

(2013) 04 AHC CK 0323
In the Allahabad High Court
Case No : C.M.W.P. No. 61152 of 2011

Raj Karan

APPELLANT

Vs

District Inspector of Schools, Gorakhpur and Others

RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Citation : (2013) 101 ALR 678

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Judgement

Arun Tandon, J.—Heard learned Counsel for the parties. The petitioner as well as respondent No. 4 joined as Class IV employees in the same Intermediate College namely Pratap Narayan Singh Janta Inter College, Barhi Sonwasta, Gorakhpur on one and the same date by way of direct recruitment, i.e., 12.4.2006.

2. According to the petitioner, he being senior in age was entitled to be treated senior to respondent No. 4. The date of birth of the petitioner is 10.9.1973, while that of respondent No. 4 is 23rd June, 1978. It is not disputed that a vacancy on the post of Clerk has been caused in the institution which as per the regulations is required to be filled by way of promotion from Class IV employees working in the same institution, satisfying the minimum requirement.

3. Under the order impugned dated 7.7.2011, passed by the District Inspector of Schools, respondent No. 4 has been directed to be promoted on the basis of recommendation of the Committee of Management, dated 18.4.2011.

4. Counsel for the petitioner submits that this approval is unsustainable on merits and even otherwise, it has been passed without notice and opportunity of hearing to the petitioner.

5. Counsel for the respondent No. 4, Sri Indra Raj Singh to the contrary submits that in the select list, name of respondent No. 4 was directed to be placed above the petitioner, as well as in the approval letter of the District Inspector of

Schools. Therefore, he has to be treated as senior to the petitioner. The Committee has rightly treated him as senior. It is then contended that respondent No. 4 is Intermediate, while the petitioner is only High School.

6. Sri Indra Raj Singh submits that Uttar Pradesh Intermediate Education Act does not contemplate any mode or method of determination of inter se seniority in-respect of persons appointed on the one and same date. As Class IV employees. He submits that for guidance reference could be had to the Uttar Pradesh Government Servant Seniority Rules, 1991, which provides that if two persons are appointed in pursuance to the same selection, then person placed above in the select list on the basis of merit has to be treated as senior. Reliance is placed on the Division Bench judgment of this Court *Jawahar Lal and another v. Deputy Director of Education (Madhyamik), Vindhyachal Region, Mirzapur and others* (with *Babu Ram v. State of U.P. and others* 2010 (4) UPLBEC 3437 Paragraphs 17 and 25.

7. In rejoinder-affidavit, Counsel for the petitioner points out that so far as Intermediate Education Act is concerned the rule applicable in the case of teachers is that the person senior in age is to be placed above the person junior in age if appointed on one and the same date. Reference be had to Regulations of Chapter II. Counsel for the petitioner therefore, submits that parity should be drawn from the regulations applicable to the teachers instead of employees working in different department/Government service. He further points out in paragraph 17, the Judge in the case of *Jawahar Lal* (supra) reference has been made upon the judgment in the case of *Principle, Adarsh Inter College, Umari, Bijnor v. State of U.P. and others* 2010 (78) ALR 42 qua the applicability of U.P. Group-D Employees Service Rules, 1985. The said issue has been referred for consideration to a Larger Bench.

8. I have heard learned Counsel for the parties and examined the record of the present writ petition.

9. Two issues do arise in the facts of the present case: (A) as to what rule will determine the inter se seniority of Class IV employees appointed on one and the same date in recognized Intermediate Colleges. (B) The other important aspect of the matter is that what ever may be the criteria is applicable for determination of seniority, if the name of a person, senior in age is recorded in the attendance register above the person junior in age, for years together, will it lead to a inference that there is a settled seniority between the parties and the person senior in age has been treated senior to the person junior in age, even if no seniority list has been prepared.

10. No final opinion is being expressed in the facts of the case on both the issues. However, it cannot be disputed that at least the petitioner was entitled to an opportunity of hearing before passing of the impugned order. In the facts of the case he has an arguable case and the matter requires investigation of the facts also.

11. The order dated 7.7.2011, passed by the District Inspector Schools is hereby set aside. The matter is remanded back to the District Inspector Schools to reconsider the claim of the petitioner and that of the respondent No. 4 in accordance with law, after affording opportunity to the parties concerned by means of a reasoned order, preferably, within six weeks" from the date a certified copy of this order is produced before him.

12. All consequential action shall be taken immediately thereafter. The writ petition is accordingly disposed of.