
(2009) 01 AHC CK 0092

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1811 of 2007

Suresh Mani

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 30-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 01 AHC CK 0092

Hon'ble Judges : Rajes Kumar, J

Final Decision : Dismissed

Judgement

Rajes Kumar, J.

1. Heard Sri T.N. Tiwari, learned Counsel for the petitioner, Sri V.K. Singh, learned Counsel appears on behalf of respondent No. 7 and learned Standing Counsel appears on behalf of respondent Nos. 1 to 5.

2. By means of the present writ petition, petitioner is challenging the order dated 15.3.2003 passed by Additional Director of Education (Secondary) Allahabad, Annexure3 to the writ petition transferring the respondent No. 7 from Chandra Shekhar Azad Inter College, Deogaon, district Deoria to Sewa Samiti Banwarilal Inter College, Deoria.

3. Brief facts of the case are that the petitioner was lecturer in the intermediate college known as Sewa Samiti Banwarilal Inter College, Deoria, which was duly recognised. The petitioner was initially appointed as Lecturer in Zoology on 8.7.1967 and was placed on probation for a period of one year and was confirmed as Lecturer on 8.7.1968. Petitioner was granted selection grade w.e.f. 1.7.1984 after completing sixteen years of service and subsequently, he was given promotional scale of lecturer's grade on 1.7.1997. It is claimed that on the retirement of Sri Krishna Mohan Srivastava on 30.6.2006, the petitioner became the senior most lecturer of the college and, therefore, the petitioner was entitled to be appointed as officiating principal of the college. Petitioner attained the age

of superannuation of 62 years on 1.1.2009 but as per the Government Order he may continue for the remaining period of session, which expires on 30.6.2009. In the writ petition, it is stated that with regard to the post of principal there was a dispute between the two lecturers, claiming themselves to be the senior most lecturers of the college, namely, S/Sri Yogendra Mani Tripathi and Girijesh Prasad Shahi, which led to the filing of Writ Petition No. 22908 of 1989, Yogendra Mani Tripathi v. State of U.P. and others. In the aforesaid writ petition, interim order was passed on 7.5.1991 restraining the respondents from proceeding for selection and appointment of principal in Sewa Samiti Banwari Lal Inter College, the said writ petition was dismissed in default on 22.1.2004. It is also stated that the transfer order of the respondent No. 7 was challenged by one Sri Ram Krishan Mishra by way of Writ Petition No. 27218 of 2003, who claimed himself as senior most lecturer of the college. In the said writ petition, this Court on 1.7.2003 has stayed the operation of the transfer order dated 15.3.2003 for a specified period. However, the interim order dated 1.7.2003 was vacated on 13.8.2003.

4. Learned Counsel for the petitioner submitted that the transfer order is bad in law as on the day when the transfer order was passed, interim order dated 7.5.1991 passed in Writ Petition No. 22908 of 1989 was in operation wherein the respondent No. 3 was restrained from proceeding for selection and apportionment of principal in Sewa Samiti Banwarilal Inter College. He submitted that the transfer order was made without proper approval by the competent authority. He further submitted that the petitioner is challenging the transfer order dated 15.3.2003 in the year 2007 when the petitioner became the senior most lecturer on 30.6.2006 and had got the right to be appointed as officiating principal of the college.

5. Sri V.K. Singh, learned Counsel appearing on behalf of respondent No. 7 submitted that the petitioner has attained the age of superannuation on 1.1.2009 and, therefore, the petitioner cannot be appointed as officiating principal. He submitted that the petitioner cannot claim any relief after attaining the age of superannuation to be appointed as officiating principal during the period when he was allowed to continue for the remaining period of session. In support of his contention he relied upon the Division Bench decision of this Court in the case of Hari Om Tatsat Brahma Shukla v. State of U.P. and others. He submitted that in case, if the transfer order dated 15.3.2003 is being set aside, the petitioner is not going to get any relief and, therefore, the petition is liable to be dismissed on this ground alone. He submitted that the respondent No. 7 was selected by the Board as Principal. The said selection has been upheld by the Apex Court finally. He further submitted that it is wrong to say that the respondent No. 7 has been transferred without following the proper procedure.

6. Having heard learned Counsel for the parties, I have perused the necessary documents and given my anxious consideration to the rival submission of the parties.

7. Admittedly, the petitioner attained the age of superannuation on 1.1.2009, therefore; the petitioner cannot claim the relief of being appointed as officiating principal in the college in view of the Division Bench decision of this Court in the case of Hari Om Tatsat Brahma Shukla v. State of U.P. and others (supra).

8. In view of the fact that the petitioner cannot be granted any relief and the cause of grievance does not survive, no relief can be granted to the petitioner.

9. In the result, the writ petition fails, and is accordingly dismissed on this ground alone.