
(1997) 11 AHC CK 0106
In the Allahabad High Court
Case No : C.M.W.P. No. 32056 of 1997

Ram Swaroop Kainthola

APPELLANT

Vs

Director of Education (Secondary), U.P., Allahabad and others

RESPONDENT

Date of Decision : 20-11-1997

Acts Referred:

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

Citation : (1998) 2 AWC 1246

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Rakesh Thapliyal, for the Appellant; S.C. and B.D. Upadhaya, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order dated 16.8.1997. passed by the Director of Education (Secondary) U. P. Allahabad, respondent No. 1, holding that Sri Ganga Singh Bisht, respondent No. 4. Is senior to the petitioner.

2. The dispute relates as to the seniority between the petitioner and respondent No. 4. The undisputed facts are that respondent No. 4 was appointed in B.T.C. grade in Higher Secondary School. Maundari. Post Office Dandatalla. district Garhwal on 1.8.1975. The petitioner was also appointed in the same institution in B.T.C. grade on 1.8.1977. The Institution was upgraded to the level and the petitioner and respondent No. 4 were promoted in C.T. grade on 9.1.1985. There is no dispute that in B.T.C. grade respondent No. 4 was senior to the petitioner. The controversy is in respect of the seniority in L.T. grade. On up-gradation of the Institution to the level of High School on 9.1.1985. three posts of L.T. grade teachers were also created by the Director of Education on 9.7.1989. On creation of three posts of L.T. grade teacher, one post of L.T, grade teacher was kept reserved for the Head Master who was promoted on ad hoc basis and for

remaining two posts vacancies were notified to the U. P. Secondary Education Services Commission. One Govind Ram Mangain was functioning as Head Master of Junior High School, He was promoted to the post of Head Master on ad hoc basis after the Institution was upgraded to High School under Para 4 (c) of U. P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981. Respondent No. 4 was promoted on ad hoc basis treating it as short term vacancy on 26.4.1990. One Yudhbir Singh who was next junior to respondent No. 2 was promoted on ad hoc basis in L.T. grade on 10.3.1992. One Kiran Pal who was recommended by the U. P. Secondary Education Services Commission for appointment to the post of Assistant Teacher in L.T. grade was appointed in the Institution on 1.10.1992. In the meantime Sri Govind Ram, Head Master of the Institution retired on 30.6.1994. The services of the petitioner were regularised on 23.4.1994 on that post by the order of the Director of Education. The petitioner was given L.T. grade on 9.1.1995 on account of the fact that he had completed ten years as a teacher in C.T. grade.

3. The contention of learned counsel for the petitioner is that if the teachers are working in the same grade, the seniority will be counted on the basis of age. The petitioner being senior in age to respondent No. 4, he shall be treated as senior to respondent No. 4. He has placed reliance upon Regulation 3 (1) (b) of Chapter II of the Regulations framed under the U. P. Intermediate Education Act which provides that seniority of teachers in a grade shall be determined on the basis of their substantive appointment in that grade. If two or more teachers were so appointed on the same day, the seniority shall be determined on the basis of age. This clause has no application to the facts of the case after insertion of clause (bb) which is more in explanatory nature in reference to clause (b). This clause provides that where two or more teachers working in a grade are promoted to the next higher grade on the same day, their seniority inter se shall be determined on the basis of length of their service to be reckoned from the date of their substantive appointment in the grade from which they are promoted. The Junior High School Maundari was upgraded from Junior High School to Higher Secondary School on 19.1.1985. It was recognised by the State Government. The contention of the petitioner is that on upgradation of the Junior High School to Higher Secondary School, the petitioner as well as respondent No. 4 were merged into C.T. grade. Both of them shall be treated as working in C.T. grade since then. The length of service in B.T.C. grade shall not be counted while considering the seniority in C.T. grade. This contention of the petitioner cannot be accepted. In view of clause (bb) of Regulation 3 (1), the length of service in be counted. Respondent No. 4 shall be treated as senior to the petitioner in C.T. grade.

4. Learned counsel for the petitioner then urged that the Government issued an order on 18th March. 1986 (Annexure-6 to the writ petition) wherein it has been stated that the period in B.T.C. grade was not to be counted. A perusal of the said Government Order dated 18.3.1986 indicates that is only in respect of promotion to the 40 per cent quota to higher grade from C.T. grade. The

requirement was that a teacher must work for about five years before seeking promotion. This Government Order does not run contrary to clause (bb) of Regulation 3 (1) of Chapter 11 of the U. P. Intermediate Education Act. 1921.

5. Respondent No. 4, being senior to the petitioner in C.T. grade, was entitled to be promoted to the post of Assistant Teacher in L.T. grade in preference to the petitioner. It was due to his seniority, he was promoted to L.T. grade on 26.4.1990 on account of promotion of Govind Ram. as Head Master of High School, Govind Ram retired on 30.6.1992 and the services of respondent No. 4 as L.T. grade teacher were regularised on 23.4.1994. Out of the three posts created by the Director of Education, one Sri Yudhbir Singh Rawat who was senior to the petitioner was promoted as L.T. grade teacher on ad hoc basis on 10.3.1992. In case respondent No. 4 had not been promoted on ad hoc basis on 23.4.1990, respondent No. 4 was entitled to be promoted to the post of L.T. grade teacher prior to the promotion of Yudhbir Singh Rawat.

6. Learned counsel for the petitioner further contended that the services of respondent No. 4 could not be regularised to the post of Assistant Teacher in L.T. grade u/s 33B of U. P. Secondary Education Services Commission and Selection Boards Act in view of the Circular dated 19.4.1993 annexed as Annexure-4 to the writ petition. He has referred to Para 2 of clause "Ka" of this Order which provides that if a teacher has been promoted to higher grade on ad hoc basis, he will retain his lien for the said post against any person who has been appointed/promoted in accordance with the provisions of U. P. Secondary Education Services Commission (Removal of Difficulties) Order (Second), 1981. Respondent No. 4 was promoted to the post of Assistant Teacher in L.T. grade on promotion of Govind Ram Mangain who was appointed as Head Master of Higher Secondary School. He was entitled to have a lien to the post of Assistant Teacher in L.T. grade.

7. Admittedly, respondent No. 4 was promoted as Assistant Teacher L.T. grade on ad hoc basis in the year. 1990. Govind Ram was appointed as Head . Master of Higher Secondary School on 18.1.1990. Govind Ram retired on 30th June, 1992. He never claimed any lien on the post on which respondent No. 4 was promoted. If he had been reverted from the post of Head Master, he would have claimed the right to be appointed as Assistant Teacher in L.T. grade. The condition provided in para 2 of clause "Ka" of the Government Order dated 19.4.1993. In these circumstances, is not applicable in the case of respondent No. 4. Secondly, the Government Order dated 19.4.1993 cannot be given effect to if it contravenes the provisions of Section 33B of U. P. Secondary Education Services Commission and Selection Boards (Amendment) Act. 1992.

8. The petitioner has further challenged the ad hoc appointment of respondent No. 4 on the ground that the procedure adopted for promotion was not followed as contemplated in Para 2 of the said order. It is not disputed that there was one post of Assistant Teacher in L.T. grade vacant. Respondent No. 4 being seniormost Assistant Teacher in C.T. grade in preference to the petitioner was

entitled for promotion to the said post. Secondly, the petitioner had never challenged the promotion of respondent No. 4 when it was made in the year 1990 and now there is hardly any justification to challenge the said promotion. Further, his promotion has been regularised by the order of the District Inspector of Schools on 23rd April, 1994 and that also remained unchallenged.

9. Admittedly, three posts were created by the Director of Education after upgradation of the Institution to High School level. Respondent No. 4 was admittedly senior to petitioner in C.T. grade and otherwise entitled to be promoted to the post of L.T. grade teacher in those vacancies prior to the petitioner. One Yudhbir Singh Rawat, who was senior to the petitioner was also promoted to L.T. grade teacher. The petitioner has not been appointed to the post of L.T. grade teacher on the basis of the vacancy to that post but he has been given L.T. grade on account of the fact that he had completed ten years service as C.T. grade and in view of the Government Orders those teachers who had completed ten years of teaching work in C.T. grade were given L.T. grade. The petitioner, in these circumstances, cannot be said to be senior to respondent No. 4. The order passed by respondent No. 1 does not suffer from any manifest illegality.

10. The writ petition is accordingly dismissed.