
(2006) 12 AHC CK 0105

In the Allahabad High Court

Case No : Writ Petition No.1765 (S/S) of 2006 (with W.P. No.3169 (S/S) of 2006)

Prem Narayan Singh

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 04-12-2006

Acts Referred:

Citation : (2006) 12 AHC CK 0105

Hon'ble Judges : S.S.Chauhan, J

Final Decision : Dismissed

Judgement

S.S. Chauhan, J.—These two writ Petition Nos.1765 (S/S) of 2006 and 3169 (S/S) of 2006 have been filed challenging the order of the Joint Director of Education dated 16.2.2006 declaring the petitioner (Prem Narain Singh) as senior most Lecturer. Prem Narayan Singh (petitioner) in Writ Petition No.1765 (S/S) of 2006 is aggrieved with the order dated 16.2.2006 to the extent that inspite of the fact that he being held to be the senior most teacher has been deprived from officiating as ad hoc Principal on the ground that some disciplinary proceedings have been initiated against him by the Management.

2. Ajay Pratap Singh, Petitioner in Writ Petition No.3169 (S/S) of 2006 is aggrieved by the fixation of the seniority of Prem Narayan Singh as senior most lecturer and thereby he is challenging the decision of the Joint Director of Education.

3. The brief facts giving rise to both the petitions are that the National Inter College, Kadipur, Sultanpur is a NonGovernment Recognized Institution and is governed by the provisions of the U.P. Intermediate Education Act (hereinafter referred to as "Act") and U.P. Secondary Education Services Selection Board, 1982 (for short "Act of 1982).

4. The petitioner was initially appointed as C.T. Grade Teacher on 1.9.1970, thereafter he was promoted to the post of L.T. Grade Teacher in the year 1979. the petitioner by virtue of the fact that the recognition to teach Logic subject has

been renewed in the year 1973 and he was therefore appointed on 1.9.1973 to teach the subject of Logic in Inter classes. This appointment was made as the initial recognition granted for the Logic subject in the year 1954 was renewed in the year 1973. The petitioner continued to be shown in the Attendance Register as C.T. Grade Teacher, although he continued to teach Inter classes by virtue of appointment order dated 1.7.1973. Feeling dissatisfied with the nonpayment of salary of the post of Lecturer, he made a representation to the Manager. The Manager informed the petitioner that the post has not been sanctioned, and, therefore, as and when the post is sanctioned he would be paid salary. The petitioner waited for long but when nothing was done, then he filed writ petition No.489 (S/S) of 1992 Prem Narayan Singh v. State of U.P. and others. The said writ petition was filed, relaying upon two decisions of this Court which were annexed as Annexures No.10 and 11 to the writ petition and on that basis he prayed that he should be paid salary of the post of Lecturer from 1973 as he can not be held responsible for nonsanction of the post and post shall be deemed to have been created with the grant of recognition of the subject concerned. The writ petition was allowed by means of the judgment and order dated 17.11.1998. The judgment dated 17.11.1998 was implemented by the D.I.O.S. by means of order dated 14.8.2002 accepting him as Lecturer and the difference of the arrear of salary was also given to the petitioner in pursuance to the order dated 14.8.2002 accepting him as Lecturer and the difference of the arrear of salary was also given to the petitioner in pursuance to the order dated 14.8.2002. After 14.8.2002 the petitioner continued working as having his seniority fixed as Lecturer with effect from 1.9.1973.

5. One Mr. Satya Deo Singh, who was working as ad hoc Principal of the College, expired on 22.2.2005. On account of his demise, the post of Principal fell vacant on substantive basis. The petitioner claiming himself to be the senior most lecturer, moved representation on 23.2.2005 to the District Inspector of Schools asking him to appoint him as ad hoc Principal as he has been working as Lecturer since 1973 and his appointment has been held to be valid by means of judgment and order dated 17.11.1998 passed in Writ Petition No.489 (S/S) of 1992 by this Court. The District Inspector of Schools verified the signature of Ajay Pratap Singh on the basis of resolution of the Committee of Management dated 1.3.2005.

6. The Committee of Management by means of resolution dated 1.3.2005 declared the opposite party No.6 i.e. Ajay Pratap Singh, as senior most Lecturer. The Committee of Management then issued a notice on 3.3. 2005 requiring the petitioner to explain as to how he obtained his M. Phil degree in the year 1980 as a regular student when he had received his salary in the Institution simultaneously. The petitioner submitted his reply to the notice dated 3.3.2005. The Committee of Management on 3.8.2005 issued a charge sheet to the petitioner. The petitioner submitted his explanation with respect to the charge enumerated in the charge sheet. The Manager of the College again required the petitioner to submit his explanation by means of letter dated 17.11.2005,

thereafter the Committee of Management did not do anything in the matter as the signature of Mr. Ajay Pratap Singh had already been attested by then. The petitioner has specifically stated in his reply that the then Manager has granted him permission by means of letter dated 11.7.1979 to complete his M. Phil Course during the holidays and vacation. University authorities have also granted permission to the petitioner to complete his M. Phil Course and exemption from attending the classes was also given. The above documents have been annexed as Annexure Nos.17 and 18 to the writ petition.

7. When the rightful claim of the petitioner was not considered by the District Inspector of Schools, then the petitioner filed writ petition No.2450 (S/S) of 2005 before this Court with the prayer that the order dated 11.3.2005 passed by the District Inspector of Schools, Sultanpur and the resolution dated 1.3.2005 of the Committee of Management be quashed and a further prayer was made that the petitioner be appointed as ad hoc Principal of the College. This Court on 26.5.2005 directed the Joint Director of Education to consider and dispose of the petitioner's representation dated 18.3.2005 before 30.6.2005. The Joint Director of Education did not make compliance of the order dated 26.5.2005 passed by this Court then the petitioner under compelling circumstances, filed a contempt petition vide Criminal Misc. Case No.215 (C) of 2005, in which contempt notices were issued by this Court. The Joint Director of Education was required to appear before this Court on 17.2.2006. On 17.2.2006 the Joint Director of Education appeared before the Court and placed the copy of the order dated 16.2.2006 impugned in the present writ petition and contempt petition was thereafter dismissed.

8. Learned counsel for the petitioner submits that the order dated 16.2.2006 is illegal so far it places a rider on the petitioner to be promoted on the post of ad hoc Principal. He further submits that when the specific permission has been given by the Manager of the College on 11.7.1979 and by the University authorities on 28.5.1978, there was no occasion for the Committee of Management to have initiated any disciplinary proceedings against the petitioner maliciously. He also submits that the disciplinary proceedings have been initiated with ulterior motive in order to pave the way to Ajay Pratap Singh as ad hoc Principal who is blue eyed boy of the Management. The petitioner has been declared as Lecturer in pursuance to the judgment dated 17.11.1998 by means of the order dated 4.8.2002 by the District Inspector of Schools and the said order dated 14.8.2002 has not been challenged by any person and has become final. Once the order dated 14.8.2002 has become final the parties are bound by the said order. The further submission is that the judgment dated 17.11.1998 passed in Writ Petition No.489 (S/S) of 1992 has become final, and, therefore, the validity of the said judgment can not be looked into in these proceedings. The judgment dated 17.11.1998 was rendered on the basis of the law then prevailing and if any law has been declared afterwards then that will have no impact upon the judgment of this Court in view of the doctrine of prospective overruling. The petitioner has been discharging his duties as Lecturer since 1973

and the continuity of his working is also established from the record then merely by virtue of the fact that his name continued in the attendance register as C.T. Grade Teacher and thereafter as L.T. Grade Teacher from 1979 will be of no consequence, once controversy in question has been set at rest by the judgment of this Court dated 17.11.1998, the petitioner cannot be deprived of holding the post of ad hoc Principal, merely because the Committee of Management has initiated certain disciplinary proceedings with a view to thwart the claim of the petitioner for being appointed as ad hoc Principal. The Committee of Management was annoyed with the petitioner and that is why the said resolution was passed so that the junior person who has been appointed as Lecturer in 1995 in comparison to the petitioner who was appointed in the year 1973 may succumb to the dictates of the Committee of the Management for various illegal actions which they do not expect that the petitioner would be able to comply with.

9. The petitioner has also filed a supplementary affidavit, wherein he has indicated that he was given "Prashasti Patras" which have been filed as Annexures No.SA1, SA2, SA3 and SA4 given by the Committee of Management for the excellent work and conduct of the petitioner. Learned counsel for the petitioner also submits that it has been consistent practice of the Committee of Management to deprive lawful claim of the senior most teacher to be appointed as ad hoc Principal and earlier also one Satya Deo Singh was also superseded and junior person was appointed as Principal, then Mr. Satya Deo Singh filed writ petition before this Court.

10. The counter affidavit has been filed by the Committee of Management denying the allegations made in the writ petition and it has been stated in the counter affidavit that the petitioner's appointment was not valid and that there was no post of Logic created in the College at the relevant time. The claim of the petitioner for being treated as lecturer is wholly illegal. It has further been said in the counter affidavit that it has rightly been held by the Joint Director of Education that the petitioner cannot be posted as ad hoc Principal on account of fact that the disciplinary proceedings are going on against him. The petitioner does not appear to have obtained the permission to complete his M. Phi in philosophy and he was never appointed as Lecturer (Logic) by the Management. The answering opposite parties have also tried to assail the judgment dated 17.11.1998 on the basis of various legal and technical points pleading that the judgment is per incuriam and that the seniority of the petitioner has wrongly been fixed and he is junior to Ajay Pratap Singh. The seniority list fixed by the Committee of Management is correct and the Joint Director of Education has wrongly decided the question of seniority in favour of the petitioner.

11. Shri Ajay Pratap Singh has filed Writ Petition No.3169 (S/S) of 2006 assailing the judgment and order dated 16.2.2006 mainly on the ground that the order is per se bad in law in view of the provisions contained in Regulation 2 of Chapter II of the Regulations framed under the U.P. Intermediate Education Act. He was appointed as lecturer in 1990 and was regularized on this post by means of the

order dated 31.1.1995, and, therefore, he is senior most Lecturer in the College and his seniority has also been fixed by the Committee of Management in accordance with law. Prem Narayan Singh (opposite party No.6) was never appointed on the post of Lecturer (Logic). The opposite party No.6 is receiving the salary of Lecturer from 1973 on the basis of the judgment dated 17.11.1998. It has further been stated that the petitioner was appointed as C.T. Grade Teacher and was promoted to the post of L.T. Grade Teacher and that no resolution was ever passed appointing the petitioner on the post of Lecturer in logic and therefore, the judgment dated 17.11.1998 can not be sustained in the eye of law.

12. I have heard the learned counsel for the parties and gone through the record.

13. The petitioner was appointed as C.T. Grade on 1.9.1970 and thereafter the Manager issued appointment letter to the petitioner on 1.9.1973 appointing him on the post of Lecturer in Logic on account of fact that recognition of Logic subject has been renewed in the year 1973 and that permission has also been granted for running the classes. The petitioner took over the charge as Lecturer (Logic) and since then he was continuously teaching as Lecturer (Logic). The claim of the petitioner for payment of salary was being agitated by the petitioner regularly and continuously, but the same was denied to the petitioner on account of fact that the post in question has not been sanctioned by the Department. In the meantime the petitioner continued to be shown in the attendance register as C.T. Grade Teacher and thereafter he was also shown to be promoted as L.T. Grade Teacher in due course and the petitioner was also paid salary of the said posts. The petitioner filed writ petition before this Court numbering 489 (S/S) of 1992, the said writ petition was filed on the basis of the fact that no sanction for creation of the post was required and once the permission has been granted to open new section or teach new subject, the post shall be deemed to have been sanctioned. The petitioner in that regard relied upon two decisions of this Court, which were annexed as Annexures No.10 and 11 with the said writ petition. The writ petition of the petitioner was allowed with the following directions:

?Since the Committee of Management appointed the petitioner as Lecturer on the basis of recognition order and as the DIOS accepted that the said appointment is valid, there was no further justification for any fresh formal order for creation of the post. Impliedly, the post was created. As such, the petitioner is entitled to the Lecturer grade on and from 1.9.1973. The respondents are directed to pay the said difference arrears on and from 1.9.1973 the date when the petitioner was appointed as Lecturer within a period of four months from the date of service of this order.?

14. The above finding recorded in the judgment dated 17.11.1998 leave no room for discussion that the petitioner was not appointed in accordance with law or that the appointment of the petitioner was not legal and valid. The validity of the appointment of the petitioner sought to be challenged now can not be looked into by this Court as the matter has been settled finally way back on 17.11.1998. The judgment of this Court was executed by the DIOS by means of order dated

14.8.2002 accepting the placement of the petitioner in Lecturer grade in pursuance to the judgment of this Court from 1.9.1973. The order dated 14.8.2002 has not been challenged by any of the contesting party, neither by the Committee of Management nor by Shri Ajay Pratap Singh. The petitioner was also paid his entire difference of salary from 1.7.1973 by means of order dated 31.12.2004. The appointment of the petitioner therefore became valid in all respect from 1.9.1973.

15. Learned counsel for the petitioner has relied upon a decision of the Apex Court reported in AIR 1966 SC 1061, *State of West Bengal v. Hemant Kumar Bhattacharjee and others*. The Apex Court in para 14 of the said judgment has ruled as under:

?(14). Before proceeding with these arguments in detail, we can dispose of second contention very shortly. This argument proceeds on a fundamental misconception, as it seeks to equate an incorrect decision with a decision rendered without jurisdiction. A wrong decision by a Court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review which the law provides. The learned Judges of the High Court who rendered the decision on 4.4.1952 had ample jurisdiction to decide the case and the fact that their decision was on the merits erroneous as seen from the later judgment of this Court, does not render it any less final and binding between the parties before the Court. There is, thus, no substance in this contention. The decision of the High Court dated 4.4.1952 bound the parties and its legal effect remained the same whether the reasons for the decision be sound or not.?

16. The argument of the learned counsel for the petitioner is that the said judgment cannot be challenged now and has become final even though it may be erroneous judgment but the Court having jurisdiction has decided the matter and so no challenge can be made in this regard as far as the validity of the judgment is concerned.

17. Learned counsel for the petitioner has also relied upon Division Bench decision reported in (2006) 2 ESC 1431 (All.) (DB), *C.M. Pandey v. State of U.P. and others*, and this Court while relying upon *Hemant Kumar (supra)* case ruled that:

?22. Thus from the aforesaid settled legal position it is clear that even a wrong decision by the Court having jurisdiction is as much as binding between the parties as a right one and may be superseded by appeals to tribunal and other procedure like review which the law provides. It is not in dispute that the Division Bench of this Court which rendered the decision dated 9.9.1999 in a Writ Petition earlier filed by the petitioner and ample jurisdiction to decide the case and the fact that its decision was erroneous on merit as contended by learned Counsel for the respondents at the strength of later judgment of Hon"ble Apex Court does not render it any less final and binding between the parties. Thus there

appears no substance in the contention of learned counsel for the respondents. The decision of this Court dated 9.9.1999 in earlier writ petition filed by the petitioner would bind the parties and its legal effect remain the same whether the reasons for the decision be sound or not.?

18. The Division Bench also relied upon a judgment reported in (1978) 2 SCC 50 *Madan Mohan Pathak and another v. Union of India and others*, wherein it was held that an Act of Legislature cannot annul final judgment giving effect to rights of any party.

19. Controverting the argument of the learned counsel for the petitioner, learned counsel for the Committee of Management has relied upon two decisions on the point of *res judicata* reported in 2004 (1) AWC 105 (SC), *Md. Mohammad All (Dead) through L.Rs. v. Jagadish Kalita and others* and 2005 (2) AWC 1599 (SC), *Shakuntala Devi v. Kamla and others* and on the strength of aforesaid decisions learned counsel for the Committee of Management has argued that the validity of decisions rendered earlier can be looked into by this Court and *res judicata* will not be a bar.

20. Learned counsel for the Committee of Management has relied upon a Full Bench decision to press his point that even if the petitioner has been appointed as Lecturer on 1.9.1973 he can not be assigned seniority as he was not a regularly appointed Lecturer, and, therefore, this Court has erred in treating the petitioner to have been appointed on 1.9.1973. In this regard learned counsel for the Committee of Management has placed reliance upon the judgment 2005(2) AWC page 1221 (FB) *Farhat Hussain Azad v. State of U.P. and others*.

21. The next case which has been relied upon by the learned counsel for the Committee of Management is reported in (2004) 10 SCC 734, *Sanjay Kr. Sinha and another v. State of Bihar and others*, wherein it has been held that the appointments made contrary to the Rules cannot confer any benefit on seniority of such appointee over and above the regular/substantive appointees of the service. He has also relied upon a judgment reported in 1986 (Supp) SCC 185 to press into service the point that employee must belong to the same stream before he can claim seniority *vis-à-vis* others. In (1992) 2 SCC 728, *U.O.I. and another v. S.K. Sharma*, it has been held that granting arrears of pay and allowance will not confer any right to claim seniority on the post. In (1995) 3 SCC 616, *State of U.P. and others v. Dr. R.K. Tandon and others*, it has been held that the *ad hoc* appointments made *de hors* the rules do not confer any right to seniority. The person is entitled for seniority only from the date of his regular appointment according to the rules.

22. In regard to the judgment dated 17.11.1998, learned counsel for the Committee of Management places reliance upon the judgment reported in 2005 (11) SCC 45, *M.P. Gopalkrishnan Nair and another v. State of Kerala and others*, wherein it has been said that a decision, is an authority for what it decides and not for what logically could follow or flow from it.

23. Learned counsel for the Committee of Management has placed reliance upon the judgment reported in (2005) 2 SCC 42, Kalyan Chand Sarkar v. Rajesh Ranjan and another, which lays down in para 40 that a case is only an authority for what it only decides and not what can logically be followed from it. He further places reliance upon a decision reported in (2004) 8 SCC 262, Ex. Engineer, ZP Engg. Divn. and another v. Digambara Rao and others, wherein it has been held that whole claim is to be laid before the Court and since the whole claim was not laid by the petitioner including his seniority and therefore seniority can not be presumed on that basis.

24. Learned counsel for the Committee of Management has also pressed into service the point of per incuriam by relying upon a judgment reported in (1991) 4 SCC 139, State of U.P. v. Synthetic and Chemicals Ltd. and another and has argued that the judgment dated 17.11.1998 is per incuriam in view of the Full Bench decision in Gopal Dubey (supra) but the learned counsel has not been able to take notice of the doctrine of prospective overruling.

25. In the decision reported in 2005 (23) LCD 753, Rajendra Pd. Shukla v. Ram Chandra Singh and others, it has been held that if there is any complaint against the senior most teacher then he can be deprived from functioning as ad hoc principal. It is the satisfaction of the authorities, which has been properly exercised in the present case.

26. Learned counsel for the Committee of Management has also relied upon a Full Bench decision reported in 1999 (17) LCD 943, Gopal Dubey v. DIOS, Maharajganj and another, to press his point that before a post is created no appointment could be made and since there was no sanction of post as contemplated under Section 9 of the Payment of Salaries Act, 1971, the petitioner is not entitled for seniority from 1973.

27. On the strength of the above submissions the counsel for the Committee of Management, submits that the petitioner's appointment was not valid and he was not appointed in accordance with the rules, and, therefore, he cannot be awarded seniority from the date of his initial appointment.

28. Learned counsel for opposite party No.6 has also argued that the appointment of the petitioner was not valid, he was never appointed in accordance with the rules. The question of seniority was never determined by the judgment dated 17.11.1998. The petitioner has only been given shelter of the post of Lecturer and, therefore, he cannot be given seniority from 1.9.1973 treating him as Lecturer.

29. The case law relied upon by the counsel for the Committee of Management does not come to his rescue in view of State of West Bengal v. Hemant Kumar (supra) and C.M. Pandey (supra) and Madan Mohan Pathak (supra), wherein it has been specifically ruled that the judgment rendered by a Court though being erroneous is binding on the parties. The judgment dated 17.11.1998 was rendered by this Court on the basis of the law then prevailing. The law as laid

down by this Court then stated was that the sanction of post was not necessary and the post shall be deemed to be created alongwith recognition of the subject. The doctrine of prospective over rulling has been relied upon by the Apex Court in several decisions, in such circumstances a judgment which has become final and on the basis of which rights has also accrued in favour of the parties can not be unsettled on account of the fact that subsequently a different view has been taken in some other decision, therefore, the decision of Gopal Dubey (supra), does not come to the rescue of the counsel for the Committee of Management.

30. The petitioner has laid his entire claim at the time of filing of the writ petition which ever cause of action was available to him. The validity of the appointment has been decided by this Court on the post of Lecturer. The argument of laying the entire claim is misconceived and is rejected. The petitioner has laid the entire claim, which was then available to him. The seniority was not in dispute and so there was no occasion for the same. The appointment of the petitioner was contrary to rule can not be argued now on account of the fact that the judgment of this Court has become final may be it is an erroneous judgment but it is binding on the parties.

31. The question of res judicata is not applicable in the present case, as the Apex Court has held that in such circumstances, the doctrine of per incuriam will not be applicable and the judgment rendered even though erroneous shall be deemed to be binding.

32. The question whether the petitioner is disqualified for being appointed as ad hoc Principal or that looking to the disciplinary proceedings pending against the petitioner, the order in question is correct, is to be considered in the context that the petitioner was accorded permission for completing his M. Phil Course by the then Manager vide his order dated 11.7.1979 and the University authorities granted permission to the petitioner to complete M. Phil Course and further exemption from attending the classes was given. The disciplinary proceedings initiated against the petitioner on the face of it goes to indicate that the Management was interested in appointing Shri Ajay Pratap Singh as ad hoc Principal and, therefore, in order to deprive his rightful claim to be appointed as ad hoc Principal, the disciplinary proceedings were initiated maliciously by the Committee of Management. The petitioner has also indicated that when earlier Satya Deo Singh another Lecturer became eligible then also the Committee of Management played the same mischief and deprived Mr. Satya Deo Singh from officiating as ad hoc Principal. Shri Satya Deo Singh filed writ petition in this Court challenging the malafide action of the Committee of Management. This proves that the Committee of Management has been continuously adopting the same mechanism to deprive a lawful person to become ad hoc Principal.

33. The petitioner who has completed his M. Phil Course in the year 1980 is sought to be proceeded with by the Committee of Management in the year 2006, if a question is asked in the circumstances of the case as to what was the Management doing for the last so many years in not proceedings against the

petitioner is unanswerable. The Management woke up only when the resolution was passed on 1.3.2005 and then disciplinary proceedings were initiated on 3.3.2005, this act of the Management obviously goes to show that the Committee of Management order to deprive the petitioner of his rightful claim to become the ad hoc principal initiated the disciplinary proceedings with oblique motive and with malafide intention and this action of the Committee of Management can only termed as an exercise of power in bad faith. Such action or the eve of promotion are often resorted to in order to fulfil the evil design of appointing a junior person who is not otherwise legally entitled for the same. Ajay Pratap Singh was appointed as lecture in the year 1990 on ad hoc basis. He was regularized in the year 1995, obviously his seniority is to be counted from the date of regularization against the substantive vacancy. A person who has been appointed in the year 1995 can not be made to sit over and above, the petitioner who has been appointed on 1.9.1973 and whose appointment has been held to be valid. The opposite parties can not render the judgment of this Court invalid or inoperative, the judgment having become final has to be implemented and it has been implemented by the authority. The implementation order has also not been challenged by the opposite parties, in such circumstances the action of the Committee of Management in depriving the petitioner from being appointed as ad hoc Principal, on the basis of disciplinary proceedings, with regard to misconduct which has been committed in the year 1980 can not be justified.

34. The disciplinary proceedings are highly belated and have been initiated only as a sheer defence by the Committee of Management to deny the appointment to the petitioner on the post of ad hoc Principal. Such action of the Committee of Management cannot be justified under law. The order of the Joint Director of Education dated 16.2.2006 allowing Shri Ajay Pratap Singh can not be sustained in the eye of law and is liable to be quashed.

35. Accordingly, Writ Petition No.1765 (S/S) of 2006 is allowed and the order dated 16.2.2006, to the extent the petitioner has been deprived from working as ad hoc Principal is hereby quashed. The petitioner would be allowed to continue ad hoc Principal ignoring the disciplinary proceedings.

36. The Writ Petition No.3169 (S/S) of 2006 filed by Ajay Pratap Singh is dismissed.

37. There shall be no order as to cost.

(Ordered accordingly)