

(1991) 09 AHC CK 0007

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 20090 of 1991

Shabbir Ahmad

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 11-09-1991

Acts Referred:

Uttar Pradesh Fundamental Rules — Rule 12A
Uttar Pradesh Intermediate Education Act, 1921 — Section 16A
Uttar Pradesh Secondary Education Services Commission Rules, 1983 — Rule 8(3),
8(4), 9, 9(1), 9(3)

Citation : (1991) 2 AWC 536

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : R.B.D. Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

S.R. Singh, J.—Janta Inter College, Jhabiran, Saharanpur is a recognised and aided non-government Intermediate College, affairs of which are managed by a Committee of Management constituted in accordance with the Scheme of Administration approved u/s 16-A of the U.P. Intermediate Education Act. The appointment of teachers in the college is, however, governed by the provisions contained in U.P. Secondary Education Services Commission and Selection Boards Act, 1982. The Petitioner as also the third Respondent are admittedly working as teachers in L.T. Grade in the said institution. The facts of the case in brief are that one Man Singh Verma, a permanent lecturer of the college, was selected and appointed as Principal in another college with effect from 4-1-1985. His appointment to the post of Principal was initially made on one year's probation. It appears that on expiry of the probationary period, Sri Man Singh Verma stood confirmed in the post of Principal in Gandhi Uchchar Madhyamik Vidyalay Ametha, District Saharanpur with effect from 4-1-1986. The post which fell vacant consequent upon Sri Verma being selected and appointed as Principal in another college, comes under 50% quota reserved for promotion. The

Petitioner as also the Respondent No. 3 staked their claims before the Committee of Management and the District Inspector of Schools for being considered for promotion to lecturer's grade in accordance with Rule 9 of U.P. Secondary Education Services Commission Rules, 1983. The said rule being relevant for the purposes of the present case may be reproduced below.

9. Procedure for appointment by promotion-

(1) Where any vacancy is to be filled by pro notion, all teachers working in L.T. or C.T. grade, who possess the minimum qualifications and have put in at least 5 years continuous service as teacher on the date of occurrence of vacancy shall be considered for promotion to the lecturer or L.T. grade as the case may be without their having applied for the same.

(2) The criterion for promotion shall be seniority subject to the rejection of unfit

(3) The management shall prepare a list of teachers, referred to in Sub-rule (1), and forward it to the Commission through the inspector with a copy of seniority list, service records including the character rules and a statement in the proforma given in Appendix "A".

(4) Within three weeks of the receipt of the list from the management under Sub-rule (3), the Inspector shall verify the facts and forward the list to the Commission.

(5) The Commission, shall, after calling for such additional information as it may consider necessary, intimate the name of selected candidate or candidates to the Inspector with a copy to the Manager of the Institution.

(6) Within 10 days of the receipt of the intimation from the Commission under Sub-rule (5), the Inspector shall send the name of the selected candidate (s) to the Manager of the concerned institution and the provisions of Sub-rules (3) and (4) of Rule 8 shall mutatis mutandis apply.

From the above rule, it is evident that criterion for promotion is seniority subject to the rejection of unfit. The other requirement is that only such teachers are eligible for promotion, who possess the minimum qualification as prescribed in Appendix to regulation 1 of Chapter II of the Regulations and five years minimum substantive service in the lower grade i.e. L.T. grade in the instant case. Admittedly, the Petitioner did not possess the academic qualification, prescribed for the post of lecturer Sociology in 1996. He acquired the minimum qualification for the first time in the year 1988 when he passed his M.A. in sociology. The submissions advanced by Sri A.K. Yog. learned Counsel appearing for the Petitioner is that the lien of Sri Man Singh Verma on the post in question came to an end for the first time on 18-5-1990 when the Authorised Controller by his letter dated 18-5-90 (Annexure 2 to the writ petition) informed Shri Man Singh Verma that his lien stood extinguished with effect from the said date for the reasons set out in the letter.

2. Sri B.D. Madhyan, learned Counsel appearing for the Respondent No. 3 ur).H(I before me that the lien stood automatically terminated with effect from 4 1-1986 when Sri Man Singh Verma was confirmed on the post of Principal in Gandhi Uchhtar Madhyamik Vidyalaya on the expiry of the period of probation which was not extended any further. His contention further is that even according to Regulation 12 of Chapter III of the Regulations, the probationary period could not have been extended beyond 12 months i.e. beyond 4-1-1987 The Petitioner admittedly acquired degree in M.A in sociology in the year 1988 and therefore, if it is held that the vacancy occurred in the year 1986 or 1987, then in that event the Petitioner would not be possessed of requisite qualification on the day of occurrence of the vacancy within the meaning of rule 9 of the rules, and for that reason he would not be eligible for being considered for promotion to the post in question.

3. Sri Yog, learned Counsel for the Petitioner has placed reliance upon a Division Bench Decision of this Court in Avadesh Kumar Verma v. District Inspector of Schools Barabanki 1987 UP LB EC 236, wherein it was held that unlike Rule 12-A of U.P. Fundamental Rules, the regulation made under the U.P. Intermediate Education Act do not provide that a teacher cannot simultaneously have lien on two posts and that Rule 12-A of the Fundamental Rules is not applicable to the teachers of private institutions. Sri Yog place reliance upon the following observation of the Division Bench.

8. In the absence of any statutory provision or administrative order, the matter will have to be decided on the basis of the general law applicable to the relationship of matter and servant in private institutions under the general law, the matter will be governed by the terms of contract. An employer may prohibit the employee from taking up any other employment under another employer. In the absence of such prohibition the employee may take up another employment, the former may condone the breach of prohibition by allowing him to continue with both the employments simultaneously or may grant him leave with or without pay for the period the employee remains in the latter employment Even under Fundamental Rule 12-A it is not an absolute proposition of law the it the Government Servant on the substantive appointment to any permanent post cease to hold lien previously acquired on any other post. The rule opens with the word "unless in any case it be otherwise provided " From this it would appear that even in respect of a Government Servant there may be a rule under which a lien previously acquired on any post may not be lost by the Government Servant on getting substantive appointment to a permanent post subsequently.

The other authority which the learned Counsel for the Petitioner has placed reliance upon is one from Hon''ble the Supreme Court in State of Punjab and Others Vs. Labhu Ram and Others, . The Supreme Court in the sjid case has observed as follows:

According to the rules set out above, lien of the Petitioners in the junior Vernacular cadre was retained by them and it could not be suspended by them

are fact that they were performing the duties of teachers working in the senior vernacular cadre. Nothing beyond this was disclosed by the facts of this case.

Sri B.D. Madhyan on the other hand placed reliance upon a recent decision of the Supreme Court in *Ramlal Khurana (Dead) By Lrs. Vs. State of Punjab and Others*, wherein the Hon. Supreme Court was pleased to lay down the following propositions as accepted principles of Service jurisprudence.

8. The other contention urged for the Appellant that he was not confirmed in the Excise Department and unless confirmed, he acquired No. lien cannot also be accepted; Lien is not a word of Article It just can notes the right of a civil servant to hold the post substantively to which he is appointed. Generally when a person with a lien against a post is appointed substantively to another post, he acquires a lien against the latter post. Then the lien against his previous post automatically disappears. The principle being that No. government servant can have simultaneously two liens against two posts in two different cadres. It is well accepted principle of service jurisprudence.

4. I have bestowed my thoughtful considerations upon the submissions advanced by the learned Counsel for the Petitioner and I am of the view that in the absence of statutory rules stipulating the teachers to retain lien simultaneously on permanent post in two different institutions The Petitioner who was selected and appointed as Principal in another college in the substantive capacity, cannot be held to have retained his lien in the college of the present case on the post of teacher in L.T. grade. To hold that he continued to retain his lien in the institution, would in my opinion be contrary to the public policy as also to the interest of the Educational Institution. The view taken by the Supreme Court in *Ram Lal Khurana's* case (supra) is based on General service jurisprudence, irrespective of Rule 12-A of the U.P. Fundamental Rules. The proposition laid down by the Supreme Court, over-rules the law laid down by the Division Bench in *Awadesh Kumar Verma's* case and is this view of the Matter, it would be useful to quip here that the decision rendered by the Division Bench of this Court, No. longer holds water in view of the broad propositions of law laid down by the Supreme Court in *Ram Lal Khurana's* case. In view of this the admitted case is that the Petitioner was not qualified in that he had not acquired the degree of MA in sociology on the day of occurrence of the vacancy i.e. 4-1-1986 and in any case on 4-1-1986 beyond which date the probation could not be extended in view of the regulation 12 of Chapter in of the Regulations. Accordingly the logical consequence of regulation 12 of Chapter III of the Regulations is that Sri Verma stood automatically confirmed on expiry of the probationary period It is true that the order of confirmation has to be made as provided in Regulations 13 and 14 on objective assessment of factors mentioned in Regulation 9, but Regulation 11 specifically provides that unless before the expiry of the period of probation, the service of the Head Mister, principal or a teacher is terminate or action is taken to dismiss, discharge or remove him or reduce him in rank or in the case of Head Master or Principal die period of Probation is extended under Regulation 12, he

would be confirmed on the post and in the grade at the end of his probation. In view of this the contention of Sri B.D. Madhyan that Sri Verma stood confirmed in 1986 as Principal and that being so Sri Verma had lost his lien which in my opinion, was not dependant upon passing of an order of the Committee of Management cannot but be accepted. The order contained in letter dated 18th May, 1990 of the authorised Controller, terminating the lien of Sri Man Singh Verma could not have the effect of reviving the termination of the lien which automatically stood extinguished by reason of the confirmation of Sri Verma on the post of Principal in another institution in view of the law laid down by Hon. Supreme Court in Ram Lal Khurana's case (supra).

5. In the instant case, the District Inspector of Schools, forwarded the name of the Petitioner as also the Respondent No. 3, even though, in consequence of my finding aforesaid, the Petitioner is not eligible for being considered for promotion to the post in question in accordance with rule 9 of the rules.

6. Sri A.K. Yog, relying upon the letter written by Sri Man Singh Verma to the District Inspector of Schools, a copy of which has been annexed as Annexure R.A. 1 to the rejoinder affidavit, stating therein that the post of principal in Gandhi Uchchar Madhyamik Vidyale on which he has been appointed, is subject to a litigation which has been pending consideration before Hon'ble Supreme Court, has contended before me that the post of Principal in Gandhi Uchchar Madhyamik Vidyale being disputed one, Sri Verma cannot be said to have acquired lien on the said post and therefore, he cannot be said to have lost his lien on the post of lecturer in the instant college. This letter does not come to the rescue of the Petitioner by any stretch of imagination as he has acquired the right to the post of Principal on his own.

7. In the result, the petition fails and is dismissed. The parties shall bear their own costs.