
(1997) 02 AHC CK 0139
In the Allahabad High Court
Case No : C.M.W.P. No. 7075 of 1981

Rajendra Prasad Sharma

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 27-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Intermediate Education Act, 1921 — Section 16G
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 5, 59, 59A, 6(1)

Citation : (1997) 02 AHC CK 0139

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : V.B. Khare, for the Appellant;

Final Decision : Allowed

Judgement

R.H. Zaidi, J.—Heard learned counsel for the parties and perused the record.

2. By means of the present petition under Article 226 of the Constitution of India, Petitioner has challenged the validity of the order dated 31.3.1981. whereby the Respondent No. 1 has cancelled the promotion of the Petitioner to the post of Lecturer (Economics).

3. It appears that the Petitioner was appointed as a Teacher (L.T. Grade) in the year 1974 in the institution known as Vidya Mandir Intermediate College, Mauchirayal, Aligarh. He was thereafter transferred from the said institution to Rana Sangram Singh Intermediate College, Bisahra, Ghaziabad on 21.2.1979. It was on 20.6.1980 the Petitioner was transferred to Udai Pratap Intermediate College, Sapnawat. Ghaziabad, and thereafter by means of a resolution, passed by the Committee of Management of the said institution, the Petitioner was promoted to the post of Lecturer grade. The promotion of the Petitioner was approved by the District Inspector of Schools, but on a complaint received from one Sri Anand Prakash Sharma, the District Inspector of Schools cancelled the

promotion of the Petitioner to the post of Lecturer by the impugned order dated 31.3.1981 on the ground that on the date the agenda of the meeting held on 17.7.1980 was circulated, the name of the Petitioner was not on the rolls of the teachers of the institution. No other ground for cancellation of the promotion of the Petitioner has been mentioned in the impugned order. Thus, the Petitioner has challenged the validity of the order dated 31.3.1981.

4. The writ petition was admitted on 12.5.1981. While admitting the writ petition an ad interim order was also granted by this Court, whereby the operation of the impugned order dated 31.3.1981, passed by the District Inspector of Schools, Ghaziabad was stayed. The Petitioner since the date of his promotion has been working as Lecturer in the said institution.

5. Learned counsel for the Petitioner submitted that the Petitioner was promoted to the post of Lecturer in accordance with law and the District Inspector of Schools, Ghaziabad has acted illegally in cancelling the promotion of the Petitioner.

6. On the other hand, learned standing counsel submitted that the promotion of the Petitioner to the post of Lecturer was illegal, inasmuch as, on the date of occurrence of the vacancy as well as on the date of circulation of the agenda of the meeting dated 19.7.1980, the name of the Petitioner was not on the rolls of the teachers in the institution. Therefore, he had no right to be considered for promotion, and the promotion of the Petitioner was rightly cancelled by the District Inspector of Schools.

7. I have considered the rival submissions made by the learned counsel for the parties.

8. u/s 16G of the U.P. Intermediate Education Act, 1921 regulations have been framed, whereby the appointments and promotions of the Teachers in the Intermediate Colleges are regulated. Regulation 6 (1) of Chapter II of the Regulations provides as under:

6 [1] Where any vacancy in the Lecturer's grade or in the L.T. grade as determined under Regulation 5, is to be filled by promotion, all teachers working in the L.T. or the C.T. grade, as the case may be, having a minimum of five years continuous substantive service to their credit on the date of occurrence of the vacancy shall be considered for promotion by the Committee of Management without their having to apply for the same provided they possess the prescribed minimum qualifications for teaching the subject in which the teacher in the lecturer's grade or in the L.T. grade is required.

9. In the present case, the Petitioner was transferred from institution known as Rana Sangram Singh Intermediate College, Bisahra, Ghaziabad to Udai Pratap Intermediate College. Sapnawat, Ghaziabad on 20.6.1980. In the said order of transfer It was mentioned that it will come into effect from 30.6.1980. The vacancy in the institution occurred on 30.6.1980. The Petitioner on the basis of

the order of transfer joined in the institution on 17.7.1980 and thereafter he was promoted to the post of Lecturer by the Committee of Management of the institution on 19.7.1980. The Petitioner admittedly put in more than five years of continuous service as L.T. grade Teacher in the institution.

10. Regulation 59A (a) of the Regulations provides as under:

59A. Upon the transfer of any person under Regulation 59 the following consequences shall ensue, namely:

(a) such person shall become an employee of the institution to which he is transferred and shall hold office by the same tenure, at the same remuneration and upon the same other conditions of service as he would have held if the transfer had not taken effect, and shall continue to do so, unless and until such tenure, remuneration and other terms and conditions are duly altered.

11. The transfer order came into effect from 30.6.1980, therefore, the Petitioner has become teacher in the institution with effect from 30.6.1980, i.e., the date on which the vacancy occurred. He might have Joined the institution on 17.7.1980, but that is of no consequence in view of Regulation 59A. The meeting of the Committee of Management for considering the Petitioner for promotion to the post of Lecturer was held on 19.7.1980. On the said date the name of the Petitioner was on the rolls of the teachers in the institution. Since no other teacher was eligible to be promoted to the post of Lecturer, therefore, the Committee of Management considered the Petitioner for promotion to the post of Lecturer. The District Inspector of Schools was not right in cancelling the promotion of the Petitioner merely on the ground that on the date on which the agenda of the meeting was circulated, the name of the Petitioner was not on the rolls of the teachers in the institution. The order passed by the Inspector of Schools is thus absolutely illegal and without jurisdiction and deserves to be quashed. Further the promotion of the Petitioner neither affected rights of any other person, nor the department has suffered any irreparable loss, there was no justification for cancellation of promotion of the Petitioner to Lecturer grade.

12. The writ petition succeeds and is allowed. The order dated 31.3.1981 is quashed. No order as to costs.