
(2008) 09 AHC CK 0011
In the Allahabad High Court

Shri Nath Sahai

APPELLANT

Vs

Devendra Nath Dwivedi and Others

RESPONDENT

Date of Decision : 12-09-2008

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 18

Citation : (2008) 09 AHC CK 0011

Hon'ble Judges : Ashok Bhushan, J;Arun Tandon, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Dr. H.N. Tripathi, learned Counsel for the appellant, Sri H.N. Pandey, for respondent No. 1, Sri A.K. Dwivedi for respondent No. 5 and learned Standing Counsel.

2. This is an special appeal against the judgment and order dated 23rd July, 2008 by which order the learned Single Judge has disposed of the writ petition with the direction that a lecturer appointed as Ad-hoc/Officiating Principal can continue as such only till he reaches the age of superannuation. Such a teacher cannot continue as Ad-hoc Principal subsequent to his date of superannuation, i.e., the period during which extension of service is granted in his favour. The appellant, who was respondent No. 5 to the writ petition, feeling aggrieved against the judgment and order dated 23rd July, 2008 has filed this appeal.

3. Brief facts of the case, which are necessary for deciding the issues raised in this appeal are; Gandhi Inter College, Maltari, district Azamgarh (hereinafter referred to as the "institution") is a recognised institution under the provisions of U.P. Intermediate Education Act, 1921 (hereinafter referred to as the Act) and is also governed by the provisions of U.P. High School and Intermediate Colleges (Payment of Salary to Teachers and other Employees) Act, 1971 as well as the U.P. Secondary Education Services Selection Board Act, 1982. The appellant was appointed as Lecturer on 18th July, 1969 in the institution. The post of Principal

of the institution fell vacant due to retirement of one Vishnu Yadav, who was working as regular Principal. The appellant, who was the seniormost Lecturer, was given charge as officiating Principal with effect from 1st July, 2006. The date of birth of the appellant being 7th July, 1945, he completed 62 years, i.e., the age of superannuation on 6th July, 2007. By virtue of Regulation 21 of Chapter-III of the Regulations framed under the Act, the appellant was to continue till 30th June, 2008, i.e., till the end of academic session. An order dated 17th June, 2008 was passed by the State Government granting extension of two years" service to the appellant he having been awarded a State award. The Committee of Management passed a resolution on 29th June, 2008 to the effect that the appellant, who was continuing till the end of academic session and is going to retire on 30th June, 2008, shall handover the charge of Principal to Sri Devendra Nath Dwivedi, respondent No. 1, who is next seniormost teacher in the institution. The Committee of Management also noticed that vide Government order dated 17th June, 2008 two years extension has been granted to the appellant, who during this period of extension shall work as Lecturer (Sociology).

4. The appellant/respondent No. 5 claims to have been working as officiating Principal since 1st July, 2006. The District Inspector of Schools asked for guidance from the Director of Education (Madhyamik) as to whether in consequence to the Government order dated 17th June, 2008, the appellant shall continue as ad-hoc Principal or not. The Director of Education wrote a letter dated 7th July, 2008 to the District Inspector of Schools stating that since the appellant has been working as ad-hoc Principal since 1st July, 2006 due to extension in service, he shall be given the same benefit which he was getting prior to extension.

5. The writ petition was filed by respondent No. 5 praying for quashing the order dated 7th July, 2008 and the consequential letter dated 11th July, 2008 issued by the District Inspector of Schools. The learned Single Judge relying on a Division Bench judgment of this Court in the case of Hari Om Tatsat Brahma Shukla v. State of U.P. and Ors. reported in (2007)1 UPLBEC 47 and another judgment in the case of Virendra Kumar Singh v. State of U.P. and Ors. reported in (2008) 1 UPLBEC 662 disposed of the writ petition by recording that the extension of 2 years service would enable the teacher concerned to continue as teacher only.

6. Dr. H.N. Tripathi, learned Counsel for the appellant, challenging the order dated 7th July, 2008 of the Director of Education, contends that by virtue of extension of services of the appellant vide Government order dated 17th June, 2008 he is entitled to continue to function as ad-hoc Principal of the institution and respondent No. 5 cannot be appointed as officiating Principal. Dr. Tripathi contends that even if it is accepted that extension of services of the appellant is as Lecturer (Sociology) he being seniormost in the institution, is entitled to function as ad-hoc Principal by virtue of Section 18 of U.P. Act No. 5 of 1982. He further submits that Division Bench judgment in Hari Om Tatsat's case (supra) was considering the status of a Lecturer, who was continuing after attaining the

age of superannuation only till the end of academic session. He submits that the law laid down in the said judgment is not applicable in the facts of the present case since in the present case the issue for consideration is the consequences which follow from the extension of service for a period of two years on the basis of a National/State award. Learned Counsel submits that learned Single Judge disposed of the writ petition without giving any opportunity of hearing to the appellant.

Sri H.N. Pandey appearing for respondent No. 1, refuting the submissions of learned Counsel for the appellant, contends that the appellant has no right to continue as ad-hoc Principal after he has attained the age of superannuation and the extension of his tenure for two years is qua his substantive post, i.e., the post of Lecturer (Sociology) and the Government order dated 17th July, 2007 specifically provides that teachers whose services have been extended shall work on teaching post. He submits that Division Bench judgment in Hari Om Tatsat's case (*supra*) is fully attracted in the facts of the present case and there is no distinction between a Lecturer continuing till the end of academic session and a Lecturer, who has been granted extension of two years of service on the basis of a National/State award.

8. Learned Counsel for the parties have relied on various decisions of this Court as well as Hon'ble Apex Court, which shall be referred to hereinafter while considering the respective submission.

9. Regulation 21, Chapter-III provides for age of superannuation. The age of superannuation was earlier 60 years, which has been extended to 62 years. The regulation further provides that if date of superannuation of any teacher falls between 2nd July and 30th June extension of service shall be automatically treated to have been granted till 30th June, i.e., at the end of the next session so that after summer vacation a teacher be appointed in his place. The regulation further provides that apart from above extension of service be granted only on specific conditions as provided by the State Government from time to time. Regulation 21, Chapter-III is quoted below:

21. Superannuation age of Principal, Headmaster, Teacher and other employees would be 60 years. If abovesaid superannuation age of any Principal, Headmaster and Teacher falls on any date in between 2nd July and 30th June, except in the condition when he himself, before two months of the date of superannuation, furnishes in writing the information for not seeking extension of service, extension of service up to 30th June shall be deemed to be conferred on him so that after summer vacation, substitute can be arranged in the month of July. In addition to this, extension of service could be granted only in such special cases which may be decided by the State Government.

If date of superannuation of any clerk or fourth class employee falls in the middle of any month, his extension of service would be deemed to be given up to the last date of that month. But if the date of appointment of any employee falls on

the first date of any month, he shall be retired on the last date of the preceding month.]

10. The extension of service of a person in employment is a concept well known to service law. After age of superannuation no employee has any right to claim continuance in service, however, the employer as per different service rules has been empowered to grant extension to services of an employee for the benefit of the organisation. It has been settled that there is no right in the employee to claim extension and it is for the employer, on fulfilment of conditions laid down, to grant extension. The Apex Court in the case of State Bank of Bikaner and Jaipur and others Vs. Jag Mohan Lal, had the occasion to consider the provisions of Rule 19 of the State Bank of Bikaner & Jaipur (Officers") Service Regulations, 1979, which provided that the competent authority may, at its discretion, extend the period of service of an officer who has attained the age of 58 years. The Apex Court considered the purpose and object of extension of service of an employee and laid down following in paragraph 11:

11. Look at the language of the proviso and the purpose underlying it. The Bank may in its discretion extend the service of any officer. On what ground? For what purpose? That has been also made clear in the proviso itself. It states "should such extension be deemed desirable in the interest of the Bank". The sole purpose of giving extension of service is, therefore, to promote the interest of the Bank and not to confer any benefit on the retiring officers. Incidentally the extension may benefit retired officials. But it is incorrect to state that it is a conferment of benefit or privilege on officers. The officers upon attaining the age of superannuation or putting the required number of years of service do not earn that benefit or privilege. The High Court has completely misunderstood the nature of right and purpose of the proviso. The proviso preserves discretion to the Bank. It is a discretion available with every employer, every management, State or otherwise. If the Bank considers that the service of an officer is desirable in the interest of the Bank it may allow him to continue in service beyond the age of superannuation. If the Bank considers that the service of an officer is not required beyond superannuation, it is an end of the matter. It is no reflection on the officer. It carries no stigma.

11. The extension of service is not a right given to an employee, rather it is an enabling power of the employer to utilise the services of an employee in the interest of the organisation. The provisions of Regulation 21, Chapter-III providing for granting extension to services of a teacher have been made for continuous teaching till the end of academic session so that teaching of the students due to retirement of a teacher in mid session be not disrupted. The object is clearly spelled out in Regulation 21 itself. While providing for extension of service till the end of academic session it has been specifically mentioned in the said regulation that extension shall be automatically treated up to 30th June so that after summer vacation an alternate arrangement be made. The object thus clearly indicates that it is not any kind of right conferred to a teacher but it

has been provided for the benefit of the students and for the benefit of continuity of teaching.

12. The extension, which is automatically provided for to a teacher of continuance till the end of academic session and other kind of extension as referred to in Regulation 21, Chapter-III, which is to be granted by the State Government from time to time are extension in service, which have to be treated on same footing. The extension granted by Government orders issued from time to time to a teacher, who has been awarded by National/State award as a teacher is also a kind of extension after superannuation as contemplated under Regulation 21. The nature of extension and the privileges granted by above mentioned two kind of extension are one and the same

13. At this stage, it is useful to refer to relevant Government orders, which provided for extension of the services of those teachers, who have been awarded National/State award. The State Government vide its Government order dated 6th May, 1982 provided for extension of two years of services to the teachers, who have been granted National/State award. The said Government order specifically provides in paragraph 2 that benefit of such teacher shall be available to the institution for some more time if the said teacher is physically and mentally fit. The purpose and object of the extension is clearly mentioned in the Government order, i.e., to benefit the educational institution of the services of such teacher.

14. A Division Bench of this Court in the case of Dr. P.D. Chamoli v. State reported in 1994 A.W.C. 259 had occasion to consider the Government order dated 6th May, 1982 and the scheme of extension. It is useful to refer paragraphs 4 and 5 of the said judgment, which are quoted below:

4. The first question that arises for consideration is what the Government order dated 6th May, 1982 seeks to achieve. For ascertaining this, it is necessary to have the language of the Government order. Relevant portion of Government order reads as follows:

Uparukta bishai ki aor aapka dhyankrisht karte huye yah kahane ka nirdesh hua hai ki varsh 1977 tak pradesh ke rashtriya/rajya puraskrit adhyapakon ko unke adhiwayata/aayu ke pasehat do varsh ki sewa ka bistaran pradan kiya jata tha. Kintu Bharat sarkar ke sujhaw par varsh 1978 me in subidhaon ko wapas le liya gaya.

1- Bharat sarkar dwara is punarbichar aur vidik parikshan ke uprant yah sujhaw diya gaya hai ki shiksha ke gunatmak vikas ki dristi se yah janhit me hoga ki is prakar ke adhyapakon ko sewa ka labh shiksha sansthayon ko kuch aur samay ke liye prapt rahe yadi we saririk evam manasik dristi se purnatya swastha ho.

2- Samyak rup se vicharoparant sashan ne yah nirnay liya hai ki pradesh sa samast rashtriya evam rajya puriskrit adhyapkon ko, jo saririk evam mansik rup se purnatiya swastha hain, adhiwayata aayu ke pasehat do varsha ka sewa

vistaran pradan kiya jaye. Tadnusr rajyapal mahoday is sambandh me jari kiye gaye samast adeshon ka atikraman karte huye yah aadesh dete hain ki pradesh ke samast rashtirya/rajya puraskrit adhyapakon ko yadi we saririk evam manasik dristi se purnataya swasta hai adhiwastaya aayu ke pasehat do parsh ka sewa vistaran pradan kiya jaye.

Is prakar se sabhi mamle samay se uchchadesh ke liye sashan se sambandhit anubhagon ko prastut kiye jayenge aur pratyek mamle me sashan ke adesh prapta kiye jayenge.

5. From the above Government order it appears that the scheme of granting extension in service for two years after attainment of the age of superannuation was in force in the State of Uttar Pradesh up to 1977 and this scheme was abandoned in the year 1978 on the directions of the Central Government. In paragraph 1 of the Government order it is mentioned that on reconsideration and after examination of legal implications it has been advised that with a view to ensure qualitative development of education it will be in public interest in the services of such teachers remain available to educational institutions for some time more, provided they are physically and mentally fit. This is the reason for the decision contained in paragraph 2 of the Government order. The decision serves public purpose. The public purpose is qualitative development of education. The decision does not serve the interest of an individual. It does not seek to give a second award to the award winner in the shape of extension in service by two years.

15. The above Division Bench thus clearly laid emphasis that the decision to extend the services of a teacher awarded with a National/State award is not to serve the interest of an individual, rather it is for the interest of the institution. Paragraph 2 of the Government order dated 17th June, 2008 by which extension has been granted to the appellant for two years also specifically provided so in following words ^^mDr dehZ lsok foLrkj dh vof/k esa "kSf{kd in ij rSukr jgsxsA^^

16. The submission, which has been much pressed by Dr. H.N. Tripathi, is that even if extension of services of the appellant is on the post of Lecturer, he by virtue of being seniormost lecturer is entitled to function as ad-hoc Principal and his right to continue as ad-hoc Principal cannot be taken away nor extension can effect the seniority of the appellant. The appellant has emphasised that after extension the appellant shall continue as seniormost Lecturer and thus is entitled to function as officiating Principal.

17. Against the Division Bench judgment in Dr. Prem Dutt Chamoli's case (supra), a SLP was filed before the Hon'ble Apex Court being SLP (C) No. 16808 of 1998 (Prem Dutt Chamoli v. State of U.P. and Ors.) decided on 24.1.1994 and the Hon'ble Apex Court had the occasion to consider the nature of extension on the basis of National/State award. The observations of the Hon'ble Apex Court in Prem Dutt Chamoli's case (supra) are to the following effect:

All that is necessary to make clear in these petitions is that since the petitioners have won National Award or State Award as teachers as the case may be they may be given two years extension in service as teachers according to the decision of the State Government itself. It is in the interest both of the institution and the public that their services as teachers should be utilised for such further period. However, it is made clear that these two years shall not be counted for seniority for getting either Principalship or any other higher post. If the Commission or the Committee (in the case of the minority institution), however, wants to appoint or continue such teachers as Principal otherwise than on the ground that they are senior because of the extension which is granted as per this order they are at liberty to do so.

The Committee appointed by the State Government, however, is at liberty not to grant extension in service to the teachers concerned, if they are of the opinion that the teachers have deteriorated in their performance as teachers after obtaining the National Award or if there was or is any complaint against them involving moral turpitude.

The interim orders, if any, passed earlier in these matters shall stand vacated in view of the above order. The petitions are disposed of accordingly.

The observation of the Apex Court, which is quoted above, clearly indicates that after attaining the age of superannuation a teacher cannot claim any right on the basis of his seniority.

18. Learned Counsel for the respondents submits that the judgment of the Hon'ble Apex Court has been relied in another decision of this Court in the case of Committee of Management, Indian Girls Inter College, Allahabad v. State of U.P. and Ors. reported in 2004(5) AWC 4428 in which case this Court clearly laid down that after extension teacher can continue on his substantive post only and cannot claim, as a matter of right, to function as officiating Principal.

20. The right and entitlement of a teacher continuing in service due to extension was again considered by a Division Bench of this Court in the case of Raja Ram Chaudhary v. Satya Narain Gupta and Ors. reported in 2003(2) E.S.C. 956. Following was laid down in paragraphs 8,9,10 and 11 of the said judgment:

8. The learned Counsel for the appellant has strenuously urged that the provisions contained in Section 18 of the U.P. Secondary Education Service & Selection Board Act, 1982 envisage the continuance of an ad hoc Principal till a selected candidate on regular basis takes over charge of the post of Principal.

9. The contention is that under the aforesaid provision only a senior-most teacher is entitled to continue as ad hoc Principal and since the appellant on account of the strength of his seniority had been allowed to hold the post of Principal on ad hoc basis, he has a right to continue as such till the end of academic session unaffected by the fact that he has attained the age of superannuation.

10. The contention is totally misconceived. The purpose of extension till the end of the academic session after attaining the age of superannuation is only to secure the benefit in favour of the students and the Institution as clarified by this Court in the aforesaid two decisions.

11. The fact that the appellant has already attained the age of superannuation is not in dispute. Further, the fact that question of seniority has not yet been determined and on account of the appellant having attained the age of superannuation it has lost all its significance is also not disputed. These additional factors also do not justify an interference in the discretion exercised by the learned Single Judge.

21. The Apex Court had also considered the right of acting Principal to continue as such till the end of academic session in the case of *S.K. Rathie v. Prem Hari Sharma and Ors.* reported in 2000(4) E.S.C. 2278. Following was laid down in paragraphs 4 and 5 of the judgment:

4. On a query raised by us, learned Counsel for the respondent drew our attention to a decision of the Government contained in document dated 16th February, 1999, in which it was, inter alia, stated that for teachers like respondent No. 1 the age of superannuation was 60 years. The said decision further states that no extension in service shall be granted but "if the date of superannuation of a teacher does not fall on June 30, the teacher shall continue in service till the end of the academic session i.e. June 30, following". This is the Clause on which reliance is placed by the learned Counsel in support of the decision of the High Court.

5. There is no doubt that the said decision would enable respondent No. 1 to continue as a teacher, which is his substantive appointment, up to 30th June, following the day when he attained the age of 60 years, but this Clause cannot allow him to continue as an acting Principal which is a different post altogether. It cannot be disputed that the post of Principal and of the teacher is not the same. It is a teacher on promotion who is appointed as a Principal and there is no decision of the Government giving extension beyond the age of 60 years to a Principal. This being so, the appeal is allowed and the decision of the High Court permitting respondent No. 1 to function as Principal of the Institution till 30th June, 2000 is set-aside.

22. A Division Bench of this Court in *Hari Om Tatsat's* case (supra) considered a similar controversy, and laid down in paragraphs 6 and 9 of the said judgment as follows:

6. We have considered the submissions and perused the record. In so far as the proposition that when a teacher is continuing till the end of academic session after attaining the age of superannuation he is not entitled for any appointment on a post other than his substantive is well settled. After attaining the age of superannuation neither higher post can be conferred nor a incumbent can claim promotion on a higher post. This proposition will both apply for appointment on

substantive basis or appointment on ad hoc basis. The adhoc appointment u/s 18 of the U.P Act No. 5 of 1982 is the appointment as a Principal on a higher post in a different grade. During the period a person is continuing to avail the benefit of academic session after attaining the age of superannuation he is not entitled for appointment even on ad hoc basis. The said proposition finds full support from Division Bench judgements reported in 2000 (1) E.S.C 645 Committee of Management, Jagdish Saran Rajvansi Kanya Inter College and Anr. v. Joint Director of Education; 2003(2) E.S.C Raja Ram Chaudhary v. Satya Narain Gupta and Ors.; and Division Bench Judgment of R.C. Gupta (Dr.) v. State of U.P and Ors. (2002) 1 UPLBEC 767.

9. We further add that the purpose and object of Regulation 21 Chapter III is to protect studies of students from disruption during academic session and it is for the benefit of the students during academic calendar of the year. By giving a persuasive interpretation of the said clause, it is amply clear that the said protection is basically for the benefit of the students and the academic calendar of the institution and does not give any vested right to a teacher to claim a promotion.

23. The Division Bench in the above case emphasised that above protection to a teacher is basically for the benefit of the students and the academic calendar of the institution and does not give any kind of right to a teacher, who has been granted extension.

24. Thus from what has been stated above, there is no practical difference with regard to nature of right of a teacher who is continuing under extension till the end of academic session or on the basis of extension granted for a period of two years on the ground of National/State award. Both kind of extension has been specifically referred to in Regulation 21 of Chapter-III and no difference is decipherable from the statutory scheme. If a teacher, who after attaining the age of superannuation is continued for the purposes of teaching, he cannot claim the post of ad-hoc Principal during the said period. The same principle will equally apply for a teacher who is continuing on extension by virtue of he being National/State awardee. Several Division Benches have considered the aforesaid right and have laid down that during the period a person is continuing after superannuation on extension, he cannot claim right to work as officiating/ad-hoc Principal and can continue only on his substantive post. It is well settled proposition to which we do not find any ground to take any different view in the present case. After attaining the age of superannuation, there is no right in a teacher to seek any higher post to one which he substantively holds.

25. Furthermore, as noticed above, in the Government order dated 17th June, 2008 by which extension has been granted to the appellant, it is specifically provided in paragraph 2 that those teachers who have been granted extension shall be posted only on teaching post. The said Clause in the Government order specifically clarifies that after extension the appellant shall continue only on his teaching post, i.e., the post of Lecturer (Sociology). In view of the aforesaid

specific condition in the Government order, the appellant cannot be heard in saying that he is entitled to continue on the post of ad-hoc Principal.

26. In view of the foregoing discussions, we are of the considered opinion that by virtue of extension granted by Government order dated 17th June, 2008 the appellant is entitled to continue as Lecturer (Sociology) and he cannot claim as a matter of right to continue as ad-hoc Principal during the extended period.

27. A perusal of the judgment of the learned Single Judge indicates that the writ petition was disposed of without issuing notice to the appellant, who was respondent No. 5 in the writ petition but in view of the fact that we have heard both the Counsel on merits of the case and there is no factual dispute between the parties and that the issues are purely legal in nature, no useful purpose would have been served in remitting the matter for fresh consideration before the learned Single Judge for passing fresh order after hearing the appellant.

28. In view of what has been said above, no relief can be granted to the appellant as prayed for. The special appeal is dismissed.