

Shitla Prasad Shukla

Vs

State of U. P. and Others

Civil Appeal No. 2609 of 1984

(M. P. Thakkar, E. S. Venkataramiah JJ)

19.05.1986

JUDGMENT

THAKKAR, J. -

1. Seniority is the bone of contention.
2. The dispute centres round the question as to whether the High Court was right in affirming the view taken by the District Inspector of Schools that respondents 5 and 6 were senior to the appellant in the lecturer's grade in the Kashiraj Maha Vidyalaya Inter College, Orai, District Varanasi.
3. The dispute regarding inter se seniority having arisen amongst the aforesaid three persons, the District Inspector of Schools examined the issue and rendered a decision dated January 8, 1980 holding that respondents 5 and 6 were senior to the appellant in the lecturer's grade having regard to the fact that their appointment in the grade became effective from December 19, 1962, July 1, 1963 and July 23, 1963 respectively.
4. The appellant challenged the decision by way of a writ petition to the High Court. The High Court affirmed the decision of the District Inspector of Schools and dismissed the writ petition. Thereupon the writ petitioner in the High Court has approached this Court by way of the present appeal by special leave.
5. The appellant was initially working as an Assistant Teacher in the aforesaid institution which was upgraded into an Intermediate College under the provisions of the Intermediate Education Act. The appellant started teaching Hindi in the Intermediate classes upon the institution being upgraded, though he was not qualified to be appointed as a lecturer in Hindi as per the relevant regulations which enjoined that the minimum educational qualification for being appointed as a lecturer in Hindi was MA in Hindi and BA with Sanskrit whereas the appellant did not possess the requisite qualification of BA in Sanskrit. It is not in dispute that the appellant did not possess the requisite qualification viz. BA degree in Sanskrit and was therefore not entitled to be appointed in the lecturer's grade as lecturer (Hindi) having regard to the prohibition contained in Section 16-F of the Intermediate Education Act. The appellant however could have been appointed as a lecturer in Hindi if he was exempted from possessing such qualifications, in exercise of powers under sub-section (1) of Section 16-E of the Act. The appellant made an application for exemption as envisaged by Section 16-E of the Act. This application was granted by the Board of High School and Intermediate Education, U. P. by its order dated July 23, 1963. The contention of the appellant is that though the Board had actually granted exemption only on July 23, 1963, he must be deemed to have been exempted from November 4, 1960, the date on which he made the application for

exemption. If the appellant is right in his submission that although he was factually exempted by the order of July 23, 1963 he must be deemed to have been exempted with retrospective effect from November 4, 1960, the appellant must succeed. If this contention is considered to be untenable the appellant must fail. The High Court has taken the view that the appellant is entitled to be treated as having become duly qualified with the actual date of the grant of exemption on July 23, 1963 and that he cannot be treated as having been granted exemption with retrospective effect. In this view of the matter the appellant's seniority vis-a-vis respondents 5 and 6 has been computed on the basis that the appellant was appointed on July 23, 1963 when he became qualified for being appointed to the lecturers' grade. The appellant has contended that the High Court has committed an error in not accepting his plea and has reiterated the same submissions before this Court.

6. The first question which must be answered is as to whether the plea of the appellant that he must be treated as having been exempted from possessing the qualification with retrospective effect is well founded. We are of the opinion that the District Inspector of Schools was right in taking the view that the appellant was absorbed as a lecturer with effect from the date on which the appellant had actually secured the exemption.

7. Developments in regard to the application for exemption took the following course :

#November 4, 1960 . . The appellant filed an application for exemption before the Board of High School and Intermediate Education, U. P. (Board) January 6, 1962 . . The Board had informed the appellant that his application for exemption was not in the proper form and that he should submit his application in the proper form. January 15, 1962 . . The appellant filed the application in the proper form. April 10, 1962 . . The Deputy Director of Education requested the appellant to obtain the minimum educational qualification (BA Degree in Sanskrit) by appearing in examination either from Varanasi Sanskrit Vishwavidyalaya or from Gorakhpur University. September 12, 1962 . . The appellant replied to this communication and stated therein that he was not in a position to pass the BA Examination in Sanskrit in the University mentioned by the Board. July 23, 1962 . . After prolonged correspondence, the Board granted the exemption.##

8. Thus it is clear that the Board was not inclined to grant the exemption to the appellant and had insisted on the appellant securing the requisite qualification by appearing in an examination, from an appropriate institution. The Board was disinclined to grant the request till late 1962. When this is the factual position, how can the appellant contend that the Board must be deemed to have granted the exemption from the date of his application i. e. November 4, 1960? In this factual backdrop it is futile to contend that the Board had granted exemption with retrospective effect or that the exemption must relate back to the date of the making of the application. Besides, the language of Section 16-E of the Act does not admit of the construction canvassed on behalf of the appellant viz. that the Board can grant exemption with retrospective effect. It is in terms provided that the exemption may be granted by the Board only after considering the report of the Director having regard to the experience, education and other attainments of the person sought to be appointed. It would be reasonable to construe the section as enabling the Board to exercise the power to grant exemption prospectively after considering the report and taking into account the relevant circumstances which would by the very nature of things be with prospective effect and not with retrospective effect. To accede to the construction canvassed on behalf of the appellant would be to hold that any unqualified person can be appointed even without the minimum qualifications subject to post facto exemption being granted. Till the exemption is granted the person is not qualified to be

appointed. In other words he would be lacking in the basic qualification for being appointed. This deficiency cannot be made good with retroactive exemption unless the provision itself expressly or by necessary implication contemplates such a course of action. Section 16-E does not satisfy this test. Thus it would appear that retrospective exemption could not have been granted and in point of fact was not granted in the present case. Even otherwise, it is not sufficient to show that retrospective exemption could have been granted. It must also be shown that retrospective exemption was in fact granted. In the present case the factual background clearly shows that the Board had not granted retrospective exemption. In fact the Board was not inclined to grant the exemption at all and was insisting that the appellant should obtain the requisite qualification. And the Board finally made up its mind to grant exemption only on July 23, 1963. Unless the view is taken that whenever exemption is granted it must be treated as having been granted with retrospective effect, if there is such power, the appellant cannot succeed. There is no warrant in law or logic for taking such a view. The High Court was therefore perfectly justified in repelling the contention urged on behalf of the appellant and in dismissing the writ petition.

9. There is also one more dimension of the matter. Though the appellant was working as a lecturer, it was not under any authority of law for there is no provision which empowers the college to allow any unqualified person to teach or to appoint him as such in anticipation of his disqualification being removed in future. Till the exemption was granted appellant was not even a teacher in the eye of law though he was allowed to teach by the indulgence of the college authorities. The disqualification was removed only on July 23, 1963 when the Board granted the exemption. How could he have claimed seniority vis-a-vis respondents 5 and 6 who possessed the requisite qualification and became regularly and lawfully appointed teachers much prior thereto?

10. An employee must belong to the same stream before he can claim seniority vis-a-vis others. One who belongs to the stream of lawfully and regularly appointed employees does not have to contend with those who never belonged to that stream, they having been appointed in an irregular manner. Those who have been irregularly appointed belong to a different stream, and cannot claim seniority vis-a-vis those who have been regularly and properly appointed, till their appointments became regular or are regularized by the appointing authority as a result of which their stream joins the regular stream. At that point of confluence with the regular stream, from the point of time they join the stream by virtue of the regularization, they can claim seniority vis-a-vis those who join the same stream later. The latecomers to the regular stream cannot steal a March over the early arrivals in the regular queue. On principle the appellants cannot therefore succeed. What is more in matters of seniority the Court does not exercise jurisdiction akin to appellate jurisdiction against the determination by the competent authority, so long as the competent authority has acted bona fide and acted on principles of fairness and fair play. In a matter where there is no rule of regulation governing the situation or where there is one, but is not violated, the Court will not overturn the determination unless it would be unfair not to do so. In any view of the matter the appellant who did not even belong to the stream of regularly (he was allowed to teach only in an irregular and unauthorized manner) and lawfully appointed lecturers cannot claim seniority against any one already in the stream before he joined the stream himself. The view taken by the High Court is unexceptionable.

11. This appeal must accordingly fail and be dismissed with no order as to costs.

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