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Dr. M.P. Singh Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Jan-05-2001

Reported in : 2001(1)AWC595

Judge : S.R. Singh and ;D.R. Choudhary, JJ.

Appeal No. : C.M.W.P. No. 22326 of 2000

Appellant : Dr. M.P. Singh

Respondent : State of U.P. and Others

Advocate for Def. : Jai Prakash Rai, ;V.K. Shukla, ;Shashi Kant Sharma, ;U.N. Sharma, ;R.K. Porwal, Advs. and ;S.C.

Advocate for Pet/Ap. : Rakesh Bahadur, Adv.

Judgement :

S. R. Singh and D. R. Choudhary, JJ.

1. The petitioner, a teacher in K.K. Post Graduate College, Etawah (hereinafter referred to as the college) has filed this writ petition for issuance of a direction to the respondents to give effect to the seniority list dated 15.11.1996 and permit the petitioner to function as officiating Principal of the college and/or handover the charge of the office of the Principal of the college to the petitioner. The college is affiliated to Chatrapati Sahuji Maharaj University of Kanpur, in short the University.

2. It is not disputed that the permanent Principal Dr. Om Shankar Srivastava was suspended by the Management on 6.8.1997 and in the resulted vacancy, Dr. Vidya Kant Tiwari, respondent No. 4, was appointed as officiating Principal on 8.8.1997. The grievance of the petitioner is that although according to Statute 13.20 of the First Statutes of the Kanpur University, the management have had the discretion to appoint 'any teacher to officiate as Principal for a period of three months or until the appointment of a regular Principal, whichever is earlier,' but they have no right to allow the fourth respondent to continue beyond the period of three months. Continuance of the 4th respondent beyond the period of three months is in utter disregard of the provisions of Statute 13.20 of the First Statutes of the Kanpur University. The petitioner who is senior to Dr. Vidya Kant Tiwari staked his claim for working as officiating Principal of the College on or after 8.11.1997, but since the Management and the Vice Chancellor of the University were in collusion with Dr. Vidya Kant Tiwari, they paid no heed in the matter and accordingly a writ petition being Civil Misc. Writ Petition No. 3006 of 1999, was filed by the petitioner and two others for appropriate direction to ensure compliance of Statute 13.20. The writ petition came to be disposed of with the direction to the Vice Chancellor to consider and dispose of the representation dated 23.11.1998 and pass appropriate order expeditiously. The Vice Chancellor by his order dated 11.7.1999, held that since the permanent Principal Dr. Om Shankar Srivastava joined the post after his suspension order was recalled by the Committee of Management, the representation had been rendered infructuous. The permanent Principal Dr. Om Shankar Srivastava has since attained the age of superannuation but the fourth respondent a junior teacher !n the College was again appointed as officiating Principal and has continued for more than three months.

3. We have had heard Sri Rakesh Bahadur for the petitioner and Sri Jai Prakash Rai, Sri V. K. Shukla. Sri Shashi Kant Sharma holding brief of Sri U. N. Sharma and Sri R. K. Porwal for the respondents.

4. Statute 13.20 of the First Statute of Kanpur University being relevant to the question involved herein is quoted below :

'When the office of the Principal of an affiliated college falls vacant, the Management may appoint any teacher to officiate as Principal for a period of three months or until the appointment of a regular Principal, whichever is earlier. If on or before the expiry of the period of three months, any regular Principal is not appointed, or such a Principal does not assume office, the seniormost teacher in the College shall officiate as Principal of such college until a regular Principal is appointed.'

5. It is evident from the provision aforestated that in the event of occurrence of a vacancy in the post of the Principal, the Management of an affiliated College has been given a discretion to appoint 'any teacher', to officiate as Principal for a period of three months or until appointment of a regular Principal whichever is earlier. If on or before the expiry of the period of three months, any regular Principal is not appointed, orsuch a Principal does not assume office, the seniormost teacher in the College shall officiate as Principal of such College until a regular Principal is appointed. The language employed in Statute 13.20 makes it abundantly clear that if a regular Principal is not appointed within three months or such Principal does not join before the expiry of three months, the seniormost teacher in the College 'shall' officiate as Principal of such College until a regular Principal is appointed. The right of the seniormost teacher in the College to officiate as Principal till a regular Principal is appointed, is not dependent on any formal order of appointment by the Management or Vice Chancellor. It is not disputed that the fourth respondent is not the seniormost teacher in the College and the petitioner is admittedly senior to the fourth respondent. In paragraph No. 14 of the writ petition, it has been averred that Prof. B. B. L. Agarwal, the seniormost teacher of the College, has already retired and Dr. A. K. Gupta next in order of seniority has proceeded on long leave since the last several years and has, perhaps, taken job in United States of America and Dr. T. N. Verma, the third teacher in order of seniority, has also retired and Dr. D. K. Agarwal, ranking fourth in the seniority list has declined to work as officiating Principal and, therefore, the petitioner being the next seniormost teacher became entitled to officiate as Principal after expiration of period of three months from the date the fourth respondent was appointed as officiating Principal of the College.

6. However, for the respondents it has been submitted that the fourth respondent being the seniormost teacher in the Post Graduate Department of the college, is entitled to work as officiating Principal of the College in the absence of a regular Principal. Reliance has been placed upon the communication dated 12.9.1993, annexed as Annexure CA-3 to the counter-affidavit, addressed by the Assistant Registrar of the University to the Secretary of the Committee of Management of the college. The communication contained in the letter dated 12.9.1993, cannot override the specific provisions contained in the Statute 13.20 which makes no distinction between a teacher of the Post Graduate Department and a teacher in the Degree Department. It is settled that in the same cadre, seniority of a teacher of an affiliated college, as provided in Statute 18.05 read with Statute 18.16 of the first Statute of the Kanpur University, is determined 'according to the length of his continuous service in substantive capacity'. Statute 18.10 provides that seniority of Principal and other teachers shall be determined by the length of continuous service from the date of appointment in substantive capacity. No provision in the Statutes provides that a teacher in the Post Graduate Department will be senior to a teacher in the degree department. The contention raised by the learned counsel appearing for the respondent that the petitioner being a teacher in the Degree Department is not entitled to work as officiating Principal in preference to the fourth respondent who is a teacher in the Post Graduate Department cannot be countenanced in view of the specific provision contained in Statute 13.20 read with Statute 18.10. A common seniority list of teachers in the same cadre and same grade, whether working in the Degree Department or in the Post Graduate Department, is prepared and admittedly the petitioner as well as fourth respondent are in the same cadre and same grade. Merely because the fourth respondent is teaching in the Post Graduate Department is no ground to hold him senior to the petitioner. In Civil Misc Writ Petition No. 42347 of 2000, Dr. Shyam Badan Singh v. Chancellor, Deen Dayal Upadhyay Gorakhpr University, Gorakhpur and others, decided on 12th December, 2000, Government order dated 9.7.1968, came up forconsideration in which it was, inter alia, provided that if two teachers are in the same grade, one belonging to the Post Graduate Department would be senior with one belonging to the Degree Department. This Court held that such provision contained in the Government order was 'Incompatible with the scheme laid down

in the Statutes for determination of seniority' for the reason that qualification and manner of appointment and inter se seniority of teachers of affiliated colleges in the same cadre and grade is to be determined by the length of service to be reckoned with reference to the date of their substantive appointments irrespective of whether appointment is made in the Degree Department or Post Graduate Department. This Court in the case aforesaid has clearly held that the Statute makes no distinction between teachers of the Degree Department or those of Post Graduate Department appointed in the same cadre and same grade.

7. It was then contended by the counsel appearing for the respondents that the petitioner was not qualified for appointment as a Principal in the Post Graduate Department. In our opinion, the criterion for appointment as officiating Principal in an affiliated college is seniority. The petitioner being senior to the fourth respondent is entitled to work as officiating Principal. The fourth respondent has no right to work as officiating Principal.

8. In the facts and circumstances of the case, the writ petition succeeds and is allowed. The respondents are directed to handover the charge of officiating Principal of the college to the petitioner within ten days of furnishing certified copy of this order before the Secretary/ Manager of the college. The petitioner shall be entitled to work as officiating Principal until replaced by a regularly selected/appointed Principal unless, of course, Dr. A. K. Gupta or Dr. D. K. Agarwal, who are senior to the petitioner, stake their claim for appointment as officiating Principal.

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