
(1985) 10 AHC CK 0025

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 8428, 6164 and 6408 of 1983

Vijai Narain Sharma

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 10-10-1985

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16E, 16E(10), 16F, 16FF
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 3, 5, 6, 7, 8

Citation : (1985) AWC 1019

Hon'ble Judges : S.D. Agarwala, J

Bench : Single Bench

Advocate : V.C. Misra, for the Appellant; U.C. Misra, Pradeep Kumar and B. Dixit, for the Respondent

Final Decision : Dismissed

Judgement

S.D. Agarwala, J.—The dispute in the three petitions relies to the seniority of three teachers in the Muhatma Gandhi Sainik Inter College, Eta wall. Initially, the college was established as a junior High School in the year 1948, but, thereafter, it became a High School and in 1965, it became an Intermediate College, The College is governed by the provisions of the Intermediate Education Act, 1921 and the Regulations framed thereunder.

2. The three leathers are Vijai Narain Shatma, Rajni Kant Dube and Dinesh Chandra Dube. Vijai Narain Sharma was appointed as lecturer in Leonomies with effect from 21st July, 1965. Rajni Kant Dube was appointed as a lecturer in Sociology with effect from 21st July, 1965. Dinesh Chandra Dube was appointed as a lecturer in Geography on 1st July, 1965.

3. The College prepared a Seniority List, for the first time, in the year 1981. In the list, Vijai Narain Sharma was placed at serial No. 1, Rajni Kant Dube was placed at serial No. 2 and Dinesh Chandra Dube was placed at serial No. 3.

4. Rajni Kant Dube filed an objection, challenging the seniority of Vijai Narain

Sharma on the ground that both Rajni Kant Dube and Vijai Narain Sharma were appointed on the same day, that is, on 21st July, 1965, and Rajni Kant Dube being elder in age, is entitled to be declared senior to Vijai Narain Sharma.

5. Another objection was tiled by Dinesh Chandra Dube to the effect that ho is senior both to Rajni Kant Dube and Vijai Narain Sharma, as the date of his appointment as a lecturer was with effect from 1st July, 1965.

6. The objections filed by Dinesh Chandra Dube were allowed on 27th April, 1983, and it was held that Dinesh Chandra Dube was appointed on 1st July, 1965, and hence he was senior both to Rajni Kant Dube and Vijai Narain Sharma. The objections filed by Rajni Kant Dube to the seniority of Vijai Narain Sharma were allowed by the District Inspector of Schools on 23rd April, 1983, and it was held that Rajni Kant Dube was senior to Vijai Narain Sharma, The effect of all these two decisions of the District Inspector of Schools was that Dinesh Chandra Dube was placed at serial No. 1, Rajni Kant Dube was placed at serial No. 2 and Vijai Narain Sharma was placed at serial No. 3 in the seniority list.

7. Vijai Narain Sharma filed two petitions in the Court, one being Civil Misc. Writ No. 8428 of 1983 against the order dated 23rd April, 1983. This was directed against the decision dated 23rd April, 1983. The second petition filed by Vijai Narain Sharma was Civil Misc. Writ No. 6164 of 1983, which was directed against the order dated 27th April, 1983. A third petition was filed by Rajni Kant Dube, being Civil Misc. Writ No. 6408 of 1983 against the order dated 27th April, 1983,

8. Since all the three petitions relate to the seniority of the three teachers, mentioned above, inter se and involve common questions of fact and law, as such, all the three petitions are being decided by a common judgment.

9. I have heard the Learned Counsel for each of the teachers independently in all the three petitions.

10. Learned Counsel for the Petitioners in Civil Misc. Writ Nos. 6408 and 6164 of 1983 have challenged the appointment of Dinesh Chandra Dube on four grounds. They arc:

(i) That the post of the lecturer in Geography was not in existence on 1st July, 1965, and, as such, Dinesh Chandra Dube could not have been appointed with effect from 1st July, 1965.

(ii) That Dinesh Chandra Dube was working in the L.T. Grade in the College. He could not be promoted as a lecturer unless he completed five years of continuous service.

(iii) That the post of the lecturer in Geography had never been sanctioned by the Managing Committee of the College and, as such, the appointment of Dinesh Chandra Dube was wholly illegal, and,

(iv) That Dinesh Chandra Dube did not have the requisite minimum qualification inasmuch as lie was not M.A. in the subject of Geography on 1st July, 1965, and,

as such, his appointment with effect from 1st July, 1965, is wholly invalid,

11. In Petition No. 8428 of 1983, Learned Counsel for the Petitioner has urged that the Petitioner Vijai Narain Sharma was confirmed with effect from 21st July, 1966, while Rajni Kant Dube was confirmed with effect from 15th August, 1966, and, as such, even though Rajni Kant Dube may be elder in age to the Petitioner Vijai Narain Sharma, Vijai Narain Sharrna is senior to Rajni Kant Dube. The second contention raised in this petition is that Rajni Kant Dube was absent from duty twice during the period of his probation from 1st September, 1965 to 30th September, 1965, and, thereafter, from 15th April, 1966 to 24th April, 1966. A portion of this leave was without pay and since there was a break in service, the seniority of Rajni Kant Dube cannot be counted with effect from 21st July, 1966.

12. I am first considering the two arguments raised by the Learned Counsel for the Petitioner in Civil Misc. Writ No. 8428 of 1983.

13. So far as the first contention of the Petitioner is concerned, Chapter II Regulation 3 of the Regulations framed under the Act provides for the manner in which the seniority is to be determined. Regulation 3 of Chapter II is quoted below:

3. (1) The Committee of Management of every institution shall cause a seniority list of teachers to be prepared in accordance with the following provisions:

(a) The seniority list shall be prepared separately for each grade of teachers whether permanent or temporary, on any substantive post.

(b) Seniority of teachers in a grade shall be determined on the basis of their substantive appointment in that grade. If two or more teachers were so appointed on the same date, seniority shall be determined on the basis of age.

(c) A teacher in a higher grade shall be deemed to be senior to a teacher in the lower grade irrespective of the length of service.

(d) If a teacher who is placed under suspension is reinstated on his original post, his original seniority in the grade shall not be affected.

(e) Every dispute about the seniority of teacher shall be referred to a committee of Management which shall decide the same giving reasons for the decision.

(f) Any teacher aggrieved from the decision of the Committee of Management under Sub-clause (e) may prefer an appeal to the Inspector within fifteen days from the date of communication of such decision to such teacher and the decision of the Inspector in appeal shall be final and shall be given effect to by the Committee of Management.

(2) The seniority list shall be revised every year and the provisions of Clause (1) shall mutatis mutandis apply to such revision.

14. Regulation 3(b) specifically provides that seniority of teachers in a grade shall be determined on the basis of their substantive appointment in that grade.

If two more teachers were so appointed on the same date, seniority shall be determined on the basis of age. It is not disputed that Vijai Narain Sharma and Rajni Kant Dube were appointed as lecturers in the college on 21st July, 1965 on probation. The appointment of a teacher on probation is a substantive appointment. The Regulations do not contemplate that the seniority has to be determined from the date of confirmation in the same grade. Chapter III Regulation 7 makes this position absolutely clear that a person selected for substantive appointment against a clear vacancy shall be placed on probation from the date of his joining the duty. Regulation 9 of Chapter 11 lays down as to when the confirmation of a teacher shall be made. There is a clear distinction drawn in the Regulations between a substantive appointment and a confirmation. Substantive appointment comes into effect from the date a teacher is placed on probation. Confirmation of a teacher is a subsequent act.

15. In accordance with the Regulations, the date of the substantive appointment is the date which is relevant for determining seniority. As; already mentioned above, both Vijai Narain Sharma and Rajni Kant Dube were appointed on probation, which is a substantive appointment with effect from 21st July, 1965, and as such, the District Inspector of Schools has rightly held that the date for the purposes of seniority has to be taken from 21st July, 1965. Since, admittedly Rajni Kant Dube is senior to Vijai Narain Sharma in age, it has been rightly held by the District Inspector of Schools that Rajni Kant Dube is senior to Vijai Nurain Sharma.

16. In so far as the second contention raised by the Learned Counsel for the Petitioner is concerned, this contention is dependent on facts. The Petitioner did not raise this contention before the District Inspector of Schools where all the relevant facts in relation to this contention could have been produced. In these circumstances, he cannot be permitted to challenge the order of the District Inspector of Schools on this ground.

17. Learned Counsel appearing for Dinesh Chandra Dube in Writ Nos. 6164 and 6408 of 1983 has urged that in proceedings relating to the determination of the seniority of teachers, it is not open to the Petitioners to challenge the appointment and promotion of Dinesh Chandra Dube. The U.P. Intermediate Education Act, and the Regulations framed thereunder prescribe specific procedures for appointment and promotion of a teacher. The said appointment and promotion cannot be challenged in collateral proceedings, namely, in proceedings relating to seniority.

18. Judicial notice can be taken of the fact that in this State, in every College, there are series of litigation amongst the teachers challenging the seniority list prepared by the various colleges. The question of seniority has assumed great importance because of the provisions in the Act and the Regulations framed thereunder governing these colleges. It has been Laid down that; the senior-most teacher in the college shall officiate as Principal of the college in the absence of the Principal. As a result of these litigations inter se, fighting and

groupism amongst the teachers has taken the upper hand which has completely shattered the discipline in the college. It has come to my notice that in cases relating to seniority, it has almost become a practice to challenge the appointments and promotion of all the teachers creating a state of uncertainty and making a sword of democles hang on every teacher. This creates great dissatisfaction and aggressive teachers take an upper hand. This also results in the lack of proper teaching because most of the time the teachers are involved in maintaining the validity of their appointments and promotion rather than concentrating on the teaching which is their primary duty.

19. It has been often found that appointments and promotion are challenged after more than one or two decades. The position of the records is that neither the Managing Committees maintain proper records in a regular manner nor the records are available with the District Inspector of Schools. In fact, the Managing Committees change so often and they are also litigating so frequently that a decision by one Managing Committee is not supported by a succeeding Managing Committee. The post of the District Inspector of Schools is also transferable and it often transpires that the District Inspector of Schools, who had earlier passed the order, is not available to justify the approval given by him to the appointment or promotion made of a teacher. It is in the light of these circumstances that the contention raised by the Learned Counsel for Dinesh Chandra Dube has to be examined.

20. Under the Intermediate Education Act, Regulations have been framed. Section 16-E deals with the procedure for the selection of teachers and the Head of the institutions. Sub-section (10) of Section 16-E empowers the State Government, in case of the appointment of a Head of the institution, and the Director in the case of the appointment of a teacher of an institution, to satisfy itself as to whether any person has been appointed as the Head of the institution or teacher in contravention of the provisions of the Act: or not, after affording an opportunity to the person concerned. Under this power, if any teacher of the institution is aggrieved by the appointment of any other teacher in the institution, it is open to him to challenge the appointment in the case of the Head of the institution before the State Government and in the case of a teacher before the Director. There is, consequently, a complete procedure prescribed under the Act for the appointment and its challenge.

21. Chapter II of the Regulations framed under the Act are the Regulations made to give effect to the provisions of Sections 16-E, 16-F and 16-FF of the Act. Regulation 6 of Chapter II provides that where any vacancy in the lecturer's grade or in the L.T. Grade occurs and it is to be filled by promotion, all teachers working in the L.T. or C.T. grade, who are eligible for promotion, ought to be considered by the Committee of Management without their having to apply for the same. The Managing Committee has been authorised to select the teachers for appointment by promotion.

22. Regulation 8 of Chapter II specifically provides as follows:

If any teacher is aggrieved by any decision, or the Committee of Management under Regulations 5, 6 or 7, he may make a representation against such decision so the Inspector within two weeks from the date thereof. The Inspector may pass such orders as he deems fit on such representation within three weeks from the date of receipt thereof, which shall be given effect to by "the Committee of Management immediately."

23. It is, therefore, clear that even in the case of a promotion of a teacher to the lecturer's grade or to the L.T. grade, a teacher aggrieved by the decision of the Committee of Management has got a remedy to challenge the said decision before the District Inspector of Schools. From the above provisions therefore, the scheme of the Act is that at the time when the appointment is made or when the promotion is made, the said appointment or promotion made by the Managing Committee can be challenged to the higher authority prescribed under the Act and the regulations framed thereunder.

24. Regulation 3 of Chapter II lays down the principles on which the seniority list has to be prepared. I have already quoted Regulation 3 of Chapter II, which lays down the manner in which the seniority is to be determined. The relevant factors for determining the validity of the seniority list are the grade in which the teacher is working, whether he is appointed on the substantive post or not, whether the appointment is permanent or temporary, the date of the appointment or promotion and the age of the teachers.

25. On a reading of Regulation 3 of Chapter II, it is clear that it nowhere contemplates that the teacher who challenges the seniority list can again challenge the validity of the appointment or promotion of a teacher in the college. He can only be aggrieved by the factors, if wrongly decided, as mentioned in Regulation 3. That dispute can be taken in appeal under Clause (f) of Regulation 3, quoted above. In my opinion, it is clear that while disputing the validity of the seniority list, it is not open to a teacher to challenge the appointment and promotion which had already been done. The challenge to the appointment and promotion has been specifically provided. If no challenge is made at that stage then the appointment and promotion becomes final. If the Legislature intended that the appointment and promotion can be challenged at the time of determining seniority, the Legislature would have specifically provided in the Regulations. This has not been done.

26. There is another aspect of the matter that once the appointment or promotion becomes final, a vested right is created in favour of a teacher. A colleague of his in the institution having acquiesced to the appointment and promotion cannot be, subsequently, permitted to raise the dispute.

27. In this view of the matter, I am of the opinion that the contention raised by the Learned Counsel for the Respondent is well founded. In proceedings for determining the validity of the seniority list prepared by the college, it is not open to a teacher of the said college to challenge the appointment or promotion

of any other teacher in the same college.

28. Learned Counsel for the Respondent has cited a decision of this Court in Civil Misc. Writ No. 471 of 1974, *Madan Pal Sharma v. The Chancellor, Meerut University*, decided on 2nd July, 1980. In that case, while challenging the seniority list it was sought to be urged that the appointment of the teacher in the R. G. College, Meerut, was not a valid appointment. In that case, a Division Bench of this Court observed as under:

In our opinion, it is not open to the Petitioner to challenge the validity of the selection or appointment of Smt. Usha Rani Gupta as lecturer in Raghunath Girls College in the present collateral proceedings.

29. In my opinion, the principle laid down in the case of *Madan Pal Sharma v. The Chancellor Meerut University* (supra) fully applies to the present case.

30. Since I am of the opinion that the Petitioners cannot challenge the appointment and validity of the promotions of Dinesh Chandra Dube, it is not open to the Petitioners to urge the four questions raised by them challenging the appointment and promotion of Dinesh Chandra Dube.

31. In the result, all the three petitions are dismissed. The parties are directed to bear their costs in all the three-petitions. Petitions dismissed.