
(2007) 10 AHC CK 0048
In the Allahabad High Court

Sri Niwas Singh

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 08-10-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 354, 376, 511
Uttar Pradesh Secondary Education Services Commission and Selection Boards
Ordinance, 1981 — Section 33

Citation : (2008) 2 UPLBEC 63

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shishir Kumar, J.—By means of the present writ petition, the petitioner has approached this Court for issuing a writ in the nature of mandamus directing the respondents to pay the salary to the petitioner in lecturer grade

2. There is Janta Inter College, Nawabganj, District Farrukhabad, which is a recognised and aided institution. As the provisions of the U.P. High School & Intermediate Colleges (Payment of Salaries to the Teachers and other Employees) Act, 1971 are applicable. The vacancy in L.T. Grade occurred in the college in the year 1980. The said vacancy was advertised and the petitioner applied for being appointed as Assistant Teacher in L.T. Grade. At that time the institution was recognised as High School. The petitioner was called for interview on the basis of his quality point marks amongst 7 candidates. The Selection Committee found the petitioner most suitable candidate and on its recommendation, the petitioner was appointed on probation with effect from 1.4.1980 as Assistant Teacher in L.T. Grade. The selection and appointment of the petitioner as Assistant Grade Teacher was made in accordance with the provisions of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921. On expiry of aforesaid period of probation, the petitioner was confirmed. The institution in question being upgraded and recognised as an

Intermediate College, four posts of Lecturer were sanctioned in December, 1980. The posts of Hindi and Sanskrit Lecturers were to be filled up by promotion whereas the two posts of English Lecturer and Geography Lecturer were advertised to be filled up by direct recruitment. As the petitioner was qualified for being appointed as lecturer in Geography, he applied for recruitment but subsequently the selection with regard to the post of the Geography Lecturer was cancelled with the result that only the post of Lecturer in English was filled up by direct recruitment whereas the post of Lecturer in Geography remained unfilled on the date of promulgation of Uttar Pradesh Secondary Education Services Commission & Selection Boards Ordinance, 1981. In exercise of its powers u/s 33 of the Uttar Pradesh Secondary Education Services Commission & Selection Boards Ordinance, 1981, the State Government, issued an order known as Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981, vide notification dated 31.7.1981. In which a provision was made for ad-hoc appointment. According to the Clause 4 of the Removal of Difficulties Order, 1981, every vacancy for the post of a teacher in Lecturer's Grade was to be filled by promotion of the senior most teacher of the institution in the trained graduate (L.T. Grade). The petitioner was senior most teacher of the institution in the trained graduate, therefore, he was entitled to be promoted on ad-hoc basis under paragraph 4(2) of the Removal of Difficulties Order, 1981. In violation of provisions of the Removal of Difficulties Order, 1981, the Committee of Management illegally appointed one Naresh Singh Yadav as Lecturer (Geography) by direct recruitment on 1.10.1981. His appointment was cancelled by the Director of Education vide its order dated 15.1.1982 as the vacancy in the post of Lecturer in Geography was to be filled up by promotion.

3. The petitioner being the senior most teacher in the institution In L.T. Grade, the Committee of Management passed a resolution on 28.11.1982 for ad-hoc promotion of the petitioner. On the basis of the resolution of the Committee of Management, the petitioner joined his duties as Lecturer with effect from 1.12.1982. The proposal of the Committee of Management was approved by the District Inspector of Schools, Farrukhabad vide letter dated 1.1.1982. A copy of the same has been filed as Annexure-1 to the writ petition. The vacancy on the post of lecturer in Geography has not yet been notified by the Commission and to the best of the petitioner's knowledge the Committee of Management has not intimated the vacancy to the Commission. On the basis of ad-hoc promotion, the petitioner was discharging his duties continuously as Lecturer in Geography. The petitioner has been taking inter classes and teaching Geography to the Intermediate students. The petitioner received his salary up to 30.11.1982. Thereafter the salary of the petitioner was paid as Lecturer from 1.12.1982 to January, 1985. The respondents have illegally stopped the payment of salary to the petitioner for the month of February, 1985 and onwards inspite of the fact that the petitioner was still continuing on the said post. The regular appointment on the post of Lecturer in Geography was to be made on the basis of recommendation of the Secondary Education Services Commission under the

provision of the Commission Act, 1982. It is stated that the process of the selection by the Commission has not yet commenced, as such the petitioner is entitled to continue as ad-hoc lecturer, until the regular appointment is made on the basis of selection held by the Commission. When the salary of the petitioner was stopped, the petitioner made a representation to that effect to the respondents for payment of salary but the salary to the petitioner was not paid. Even the petitioner has approached the District Inspector of Schools to this effect, but by an order dated 7.12.1985, the Manager of the institution suspended the petitioner and the said order of suspension was not approved by the Competent Authority treating the order of suspension as arbitrary and malafide, as according to law the order of suspension comes automatically to an end on expiry of 60 days. If the same has not been approved by the Competent Authority. The services of the petitioner as Lecturer has not come to an end and as the petitioner is teaching, he is entitled for salary. Aggrieved by the inaction of the respondents, the petitioner has approached this Court.

4. The time for counter affidavit was granted. When the case was listed on 12.3.1997, the learned Counsel for the respondents informed the Court that the services of the petitioner have been terminated, though this fact was denied by the petitioner. In such circumstances, the Court was pleased to direct the District Inspector of Schools, Farrukhabad to submit a report within a period of three weeks". When the case was listed on 18.5.2001 this Court has passed the following order:

18.05.2001:

Hon"ble A.K. Yog, J.

Heard learned Counsel for the parties and perused the record.

Perusal of the judgement and order dated 15.4.1998 passed by learned Single Judge shows that a First Information Report was lodged by one Sri Premvir Singh against the petitioner under Sections 354, 376 and 511 I.P.C. for committing rape upon his younger sister Nita. a student of Intermediate Class of the College. The Committee of Management purported to have terminated the services of the petitioner who had absconded from the college. The Management further pleaded that it had passed resolution to terminate the services of the petitioner and matter was referred for approval to the U.P. Secondary Education Services Commission.

In view of the above, I am of the considered view that U.P. Secondary Education Services Commission should have been impleaded as party. In absence of necessary averment and proper party which could have brought on record the relevant facts regarding termination proposal against the petitioner, the relief as claimed in this petition cannot be granted also in view of the admitted position that petitioner is not working in the institution.

Petitioner is directed to implead U.P Secondary Education Services Commission.

For this purpose he may file impleadment application. Requisite application for impleadment, if so advised, be filed by the petitioner within two months from today.

Since necessary and proper party is not impleaded, I am of the considered view that interim order passed should not be allowed to continue as it will create complication in the institution affecting education of the student in the college. Petitioner can always be paid his salary and even with interest, he is not going to suffer irreparable loss. Accordingly, Interim order, if any, stands discharged.

Now the counter and rejoinder affidavits have been filed, therefore, the writ petition is being disposed of finally with the consent of the parties.

5. It has been submitted by Sri Ashok Khare, learned Senior Advocate assisted by Sri Shobhit Dubey, that the petitioner was working as L.T. Grade Teacher and was promoted as Lecturer, purely on the ad-hoc basis. Under the provisions of Section 18(1)(b) of the U.P. Act No. 5 of 1982 for ad-hoc promotion, only the senior most teacher in L.T. Grade has to be considered. If petitioner was not having qualification, the order of promotion on ad-hoc basis can be made effective immediately on the date when the petitioner has completed 5 years of service as L.T. Grade teacher. The District Inspector of Schools has accorded approval to ad-hoc promotion of the petitioner. The petitioner was suspended but the order of the suspension was not approved. Later on, on the basis of resolution dated 31.1.1987, the services of the petitioner were terminated. The papers regarding the same were submitted for approval under the U.P. Act No. 5 of 1982, but the Commission returned the papers for being submitted to the District Inspector of Schools. The District Inspector of Schools after keeping the papers for a period of two years, sent back the same to the Manager to resubmit the same along with the queries made thereunder.

The Court on 1.8.1989 after hearing the learned Counsel for the petitioner was pleased to pass the order that in case the petitioner is working in the institution, the District Inspector of Schools will see that the salary to the petitioner be paid in Lecturer's grade. Further it was mentioned that this order will apply only till the regular selected candidates by the Commission join. It is not correct to say that ad-hoc promotion of the petitioner came to an end on 30th day of June following the date of ad-hoc promotion. The petitioner having once been appointed as Geography Lecturer by promotion under the Provision of Removal of Difficulties Order is entitled to hold post until the regular appointment is made on the post in accordance with the provisions of the Act. As no person has been appointed, the respondents are not justified in treating the petitioner's appointment by promotion as having come to an end on the date alleged by the respondents. It has further been submitted by the learned Counsel for the petitioner that up till date there is no order of suspension or termination of the services as submitted above, the order of suspension has been disapproved by the Competent Authority and the order of the termination has also not been approved by Board. Therefore, the petitioner will be treated to be lecturer in

Geography from the date of ad-hoc promotion and is entitled for salary. It was only due to inaction of the Committee of Management and the Authorities, the petitioner has not been permitted to work, therefore, the petitioner cannot be held responsible for the same.

6. On the other hand Sri G.K. Singh, who appears for the private respondent, who alleged to be appointed in place of the petitioner on the post of lecturer Geography has submitted that the petitioner's promotion as alleged was not in accordance with law. As admittedly in view of the provisions, he was not having requisite qualification on the date when he was promoted. Five years experience as L.T. Grade teacher is essential qualification for the purposes of consideration for promotion on the post of Lecturer. Admittedly the petitioner was appointed as Assistant Teacher in L.T. Grade on 1.4.1980, therefore, in 1983 the petitioner was not qualified to be promoted on the post of lecturer in geography. After termination, the petitioner has not worked and the respondent No. 4, Sri Awadhesh Kumar has already been appointed and is working on the said post and in view of the provisions contained, he is entitled to be regularised, therefore, the petitioner is not entitled for any relief. Reliance have been placed upon a judgement of this Court reported in 1993 AWC 872 Smt. Prem Balika Rai v. Regional Inspectress of Girls Schools, Pancham Mandal Varanasi and Ors. Placing reliance upon the aforesaid judgement, the learned Counsel for the respondent has submitted that the Regulation 6(1) of Chapter II of the Regulation framed under the U.P. Intermediate Education Act prescribing 5 years continuous substantive service on the date of occurrence of vacancy as a pre requisite condition for coming with the zone of consideration for promotion, the said requirement is retained even u/s 18(1)(b) of U.P. Act 5 of 1982, yet there has been a slight departure in this regard in the provisions contained in the U.P. Secondary Education Services Commission Rules, 1983, where, in Rule 9 thereof instead of "5 years continuous substantive service", the requisite condition is 5 years continuous services. This difference however does not lead to an inference that 5 years continuous teaching experience was intended to be dispensed with. The minimum 5 years teaching experience to the credit of a candidate for promotion is contemplated under para 4(2) of the Removal of Difficulties Order, 1981, which could not be deemed to have been dispensed with. In view of the aforesaid provisions and the judgement of this Court has held that continuous 5 years service is essential ingredients for the purposes of promotion on the post of lecturer. Admittedly, the petitioner was not having the essential qualification on the date when he was promoted and the approval was granted, therefore, the petitioner is not entitled for any relief. Further reliance has been placed by the learned Counsel for the respondents upon a judgment reported in Sushil Kumar Dwivedi Vs. Basic Shiksha Adhikari and Others, In support of his contention the learned Counsel for the respondents submits that a Division Bench of this Court has held that if a person is not having or fulfilling the eligibility criteria of appointment or promotion is to be treated illegal and he cannot claim as a matter of right.

On the other hand learned Counsel for the petitioner submits that the promotion of the petitioner was under the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981. Rule 4 relates regarding the ad-hoc appointment by promotion. Sub-clause (2) states that every vacancy on the post of teacher in lecturer grade may be filled up by promotion by the senior most teacher of the institution in the trained graduate (L.T. Grade). The petitioner being a senior most teacher in the institution, he is entitled to be considered for promotion and in view of the aforesaid provision, the Committee of Management has recommended the name of the petitioner. Admittedly the promotion/appointment of the petitioner has been approved, in case the argument of the respondents to this extent is admitted then the petitioner can only be entitled for salary or the order of promotion can be made effective from the date, immediately after expiry of 5 years of experience of the petitioner but there is no whisper in order of 1981 regarding pre condition of 5 years of service as L.T. Grade teacher, it talks regarding senior most teacher to be considered. Admittedly the promotion of the petitioner on ad-hoc basis for the purpose of promotion of ad-hoc basis, if it is done under the Removal of Difficulties Order, 1981 there was no requirement that a teacher had to complete 5 years of requisite service as L.T. Grade teacher. It was in the year 1993 in the case of Smt. Prem Balika Rai it was held for the purposes of ad-hoc promotion also the five years of service has to be completed on the date of vacancy as provided under the Regulation 6(1) of Chapter II of the Regulation framed under the U.P. Intermediate Education Act. The learned Counsel for the petitioner has also placed reliance upon a judgement of this Court reported in 1990 AWC 1990 Hans Raj Singh v. U.P. Secondary Education Service Commission, Allahabad and Ors. The Division Bench of this Court has held that what will be the relevant date and what is relevant date with reference to which eligibility has to be seen. u/s 18(1) (b), the management gets rights to make ad-hoc appointments, if the post has actually remained vacant, for more than 2 months. The date on which the management, after expiry of more than 2 months from the date of vacancy, decides to make ad-hoc appointment is a relevant date. The Division Bench of this Court has taken into consideration the earlier judgement in the case of Charu Chandra Tiwari v. District Inspector of Schools, Deoria and Ors. reported in 1991 AWC 562 Yogendra Nath Singh v. The District Inspector of Schools, Jaunpur and Anr.. In support of the aforesaid judgement, learned Counsel for the petitioner submits that for the purposes of ad-hoc promotion, the relevant date for the purposes of eligibility of a teacher, who claims promotion is to be seen with reference to the date when the management decides to make ad-hoc appointment. The learned Counsel for the petitioner has also placed reliance upon the Full Bench decision of this Court reported in (1991) 2 UPLBEC 1202 Dr. Asha Saxena v. Smt. S.K. Chaudhary and Ors. Paragraph 16 of the aforesaid judgement is being reproduced below;

16. If that be so, the controversy regarding seniority of the three lecturers was

determined by the Managing Committee on 29.4.1976. The aforesaid seniority list had remained in existence since then. The argument raised by the learned Counsel for Dr. Asha Saxena that she got a right to file objections only when the seniority list, was prepared in the year 1985-86 is not tenable. This argument is also not tenable because it has come on the record that the seniority list gradewise was prepared even earlier to the year 1985 and no objection had been filed. The law is well settled that the Court will not interfere with a seniority list which had remained in existence for a long time and which had become final. In the present case the Management had determined the seniority on 29.4.1976. This decision had been taken after affording opportunity to Dr. Asha Saxena. She did not file any appeal against the decision of the Committee of Management even though an appeal may have been preferred. Objections by Dr. Asha Saxena had been filed after a lapse of nearly 15 years. In the objections, which have been filed as Annexure "3" to the writ petition, of Dr. Asha Saxena, she has not taken a ground that seniority list was not prepared every year. The only objection raised was that she did not know about the insertion of provisions of Section 3(1) (bb) in Chapter II and she filed the objections after coming to know of the aforesaid provision. The seniority list has been existing since the year 1975-76 and we are not prepared to quash the seniority list after a lapse of nearly 15 years. The Supreme Court in the case of Malcom Lawrence Cecil D'souza Vs. Union of India (UOI) and Others, has held:

The matter can also be looked at from another angle. The seniority of the petitioner qua respondents 4 to 26 was determined as long ago as 1956 in accordance with 1952 Rules. The said seniority was reiterated in the seniority list issued in 1958. The present writ petition was filed in 1971. The petitioner, in our opinion, cannot be allowed to challenge the seniority list after lapse of so many years. The fact that a seniority list was issued in the year 1971 in pursuance of the decision of this Court in Union of India (UOI) Vs. Vasant Jayaram Karnik and Others, would not clothe the petitioner with a fresh right to challenge the fixation of his seniority qua respondents 4 to 26 as the seniority list of 1971 merely reflected the seniority of the petitioner qua those respondents as already determined in 1956. Satisfactory service conditions postulate that there should be no sense of uncertainty amongst public servants because of stale claims made after lapse of 14 or 15 years. It is essential that any one who feels aggrieved with an administrative decision affecting one's seniority should act with due diligence and promptitude and not sleep over the matter. No satisfactory explanation has been furnished by the petitioner before us for the inordinate delay in approaching the Court. It is not doubt true that he made a representation against the seniority list issued in 1956 and 1958 but that representation was rejected in 1961. No cogent ground has been shown as to why the petitioner became quiescent and took no diligent steps to obtain redress.

Although security of service can not be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of

security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be re-opened after lapse of many years at the instance of the party who has during the intervening period chosen to keep quiet. Baking of old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time.

learned Counsel appearing for Dr. Asha Saxena has also urged before us that the Regional Inspectress of Girls Schools has found the appointment of the three teachers invalid as on the date of appointment none of them had the requisite qualifications for being promoted to the post of lecturer in the College. It has been urged that the Full Bench on an earlier occasion relying on the decision of the Supreme Court in the case of Ram Sarup Vs. State of Haryana and Others, has held that the three teachers should be deemed to have been appointed from the date on which they would acquire qualifications for being promoted to the post of Lecturers. At the very out-set it may be mentioned that the earlier writ petition of Dr. Asha Saxena had been allowed inasmuch as complete material had not become before the Full Bench regarding the fact that Dr. Asha Saxena had filed objections immediately after her promotion which had been rejected and had become final. It has also not been brought to the notice of the Full Bench that seniority list gradewise was prepared every year after the incorporation of Chapter III in the year 1976. It may also be noted that Dr. Asha Saxena has not challenged the validity of the appointment and had only made a challenge to the seniority list. One fails to understand that after a lapse of nearly 17 years the Regional Inspectress of Girls Schools referred the matter to the Director of Education for adjudicating the question as to whether the appointments were valid or not. In our opinion, the exercise of power by the Regional Inspectress of Girls Schools on the facts and circumstances of the case is wholly arbitrary as that power could not be exercised after lapse of 17 years. The objections filed by Dr. Asha Saxena in the year 1986 which are contained in Annexure "3" to the writ petition are liable to be rejected inasmuch as the ground that she did not know the provisions of Clause 3(1) (bb) in Chapter II was of no avail to her. The seniority lists were being prepared year after year after 1975-76 and the objection filed by Dr. Asha Saxena after the lapse of nearly 11 years was not liable to be entertained as has been held by the Supreme Court in the case of Malcon Lawrence Cecil D'Souja (supra). In any view of the matter, the appointments which were existing for the last 17 years could not be set aside after a lapse of such a long period. Even the earlier Full Bench had quashed the order of the Regional Inspectress of Girls Schools referring the matter u/s 16-E(10) of the Act and we are also of the opinion that the aforesaid order is liable to be quashed. It is true that there is power u/s 16-E(10) of the Act to cancel the appointments but that power has to be exercised within a reasonable time. The appointments had been made in the year 1973 and by no stretch of imagination

it can be said that the exercise of that power after the lapse of 17 years by the Director of Education u/s 16-E (10), on the facts and circumstances of the case can be said to be exercise of a power within a reasonable time. In our opinion, the order of the Regional Inspectress of Girls Schools referring the matter to the Director of Education u/s 16-E (10) is thus liable to be quashed.

7. Further reliance has been placed by the learned Counsel for the petitioner upon a judgement of this Court reported in 1998 (3) E.S.C. 2006 Ashika Prasad Shukla v. The District Inspector of Schools, Allahabad and Anr.

Further argument has been raised by the learned Counsel for the petitioner is that admittedly order of suspension as well as the alleged order of termination has never been approved by the Competent Authority as provided under the Rules. The Committee of Management as well as private respondent has not challenged the order of approval of the petitioner, therefore, in view of the aforesaid fact, the petitioner is entitled for salary on the post of lecturer in Geography.

8. After hearing the learned Counsel for the parties and after perusal of the record, it is not in dispute that the petitioner was appointed in the year 1980 and due to vacancy for post of lecturer Geography, petitioner being the senior most teacher in the institution was considered according to the Removal of Difficulties Order, 1981. As inspite of the information given to the District Inspector of Schools and to the Commission, no appointment was made, therefore, the Committee of Management decided to make an ad-hoc promotion and the petitioner being the senior most teacher was considered and promoted. The District Inspector of Schools vide its order dated 1.1.1983 has approved the appointment of the petitioner. The petitioner was suspended and the order of suspension was sent to the District Inspector of Schools but the same was not approved, therefore, according to law the order of suspension will come to an end after expiry of 60 days. It has been alleged that the services of the petitioner has been terminated but there is nothing on record to show that the order of termination as required under the Act has to be approved but it has not been approved by any Competent Authority. It is also not in dispute that the ad-hoc appointee is entitled to continue on the post and to be paid salary, till the regularly selected candidate is appointed by the Commission. There is nothing on record to show that the Commission has appointed any candidate on the post on which the petitioner was working.

9. As regards the contention made by the learned Counsel for the respondents is that as the petitioner was not having qualification on the date when he was considered for promotion on the post of lecturer and in case the ad-hoc promotion of the petitioner was approved by the District Inspector of Schools that will not confer any right to the petitioner as decided by this Court in the judgement mentioned above. The contention of the learned Counsel for the respondents cannot be accepted in view of the fact that it is only in the year 1993 this Court while interpreting the provisions of Regulation 6.(1) of Chapter 2

and the provisions of Removal of Difficulties Order, 1981 has held that for the purposes of ad-hoc promotion the essential qualification for the post of lecturer will be 5 years continuous service as L.T. Grade teacher. Sub-clause 4 of Removal of Difficulties Order, 1981 specifically says that the senior most teacher in the institution working in L.T. Grade is to be considered for the purposes of ad-hoc promotion on the post of lecturer. In case the respondent was of the opinion that the petitioner has wrongly been accorded approval, inspite of the fact, that he was not having requisite qualification on the date when the Committee of Management decided to make the promotion then the order should have been passed to this effect that the order of the promotion will be effective immediately on the date of expiry of 5 years of service of the petitioner.

10. There is no challenge in the writ petition by any of the party of the approval granted to the petitioner on ad-hoc basis on the post of lecturer. It is also not disputed that the order of suspension or termination has been approved. The Committee of Management has not permitted the petitioner to function as a teacher in the institution, therefore, in my opinion, due to inaction of the Committee of Management, the petitioner cannot be made suffer and in my view, he is entitled for salary for the post of lecturer from the date of approval by the District Inspector of Schools.

11. The present writ petition is allowed. A writ of mandamus is issued to the respondents No. 2 and 3 to permit petitioner to continue on the post of lecturer and to pay arrears of salary as well as future salary as and when it is due month to month to petitioner. The order of this Court be complied with within a period of two months from the date of production of a certified copy of this Order. In case the respondent No. 3 does not permit the petitioner to function as lecturer in Geography then the respondent No. 2 will take necessary steps to this effect that petitioner is permitted to function in the institution and to receive his salary. There shall be no order as to costs.