
(1994) 12 AHC CK 0042

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13423 of 1981

Ram Raj Shukla

APPELLANT

Vs

D.I.O.S., Fatehpur and Others

RESPONDENT

Date of Decision : 02-12-1994

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Chapter 2 Regulation 3(b), Chapter 3 Regulation 7, Chapter 3 Regulation 8

Citation : (1994) 12 AHC CK 0042

Hon'ble Judges : D.S.Sinha, J

Final Decision : Dismissed

Judgement

D. S. Sinha, J.—Hoard Sri H. N. Singh, learned Counsel for the petitioner, Sri Tej Ram, learned Standing Counsel representing the respondent No. 1, and Sri Shrikanti Misra, learned counsel appearing for the respondents No. 2 and 3.

2. Inter se seniority of Sri Ram Raj Shukla, the petitioner, and Raj Narain Tewari, the respondent No. 3, the two Assistant Teachers of Shri Siddheshwar Higher Secondary School, Gopalpur Bijuri, district Fatehpur, hereinafter called the institution, in C. T. grade, is the subjectmatter of controversy in the instant writ petition.

3. Initially the institution was a Junior High School and was upgraded as High School with effect from 22nd October, 1974. By order dated 4th July, 1974, the petitioner as well as the respondent No. 3 were appointed as Assistant Teachers in C. T. grade. In pursuance of the appointment order dated 4th July, 1974 the petitioner joined the institution on 10th July, 1974 and the respondent No. 3 joined on 9th July, 1974.

4. Subsequent to the upgradation of the institution as High School, the District Inspector of Schools, Fatehpur granted approval to the appointments of the petitioner and the respondent No. 3, putting them on one year's probation, by the order dated 14th March, 1975.

5. It appears that in the year 1980 the petitioner was shown to be junior to the respondent No. 3 in the seniority list, He objected. The Managing Committee of the institution passed an order dated 10th December, 1980 rejecting the objection of the petitioner and affirming that the respondent No. 3 was senior than the petitioner. Feeling aggrieved by the order of the Managing Committee, the petitioner went up in appeal before the District Inspector of Schools, Fatehpur, the respondent No. 1. The respondent No. 1 rejected the appeal of the petitioner and affirmed the order of the Managing Committee of the institution by his order dated 9th July, 1981. Following the order of rejection, the District Inspector of Schools has approved the proposal of the Managing Committee for promotion of the respondent No. 3 to L.T. grade by his another order dated 9th July, 1981. These two orders dated 9th July, 1981, passed by the respondent No. 1, are sought to be challenged by the petitioner.

6. Sri H. N. Singh contends that the respondents No. 1 committed an error apparent on the face of record in computing the inter se seniority of the petitioner and the respondent No. 3 on the basis of the date of their joining the institution. According to him the relevant date for reckoning the seniority is the date on which the respondent No. 1 accorded approval to their appointments putting them on one year's probation.

7. Further contention of Sri Singh is that the service rendered by the petitioner and the respondent No. 3 during the period between the date of their joining the institution and the date of approval by the respondent No. 1 could not be taken into account as the appointments were made without prior approval of the respondent No. 1 under clause (b) of subsection (1) of Section 16F of the U. P. Intermediate Education Act, 1921, hereinafter called the Act.

8. On the other hand, Sri Shrikant Mishra submits that the date of joining of the institution by the petitioner and the respondent No. 3 is material for determining their respective seniority as the said date is the date of their substantive appointment. He points out that the petitioner and the respondent No. 3 were put on probation of one year counted from the date of their joining the institution. Sri Mishra further submits that the provisions of clause (b) of subsection (1) of Section 16F of the Act, relied upon by the learned counsel for the petitioner, were not applicable inasmuch as at time of appointment of the petitioner and the respondent No. 3 the institution, being a Junior High School, was not governed by the Act. Therefore, the requirement of prior approval before the appointment of the petitioner and the respondent No. 3 was not obligatory.

9. Regulation 3 of Chapter II of the Regulations, framed under Sections 16E, 16F and 16FF of the Act, hereinafter called the Regulation, contemplates and provides for preparation of seniority list of the teachers of the institution governed by the Act. Clause (a) requires the preparation of the seniority list of teachers working on substantive post separately for each grade. Clause (b) provides that the seniority of teachers in a grade shall be determined on the basis of their substantive appointment in that grade. It further provides that if

two or more teachers are so appointed on the same date seniority shall be determined on the basis of the age. In the instant case, the respondent No. 1 has found it, as a matter of fact, that the date of joining of the petitioner was 10th July, 1974 and that of respondent No. 3 was 9th July, 1974.

10. Regulation 7 of Chapter III of the Regulations framed under Section 16G of the Act, as it existed at the relevant time, namely, 1974 and 1975, provides that a person selected for substantive appointment against a clear vacancy shall be placed on probation from the date of joining the duty. Regulation 8 of the Regulations provides that the period of probation shall be one year whether a person is recruited directly or has been promoted from lower grade in the service of the institution to a higher grade.

11. Reading the aforesaid Regulations together leads to an irresistible conclusion that the date of appointment of a person selected for substantive appointment against a clear vacancy is the date at which he joins the duty and the period of probation is to be counted from that date.

12. Expression "substantive appointment" contemplated by Regulation 3 (b) of Chapter II of the Regulations and Regulation 7 of Chapter III of the Regulations were examined by this Court in the case of *Sri V. N. Sharma v. District Inspector of Schools Etawah and others*, 1986 U. P. Local Bodies and Educational Cases 44. The court held that Regulation 3(b) specifically provided that the seniority of the teachers in a grade should be determined on the basis of their substantive appointment in that grade. It was pointed out by the court that the appointment of a teacher on probation is a substantive appointment. The court further observed that Regulation 7 of Chapter III of the Regulations made the position absolutely clear that a person selected for substantive appointment against a clear vacancy was to be placed on probation from the date of his joining the duty. The court also rules that, in accordance with the Regulations the date of the substantive appointment is the date which is relevant for determining seniority.

13. It is not in dispute that the appointments of the petitioner and the respondent No. 3 were made against clear vacancies and on substantive basis. It is also not in dispute that when the appointments of the petitioner and the respondent No. 3 were made the institution was not governed by the Act. It, therefore, cannot be contended that the appointment of the petitioner and the respondent No. 3 was made without prior approval of the respondent No. 1 and as such suffered from any legal infirmity. The approval granted by the respondent No. 1 vide his Order, dated 14th March, 1975 was necessitated because of the upgradation of the institution as High School. By approving the appointments of the petitioner and the respondent No. 3, in fact the respondent No. 1 only rectified their appointments which had already validly taken place prior to the upgradation of the institution.

14. While granting approval to the appointments of the petitioner and the

respondent No. 3, the respondent No. 1 put them on one year's probation. The order putting the petitioner and the respondent No. 3 on one year's probation was, Apparently, passed in conformity with the provisions of Regulation 8 of Chapter III of the Regulations which made it obligatory of fix the period of probation to be one year. This period of probation, under Regulation 7 of Chapter III of the Regulations, had to commence from the date of joining the duty by the petitioner and the respondent No. 3, namely, 10th July, 1974 and 9th July, 1974 respectively.

15. Thus, it is absolutely clear that in the case of the petitioner the date of substantive appointment was 10th July, 1974 on which date he actually joined the duty, according to the finding of the respondent No. 1 recorded in the impugned order and in the case of the respondent No. 3 such date was 9th July, 1974 which was also found, as a matter of fact, by the respondent No. 1 in his impugned order.

16. Neither the Managing Committee nor the respondent No. 1 committed any error, much less of law, in computing the seniority of the petitioner and the respondent No. 3 on the basis of the date of their joining the duty. The contention of Sri Singh to the contrary is not correct.

17. Further, Sri Singh is not right in contending that the service rendered by the petitioner and the respondent No. 3 during the period between the date of their joining the institution and the date of approval by the respondent No. 1 could not be taken into account for want of prior approval to the appointment in question as at the relevant time prior approval was not legally required.

18. Computed on the basis of the date of joining, which is the date of substantive appointment of the petitioner and the respondent No. 3, the Managing Committee rightly declared the respondent No. 3 to be senior than the petitioner and the order of the respondent No. 1 upholding the decision of the managing committee is perfectly valid. The respondent No. 3 being senior to the petitioner has been validly approved for promotion by the respondent No. 1 by the order dated 10th July, 1981. The impugned orders dated 10th December, 1980 (Annexure 10th to the petition) and the two orders of the respondent No. 1 dated 9th July, 1981 (Annexure "14" and "15" to the petitioner) are perfect and do not call for any interference by this court.

19. In the result, the petition fails and is hereby dismissed. However, there will be no order as to costs.