
(2014) 11 AHC CK 0217
In the Allahabad High Court
Case No : Writ A. No. 41068 of 1996

Satyabhama

APPELLANT

Vs

Regional Dy Director of Edu. (Secondary)

RESPONDENT

Date of Decision : 12-11-2014

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16E(ii)

Citation : (2014) 11 ADJ 464 : (2015) 1 AWC 420 : (2015) 1 ESC 496

Hon'ble Judges : Rajan Roy, J

Bench : Single Bench

Advocate : Ashok Khare and Siddharth Khare, Advocate for the Appellant; Daya Shnakar, K.N. Singh and P.K. Jain, S.C, Advocate for the Respondent

Judgement

@DELETEUPPERDATA

Rajan Roy, J.—Heard Shri Siddharth Khare, learned counsel for the petitioner and learned Standing Counsel for respondents No. 1, 2 and 3. None appears for the respondent No. 5.

2. The petitioner and respondent No. 5 were appointed as lecturer in the respondent institution vide order dated 30.11.1972 and there is no dispute in this regard. It is also not in dispute that in pursuance to the aforesaid order of substantive appointment, the petitioner joined on the post in question on 1.12.1972 whereas respondent No. 5 joined earlier, i.e., 30.11.1972. In paragraph 13 of the writ petition a categorical assertion has been made that the aforesaid appointment of the petitioner and respondent No. 5 were approved by the competent authority by the same order of the same date passed sometime in December, 1972. This fact has not been categorically and specifically denied by any of the respondents.

3. A seniority list of lecturers was issued by the management in the year 1981-82 wherein the petitioner was shown as senior to the respondent No. 5. Thereafter, on 11-3-1985, an order was passed by the respondent No. 2

declaring the respondent No. 5 as senior to the petitioner on the ground that the respondent No. 5 has joined her service prior to the petitioner, as already mentioned in the earlier part of this judgment.

4. Being aggrieved, the petitioner filed a writ petition before this Court challenging the aforesaid order dated 11.3.1985 which was disposed of on 22.1.1996 setting aside the said order on the ground of violation of principles of natural justice with liberty to the respondents to pass a fresh order after giving due opportunity of hearing.

5. In pursuance to the aforesaid, the Deputy Director of Education, Agra Region, Agra, issued a notice to the petitioner and other concerned on 26.4.1996. In response thereto, the petitioner herein, replied and the other concerned persons also filed the reply.

6. In the meantime, while the proceedings were pending before the Deputy Director of Education, Agra Region, Agra, the regular incumbent working on the post of Principal retired on 30.6.1997.

7. On 1.7.1997, an order was passed by the management, appointing respondent No. 5 as officiating Principal of the institution which was approved by the official respondent.

8. Being aggrieved, the petitioner herein, filed a writ petition before this Court which was disposed of vide judgment dated 5.8.1996 with a direction to the Deputy Director of Education (Secondary), Agra Region, Agra, to decide the inter se seniority dispute between the petitioner and respondent No. 5 within a stipulated period.

9. In pursuance to the aforesaid, the impugned order dated 26.11.1996 was passed, wherein, the respondent No. 5 has been held to be senior to the petitioner, consequently, her officiation on the post of Principal of the institution has been affirmed.

10. The contention of Shri Khare, learned counsel for the petitioner is that both the contesting parties having been substantively appointed by an order of the same date and such appointment having been approved by the competent authority on the same date by the same order, it is their age which would be the determining factor in the matter of seniority, in view of the provisions contained in Regulation 3(1)(b) of Chapter II of the Regulations framed under U.P. Intermediate Education Act, 1921 (for short "Act of 1921"). The contention is that the petitioner being elder in age was senior and his seniority was wrongly upset by the respondents resulting in officiating appointment of respondent No. 5 and deprivation of right of the petitioner to officiate as Ad hoc Principal and causing financial loss to her. The petitioner has mentioned her date of birth in paragraph 9 of the writ petition as 10.8.1939, whereas the date of birth of respondent No. 5 is mentioned as 14.1.1942. He contends that this fact has not been denied in the counter affidavit.

11. Learned counsel for the petitioner submitted that keeping in mind the financial loss caused to the petitioner, she should be treated as officiating Principal w.e.f. 1.7.1996 with consequential salary of the post etc.

12. Shri Khare has contended that as the petitioner was willing to work but was prevented to do so, therefore, the principle "no work, no pay" will not apply and the petitioner shall be entitled to full salary for such period during which she was prevented from working as officiating Principal.

13. In this regard he has relied upon the judgments of this Court in Brijendra Prakash Kulshrestha Vs. Director of Education, Deputy Director of Education, Agra Region, District Inspector of Schools and Committee of Management, Saraswati Inter College, and in Kishori Lal Vs. Chairman Board of Directors, .

14. The contention of learned Standing Counsel is that as the respondent No. 5 has joined on the post of lecturer prior to the petitioner, therefore, she has rightly been held to be senior to the petitioner.

15. I have heard learned counsel for the parties and perused the record.

16. The seniority of teachers in the institution in question is to be determined in accordance with the provisions contained in Regulation 3 of Chapter II of the Regulations framed under the Act of 1921. Regulation 3 of the Regulations is extracted as hereinbelow:

"3. (1) The Committee of Management of every institution shall cause a seniority list of teachers to be prepared in accordance with the following provisions-

(a) The seniority list shall be prepared separately for each grade of teachers whether permanent or temporary, on any substantive post;

(b) 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 date, seniority shall be determined on the basis of age;

(bb) Where two or more teachers working in a grade are promoted to the next higher grade on the same date, their seniority inter se shall be determined on the basis of the length of their service to be reckoned from the date of their substantive appointment in the grade from which they are promoted:

Provided that if such length of service is equal, seniority shall be determined on the basis of age.

(2) The seniority list shall be revised every year and the provisions of Clause (1) shall mutatis mutandis apply to such revision."

17. The aforesaid provision clearly states that the seniority of teachers shall be determined on the basis of their substantive appointment on the said post. Substantive appointment in this case would be an appointment which is duly approved by the competent authority. Both the petitioner and respondent No. 5 were appointed vide order dated 30.11.1972. The averments made in paragraph

13 of the writ petition to the effect that their appointments were duly approved by the same order passed sometime in December 1972 has not been categorically and specifically denied by any of the respondents by asserting to the contrary. A bald denial has been made which is no denial in the eye of law. No material has been produced before the Court to establish that the respondent No. 5's appointment was approved prior to that of the petitioner. The contents of paragraph 9 of the writ petition wherein their respective dates of birth have been mentioned, have also not been denied by the respondents and there is nothing on the record to show to the contrary. The petitioner having been born on 10th August 1939 is older in age to the respondent No. 5 herein, who was born on 14.1.1942, therefore, clearly in view of the aforesaid provisions, the petitioner was senior to respondent No. 5.

18. On a perusal of the impugned order, I find that the concerned authority has only considered part of the provisions contained in Regulation 3 (1)(b) of the Regulations that too cursorily and superficially. He has only referred to the first line of the provision to the effect that seniority will be determined on the basis of the date of substantive appointment and thereafter has proceeded to consider the date of joining of the contesting parties and has held the respondent No. 5 to be senior based thereon, without noticing that the date of joining is not mentioned as a criteria for determining seniority, instead, in the event two or more persons have been appointed on the same date, then, their age is to be the determining factor. He has not at all considered the age of the parties while determining the seniority dispute. Thus, clearly the consideration of the said authority is without adverting to the relevant and complete provisions, referred to hereinabove. In this regard, learned counsel for the petitioner has relied upon a decision of the Lucknow Bench of this Court in Jagat Narain Dwivedi Vs. District Inspector of Schools, Pratapgarh and others, . In paragraph 4 and 13 of the said judgment it has been held that where the order of appointment and approval are of the same date, then, it is the age that is the determining factor in the matter of seniority of the teachers.

19. As no interim order has been passed in this case, therefore, the respondent No. 5 officiated on the post of Principal of the institution w.e.f. 1.7.1996 to the date of her retirement on 30.6.2002.

20. The petitioner herein, retired from service on 30.6.2000 therefore, due to the aforesaid circumstances she was prevented from working as officiating Principal inspite of being senior. It is trite that in absence of regularly selected candidate for the post of Principal the senior most teacher shall officiate as Ad hoc Principal. In this regard a provision is contained in Section 16E(ii) read with the Proviso to Regulation 2 of Chapter II of the Regulations made under the Act of 1921 and in Section 18 of the U.P. Secondary Education Service Selection Board Act of 1982. It is nobody's case that the petitioner was otherwise ineligible for such officiation and did not have the requisite qualification. Had the seniority been rightly determined, she would have officiated as Principal of the institution

w.e.f. 1.7.1996 till 30.6.2000. There is no dispute that an officiating Principal is also entitled to the salary of the post in question and consequential benefits resulting therefrom.

21. In view of the above, the impugned order cannot be sustained and the same is, accordingly, quashed.

22. As the respondent No. 5 has already worked as officiating Principal in the institution w.e.f. 1.7.1996 to 30.6.2002, she must have been paid salary against the said post, therefore, considering the aforesaid fact and also the fact that the petitioner actually did not function on the said post during the aforesaid period, it is not possible to grant salary of the post of Principal to the petitioner as claimed by her, however, considering the fact that her statutory right was violated on account of arbitrary and illegal action of the official respondent No. 1, Deputy Director of Education, Agra Region, Agra, the petitioner deserves to be compensated for the financial loss caused to her. Considering the facts and circumstances of the case an amount of Rs. 2 lakh payable by the State Government to the petitioner shall be adequate compensation to the petitioner. The aforesaid amount shall be paid by the respondent State to the petitioner within two months. In addition to the above, it is provided that the salary of the petitioner shall be fixed treating her as officiating Principal of the institution w.e.f. 1.7.1996 notionally and based thereon, the post retirement benefits like pension, etc. be revised and re-fixed, if permissible under the rules, within a period of six months from the date a certified copy of this order is produced before the concerned officer. The salary, emoluments and post retirement benefits already paid to the respondent No. 5 and consequential benefits based thereon, shall remain unaffected by this judgment.

23. In view of the aforesaid, the writ petition is allowed.