
(1988) 12 AHC CK 0072
In the Allahabad High Court
Case No : Second Appeal No. 2872 of 1980

Triveni Verma

APPELLANT

Vs

Deshraj Narang Dayanand Inter College and Others

RESPONDENT

Date of Decision : 22-12-1988

Acts Referred:

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 6, 6(1), 6(3), 6(8)

Citation : (1989) 1 AWC 440

Hon'ble Judges : A.N. Varma, J

Bench : Single Bench

Advocate : R.K. Kakkar, S.K. Kakkar and R.R.K. Trivedi, for the Appellant; V.C. Misra, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Varma, J.—This is Plaintiffs second appeal arising out of suit for quashing a resolution dated 3-11-1977 passed by the Committee of Management of the concerned Intermediate College promoting Sri Ram Bujharat Yadav (Defendant No. 4 in the suit) to the lecturer's grade and for declaration that the same was ineffectual in law.

2. The plaint case was that the post of a lecturer in Geography fell vacant in Deshraj Narang Dayanand Intermediate College, which is an institution recognised by the Board of High School and Intermediate Education under the Intermediate Education Act. The post had to be filled by promotion in accordance with Regulation 6 of the Chapter II of the Regulations framed under Intermediate Education Act. The Plaintiff was an L.T. grade teacher in that college. He was in that grade senior to the Defendant No. 4. Under the aforesaid regulations, the post had to be filled from amongst the teachers of the college working in the next lower grade, that is, the L.T. grade. In all respects the Plaintiff had a better claim to promotion, but the Committee of Management illegally and malafide promoted the Defendant No. 4. Hence the suit.

3. The suit was contested by the Defendants which included the Committee of Management and its Manager, Ram Bujharat Yadav as well as the college itself who filed a joint written statement. Their case was that the promotion of the Defendant No. 4 was strictly in accordance with Regulation 6(3) of the aforesaid Regulations. It was otherwise also valid and proper and allegations to the contrary were wrong and unfounded.

4. Three issues were framed by the trial Court. These are:

(1) Whether the disputed resolution dated 3-11-1977 was illegal and ineffectual in law and if so its effect ?

(2) Whether the Plaintiff is entitled to promotion from the L.T. grade to the lecturer's grade ?

(3) To what relief is the Plaintiff entitled ?

5. The learned Munsif trying the suit held that the resolution dated 3-11-77 was Valid and passed in accordance with the Rules and Regulations. He also answered issues Nos. 2 and 3 against the Plaintiff and dismissed the suit. The Court below on appeal has affirmed these findings. Both the Courts below have repelled the contention that the impugned resolution passed by the Committee of Management was vitiated by any bias arising from the mere presence of the Defendant No. 4 ex officio as a member of that Committee in the meeting at which the resolution dated 3-11-77 was passed as admittedly he had not participated in the deliberations.

6. Sri V.K.S. Chaudhary and Sri R.R.K. Trivedi learned Counsel for the Plaintiff Appellant reiterated the issue of bias before me and pressed the appeal only on that point. Their contention was relying on the decisions of the Supreme Court reported in Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, , Ranjit Thakur Vs. Union of India (UOI) and Others, and 1981 SC 136, that the presence of the Defendant No. 4 in the meeting at which the impugned resolution was passed per se rendered the same completely null and void being violative of the principles of natural justice, even though the Defendant No. 4 may not have participated in the deliberations thereat.

7. Sri V.C. Misra learned Counsel for the Defendant No. 4 countered this submission relying on the decision of the Supreme Court reported in 1976 (2) Service Law Reports 509 as well as an unreported decision of this Court in Writ Petition No. 3607 of 1975 decided on 31-8-1976 by urging that the concurrent findings recorded by both the Courts below that the Committee of Management could not be said to have been biased against the Plaintiff is legally correct and proper and consequently the same is not open to review in a second appeal. He also submitted that the failure of the Plaintiff to raise any objection to the presence of the Defendant No. 4 at the meeting in question or to challenge the impugned resolution by way of a representation under Regulation 6(8) of the aforesaid Regulations disentitled him to raise the objection which is now being

sought to be canvassed in the suit.

8. Having heard the learned Counsel for the parties it does not seem necessary to give any concluded opinion on the issue whether the impugned resolution was vitiated by any bias in view of the fact that in my opinion the suit is liable to be dismissed on another ground. The appointment or promotion of teachers of an Intermediate College recognised by the Board of High School and Intermediate Education is regulated by Chapter II of the Regulations framed under Intermediate Education Act. Regulation 6 of this chapter lays down the procedure for appointment of teachers by promotion from the lower grade to the higher grade. Regulation 6(1) provides that any vacancy in the lecturer's grade shall be filled by promotion from amongst the teachers working in the LT grade having a minimum of five years continuous service to their credit and for this purpose the cases of all the eligible teachers have to be considered by the Committee of Management irrespective of whether the teachers of the LT grade apply for selection by promotion or not. Selection for promotion to the lecturer's grade has to be made on the basis of :

- (i) Service standing;
- (ii) achievements in service;
- (iii) academic qualifications and
- (iv) integrity

9. On the basis of these criteria the Committee of Management has to consider the claims of all the eligible teachers in the lower grade who are eligible for promotion and thereafter the Committee of Management makes its recommendation indicating the teacher which in its opinion deserves to be promoted in preference to others. The Manager of the institution is required to forward the proposal recommending the name of the teacher approved for promotion by the Committee of Management alongwith the copy of the resolution to the District Inspector of Schools. He is further required to submit to the District Inspector of Schools a statement showing the various particulars including inter alia the names of all the eligible candidates for promotion, their qualifications and length of their service in the grade from which they are to be promoted. The District Inspector of Schools is then enjoined to take a decision on the proposal of the Committee of Management and to communicate the same under Clause 6 of Regulation 6. If the Committee of Management feels aggrieved by the decision of the District Inspector of Schools it is free to make representation against it to the Regional Deputy Director of Education whose decision in the matter shall be final. under Clause 8 of Regulation 6 if any teacher feels aggrieved by the decision of the Committee of Management he can make a representation against such decision to the Inspector who is authorised to decide the same within three weeks.

10. The statutory scheme laid down under Chapter II indicates that the

appointment cannot take effect unless it receives the approval of the District Inspector of Schools Further, in case the decision of the District Inspector of Schools goes against the Committee of Management it can appeal to the Regional Deputy Director of Education by way of a representation whose decision assumes finality in the matter. On the other if any teacher feels aggrieved by the resolution of the Committee of Management he is entitled to challenge the same by means of a representation as provided under Regulation 6(8).

11. Now it is not disputed that the impugned resolution was approved by the District Inspector of Schools. It is equally undisputed that the Plaintiff did not challenge the resolution under Clause 8 of Regulation 6 to the District Inspector of Schools. The result is that the decision of the District Inspector of Schools became final. And no relief has been claimed in the suit against that decision of the District Inspector of Schools. In the entire, plaint there is no allegation of bias against the District Inspector of Schools which is under the statutory scheme the ultimate authority in the matter of appointment by promotion. That being so, no effective relief can be granted to the Plaintiff by way of declaration in this suit. The suit was hence liable to be dismissed on this preliminary ground alone.

12. In the result, the appeal fails and is dismissed. But I make no order as to costs.