

(1985) 09 AHC CK 0001

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 10524 of 1978

Sheo Nath Dubey

APPELLANT

Vs

The District Inspector of Schools and Others

RESPONDENT

Date of Decision : 28-09-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9
Constitution of India, 1950 — Article 226
Uttar Pradesh Intermediate Education Act, 1921 — Regulation 3

Citation : (1985) 09 AHC CK 0001

Hon'ble Judges : K.C. Agrawal, J;A.S. Srivastava, J

Bench : Division Bench

Advocate : S.P. Gupta, S.N. Misra, V.N. Dubey and V.S. Saxena, for the Appellant; B. Dixit and B.D. Agarwal, for the Respondent

Judgement

K.C. Agrawal, J.—The dispute between the Petitioner on the one hand and Respondent No. 3, Chhotey Lai Sharma on the other, both of whom are employed as teachers in the Azad Hind Intermediate College, Karnal, district Mainpuri, is relating to seniority.

2. The relevant facts briefly stated are these. Azad Hind Intermediate College, Karnal was run by a Society known as Karnal Education Society, Karnal. It established an institution in 1947 for imparting education up to Junior High School (YI II class). In 1954, this institution was recognized as High School by the U.P. Board of High School and Intermediate Education. As a result of this recognition, it became High School. On 29th June, 1958, recognition was granted by the Board for opening Inter Commerce. History was one of the optional subjects for the Inter Commerce students.

3. In pursuance of the recognition letter- dated 29th June. 1958, the Committee of Management on 6th July, 1958 decided to start Intermediate classes in Commerce and for that purpose through a resolution passed on that date, Respondent No. 3 was appointed as a lecturer on probation for one year. Sri

Nathu Ram Bhataley was also appointed as Principal of the College. An appointment letter was issued to Respondent No. 3 directing him to join as lecturer on 8th July, 1958.

4. So far as the appointment of the lecturers in optional subject other than Commerce was concerned, the Managing Committee did not take any decision on 6th July, 1958. It was uncertain at that time as to how many students were willing to join History.

5. The Petitioner, Sheo Nath Dubey, who was already a teacher in the High School, was called upon by the Committee of Management to teach History to the students of Intermediate Commerce. The claim of the petitioner was that he was appointed with effect from 1st July, 1958 and since by virtue of that appointment with effect from 1st July, 1958, he was senior to Respondent No. 3 who had been appointed on 08.07.1958 for a probationary period of one year, he was entitled to be treated as senior. The Petitioner claimed that by virtue of his appointment with effect from 01.07.1958, he was confirmed OH 01.07.1959 and also was given increment with effect from that date. The Petitioner claimed that he was continued to be shown as senior to Respondent No. 3 for considerably long time. In 1971/72, when the Petitioner was not given the charge of the Principal, he made enquiries and found that the Petitioner was being treated as junior to Respondent No. 3. As in the letter seeking approval of the appointment of the Petitioner, his date of appointment was mentioned as 11-07-1958. The Petitioner was extremely surprised on knowing that he was treated as junior to Respondent No. 3 on the ground of date of his appointment being 11-07-1958. He claimed that his date of appointment was 01-07-1958 and not 11-07-1958. Consequently, he made a representation to the District Inceptor of Schools, who enquired about the matter from the Manager of the Committee of Management by his letter dated 07-06-1977. The Manager sent the relevant information to the District Inspector of Schools. He also requested through this letter that the question of seniority between the Petitioner and Respondent No. 3 be decided by the District Inspector of Schools himself.

6. On 30-07-1977, the District Inspector of Schools decided that the date of appointment of the Petitioner was 01-07-1958 and, therefore, he was senior to Respondent No. 3.

7. On 01-10-1977, when the Manager of the Committee of Management learnt that the question of seniority was initially -required to be decided by the Committee of Management Under Chapter II Regulation 3 of the U.P. Intermediate Education Act, he wrote a letter to the District Inspector of Schools. The District Inspector of Schools wrote back to the Manager of the College by his letter dated 07.10.1977 that determination of seniority by the letter dated 30.07.1977 by him be not treated effective because the seniority had to be first decided by the Committee of Management.

8. At that stage, the Petitioner felt aggrieved and filed a writ petition in this Court

on the ground that the District Inspector of Schools did not have power to revoke his earlier Order dated 30-07-1977. The writ petition was dismissed. Thereafter, the second battle between the Petitioner and Respondent No. 3 started. The Committee of Management considered the question of enormity and rejected the representation on 18-07-1978 by holding that Respondent No. 3 was senior to the Petitioner. The Petitioner preferred an appeal to the District Inspector of Schools as is provided by Chapter II Regulation 3. The appeal was also dismissed on 28-11-1978. Aggrieved, the Petitioner has filed the present writ petition on the grounds :

(i) that the appointment of the Petitioner being with effect from 01-07-1958, he was senior to Respondent 3, alternatively, the Petitioner since was older in age, was entitled to be treated as senior even if both of them were held to be appointed on 08-07-1958.

(ii) that the resolution of the Executive Body dated 07-07-1959 was void inasmuch as it was passed behind the back of the Petitioner notifying his date of appointment to be 11-07-1958. The date of the Petitioner's appointment in the Service Book being 01-07-1958 the Petitioner should be deemed to have been appointed on that date.

9. Two counter affidavits have been filed-one by Respondent No. 3 and the Ors. By the State of U.P. In both of these counter affidavits, the date of appointment of the Petitioner was claimed to be 11-07-1958 and not 01-07-1958.

10. Before coming to the merits, we find two relevant facts, one of which was not disclosed by the Petitioner in the writ petition. The same was that the Petitioner had filed a suit No 120 of 1974 for declaration of his right to be senior to Respondent No. 3, Chhotey Lai Sharma, who had been imp leaded as one of the Defendants in the same. The suit was dismissed by the order of the Civil Judge, Mainpuri dated 25-03-1976. The said Order is as Under

25-03-1976.

No cause shows by Plaintiff dated hence the suit is liable to be dismissed for want of presentation.

ORDER

The suit is hereby dismissed for want of presentation with Costs to three Defendants who have appeared.

11. In the rejoinder affidavit, the Petitioner has come out with an excuse for not disclosing the fact of dismissal of the suit in the writ petition which appears to us to be a lame one His explanation is that as he was not getting leave from the College for pursuing the suit, he had no alternative but to leave the same. It was his duty to have disclosed the said fact in the writ petition. Be that as it may. from the order it appears that on the date when the suit was taken up, the Defendant was present in the court and the order indicates that the Petitioner

had since failed to show cause for which he had been granted time, it was dismissed for want of prosecution. To the filing of the writ petition, the principle of Order IX Rule 9 applied. In the view of the applicability of the principle, the present writ petition was barred. It is true that Order IX Rule 9 applies to a civil suit in terms but, as stated above Order IX Rule 9, being behind the idea that no body should be harassed unnecessarily by fresh proceedings one after the other, would apply to the maintainability of the writ petition also,

12. In that suit the controversy was relating to the seniority of the Petitioner which he is claiming in this writ petition, it has been held in *Shanker Ratnchatdra Abhvankar v. Krishnali Dattatraya Bapat* AIR 1970 SC 1 that:

If there were two modes of invoking the jurisdiction of the High Court and one of those modes has been chosen and exhausted, it would not be a proper and sound exercise of discretion to grant relief in the other set of proceedings in respect of the same order of the subordinate Court. The refusal to grant relief in such circumstances would be in consonance with the anxiety of the Court to prevent abuse of process as also to respect and accord finality to its own decisions.

13. In *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, it was observed:

But where the industrial dispute is for the purpose of enforcing any right, obligation or liability under the general law or the common law and not a right, obligation or liability created under the Act, then alternative forums are there giving an election to the suitor to choose his remedy of whether moving the machinery Under the Act / to approach the civil court. It is plain that he cannot have both. He has to choose the one or the other.

14. Independently of the doctrine of election, the question of the sound exercise of judicial discretion is that having chosen the remedy of filing a suit, the Petitioner had the benefit of a meaningful hearing of the list herein. He cannot be permitted to harass a party by changing the forum of court from one to another. Judicial discretion requires the rejection of the writ petition on that ground.

15. One of the points raised by the Petitioner was that as the District Inspector of Schools had given his opinion about the seniority of the Petitioner earlier on the papers supplied to him by the Manager, he did not have power to recall the said Order dated 30-07-1977 and to direct that the same be not treated to be effective. The submission made cannot be accepted. Under Chapter II Regulation 3, the power to determine the seniority list was that of the Committee of Management. The Committee of Management had not determined the same and without its determination the Manager had forwarded the relevant papers to the District Inspector of Schools. Subsequently, when the Committee of Management came to learn that the papers were forwarded by the Manager incorrectly it called them back and having seen force in the objection that the District Inspector of Schools had no power to determine the seniority before its prior

determination by the Committee of Management, the District Inspector of Schools took the right view by recalling his Order dated 30-07-1977.

16. Apart from merits, this controversy was the subject matter of earlier writ petition filed by the Petitioner in this Court. The writ petition was dismissed. Dismissal of the writ petition resulted in adjudication of this controversy. The Petitioner having obtained decision of the same once cannot be permitted to raise this point again through this petition.

17. Coming to the question of seniority, we find after perusal of the resolution of the Committee of Management dated 18-07-1978 that the Petitioner in fact was appointed on a date later than that of the date of appointment of Respondent No. 3. The appointment of Respondent No. 3 was with effect from 08-07-1958 whereas that of the Petitioner was with effect from 11-07-1958. In fact, the College had no History classes of Intermediate up to 15th July, 1958. The Petitioner was asked to teach history to the Intermediate classes with effect from the date on which classes in that subject start from 15-08-1958. It was subsequently that his appointment was regularized by passing a resolution by the Committee of Management on 07-07-1959. The Committee of Management has given elaborately the reasons for holding Respondent No. 3 as senior to the Petitioner. In arriving at the finding, all the relevant papers were examined by the members constituting the Committee. From those papers, it was found that the Petitioner's appointment was not from 01-07-1958 as was claimed by him. This decision of the Committee was endorsed to the District Inspector of Schools when the appeal of the Petitioner was rejected.

18. The question of seniority of the Petitioner and Respondent No. 3 was thus decided on evidence. This finding is a finding of fact. This Court under Article 226 of the Constitution cannot sit in appeal over those findings and to set aside the same by revaluating the same.

19. The writ petition is consequently dismissed with costs to Respondent No. 3.