

(1990) 02 AHC CK 0067

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No's. 9761 and 14231 of 1989

Surendra Pratap Singh

APPELLANT

Vs

Distt. Inspector of Schools and Others

RESPONDENT

Date of Decision : 21-02-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 18

Citation : (1990) 1 AWC 538

Hon'ble Judges : S.K. Dhaon, J;D.S. Sinha, J

Bench : Division Bench

Advocate : Ram Niwas Singh and V.K. Chandel, for the Appellant; S.C. and V.K. Upadhyaya, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Sinha, J.—The writ petitions have not been formally admitted but are ripe for final disposal as the parties have exchanged their affidavits. Upon joint request of learned Counsel for the parties and with their consent we heard these petitions for final disposal.

2. The controversy in these writ petitions centres round the claim of inter-se seniority of Sri. Surendra Pratap Singh and Sri. Akshaibar Giri, two lecturers of Yugul Behari Inter College, Rameshwar, and Varanasi and as such they are being disposed of by a common judgment.

3. The facts, as they emerge from the pleadings of the parties and various annexure filed in support of the pleadings and the order dated 29th April, 1989, passed by the District Inspector of Schools, Varanasi, whereby Sri. Giri has been found to be senior than Sri. Singh, are as given below.

4. Sri. Giri was appointed as L.T. Grade teacher on 4th July, 1960. He was confirmed on the, said post with effect from 1st July, 1962 and was allowed to

join the Provident Fund Scheme. Later on, Sri. Giri was promoted and appointed Lecturer with effect from 15th September, 1963. On the post of lecturer he was confirmed on 1st August 1964. Sri. Singh was appointed lecturer on 6th October, 1964. He was confirmed on the said post on 16th October, 1965 and was allowed to join the Provident Fund Scheme from that date. The appointments of Sri. Giri and Shri Singh as lecturer were approved by the District Inspector of Schools, Varanasi on 31-10-1966.

5. After a lapse of a period of more than two decades, by means of his representation dated 11th November, 1986, submitted to the Managing Committee of the College, Sri. Singh raised a dispute of seniority asserting himself to be senior than Sri. Giri. The Managing Committee in its meeting dated 16th December, 1986 passed a resolution upholding the claim of Sri. Singh and declaring him to be senior than Sri. Giri.

6. Aggrieved by the resolution of the Managing Committee dated 16th December, 1986 Sri. Akshaibar Giri preferred an appeal before the District Inspector of Schools, Varanasi. The District Inspector of Schools, Varanasi allowed the appeal by means of his order dated 29th April, 1989, held the resolution dated 16-12-1986 to be invalid and declared Sri. Giri to be senior than Sri. Singh.

7. On 10-5-1989 Sri. Singh filed writ petition No. 9761 of 1989 challenging the order of District Inspector of Schools, Varanasi. The petition was directed to be listed for admission on 13-7-1989. In the meantime the Manager of the Managing Committee of the College directed the Principal to treat Sri. Giri as senior to Sri. Singh vide his letter date 28-5-1989. On 12th June, 1989 the Manager directed the Principal to hand over the charge of his office to Sri. Giri, the senior most teacher, as his tenure on the post of Principal was coming to an end on 30-6-1989. Sri. Giri took over the charge of the office of Principal on 1-7-1989 and duly informed the Manager.

8. Suddenly, Managing Committee of the college in its meeting dated 16-7-1989 passed a resolution directing Sri. Singh to function as Officiating Principal and requiring Sri. Giri to hand over the charge of the office of Principal to Sri. Singh. Manager of the Committee of Management of the College apprised Sri. Giri of the said resolution vide his letter dated 20-7-1989. The resolution of the Managing Committee dated 16-7-1989 and letter of its Manager dated 20-7-1989 are under challenge in Writ Petition No. 14231 of 1989 filed by Sri. Giri.

9. Learned Counsel for Sri. Singh contended that Sri. Giri could not be treated to be senior than Sri. Singh as he was illegally appointed as a lecturer by promotion on 15th September, 1963 inasmuch as he, by that time, had not put in five years continuous substantive service in L.T. Grade which was condition precedent under the Regulation 18 of Chapter III of the Regulations made u/s 16G of the Intermediate Education Act, 1921 and was wrongly confirmed with effect from 1st August, 1964. According to him the appointment and confirmation of Sri. Giri being illegal no benefit, much less of seniority over Sri. Singh, who was validly

appointed and confirmed lecturer, could accrue to him. Alternatively, he contended that approval with regard to the appointment of Sri. Giri and Sri. Singh was accorded by the District Inspector of Schools on one and the same date, namely, 31st October, 1966 and as such their seniority would be determinable on the basis of seniority in age. The date of birth of Sri. Singh was 7th May, 1933 and that of Sri. Akshaibar Giri was 25th July, 1938 Sri. Singh, being elder in age had to be treated senior to Sri. Giri, who was younger in age.

10. In support of his contentions learned Counsel of Sri. Singh gave reference of following cases:

(a) 1979 ALJ 1025 Lalit Mohan Misra v. DIOS, (b) 1984 UPLBEC 1342 Mahendra Prakash Kulshrestha v. DIOS, (c) 1986 UPLBEC 69 : 1985 EC 304 Smt. Om Bala Nigam v. Regional Inspectress of Girls Schools, (d) 1986 UPLBEC 134 Jokhu Singh v. DIOS, (e) 1986 UPLBEC 473 Shitla Prasad Shukla v. State of U.P., (f) 1988 Education Cases 1 Sudama Singh v. Nath Saran Singh.

11. Learned Counsel for Sri. Giri urged that Sri. Singh could not be treated senior to Sri. Giri inasmuch as he was appointed in the Lecturer's Grade in year 1964 and confirmed on the said post in the year 1965 while Sri. Giri was appointed as Lecturer on 15th September, 1963 and confirmed on 1st August 1964 and had to his credit about three years service in L.T. Grade also. The learned Counsel further contended that even if there was any illegality in the appointment of Sri. Giri as Lecturer it was not open to challenge after the laps of a period of more than 25 years specially because appointment of Sri. Giri as lecturer had all along been accepted by all concerned including Sri. Singh. The learned Counsel also contended that the Managing Committee of the College had no jurisdiction to question and investigate upon the question of legality upon the appointment of Sri. Giri and rest its decision with regard to seniority thereon. The learned Counsel further pointed out that there was enough evidence on record showing that Sri. Giri had all along been accepted and treated as senior to Sri. Singh by every body including Sri. Singh himself. Sri. Giri was treated senior to Sri. Singh even in the year 1985 when his name along with the name of Sri. Rajeshwar Singh was sent to U.P. Secondary Education Services Commission for selection to the post of Principal of the College treating him to be one of the two senior most teachers of the College.

12. There cannot be any doubt that in the matter of the determination of inters seniority of teachers, governed by the provisions of the U.P. Intermediate Education Act, 1921 and Regulations made there under, the date of substantive appointment and, if the date of substantive appointment is same, the date of birth shall be decisive factor. The cases cited by the learned Counsel of Sri. Singh fortify this legal position. In the instant case the date of approval of the appointments of Sri. Singh and Sri. Giri, which is 31-10-1966, may be taken to be the date of their substantive appointment. The date of their substantive appointment being one their dates of birth may be guiding factor. The date of birth of Sri. Singh being earlier than that of Sri. Giri he may be considered to be

senior. But this is not the end of the matter. There is yet another important dimension of the case which cannot be ignored and that is the conduct of Sri. Singh in slumbering over the matter and acquiescing to the seniority of Sri. Giri for more than two decades. All concerned treated Sri. Giri to be senior than Sri. Singh and he, with full knowledge of such a position allowed it to pass by and settle down.

13. On the material on record, it cannot be disputed that Sri. Giri was appointed and confirmed as Lecturer prior to the appointment of Sri. Singh and he had always been treated senior than Sri. Singh by all concerned without being objected to by Sri. Singh till November, 1986. Paragraph 7 of the counter-affidavit of Sri. Giri, filed in Civil Misc. Writ Petition No. 9761 of 1989, reveals that on 15th September, 1969 the pay of Sri. Giri was fixed at Rs. 250/- while the pay of Sri. Singh was fixed at Rs. 235/- on 6th October, 1969. Again on 1st November, 1973 the pay of Sri. Giri was revised and fixed at Rs. 535/- while the pay of Sri. Singh was fixed at Rs. 515/-. Further the selection grade was granted to Sri. Giri with effect from 1st November, 1979 and his pay was fixed at Rs. 1080/- whereas the selection grade to Sri. Singh was granted with effect from 6th October, 1980 and his salary was fixed at Rs. 1040/-. The fixation of pay and grant of selection grade is, normally, on the basis of length of service. Obviously, Sri. Giri was granted a pay higher than that of Sri. Singh. He was also granted selection grade prior to Sri. Singh. The assertions with regard to fixation of pay and grant of selection grade, as aforesaid, have not been effectively controverted by Sri. Singh in rejoinder affidavit. These assertions have got to be accepted as correct. There is nothing on record to indicate that fixation of higher scale of pay and grant of selection grade to Sri. Giri was ever challenged by Sri. Singh. The fact that in January 1985, the name of Sri. Giri, as second senior most teacher along with the name of Sri. Rajeshwari Prasad Singh, who was the senior most teacher, was sent to the Commission for selection and appointment on the post of Principal of the College on ad-hoc basis and the name of Sri. Singh did not figure in the list of two senior most teachers is fully established from the letter dated 15th April, 1985 sent by the Manager of the College, a true copy where of is Annexure "P to the rejoinder affidavit of Sri. Giri, filed in Civil Misc. Writ Petition No. 14231 of 1989. This is clearly indicative of the fact that Sri. Giri was treated as senior to Sri. Singh.

14. In paragraph 7 of Writ Petition No. 14231 of 1989 Sri. Giri has asserted that in the attendance register of the institution his name always figured above the name of Sri. Singh treating and accepting him to be senior than Sri. Singh. It has been further asserted that Sri. Singh had been signing the attendance register against his name which was below the name of Sri. Giri with full knowledge and acceptance of the fact that Sri. Giri was being treated senior to him. These assertions have been replied by Sri. Singh in paragraph 9 of his counter-affidavit. He does not dispute that the name of Sri. Giri was shown in the attendance register above his name showing Sri. S. Giri to be senior than him. He also does not dispute that he had been signing the attendance register with full knowledge

and acceptance of the fact that Sri. Giri was shown therein as senior to him. The stand taken by him is that the name of Sri. Giri was "wrongly entered above" his name in the records of the institution on account of his illegal date of appointment in the year 1963.

15. According to averments in paragraph 8 of Civil Misc. Writ Petition No. 14231 of 1989, since July, 1985 Sri. Giri had been functioning as Vice-Principal of the College by virtue of his being senior-most teacher and had been taking over charge of the office of Principal, in the absence of Principal from time to time. And Sri. Singh never raised objection to this. On the contrary, he applied to Sri. Giri, when he was officiating as Principal, for grant of leave from time to time. Photostat copies of charge-register and applications moved by Sri. Singh along with other teachers of the College are appended as Annexure IV and v. to the aforesaid writ petition neither the averments in paragraph 8 have been controverted effectively nor the veracity of the aforesaid annexure IV and v. has been challenged by Sri. Singh.

16. Sri. Singh does not deny that he had full knowledge of the factual position with regard to Sri. Giri being treated as senior to him right from his appointment in the college in 1964. There is also no denial by him that he slept over throughout the long period during 1964 to 1986. Nor is there any explanation as to why he kept quiet in the matter. Thus, irresistible conclusion is that Sri. Giri was being treated as senior to Sri. Singh and Sri. Singh continuously acquiesced to the seniority of Sri. Giri more than twenty years and allowed the alleged infirmity to pass by.

17. The contentions of the learned Counsel of Sri. Singh with regard to the alleged illegality in the promotion and confirmation of Sri. Giri on the post of Lecturer is of no consequence. May be there was some illegality in the promotion of Sri. Giri to the post of lecturer but it cannot wipe out and invalidate his functioning as lecturer, now, for over twenty-five years. In any event, it should not be allowed to be questioned by Sri. Singh, who, indisputably, kept on slumbering since 1964 till 1986.

18. It cannot be gain said that Sri. Giri functioned as lecturer since 1963; and that he was always treated and accepted as senior to Sri. Singh. These are hard facts. "Fact cannot be altered even though it should not have been done" (*quod fieri non debet factum valet*).

19. Jurisdiction under Article 226 of the Constitution is extra-ordinary. It is discretionary. The discretion ought to be exercised with great caution and care. It should not be exercised to disturb and unsettle a position which has prevailed for about a quarter of century and that too at the instance of a person who assented to it. Otherwise, it may lead to chaos and confusion. Under Article 226 of the Constitution High Court may decline to interfere in the matter inspite of illegality being established if by doing so, in its opinion, cause of justice is advanced and injustice prevented. In the instant case, we are fully convinced that it would not

be a sound exercise of discretion to interfere with the factum of Sri. Giri being treated and accepted as senior than Sri. Singh by all concerned for a very long period of more than twenty years. It will be extremely unfair, unjust and harsh to penalise Sri. Giri by depriving him of the seniority which he has been enjoying over two tens of years with the quiet assent of Sri. Singh. We, therefore, decline to interfere with the order of the District Inspector of Schools, Varanasi dated 29-4-1989 declaring Sri. Giri to be senior than Sri. Singh, impugned in the writ petition No. 9761 of 1989 filed by Sri. Singh. This petition shall stand dismissed.

20. Consequent upon the dismissal of the writ petition No. 9761 of 1989, the order dated 29th April, 1989 declaring Sri. Giri senior to Sri. Singh shall continue to hold field and the resolution of the Managing Committee of the College dated 16-7-1989 and the letter of its Manager dated 20-7-1989 directing Sri. Singh to function as Officiating Principal of the college and requiring Sri. Giri to hand over the charge of the said office, challenged in writ petition No. 14231 of 1989, cannot be sustained. The writ petition No. 14231 of 1989 is allowed. The resolution dated 16th July, 1989 and the letter dated 20-7-1989, aforesaid, are quashed.

21. The parties shall bear their respective costs.