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Panchami Singh Vs. Junior Director of Education and ors.

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Court : Allahabad

Decided On : Dec-19-2002

Reported in : 2003(3)AWC2227

Judge : Janardan Sahai, J.

Acts : Uttar Pradesh Intermediate Education Act, 1921 - Regulation 3; Uttar Pradesh Recognised Basic Schools (Recruitment and Condition of Service of Teachers) Rules, 1978

Appeal No. : C.M.W.P. No. 37923 of 2001

Appellant : Panchami Singh

Respondent : Junior Director of Education and ors.

Advocate for Def. : V.K. Shukla, ;V.B. Khare, ;A.K. Shukla, Advs. and ;S.C.

Advocate for Pet/Ap. : Arvind Srivastava, Adv.

Disposition : Writ petition dismissed

Judgement :

Janardan Sahai, J.

1. The issue in this writ petition is the determination of inter se seniority between the petitioner Panchami Singh and the third respondent Indrajeet Gaur. They are

both teachers in the L.T. grade in Jawahar Lal Nehru Uchchatar Madhyamik Vidyalaya, Jayatpur, which is a recognised Intermediate College. The Committee of Management decided the dispute by holding the third respondent Indrajeet Prasad Gaur as senior. The petitioner took the matter to the Joint Director of Education in appeal. By the order dated 31.5.2001 the Joint Director of Education has decided the matter in favour of the third respondent. Aggrieved, the petitioner has come in this writ petition. The petitioner and the third respondent were both appointed as L.T. grade teachers by promotion on 7.9.1993. In such: a case where two persons are promoted on the same date in a particular grade, seniority would be determined by Regulation 3 (bb) of Chapter II of the Regulations framed under the Intermediate Education Act and not by Regulation 3 (b). Both the Regulations 3 (b) and 3 (bb) are quoted below :

'3 (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 ; (bb) Where two or more teachers working in a grade are promoted to the next higher grade on the same date, their seniority inter se shall be determined on the basis of the length of their service to be reckoned from the date of their substantive appointment in the grade from which they are promoted. Provided that if such length service is equal, seniority shall be determined on the basis of age.'

2. As per the aforesaid provision of Regulation 3 (bb), seniority is to be determined on the basis of the length of service to be reckoned from the date of substantive appointment in the grade from which the promotion was made. The petitioner and the third respondent were both teachers in the C.T. grade from which they were promoted, as such, it is necessary to fall back on the determination of the date of substantive appointment of the petitioner and the third respondent. The Joint Director of Education has relied upon the service book. The date of appointment of the third respondent in the C.T. grade entered in his service book is 9.11.1972 but his appointment was shown as untrained. The date of his substantive appointment is entered as 1.7.1975. On the other hand, the date of substantive appointment of the petitioner in the service book is entered as 1.8.1977. On this basis, the Joint Director of Education held the third respondent to be senior to the petitioner.

3. Sri Arvind Srivastava, learned counsel for the petitioner submitted that approval of the petitioner in the C.T. grade under the three language scheme was 30.3.1979, whereas the date of approval of the third respondent was 29.6.1982 and as such, the petitioner is senior to the third respondent. Reliance is placed in this regard upon Annexure-2 to the writ petition, which is a copy of the letter of the District Basic Shiksha Adhikari, Gorakhpur, in which it is stated that the teachers whose names were given in the list which, includes the name of the third respondent were regularised by the department in the prescribed pay scales. The question is whether the letter dated 29.6.1982 confers validity upon the petitioner's appointment as a letter of approval or it is merely a recognition of the appointment for the purpose of payment of salary as the institution had come under the grants-in-aid. It is submitted by Sri V. K. Shukla, learned counsel for the third respondent that no approval was required at the time of the petitioner's appointment in the C.T. grade, which was made in the year 1972 or at any point of time before the U. P. Recognised Basic School (Recruitment of Condition of Service of Teachers) Rules, 1978, were enforced with effect from 13.2.1978. For the first time, the requirement of approval to the appointment of a teacher of a Junior High School became necessary under these Rules. Sri Arvind Srivastava, however, submitted that even before these Rules, there was a requirement of approval under paragraph 143 of the Education Code. A Full Bench of this Court in Magan Ram Yadav v. Deputy Director of Education, 1980 UPLBEC 6, has held that the paragraph 143 of the Education Code is merely in the nature of executive instruction and does not have the status of a statutory rule. A Division Bench of this Court in Krishna Narain Katiyar v. District Basic Education, Kanpur, 1980 UPLBEC 257, relied upon the decision in Mangan Ram Yadav and has also held that paragraph 143 applies to teachers of High School and Intermediate classes and not to Junior Higher Secondary or Basic Schools.

4. It is clear that there was no statutory provision requiring approval to an appointment of Assistant Teacher of a Junior High School before the 1978 Rules were framed. It must, therefore, be held that the appointment of the third respondent, which was made before 1978 did not require any approval. The letter dated 29.6.1982, was merely a recognition of the appointment of the third respondent for the purposes of payment of salary after the institution had come

under grants-in-aid. Even if it is assumed that the letter dated 29.6.1982 was a letter of approval, that would make no difference because it would be a mere surplusage as I have already taken the view that at the time when the respondent No. 3 was appointed, no approval was required.

5. At the time of the appointment of the third respondent in the year 1972, he was not trained. The third respondent became a trained teacher when he acquired B.T.C. certificate in the year 1974-75. The date of substantive appointment of the third respondent is entered in his service book as 1.7.1975. The petitioner on the other hand was appointed as assistant teacher on 1.10.1975 but he was not trained. He acquired the B. Ed. qualification on 1.8.1977. Whether B. Ed. qualification is a sufficient training qualification is in dispute. It is submitted on behalf of the third respondent that B. Ed. is not a sufficient training qualification and as such, the petitioner can claim no seniority over the third respondent. Reliance is placed upon a decision in Dharm Veer Singh v. State of U. P. and Ors., 2001 (1) AWC 254 : 2000 (4) ESC 2838, in which it was held that B. Ed. training qualification cannot be treated to be equivalent or higher to teachers training certificate envisaged in Rule 4 (2) (b) of the 1978 Rules. The case of the petitioner is that his appointment was approved by the Basic Shiksha Adhikari under the three Language Scheme of appointment as Sanskrit teacher on 30.3.1979. Even if B. Ed. is taken to be a sufficient training qualification, the petitioner became a qualified trained teacher only from the date he acquired the B. Ed. qualification on 1.8.1977. In Shitala Prasad v. State of U. P., 1986 UPLBEC 473, a distinction was made between teachers who are regularly and validly appointed and those whose appointment became regular subsequently. It was held that these two sets of teachers would belong to different streams and a teacher whose appointment became regular at some point of time after his appointment could not be permitted to steal a march over a teacher who was regularly appointed earlier. It was held that if a rule permits exemption from the required qualification, the appointment would become regular from the date such exemption is granted and not retrospectively. In view of this position, the appointment of the petitioner as C.T. grade teacher would be treated to have been made after he acquired the B. Ed. qualification on 1.8.1977 whereas the third respondents' appointment would be taken as valid from the date he acquired the

B.T.C. certificate, namely, from the year 1975. In view of these facts, the Joint Director of Education committed no error in coming to the conclusion that the third respondent is senior to the petitioner.

6. Learned counsel for the petitioner relied upon certain decisions on the point that seniority has to be counted from the date of regularisation. These are Masood Akhtar Khan v. State of M. P., 1990 (2) AWC 1291 (SC) :1990 (4) SCC 24, in which it was held that if the initial appointment is not made according to Rules subsequent regularisation does not entitle the employee to the benefit of the intervening service for seniority ; C. K. Antony v. B. Murlidharan, 1998 (7) SCC 75, wherein the claim of the petitioners who were appointed in excess of the quota though before the direct recruits was held not to affect the seniority of direct recruits ; Registrar General of India v. Thippa Shetty, 1998 (8) SCC 690, in which it was held that ordinarily regularisation would be prospective so that seniority of those who are already in service is not affected ; Davinder Bathia v. Union of India, 1998 (4) AWC 850 (SC) : 1998 (5) Supreme 28, in which it was held that period of ad hoc service cannot be counted for purpose of seniority in the cadre of selection pool. Dr. Ram Ray Ram v. State of Bihar, 1998 Supreme Today, in which in view of the specific Rule the date of entry into service in substantive capacity was held to be the determining factor for seniority irrespective of scale of pay and M. K. Shanamgam v. Union of India, 2000 (4) Supreme 710, in which the claim for seniority from date of ad hoc promotion was turned down for the proposition that ad hoc services can not be counted for determining seniority. These decisions are distinguishable. They are applicable to cases where there was some flaw in the initial appointment which was subsequently made regular. I have already held that the appointment of the third respondent became regular with effect from the date he acquired the training qualification in 1975 and as such, the proposition laid down in the cases cited by the counsel for the petitioner do not affect the case of the third respondent to have his seniority reckoned from the date he acquired the training qualifications and on this basis too the third respondent is senior.

7. It was lastly contended by the learned counsel for the petitioner that the date of appointment of third respondent in his service book shown as 1.7.1972, is incorrect and that the entry was in the hand writing of a person who became the

manager in a subsequent year and was not the manager at the relevant time. The submission does not carry weight. It is not the case of the petitioner that a new service book has been prepared. The entries in the original service book are undisputedly of long standing and would be presumed to be genuine and I am not prepared to reopen the question after such a long lapse of time in this writ petition. The fact that the respondent No. 3 was treated to be senior to the petitioner is also supported by certain other circumstances. In the attendance register, the name of the third respondent has been shown to be above that of the petitioner. The third respondent was given the selection grade before the petitioner. In S. P. Singh v. District Inspector of Schools, 1990 (1) UPLBEC 474, a Division Bench of this Court relied upon the date of selection grade as well as upon the order in which the names are entered in the attendance register as relevant circumstances in proof of seniority. While these facts may not be determining factors, they are relevant as supporting circumstances of acquiescence.

8. In the result, the challenge fails. The petition is dismissed.

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