

(1995) 09 AHC CK 0118
In the Allahabad High Court
Case No : C.M.W.P. No. 13191 of 1987

Raj Nath Sharma

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 05-09-1995

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16E(10), 16G
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 2(2), 6(1),
7(2), 7(3), 7(5)

Citation : (1996) AWC 173 Supp

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Ashok Knare, for the Appellant;

Final Decision : Disposed Of

Judgement

D.K. Seth, J.—In this case, the fixation of seniority of Respondent No. 5, above that of the Petitioner, in service has been challenged. The same dispute was involved in Writ petition No. 7659 of 1986, in which the parties appeared in changed position, namely the Respondent No. 5 as the Petitioner therein and the Petitioner herein as Respondent No. 2 therein. I shall refer to the said case shortly afterwards.

2. The facts of the present case, in short campass, are that the concerned School was established as Junior High School in July, 1968 and was subsequently upgraded with effect from the academic session 1971-72. The Petitioner was appointed as assistant teacher in B.T.C. Grade on 1.8.1968 in the said School before its upgradation. The Petitioner was then appointed as officiating Head Master of the said School on 19th October, 1970, by a resolution of the managing committee, which is Annexure-1 to the writ petition. The Petitioner continued to function as Head Master till upgradation. The Petitioner thereafter continued to discharge the function of Head Master even after the upgradation. Consequently, he is entitled to be appointed as Head Master of the said School in view of

Regulation 2(2) of Chapter II of the Regulations framed under U.P. Intermediate Education Act. Alternatively, according to the Petitioner without any break since 1st July, 1971, he worked as Hindi teacher in L.T. Grade after having been appointed on 1st November, 1970, as has been recorded in his service book.

3. The Respondent No. 5. Sri Ranjeet Singh was appointed as assistant teacher in L.T. Grade after the School was upgraded. On the requisition of the District Inspector of Schools, for specific resolution, the managing committee resolved on 7th March, 1973 that the Petitioner was retained as Assistant teacher in L.T., Grade in the institution since the upgradation, being Annexure-2 to the writ petition. The papers pertaining to the said resolution was duly forwarded to the District Inspector of Schools on 8th March, 1973. No objection was received from the District Inspector of Schools" end. The Petitioner had all along been treated as assistant teacher in L.T. Grade since 1st November, 1970 and was paid his salary accordingly, which is apparent from the certificate granted by the Head Master of the School, being Annexure-3 to the writ petition. The Petitioner, as such, was being treated as senior-most teacher in the institution until it was disputed in the year, 1985 by the Respondent No. 5 before the District Inspector of schools, claiming himself to be senior to the Petitioner.

4. Without affording opportunity to the Petitioner, the District Inspector of Schools held on 25th November, 1985, that Sri Ranjeet Singh was senior to the Petitioner in L.T. grade. On the representation being made by the Petitioner, the District Inspector of Schools by an order dated 23.6.1986 recalled the order dated 25th November, 1985. The said order dated 23rd June 1986, was the subject-matter of challenge in the writ petition No. 7659 of 1986, as indicated earlier. The said writ petition was dismissed on 28th July, 1986 with a direction that the Respondent No. 5 should prefer an appeal before the Director of Education, U.P., Upon such representation being made, the Director of Education by order dated 7th July, 1987 held that the Respondent No. 5 was senior to the Petitioner in L.T. Grade. in the said order, a direction was issued for recovery of the excess amount, already paid to the Petitioner, being Annexure-7 to the writ petition. The said order dated 7th July, 1987 has been impugned in the present writ petition, wherein, prayer for quashing the said order contained in Annexure-7 to the writ petition, has been made.

5. The Respondent No. 5 is contesting the case by filing a counter-affidavit, alleging, inter alia, that one Sri Kripa Shanker Srivastava, was functioning as Head Master of the said School since 9th October, 1968, who continued as such, at the time of upgradation of the School. The Petitioner was temporarily looking after the working of Head Master. He was never appointed permanently. The said Kripa Shanker Srivastava continued to function as Head Master even upgradation till June, 1986, which is apparent from the service book of Sri Kripa Shanker Srivastava, copy whereof is Annexure-1 to the counter-affidavit together with a certificate, issued by the Manager of the School, enclosed as Annexure-2 to the counter-affidavit. The Petitioner was appointed in B.T.C. Grade, therefore, he

would not be promoted in C.T. Grade in the year 1969 before expiry of five years nor could be promoted from B.T.C. Grade to L.T. Grade in the year 1971. The Petitioner had never applied for being selected as L.T. grade teacher. At the time of approval, the name of Respondent No. 5 was shown at serial No. T and the Petitioner was shown at serial No. "2". The Respondent No. 5 was born on 30.10.1939, whereas the Petitioner was born on 1.1.1943. Even assuming that the Petitioner was actually appointed in L.T. Grade in the year 1973, even then the Respondent No. 5 would be senior to the Petitioner, by reason of age. No post of L.T. Grade teacher was sanctioned in the Junior High School. Therefore, the Petitioner could not have been appointed in L.T. Grade in Junior High School. The payment of salary unauthorisedly does not confer any benefit on the Petitioner.

6. In the supplementary counter-affidavit, the Respondent No. 5, contended that the resolution dated 7.3.1973 promoting the Petitioner from B.T.C. Grade to L.T. Grade was turned down by the District Inspector of Schools, with a direction to furnish some more Information which were not submitted. The Petitioner in collusion with the concerned clerk in the office of District Inspector of Schools got his name included in the list of recommended candidates by the selection committee, which had held its meeting on 27th July, 1972. Pursuant to the result of interview held on 26.7.1972, the Petitioner got his name included in the list of recommended candidates at serial No. -3T and thereby got approval in L.T. Grade from the District Inspector of Schools by committing fraud. As soon as the said fraud was detected, the Director of Education, has exercised its power conferred upon him u/s 16E(10) of the U.P. Intermediate Education Act.

7. In the counter-affidavit filed on behalf of District Inspector of Schools, It has been contended that the Petitioner worked as officiating Head Master of the Junior High School on the basis of resolution dated 19.10.1970 of the committee of management. When the School was upgraded, the Petitioner was promoted as teacher in B.T.C. Grade. A teacher in B.T.C. Grade could be promoted in C.T. Grade. The committee of management could not have promoted the Petitioner to L.T. Grade from B.T.C. Grade. At the material point of time, the School was not within the purview of U.P. High School and Intermediate Colleges (Payment of Salary to the Teachers and Other Employees) Act, 1971 (hereinafter referred to as Payment of Salaries Act, 1971). Therefore, no financial sanction of payment of salary from the District Inspector of Schools was required. The appointment of the Petitioner in L.T. Grade as on 1.11.1970 from B.T.C. Grade was Illegal. The purported resolution promoting the Petitioner to L.T. Grade was not in accordance with rule. Therefore, the said resolution was objected by letter dated 26.3.1973. There was no Justification or propriety of making promotion in L.T. Grade when the School itself was Junior High School before 5.2.1972. The Petitioner's appointment in L.T. Grade was never recognised by the Respondent Nos. 1, 2 and 3. The impugned order dated 7.7.1987 passed by the Additional Director of Education is in accordance with the rule and supported by reasons. According to the rule, the Petitioner could have been appointed in C.T. Grade only

after completion of five years of service from 1969 when he was appointed in B.T.C. Grade, namely, only in the year 1974. He could not get promotion directly in L.T. Grade when the school was Junior High School. There was no question of making promotion in L.T. Grade since it was a Junior High school at that point of time. There has been some manipulation of connivance between the Manager, Principal and the Petitioner.

8. In the rejoinder-affidavit, the Petitioner sought to controvert the allegations made in the counter-affidavit. According to him, while deciding the question of seniority between the Petitioner and the Respondent No. 5, the question of Petitioner's placement in L.T. Grade cannot be disputed and, therefore, no order for recovery could be made, particularly after expiry of long seventeen years. In Para 10 of the rejoinder-affidavit, the Petitioner had admitted that on the assumption of duty by Sri Kripa Shanker Srivastava, as Head Master, the Petitioner continued as assistant teacher, in L.T. Grade in the institution without any objection.

9. The learned Counsel for the Petitioner contended that by reason of appointment of the Petitioner in L.T. Grade earlier than that of Respondent No. 5, the Petitioner was treated as senior to the Respondent No. 5 and the Respondent No. 5 having allowed the said position to continue in L.T. Grade for long "17" years, the question cannot be re-opened. Secondly, he had argued that in course of determining the dispute with regard to seniority, the question of Petitioner's appointment in L.T. Grade cannot be gone into since the same was not within the dispute referred to the Director of Education, U.P., Allahabad, particularly when the Petitioner was allowed to continue in L.T. Grade for long "17" years and he had been paid his salary. Thirdly, he has pointed out that by reason of Regulation 2 (2) of Chapter-II of the Regulations framed under U.P. Intermediate Education Act, the Petitioner was entitled to be appointed as Head Master of the School on account of his officiation on the post of Head Master at the time of upgradation and, as such, he cannot be denied L.T. Grade. Fourthly, that the Respondent No. 5 having acquiesced to the fact that the Petitioner was senior to him, the Respondent No. 5 could not have challenged the said position neither the said position can be re-opened in the facts and circumstances of the case.

10. On the other hand, learned Counsel for Respondent No. 5 submitted that the Petitioner cannot take advantage of his own wrong which he had obtained from the managing committee prior to the School was brought into purview of Payment of Salaries Act, 1971. His next contention was that the Petitioner having been appointed in B.T.C. Grade in the year, 1969 could not have been appointed in L.T. Grade directly, inasmuch as only after expiry of five years from 1969 he could have been appointed in C.T. Grade only. He has contended further that there cannot be any appointment in L.T. Grade in Junior High School since L.T. Grade is available in only Higher Secondary School.

11. Learned standing counsel supported the contention of Respondent No. 5 and has made out a case that the Petitioner's appointment in L.T. Grade has never

been approved and in no event, the Petitioner can be appointed in L.T. Grade from B.T.C. Grade and all these purported appointments having been made prior at a point of time before the School was taken over under the purview of Payment of Salaries Act, 1971.

12. After having heard learned Counsel for the parties and on perusal of record, it appears that there are certain facts which were admitted, namely, (1) the Petitioner was appointed in B.T.C. Grade in 1969 and according to rule, he could be promoted to C.T. Grade only after expiry of five years from 1969. namely, in 1974 but he was appointed in L.T. Grade in the year 1970 by the managing committee, which is contrary to the rule, (2) the approval was sought for the appointment of the Petitioner in L.T. Grade by the District Inspector of Schools who had sought for further information in the year 1973 when fresh resolution adopted by the committee of management on 7.3.1973 was forwarded. But no approval was accorded to such appointment by the District Inspector of Schools. The Petitioner had not made out a case that any such approval was ever granted. His case, as made out in para 11 of the writ petition, is that no objections were received from the District Inspector of Schools, (3) the Respondent No. 5 was appointed in L.T. Grade after the School was upgraded, (4) Sri Kripa Shanker Srivastava, was Head Master and the Petitioner had only temporarily officiated as Head Master, (5) all these promotions and appointment of the Petitioner in L.T. Grade had taken place prior to taking over the School under the purview of Payment of Salaries Act, 1971, (6) that the appointment of Respondent No. 5 in L.T. Grade was approved.

13. On this background, the Petitioner's contention is that by reason of Regulation 2 (2) of Chapter II of the Regulations framed under U.P. Intermediate Education Act, he was entitled to be appointed as Head Master of the School cannot be sustained, even assuming that he was officiating as a Head Master at the material point of time when the School was upgraded because of the simple reason that the said regulation does not apply in the case of officiating Head Master, particularly, when permanent Head Master Sri Kripa Shanker Srivastava had resumed his duties and continued to be the Head Master of the upgraded School till June, 1986. Similarly, in view of rules, promotion and appointment of L.T. Grade from B.T.C. Grade cannot be effected over-stepping the appointment in C.T. Grade which could be accorded only after completion of five years from the date of appointment in B.T.C. Grade. The Petitioner could not have been appointed in L.T. Grade in the year 1970 after having been appointed in B.T.C. Grade in the year 1969. At best, he could be appointed in C.T. Grade in the year 1974, namely, after completion of five years of his appointment from 1969 in B.T.C. Grade. It is clear from perusal of the record that appointment of the Petitioner in L.T. Grade being wholly contrary to the rules and having never been approved by the appropriate authority, he cannot claim benefit of automatic approval by reasons of forwarding of the relevant documents to the District Inspector of Schools for the simple reasons that the Petitioner was not eligible for such appointment. Such automatic approval can apply only in cases where

appointment has been made in accordance with the rule and not otherwise.

14. Regulation 7 (2) of the Regulations framed under U.P. Intermediate Education Act provides that if any teacher working in J.T.C./B.T.C. Grade has passed intermediate or equivalent examination or is trained graduate and has completed five years service in the grade, he shall be promoted to C.T. Grade by the managing committee and information of such promotion shall be immediately conveyed to the District Inspector of Schools. While sub-regulation (3) of the Regulations provides that if the Inspector has reasons to believe that any promotion under Clause (2) has been made in contravention of the Act and the Regulations, then without prejudice to any other action, that may be taken in that behalf, he may refer the case to the Director of Education, U.P., Allahabad, whose decision, in the matter, shall be final. Regulation 6 (1) of the regulations provides that where any vacancy in the lecturer's grade or in the L.T. Grade as determined under Regulation (5) is to be filled in by promotion, teachers working in L.T. or C.T. Grade, as the case may be, having minimum of five years continuous substantive service to their credit on the date of occurrence of vacancy shall be considered for promotion by the committee of management, without their having applied for the same provided they possess minimum qualification for teaching the subject, in which the teacher in the lecturer's grade or L.T. Grade is required.

15. Therefore, the Petitioner could not have been promoted to the post of L.T. Grade without being promoted on the post of C.T. Grade after satisfying the conditions contained in Regulation 7 (2) of the said regulations. In that view of the matter, the decision contained in the impugned order, being Annexure-7 to A.W.C. 12 the writ petition, cannot be assailed on the ground that the Director of Education, U.P. has misguided himself or has committed any illegality or irregularity in deciding the question on the basis of directions passed by this Court in writ petition No. 7659 of 1986.

16. Now turning to the point that the situation had allowed to continue for "17" years and, therefore, cannot be re-opened. It appears that the Petitioner was granted L.T. Grade by virtue of the agreement between the management and the Petitioner. But such agreement being inconsistent with the provisions of the Regulation, the same is void, as provided in Section 16G of the said Act. If it is void right from the beginning, no benefit can be derived because of the reasons that such a situation as continued for a long "17" years. Therefore, I am unable to agree with the contention of learned Counsel for the Petitioner in this respect.

17. However, so far as the question of recovery is concerned, the same cannot be done in the present dispute which is confined only to determination of seniority as between the Petitioner and the Respondent No 5. The recovery can " be done only by the appropriate authority by resorting to the appropriate proceeding against the Petitioner after giving him reasonable opportunity as provided under the Act and the Regulations framed thereunder.

18. I am, therefore, not inclined, in the facts and circumstances of the case, to interfere with the impugned order, contained in Annexure-7 to the writ petition, so far as the determination of seniority of Respondent No. 5 above the Petitioner is concerned, which in my opinion, does not suffer from any infirmity or incompetence. But however, so far as the order for recovery of excess payment from the Petitioner is concerned, that cannot be sustained and as such quashed. However, the Respondents authority shall be at liberty to initiate proceedings, if they are so advised, in appropriate manner against the Petitioner, for such purpose in accordance with the provisions of the Act and the Regulations, as provided.

19. In the result, the writ petition stands disposed of in the manner indicated above.

20. There will, however, be no order as to costs.