

(1995) 09 AHC CK 0094
In the Allahabad High Court
Case No : Second Appeal No. 2528 of 1984

Ram Bharosey Singh Yadav

APPELLANT

Vs

Adarsha Niketan Inter College, Attamanda, Dist. Bareilly and
Others

RESPONDENT

Date of Decision : 15-09-1995

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Chapter 4 Regulation 6

Citation : (1995) 09 AHC CK 0094

Hon'ble Judges : R.B.Mehrotra, J

Final Decision : Allowed

Judgement

R. B. Mehrptra, J.—This is defendant's second appeal. The facts necessary for the decision of the appeal areas under. Sri Hriday Narain Singh, plaintiff filed a suit No. 219 of 1980 in the Court of Munsiff, Haveli, Bareilly impleading therein : (1) Adarsh Niketan Inter College, Attamanda, District, Bareilly through its Secretary, (2) the Committee of Management, Adarsh Inter College, Atiamanda through its Secretary, and (3) Ram Bharosey Singh Yadav as defendants.

2. The plaint case was that defendant No. 1, namely, Adarsh Niketan Inter College is a recognised educational institution and is governed and managed by the defendant No. 2 in accordance with the provisions of U. P. Intermediate Education Act (hereinafter referred to as the Act). The appointment, promotion and condition of service of the teachers employed in Adarsh Niketan Inter College (hereinafter referred to as the Institution) are regulated by the provisions contained in the Act and Rules and Regulations framed thereunder. In the year 1976 a seniority list of L. T. grade teachers was prepared, copy thereof was furnished to defendant No. 3, wherein the defendant No. 3 was shown junior to the plaintiff. The allegation in the plaint was that the defendant No. 3 did not raise any objection to the said seniority list. It was further alleged in the plaint that on the retirement of Sri Had Shanker Saxena, vacancy occurred in Lecturer Grade in the Institution and defendant No. 2 selected plaintiff to the next higher

grade as Lecturer in Sociology and passed resolution to that effect on 2771980. The Manager of the defendant No. 2 forwarded the resolution dated 2771980 to the District Inspector of Schools on 181980. It was further alleged in the plaint that the District Inspector of Schools did not communicate his decision on the aforesaid resolution. Consequent thereto the plaintiff claimed that his promotion was automatically deemed to have been approved after the expiry of three weeks. The plaint further alleged that the defendant No. 3 is an influential person and is pressurising the District Inspector of Schools as well as the Management of the Institution to cancel the promotion of the plaintiff and defendant No. 2 is threatening to demote the plaintiff from the post of Lecturer, hence cause of action arose for the suit wherein the plaintiff claimed the relief :

"That it be declared that the plaintiff is promoted to the post of Lecturer in Sociology in the college of defendant No. 1 on 2771980 from the date of resolution of defendant No. 2 on expiry of statutory period of concurrence and onwards and is entitled to emoluments, privilege and benefits from the defendant Nos. 1 and 2 to the entire exclusion of defendant No. 3."

3. The suit was contested by all the defendants. It was inter alia contended in the written statement that the seniority list has not become final and is revisable every year according to Regulation 3(2) of Regulations framed under the Act. The District Inspector of Schools vide his order dated 2691980 which has been filed on record, declared the defendant No. 3 senior to the plaintiff and as such, no suit is maintainable challenging the aforesaid seniority determined by the District Inspector of Schools.

4. On the basis of the pleadings of the parties, the trial court framed issues, however, for the purpose of present appeal only following issues are relevant:

"(1) What is the effect of seniority list prepared by defendant No. 2 as on 3181976 on the parties ?

(2) Whether the resolution of defendant No. 2, dated 2771980 promoting the plaintiff to the post of Lecturer of Sociology in the college, defendant No. 1, shall be deemed to have become final and binding on the parties as alleged in para No. 1 of the plaint, if so, its effect ?

(3) What is the effect of letter of D. I. O. S. on 269198J on the resolution of defendant No. 1, dated 2771980 ?"

5. The trial court decreed the suit of the plaintiff vide its judgment dated 11121980 and passed decree in favour of the plaintiff declaring that the plaintiff stands promoted as Lecturer of Sociology on the basis of the resolution dated 2771980 and is entitled to the benefits and salary of the aforesaid post.

6. Aggrieved thereby the defendant No. 3 filed an appeal in the court of District Judge, Bareilly being Civil Appeal No. 7 of 198J. The appellate court affirmed the judgment of the trial court.

7. Aggrieved thereby the defendant No. 3 has filed the present second appeal wherein the plaintiff has been arrayed as respondent No. 3. The appeal was admitted by this Court on substantial questions of law framed in paras 1, 4 and 5 of the memo of appeal and the 4th substantial question of law, on which the appeal was also admitted, was framed as under :

"Whether the limitation of approval would begin to run from 781980. If so, its effect ?"

8. The other three substantial questions of law on which the appeal has been admitted, are being reproduced herein below ;

"(1) Whether in view of the provisions of the U. P. Intermediate Education Act and the Regulations framed thereunder, a declaration of the nature sought by the plaintiffrespondent could lawfully be granted to him and whether the courts below acted legally and within their jurisdiction in passing a decree of the nature passed by them ?

(4) Whether the courts below did not misconstrue the provisions of Regulation 6 and ignore the effect of Regulation 8 of Chapter II of the Regulations framed under the U. P. Intermediate Education Act in arriving at their material findings for decreeing the plaintiffrespondent's suit ?

(5) Whether on the facts and circumstances of the case and on a correct application of the law thereto, the plaintiffrespondent's suit ought not to have been dismissed by the courts below and they did not err in decreeing the same ?"

9. Heard Sri A. P. Shahi holding brief of learned counsel for the appellant. No body appeared on behalf of the plaintiffrespondent.

10. Before appreciating the controversy involved in the present appeal, one broad fact is to be stated in appeal, which is not disputed between the parties, that the appellate court itself recorded a finding of fact that the appellant, namely, defendant No. 3 was appointed in L. T. grade in the Institution on 2771964 whereas the plaintiffrespondent No. 3 was appointed in the same grade on 871966, as such, it is not disputed before me that the appellantdefendant No. 3 was senior to the plaintiff as L. T; grade teacher and has preferential claim of being promoted to the post of Lecturer.

11. The facts which are further not disputed between the parties, as borne out from the record of the lower appellate court, are that the Committee of Management of the Institution in its meeting dated 2771980 resolved that the plaintiffrespondent No. 3 may be promoted as Lecturer in Sociology in the Institution. The said resolution was received by the office of the District Inspector of Schools on 181980 for approval. Immediately the District Inspector of Schools on 181980 returned the resolution seeking further information in the matter from the Management of the Institution. The Management of the Institution in its turn again sent back the proposal to the District Inspector of Schools on 781980. The defendantappellant claimed that the said proposal was received in the office of

District Inspector of Schools on 1181980. The District Inspector of Schools again made further query in the matter from the respondents Nos. 1 and 2 on 3081980. In compliance of the aforesaid information sought by the District Inspector of Schools, the Committee of Management sent further information on 1091980 and service book of the teachers were sent on 1591980. On 2691980 the District Inspector of Schools communicated his decision disapproving the promotion of respondent No. 3 to the post of Lecturer in Sociology in the Institution. The order of District Inspector of Schools dated 2691980 has been filed as paper No. C 18/7. An English translation of the aforesaid letter of District Inspector of Schools reads as under ;

"From,

District Inspector of Schools, Bareilly.

To,

The Manager,

Adarsh Niketan Inter Collage,

Attamanda,

Bareilly.

No E(1)/56II/8081, dated 2691980.

Subject: In relation to promotion to the post of Lecturer in Sociology.

Dear Sir,

With reference to your letter No. 169/8081, dated 1561980 it is apparent from the service book of Sarvshn Hridaya Narain Gangwar and Ram Bharosey Singh Yadav that the date of the appointment of Sri Ram Bharosey Yadav on the permanent post was 2671964 whereas the date of appointment of Sri Hridaya Narain Gangwar on the permanent post was 871966. The seniority of the teachers is determined on the basis of their appointment on permanent post. On the basis of appointment on permanent post Sri Ram Bharosey Yadav is senior and is qualified to be promoted the post of Lecturer in Sociology, therefore, you may pass a resolution for promoting him and it is not proper to include break period in the services of Sri Gangwar.

Yours,

Sd/ District Inspector of Schools, Bareilly."

12. This letter of District Inspector of Schools has not been challenged or adjudged, illegal or nullity, as such, stands final between the parties.

13. The two courts below have held in favour of the plaintiffrespondent only on the basis that within three weeks from the date of sending proposal for approval of the promotion of the plaintiffrespondent No. 3 to the District Inspector of

Schools, the District Inspector of Schools having not taken any decision in the matter, the approval is deemed to have been granted and on the aforesaid basis passed decree of declaration in favour of plaintiffrespondent. The courts below have placed reliance on two dates for drawing the presumption in favour of the plaintiffrespondent. The findings recorded by the courts below are that the revised proposal was sent by the Management to the District Inspector of Schools on 781980 and for 21 days i.e. till 2881980 the District Inspector of Schools did not communicate his disapproval to the proposal, as such, the proposal sent by the Committee of Management should be deemed to have been approved and the plaintiffrespondent No. 3 should be deemed to have been appointed on the post of Lecturer on the basis of deemed approval and suit was decreed by the courts below mainly on the language of Regulation 6(6) of Chapter II of Regulations framed in U. P. Intermediate Education Act which is reproduced hereinbelow for convenient reference i

"Within, three weeks from the date of receipt of the proposal under clause (5) the Inspector shall communicate his decision there on to the Manager failing which the Inspector shall be deemed to have given his concurrence to the resolution passed by the Committee of Management."

14. Reliance was also placed on Exhibit7 for holding that necessary information was furnished by the Management as required by Regulation 6(5) of the Regulations within a week from the |date of the resolution of the Committee of Management and on the aforesaid basis, the deeming provision was in favour of the plaintiffrespondent for the purposes of holding that the resolution passed by the Committee of Management should be deemed to have been approved and the plaintiffrespondent was entitled to the declaration of his deemed promotion on the post of Lecturer in Sociology.

15. For appreciating the controversy involved in the appeal, it is necessary to reproduce the entire Regulation 6 of Chapter II of the Regulations framed under U. P, Intermediate Education Act:

"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 ba 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.

(2) Selection for promotion to the next higher grade shall be made on the basis of service standing, achievements in service, academic qualifications and integrity.

(3) Subject to clause (2) where more than one teacher in the L. T. grade are eligible for promotion to the post of lecturer in any subject preference shall be

given to the teacher who is the senior most amongst them in service in that grade.

(4) (a) The claim of any teacher who is eligible for promotion shall not be ignored merely because he has proceeded on long leave or is officiating or working temporarily on a post in the higher grade.

(b) In the case of a teacher who is under suspension, the claim for promotion shall not be ignored* if he is reinstated prior to the selection for promotion.

(5) In respect of any teacher selected for appointment by promotion in accordance with these regulations, the Manager of the institution shall, within a week from the date of the resolution passed by the Committee of Management in regard to such appointment forward (the proposal for the occurrence of the Inspector together with) a copy of such resolution and a statement showing the following particulars ;

(i) the total number of sanctioned posts in the grade in which promotion is to be made ;

(ii) the number of posts to be reserved for promotion ;

(iii) the number of posts already filled by promotion giving names of the incumbents ;

(iv) the total number of vacancies which have occurred ;

(v) the number of vacancies determined by the Committee of Management to be filled by

(a) promotion ;

(b) direct recruitment;

(vi) the names of all eligible candidates for promotion, their qualifications and the length of their service from the date of their substantive appointment in the grade from which they are to be promoted ; and

(vii) the names of persons selected for promotion.

(6) Within three weeks from the date of receipt of the proposal under clause (5) the Inspector shall communicate his decision thereon to the Manager failing which the Inspector shall be deemed to have given his concurrence to the resolution passed by the Committee of Management. ,

(7) Where the Committee of Management feels aggrieved from the decision of the Inspector under clause (6), it may within two weeks from the date of communication of such decision to the Manager, make a representation against it to the Regional Deputy Director of Education whose decision in the matter shall be final."

16. In the background of aforesaid Regulations some documents filed by the

defendantappellant as additional evidence at appellate stage which have been admitted by the lower appellate court also require reference.

17. Exhibit A7 on which both the courts below have placed reliance is a copy of the letter sent by the Principal of the College to the District Inspector of Schools. An English translation of the letter is reproduced below. The original letter has not been summoned from the office of District Inspector of Schools nor has been produced. How this document was produced, has not been deliberated in the courts below, as such, it is being accepted as a proved document.

English translation of Exhibit A7.

To,

The District Inspector of Schools,

Bareilly.

No. 120/8081, dated 781980.

Subject: Promotion on the post of Lecturer in Sociology.

Dear Sir,

For removing objection for the promotion to the post of Lecturer in Sociology, the necessary information is being sent for proper action.

Yours faithfully Illegible

Enclosure ;

(1) Statement.

(2) Resolution.

(3) Seniority list.

18. Courts below have failed to record any finding as to when this letter was received in the office of the District Inspector of Schools, the plaintiff has utterly failed to prove it. The crucial date for determination in the matter is three weeks from the date the letter was received in the office of the District Inspector of Schools. Unless this is proved as to when the aforesaid letter was received in the office of the District Inspector of Schools, the period of three weeks cannot be counted from the date of sending the letter. The courts below were in error in calculating the period of three weeks from the date shown in the letter.

19. The next document which is of importance for the purpose of present appeal is Exhibit9. Exhibit9 is the copy of the letter of the District Inspector of Schools dated 3081980 seeking information from the Management of the College in relation to the promotion of Lecturer of Sociology in the Institution. In the aforesaid letter the District Inspector of Schools sought further information in the matter wherein he asked for the details regarding total number of sanctioned

post in the grade for which promotion is to be made, number of post to be reserved for promotion, the number of vacancies, cause for vacancies, number of posts filled by direct recruitment, the list of teachers employed in Lecturer Grade, their qualification, the details of subject which they are teaching, the date of appointment on their permanent post alongwith their signatures, the list of teachers whose names were proposed for promotion, service book, certificate of educational qualification, date of appointment the certified and true copies of date of approval, the certified copies of confirmation of teachers. Thereafter it was mentioned in the latter that since the information furnished was not complete, no decision could be taken. It was also noted that Sri Yadav has given representation on 181980, management was asked to send comment on the same also. This letter clearly shows that the information furnished by the Management was not complete. The deeming provision under Regulation 6(6) can be attracted only if all the information sought for under Regulation 6(5) is furnished, no deeming provision can be attracted unless the said information sought under subregulation (5) is furnished. However, two courts below with a very peculiar reasoning presumed that necessary information under subregulation (5) was furnished in view of the letter of the Principal, dated 781980 which has been exhibited as Exhibit7. No reasoning worth the name has been given for discarding the contents of Exhibit8. It may also be noticed that the enclosures which were mentioned in Exhibit7 were neither filed nor proved. The courts below committed patent error of law in presuming that necessary information under Regulation 6(5) was furnished or should be presumed to have been furnished by the Management, since the enclosure of Exhibit7 were never placed before the Court. There was absolutely no reason for arriving at the said conclusion. The two courts below were clearly in error in arriving at the decision that the necessary information as required under subregulation (5) was furnished. The two crucial facts have not been proved by the plaintiffrespondent. Firstly, as to when the letter dated 781980 reached the office of District Inspector of Schools, secondly the courts below were in error in holding that necessary information under subregulation (5) was furnished by the Management by letter dated 781980. For want of proving there two crucial facts, the deeming clause could not have been attracted in favour of the plaintiffrespondent and the courts below were clearly in error in taking a view to the contrary.

20. Even otherwise on the facts of the present case, the courts below did not refer to the District Inspector of Schools letter dated 2691980 which became final between the parties and in the teeth of the said order no relief could have been granted to the plaintiff, unless the said order was declared null and void. The courts below were clearly in error in decreeing the suit of the plaintiff, on the basis of presuming facts in favour of plaintiff ignoring the documentary evidence on record. On analysis of the aforesaid facts, I am satisfied that the plaintiff has utterly failed to prove that the provisions of Regulation 6(6) were attracted and on the basis of deeming clause the plaintiff matured his right on the post of Lecturer. The suit of the plaintiff must fail on the said ground. At the cost of

repetition, it is being stated that the plaintiff failed to prove as to when the letter dated 781989 was received in the office of District Inspector of Schools and the plaintiff also failed to prove that the necessary information required to be furnished under Regulation 6"5) was furnished to the District Inspector of Schools. The courts below also failed to see that admittedly the defendantappellant was senior to the plaintiffrespondent and there was no justification for granting the discretionary relief under Specific Relief Act in favour of the plaintiffrespondent who had chimed ^he post on the basis of technicality. The discretionary relief under Specific Relief Act should not be granted merely on the basis of technically assuming everything to be correct in favour of plaintiffrespondent.

21. On the basis of the aforesaid reasoning I am satisfied that the judgment of the courts below suffers from patent error of law. On the facts of the case, the plaintiff was not entitled to any relief. The suit of the plaintiff is liable to be dismissed.

22. However, before parting with the case, it is necessary to mention that an interim order in the present second appeal has been passed by this Court in the following terms :

"The operation of the decree passed by the trial court is stayed during the pendency of the present second appeal. It is, however, made clear that the Principal of the Institution will be entitled to take educational work from the plaintiff as well as defendant No. 3 treating them to be teachers in the Department of Sociology. However, neither the plaintiff nor defendant No. 3 shall be entitled to the salary of the Lecturer and will only draw the salary which they are drawing at present, The extra amount which is available on the post of Lecturer shall remain in deposit and the party succeeding in this second appeal will be entitled to get it at the time of final adjudication of the second appeal. It is being made clear that allotting the work will be entirely the decision of the Principal of the Institution."

23. Accordingly I allow the appeal and set aside the judgment of the VI Additional District Judge, Bareilly in Second Appeal No. 7 of 1981 and also set aside the judgment of Munsiff, Haveli, Bareilly dated 11*121980, passed in Suit No. 219 of 1980 and dismiss the suit of the plaintiff with costs throughout. The District Inspector of Schools will adjust the payment of salary between the parties as per decision of this Court and as per interim order passed by this Court on 2731985, as quoted above.

24. The appeal is allowed with costs throughout. Appeal allowed.