
(1987) 10 AHC CK 0057

In the Allahabad High Court

Case No : Civil. Miscellaneous Writ Petition No. 10218 of 1987

Smt. Rama Rati

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-10-1987

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16F(1), 16FF

Citation : (1988) 1 AWC 139

Hon'ble Judges : R.M. Sahai, J;D.S. Sinha, J

Bench : Division Bench

Advocate : Sakha Ram Singh, for the Appellant;

Final Decision : Allowed

Judgement

R.M. Sahai, J.—Short question that arises, for consideration in this petition is whether the senior most teacher on promotion as principal under proviso to paragraph (2) of sub-regulation (1) of Regulation 2 of Chapter II of Regulations framed under Intermediate Education Act is entitled to salary and increments etc. of principal.

2. Facts on which this question of law arises are more or less undisputed. In June 1982 the principal of the college retired. The committee of management on 30th June, 1982 passed a resolution appointing petitioner the second in order of seniority as principal of the college. Against this resolution the senior most teacher, Smt. M. David, approached this Court and an interim order was granted in Civil Misc. Writ Petition No. 10000 of 1982. Consequently the petitioner handed over charge to Smt. David. The vacancy was then notified to Secondary Education Service Commission. Smt. David was selected. Against her selection the committee of management filed writ petition No. 912 of 1984 in which interim order was granted that no letter of appointment to the post of principal shall be issued in pursuance of impugned selection. On 16th April, 1984 Smt. David was suspended. She continues to be suspended even now. As a result; of her suspension the committee of management passed a resolution promoting

petitioner as principal of the college with effect from 16th April, 1984. In counter-affidavit these facts are not disputed. But what is claimed is that since appointment of petitioner was not approved by District Inspector of Schools because interim order granted in favour of Smt. David was still continuing, she was not entitled to her salary.

3. That the Inspector of Schools did not grant approval to resolution appointing petitioner as principal in 1984 under misapprehension cannot admit of any doubt. The interim order in favour of Smt. David granted in 1982 against appointment of petitioner as principal exhausted once regular selection was held by commission. In any case Smt. David having been suspended in 1984 the committee of management did not commit any error of law in appointing petitioner the senior most teacher as principal under regulation 2 of Chapter II. In absence of any averment that petitioner was not qualified, the Inspector could not withhold approval. In fact such promotions are as a matter of law. And the committee is only required to intimate the Inspector and Deputy Director of Education. The argument of learned Standing Counsel, therefore, that in absence of approval the petitioner was not entitled to her salary, is without substance.

4. In law also the petitioner is entitled to her salary. Paragraph 2 of Regulation framed under Chapter II reads as under:

2. (1) The post of Head of institution shall except as provided in Clause (2) be filled by direct recruitment after reference to the Selection Committee constituted under Sub-section (1) of Section 16For, as the case may be, under Sub-section (1) of Section 16-FF.

Provided that in the case of any institution not being an institution referred to in Section 16FF a temporary vacancy caused by the grant of leave to an incumbent for a period not exceeding six months, or by death, retirement or suspension of an incumbent occurring during an educational session in the post of Head of Institution shall be filled by promotion of the senior most qualified teacher if any in higher grade in the institution.

5. The proviso visualizes various situations in which the senior most teacher of the institution if he or she is qualified is to be promoted as principal. Since it is a right conferred under regulations it could not be curtailed or effected either by management or Inspector of Schools except in the circumstances mentioned in the regulation. Further the word used is promotion. That is by virtue of seniority the senior most teacher is entitled to move up in the ladder. It is not officiating or looking after the work of principal but promotion. Therefore, it automatically follows that the promotee is entitled to all benefits of the post. Regulation 3 reads as under:

(3) Where temporary vacancy in the post of Head of institution is for a period not exceeding thirty days, the senior most teacher in the highest grade may be allowed to work as acting head of institution, but he shall not be entitled to pay in a scale higher than the scale of pay in which he is drawing salary as such

teacher.

It further clarifies that if the vacancy of principal is not exceeding thirty days then the senior most teacher may only look after the work. The two regulations read together leave no room for doubt that if the vacancy of a principal is for more than thirty days then the senior most teacher is entitled to be promoted and is entitled to salary of principal

6. In the result this petition succeeds and is allowed. A direction is issued to opposite party to pay salary to petitioner of principal from the date she was promoted in April, 1984 till today and continue paying the same so long proceedings against Smt. David are not finalized.