess the minimum qualification but he applied for and was granted exemption under proviso to Section 16-E(1) which makes it permissible to appoint a person not possessing the minimum qualification in anticipation of exemption being given by the Director of Education and as such, the appointment cannot be said to be void or/and non est whereas in the instant case the appointment with effect from 1-7-1966 without prior approval, was void and non-est for all purposes and cannot be validated by subsequent approval inasmuch as the requirement is of prior approval and law did not permit appointment to be made "subject to approval."

20. The learned Counsel for the Petitioner lastly urged that the Respondent No. 2 was estopped by the principles of estoppel and acquiescence, from disputing the correctness of the seniority which was allowed to endure for years together and the Distt. Inspector of Schools had no jurisdiction to rake over a settled controversy. He placed reliance upon a Full Bench decision of this Court in Smt. S.K. Chaudhary v. Committee of Management in which it was observed by the full bench : "Law is well settled that the Court will not interfere with a seniority list which has remained in existence for a long time and which has become final "

21. The argument based on estoppel by acquiescence has been advanced by the learned Counsel for the Petitioner on the premises that seniority lists were prepared and published in 1979, 1981, 1984 and 1990 and one of these seniority lists published on 23-8-84 as would be evident from the Photostat copy of the said seniority list which bears the signature of the Respondent No. 2 against his name at 31. No. 13 but no objection was filed by the Respondent aforesaid and therefore, the argument proceeds he should be taken to have acquiesced to the inter-se seniority as shown in the said seniority list which was repeated in 1990 also.

22. I am not impressed by the arguments Estoppel by conduct as a rule of evidence embodied in Section 115 of the Evidence Act can be pressed into service against a party to a proceeding only upon fulfilment of certain conditions

precedent. It can only arise when one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such behalf. None of these conditions is found to be borne out in the case in hand. Mere reticence or laches not amounting to an abandonment of "his right or to an estoppel against the second respondent, cannot divest the Respondent of his right claiming seniority over the Petitioner in accordance with law Further, the rule of estoppel by conduct as distinguished from rule of estoppel by record known as rule of res-judicata embodied in Section 11 CPC would not, in absence of any previous order or decision of a competent authority resolving the controversy as to interse seniority between the Petitioner and the second respondent, preclude the Distt. Inspector of Schools from deciding the same in accordance with law. The Full Bench decision relied upon by the learned Counsel for the Petitioner has no application to the facts of the case in hand. There in the case before the Full Bench, the controversy about seniority was determined by the Managing Committee on 29-4-1976 after affording opportunity to one Dr. sha Saxena who filed objection against seniority list prepared on 29-4-6 after a lapse of nearly 15 years and in the meantime some promotions were made on the basis of the seniority list dated 29-1-76 which were not challenged by Dr. Asha Saxena.

23. The objection filed by Dr. Asha Saxena against the seniority list after a lapse of about 11 years did not find favour with the authorities and the writ petition filed by her for quashing the seniority which had attained finality on 29-4-76 was dismissed by the Full Bench and it was observed:

The law is well settled that the Court will not interfere with a seniority list which had remained in existence for a long time and which had become final.

In the instant case the second Respondent has not approached this Court for quashing any seniority list which may have become final. Rather, it has been found by the Distt. Inspector of Schools to be incorrect vide order impugned in this writ petition As such there is no question of the Court declining to interfere with the seniority list.

24. The impugned order passed by the Inspector does not have the taint of any illegality muchless an illegality apparent on the face of the record. The Inspector has not been shown to have misdirected himself on any question of law nor has he placed reliance upon any material irrelevant or exterior to the questions involved in the case. Power of judicial review of a quasi-judicial order, as the one in hand is very much limited. The High Court may interfere under Article 226 of Const, of India if a quasi-judicial order passed by a statutory authority is found to be manifestly illegal, perverse in the sense that no reasonable man can. arrive at the decision reached by the concerned authority or on the ground that it is based on irrelevant consideration. There is no such defect in the impugned order.

25. As noticed above, the District Inspector of Schools has computed the seniority with effect from the dates the Petitioner and the Respondent No. 2 are

deemed to have taken over charge on the basis of the appointment letters dated 8-9-1966 and 6-9-1966 issued in their favour pursuant to approval order dated 11-8-1966. In this view of the matter, I am not inclined to interfere under Article 226 of the Constitution of India, even if it held that the Respondent No. 2 did not dispute the correctness of the seniority lists published from time to time as aforesaid inasmuch as it is settled, this Court would decline to interfere under Article 226 of the Constitution if as a result of interference, an illegality is likely to be perpetuated. The seniority lists relied upon by the Petitioner are ex-facie illegal and incorrect being based on service which is no service in the eye of law. It is to be borne in mind that at the relevant time when these appointments were made there were no criteria fixed by the regulations for determining seniority. Regulations 3 to 6 of Chapter I as it stood at the relevant time contemplated a combined seniority list of all teachers in substantive service to be prepared by the Committee of Management for the purpose of rotational representation in order of seniority, of the teachers in the Committee of Management as its ex-office members: Criteria were introduced with the insertion of regulation 3 in Chapter II of the Regulations as it stands substituted vide notification dated 7th July, 1976 and amended by notification dated 9th December 1976. But the expression "teachers in substantive service" occurring in the old regulation 2 of Chapter I, gives sufficient clue as to what should be the basis for determining seniority. Before parting it may be observed that even if the representation filed by the Respondent No. 2 be held as barred by estoppel or acquiescence as urged by the Learned Counsel for the Petitioner, I am not inclined to interfere with the impugned order passed by the District Inspector of Schools, for interference would result in restoration of ex-facie incorrectly prepared seniority list.

26. In the result, the petition fails and is dismissed. Parties to bear their own costs.