
(2002) 01 AHC CK 0177

In the Allahabad High Court

Case No : C.M.W.P. No"s. 27750, 29445 and 37123 of 2001

Rajendra Prasad Katiyar

APPELLANT

Vs

Joint Director of Education and Others

RESPONDENT

Date of Decision : 22-01-2002

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 33D

Citation : (2002) 1 AWC 829 : (2002) 1 UPLBEC 770

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Arun Kumar Tiwari and R.K. Ojha, for the Appellant; Amit Saxena and S.C., for the Respondent

Final Decision : Allowed

Judgement

Anjani Kumar, J.—These three writ petitions, two filed by Rajendra Prasad Katiyar and one filed by Hari Nam Singh, relate to the same factual and legal controversy and therefore, they are being disposed of by the common judgment and order with the consent of learned counsel for the parties. The facts leading to the filing of the aforesaid writ petitions are that Hari Nam Singh filed Writ Petition No. 27750 of 2001 in the month of July, 2001 challenging the order dated 9th July, 2001, Annexure-5 to the writ petition, whereby the Joint Director of Education, Kanpur Region, Kanpur, has stayed the earlier order dated 28th June, 2001, a copy of which has been annexed as Annexure-4 to the writ petition of Hari Nam Singh. By the said order dated 28.6.2001, the Joint Director of Education, Kanpur Region, Kanpur, relying upon the clarification issued by the Director has clarified that in the matter of grant of higher grade, i.e., L.T. grade to which a teacher working in C.T. grade, ten years service contemplated under the law shall be counted from the date when the institution was upgraded in case the institution is upgraded during past ten years. This order of 9th July, 2001, by which the order dated 28th June, 2001 was stayed, has been stayed by this Court in the said Writ Petition No. 27750 of 2001 filed by Hari Nam Singh.

Thereafter Writ Petition No. 29445 of 2001 has been filed by Rajendra Prasad Katlyar and others, wherein the order dated 28th June, 2001, was again challenged by petitioner Rajendra. Prasad Katiyar and others. In this writ petition, no interim order was granted may be because of the fact that the order dated 9th July, 2001 has already been stayed in the earlier writ petition. Rajendra Prasad Katlyar has challenged this order on the ground that in view of Section 33D of the U. P. Secondary Education Selection Board Act, 1982, as amended up-dated, the petitioner Rajendra Prasad Katiyar and others are entitled for the L.T. grade w.e.f. the date of completion of ten years service irrespective of the date of the upgradatlon of the institution. The facts, which are not in dispute, which leads to the filing of the third writ petition i.e.. Writ Petition No. 29445 of 2001 with the following prayers :

"(i) issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 28th June. 2001 (Annexure-9 to the writ petition) passed by the respondent No. 1.

(ii) issue any other writ, order or direction which this Hon"ble Court may deem fit and proper in view of the facts and circumstances of the case.

(iii) and award cost of the petition."

2. Kisan Uchchar Madhyamik Vidyalaya, Kandhi, Kanpur Dehat (hereinafter shall be referred to as "institution") is a recognised institution under the provisions of the U. P. Intermediate Education Act, 1921, to which the provisions of U. P. Secondary Service Selection Board Act, 1982 and rules framed thereunder are also applicable.

3. The institution was given temporary recognition up to the Junior high school in the year 1973 and permanent recognition of the Junior high school was given in the year 1978. The said institution was up-graded as High School in the year 1984 and has been put into grant-in-aid list and teachers and other staff of the institution are getting salary under U. P. High School and intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971, which shall be referred hereinafter as "Payment of Salaries Act". The petitioners of Writ Petition No. 29445 of 2001 were appointed as Assistant Teacher in C.T. grade when the institution was a junior high school. The appointment of these petitioners including Rajendra Prasad Katiyar was approved for the purposes of payment of salaries under the relevant law.

4. The institution was upgraded to high school level in the year 1978, as already stated above, and the services of the petitioners including Rajendra Prasad Katlyar have been regularised and they have been absorbed for the purposes of Payment of Salaries Act as institution has now been recognised under the U. P. intermediate Education Act, 1921. The District Inspector of School. Kanpur Dehat, has passed an order on 3.8.1988 approving the petitioners for the purposes of payment of salary. The principal of the institution, namely, Sri Jang Bahadur Singh retired on 30.6.2001.

5. After the upgradation of the Institution up to the high school level, the petitioners became teachers as contemplated under Regulation 4, Chapter II of U. P. Intermediate Education Act, 1921. In the year 1989, cadre of C.T. grade has been declared as dying cadre and the same has been merged into the L.T. grade and such teachers, who have complete ten years service in C.T. grade or would completed ten years service after the year 1989, became entitled for the L.T. grade, which is the next higher grade of assistant teachers. That U. P. Act No. 5 of 1982 was amended in the year 1988 when Section 33D has been added to U. P. Secondary Education Service Selection Board Act, 1982. For the ready reference the provisions of Section 33D are reproduced below :

"33D. Special provision for Certificate of Teaching grade teachers.--Every teacher in the Certificate of Teaching grade, who is trained graduate and,--

(a) has completed ten years continuous satisfactory service in the said grade on or before January 1, 1986 ; or

(b) completes the said service of ten years after January 1, 1986;

shall be deemed to have been appointed in the Trained Graduate Grade, with effect from January 1, 1986, in the case of teacher who has completed the said service of ten years on or before January 1, 1986, and with effect from the date of completion of the said service of ten years, in the case of a teacher, who completes, the said service of ten years after January 1. 1986."

6. A perusal of the amended Section 33D of the Act would make it clear that a teacher working in C.T. grade in the institution, who has completed ten years service on or before January 1. 1986, shall be deemed to be appointed as L.T. grade teacher w.e.f. January 1, 1986. The said amendment further provides that such teachers, who were working in the institution but had not completed ten years service in C.T. grade on or before 1.1.1986. will be deemed to be in L.T. grade from the date when they completed ten years service after 1.1.1986. All the petitioners were working as C.T. grad: teachers since 1977, therefore, on the date when Section 33D of the Act was introduced in the year 1988, they had completed ten years service and therefore, the District Inspector of Schools vide his orders dated 28.1.2000 and 21.10.2000 have granted them promotion w.e.f. 1.1.1986 in L.T. grade and the petitioners have further been granted selection grade after completion of ten years service in L.T. grade. It is at this stage, the order of Joint Director of Education dated 28.6.2001 was passed, whereby the Joint Director of Education cancelled the orders of the District Inspector of Schools dated 28.1.2000 and 21.10.2000 by which the petitioners were granted L.T. grade as per Section 33D of the Act. The said order dated 28.6.2001 was passed on the basis of clarification given by the Directorate of Education on 16.2.1990 wherein it has been clarified that If the junior high school has been upgraded to the high school level, then teachers of the Junior high school will be given L.T. grade only after the completion of ten years service from the date of upgradation of the institution. The said order of Joint Director of Education has

not taken into consideration as would be clear from the facts stated above, the amendment has been made in the year 1988, the petitioners and other teachers met to the Joint Director of Education and as a consequence thereto the Joint Director of Education stayed his order dated 28.6.2001 by the order dated 9.7.2001.

7. It is submitted that one teacher, namely. Hari Nam Singh filed, as stated above. Writ Petition No. 27750 of 2001, in which this Court has been pleased to grant an interim order on 30th July, 2001, staying the order dated 9th July, 2001 passed by the Joint Director of Education, respondent No. 1. Petitioner Rajendra Prasad Katiyar and others also filed Writ Petition No. 29445 of 2001. which is connected along with the writ petition filed by Hari Nam Singh. In the meantime, due to the retirement of Sri Jang Bahadur Singh, who was holding permanent post of principal, the management of the institution concerned on 30th June, 2001, directed petitioner Rajendra Prasad Katiyar to function as officiating principal and submitted his signature for attestation before the District Inspector of Schools. It would not be out of place to mention here that Hari Nam Singh was appointed as assistant teacher in L.T. grade on 14.5.1990, whereas the petitioner Rajendra Prasad Katiyar was deemed to be appointed in L.T. grade in the year 1988 and thus he is senior to Hari Nam Singh. It is further submitted that the inter-se seniority between petitioner Rajendra Prasad Katiyar and Hari Nam Singh is the subject-matter of challenge in Writ Petition No. 1534 of 1993 as stated in paragraph 19 of the Writ Petition No. 37123 of 2001 filed by petitioner Rajendra Prasad Katiyar, in which no interim order has been passed and no counter-affidavit has been filed in the said writ petition. Thus, according to petitioner Rajendra Prasad Katiyar, the order of the management promoting him as "officiating principal has not been stayed by either any authority or Court, including this Court, It appears that in the meantime, the management submitted the signatures of Hari Nam Singh as officiating principal before the District Inspector of Schools. The District Inspector of Schools vide its order dated 24.9.2001. has attested his signature, which is impugned in Writ Petition No. 37123 of 2001.

8. Under the aforesaid factual background, these writ petitions have come up for hearing together and is being disposed of by this judgment. The factual position that emerges after analysis of the fact that the petitioners of Writ Petition Nos. 37123 of 2001, 27750 of 2001 and 29445 of 2001 were appointed as assistant teachers in the institution when the institution was junior high school in C.T. grade. Petitioner Rajendra Prasad Katiyar was appointed in the year 1977.

9. Section 33D was introduced in the year 1998. As stated above, that in view of the provisions of Section 33D, the clarification dated 16.2.1990 becomes redundant and provisions of Section 33D as introduced in the year 1988 shall prevail.

10. Section 33D of clarifies teachers appointed in C.T. grade in an institution, which is upgraded to high school level in two categories : (f) who have

completed ten years continuous satisfactory service in the said grade on or before January 1, 1986 ; and (ii) who completes the said service of ten years after January 1, 1986. Section 33D further provides that such teachers shall be deemed to have been appointed in the trained graduate grade w.e.f. January 1, 1986 and in the case of teachers, who have completed the said service of ten years on or before January 1, 1986 and with regard to such teachers like petitioners w.e.f. the date of completion of said service of ten years who will complete or have completed the said service of ten years after January 1, 1986, the teachers cannot be said to be appointed/promoted unless the institution is upgraded, meaning thereby the Legislature has taken care to the fact that both the category of teachers are such teachers who were initially appointed in C.T. grade in a junior high school and subsequently that institution being upgraded, they would become or have become entitled for the next higher grade, i.e., L.T. grade, which is available only in the upgraded institution. In this view of the matter, the view taken by the Joint Director of Education to the contrary in its order dated 28.6.2001 is not tenable in law and deserves to be quashed.

11. In view of the aforesaid discussions, the order of the Joint Director of Education dated 28.6.2001 is hereby quashed and the orders of the District Inspector of Schools dated 28.1.2000 and 30.5.2001 are upheld. This being the position the action of the management in submitting the name of Hart Nam Singh for attestation as working principal and the order of the District Inspector of Schools attesting the signature of Hari Nam Singh vide its order dated 24.9.2001 deserves to be quashed and is hereby quashed. The order dated 24.9.2001 is bad for further reason that the District Inspector of Schools has not taken into consideration the fact that in Writ Petition No. 1354 of 1993 relating to the inter-se seniority between petitioner Rajendra Prasad Katiyar and Hari Nam Singh. no orders have been passed and the seniority declared by the management is still intact.

12. In view of what has been stated above, the orders dated 28.6.2001 and 9.7.2001 passed by the Joint Director of Education and the order dated 24.9.2001 passed by District inspector of Schools are quashed. The orders dated 28.1.2000 and 30.5,2001 passed by the District Inspector of Schools are upheld. The petitioners are entitled for their salary in L.T. grade and Selection grade, as the case may be, respectively, if the petitioners have been promoted in L.T. grade with effect from the year 1988-89.

13. The District Inspector of Schools, Kanpur Dehat, is directed to attest the signature of petitioner Rajendra Prasad Katlyar as officiating principal till regular selected candidate under the provisions of U. P. Act No. 5 of 1982. Joins the institution concerned, or till any order is passed in Writ Petition No. 1534 of 1993.

14. In view of the aforesaid observations and direction, the Writ Petition No. 29445 of 2001 and 37123 of 2001 are allowed and Writ Petition No. 27750 of 2001 is dismissed. However, there will be no order as to costs. The interim order, if any, in Writ Petition No. 27750 of 2001 stands vacated.