

(1986) 02 AHC CK 0029

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9895 of 1985

Nath Saran Singh

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 18-02-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Intermediate Education Act, 1921 — Section 16E, 16F, 16FF, 16GG, 16GG(1)

Citation : (1986) 02 AHC CK 0029

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Advocate : R.N. Singh and S.N. Singh, for the Appellant; U.K. Misra, for the Respondent

Judgement

B.D. Agarwal, J.—The Petitioner and the Respondent No. 3 both were appointed Assistant Teachers in L.T. Grade in the Gandhi Inter College, Chikahar, district hallia, with effect from July 1, 1967, and played on probation for one year each. The Petitioner, it appears was promoted as lecturer in Hindi on ad hoc basis with effect from March 1, 1970, by the Committee of Management and to this the District Inspector of Schools (for short the Inspector) accorded approval on 5th October, 1976. On 20th November, 1976, the Inspector made an order promoting both, the Petitioner and the Respondent, as lecturers in Hindi and Civics respectively. Dispute arose in regard to the determination of seniority between them inter se. The Inspector took the decision on appeal by the Petitioner that the Respondent is senior to him since both were promoted on the same date and in age the Respondent is older. This order is dated 13th June, 1985. Aggrieved against this order the Petitioner has approached this Court under Article 226 of the Constitution.

2. Learned Counsel for the Petitioner contends that the impugned order passed by the Inspector overlooks the provisions contained in Section 16GG of the Intermediate Education Act, 1921. The submission is that on the basis thereof

the Petitioner is deemed to have been appointed in a substantive capacity right from March 1, 1966 and since in point of time this was earlier to the promotion given to the Respondent on 20th November, 1976, he should be considered senior and the question of age does not arise. For the other side the submission made is that the Petitioner is not eligible to the benefit u/s 16GG in view what is contained in Sub-section (2) and Sub-section (3)(a) thereof.

3. Regulation 3(1) Chapter II Intermediate Education Act requires the Committee of Management or every institution to prepare a seniority list of teachers. In view of Clause (b) the seniority of teachers in a grade shall be determined on the basis of their substantive appointment on the same date; seniority is to be determined on the basis of age. A teacher aggrieved from the decision of the Committee of Management is given the right to prefer an appeal to the Inspector (vide Clause (f)). Section 16GG, introduced with effect from April 21, 1977, by the U.P. Act v. of 1977 is admittedly regulatory in nature. This is overriding also as appearing from the non-obstante clause saying that this shall operate notwithstanding anything Contained in Sections 16E, 16F and 16FF. The provision made in Sub-section (1) of Section 16GG is attracted where the following conditions are fulfilled:

- (i) the teacher has been appointed between August 18, 1975 to September 30, 1976, on ad hoc basis against a clear vacancy ;
- (ii) he possesses prescribed qualifications or has been exempted in accordance with the provisions of the Act ;
- (iii) he has been continuously serving the institution from the date of his appointment up to the commencement of this section.

4. If these conditions are fulfilled, such a teacher shall " be deemed to have been appointed in a substantive capacity ". The explanation to this Sub-section adds that the period during which any break in service of teacher has occurred between date of his ad hoc appointment and the date of the commencement of this section for any reason not arising out of his misconduct or his no violation shall be discarded.

5. There is no dispute that the ad hoc appointment of the Petitioner by promotion as lecturer in Hindi with effect from March 1, 1976, was against a clear vacancy. It is also not in dispute that he possesses prescribed qualifications and that he has continuously been serving the institution from that date. The argument of Sri U.K. Misra, learned for the Respondent, is that since Sub-section (2) provides that every teacher deemed to have been appointed in a substantive capacity under Sub-section (1) shall be deemed to be on probation from the days of commencement of this section, it should be taken that the substantive appointment became effective as such on April 21, 1977, and not earlier. Further it is argued with the help of Clause (a) of Sub-section (3) that a teacher is not entitled to substantive appointment on any post if on the date of the commencement of this section such post has already been filled or selection for

such post has already been made in accordance with this Act or the regulations made there under.

6. The question arising, therefore, is whether Sub-section (3)(a) is attracted thereby preventing the Petitioner from getting the benefit of Sub-section (1) of Section 16GG. For the Respondents it was urged that the post was filled in by promotion accorded by the Inspector on 20th November, 1976, to the Petitioner besides the promotion given to the Respondent on the same date as lecturer in Civics. The expression such post has already been filled in or selection for such post has already been made " appearing in Clause (a) suggests, in my view, that the filling in of the post or the selection thereto be by some person other than the teacher appointed on ad hoc basis within the period and in the manner specified in Sub-section (1). Sub-section (3)(a) contemplates a case where prior to April 21, 1977, when this section came in force, the post has been filled in or a selection thereto has been made by taking some person other than the teacher appointed on ad hoc basis between 18.8.75 to 30.9.1976. Under the U.P. Secondary Education (Removal of Difficulties) Order, 1975, dated August 18, 1975, provision was for appointment of a teacher by the Committee of Management on ad hoc basis for period not exceeding six months. The appointment contemplated is both by direct recruitment and by promotion as the case may be. This is made evident by Clause (2)(c) of this Order, which says that the vacancy of a teacher in the lecturer's grade or L.T. grade, as the case may be, shall be filled in by the senior most teacher of the institution in the L.T. grade or the C.T. grade respectively. The period of six months referred to in Clause (2) (a) has subsequently been extended from time to time. Under the Second Order, 1976, this was extended up to June 30, 1976 ; the Third Order, 1976, extended this up to September 30, 1976 ; under the Fourth Order, 1976, this was further extended up to November 15, 1976. The Fifth Order was issued under notification dated 27th November, 1976. Sri Misra argues that the Petitioner cannot avail of Clause (3) of this Order because his is not a case of appointment by the Committee of Management as a teacher on or before June 30, 1975. The argument is not without force the reason being that Clause (3) extends to a person appointed as teacher on or before June 30, 1975, for any period as on temporary measure with the approval or permission of the Inspector. In the instant case the initial appointment by promotion as lecturer took place on March 1, 1976, as mentioned above. There is, however, Clause (7) in this Fifth Order, which may not be overlooked. This provides that where the Committee of Management has filled a post by appointment of a person under the Order 1975 (meaning thereby the First Order) such post shall be held until December 31, 1976, or regular appointment in accordance with the Act and the regulations made there under whichever is earlier. The Petitioner continued to hold the post until December 31, 1976, uninterruptedly. Here again the regular appointment, referred to in Clause (7), envisages the appointment of some person other than the teacher appointed on ad hoc basis. In case "X" had been appointed as lecturer by promotion prior to December 31, 1976, the Petitioner would have had

no claim under this provision. The Sixth Order, 1977, issued under notification dated January 22, 1977, extended the period still further from December 31, 1976 to May 20, 1977, providing that such a teacher appointed initially on ad hoc basis shall continue to hold the post till 20th May, 1977. Before this date could arrive, Section 16GG was brought in the statute book on April 21, 1977. The continuity is thus maintained and Sub-section (1) lays down that a teacher as this shall be deemed to have been appointed in a substantive capacity. This deeming is clearly intended to cover the entire period during which the appointment has remained operative. But since an appointee under the Removal of Difficulties Order, referred to above, was not placed on probation, there is provision also made in Sub-section (2) of Section 16GG for such a teacher being deemed to be placed on probation from the date of the commencement thereof. Since in the case of the Petitioner there was the appointment made by promotion with effect from March 1, 1976, under the Removal of Difficulties Order, 1975, which continued to be extended from time to time and no third person came to be appointed to that post or selected against the same, the order made by the Inspector purporting to be under Clause 5(2) (a) Chapter II of the Regulations dated November 20, 1976, cannot be claimed to prevent the Petitioner from getting the benefit of Section 16GG. The appointment, which was ad hoc is given the character of substantive appointment by virtue of Section 16GG. As this took place with effect from March 1, 1976, while the Respondent came to be promoted on 20th November, 1976, in substantive capacity, the Petitioner may, as contended by Sri R.N. Singh learned Counsel on his behalf, legitimately claim to be senior in comparison to the Respondent. In the order impugned passed on 20th June, 1985, the Inspector has not taken into consideration the implications of Section 16GG or the Removal of Difficulties Orders issued from time to time.

7. This can be viewed from another angle also. As the Preamble to the Fifth Order, 1976, recites a large number of teachers were employed before the U.P. Act 26 of 1975 was enforced. They had been continued in service in order that the studies may not suffer and it was felt necessary to make provisions for safeguarding their services, with this end in view, Clause 3(a) provides that a teacher appointed on or before June 30, 1975, shall be deemed to have been appointed in a substantive capacity "in case the appointment was initially made in a clear vacancy, from the date of appointment." It would be anomalous if a teacher appointed on or before 30th June, 1975, by the management were to be given this status from the date of appointment and this were to be denied to a teacher appointed subsequent to this date, but continued in service under the series of Removal of Difficulties Orders. The Legislature in enacting Section 16GG (which intends broadly to regularise what had taken place under these Orders) cannot, in my view, be credited with this intention. By legal fiction this section confers substantive capacity to such a teacher also as if he had it all along since his uninterrupted appointment commencing on ad hoc basis.

8. For the discussion made in the above, the petition succeeds and is allowed accordingly. The order passed by the District Inspector of Schools dated 13th

June, 1985 (Annexure-VII to the writ petition) is set aside. There will be no order as to costs.