

Sudama Singh

Vs

Nath Saran Singh and Others

Civil Appeal No. 3004 of 1987

(E S. Venkataramiah, K. N. Singh JJ)

13.11.1987

JUDGMENT

VENKATARAMIAH, J. –

1. Special leave granted. The appeal is heard.

2. The appellant, Sudama Singh, and respondent 1, Nath Saran Singh, were both appointed as Assistant Teachers in L.T. Grade in the Gandhi Inter College, Chilkahar, District Ballia with effect from the same date, i.e., July 8, 1967 and were placed on probation for one year. Respondent 1 was promoted as Lecturer in Hindi on ad hoc basis with effect from March 1, 1976 by the Committee of Management and this action of the committee of Management received the approval of the District Inspector of Schools on October 5, 1976. On November 20, 1976 the District Inspector of Schools again made an order promoting both the appellant and respondent 1 as Lecturers in Civics and Hindi respectively. The promotions, referred to above, had been made on an ad hoc basis. Likewise a large number of teachers, who were working in the educational institutions which were governed by the (Uttar Pradesh) Intermediate Education Act, 1921 (hereinafter referred to as 'the Act') had been appointed or promoted on an ad hoc basis and the question of regularisation of their services was engaging the attention of the State Government during the relevant time. As a consequence of the decision of the State Government an ordinance entitled the Uttar Pradesh Education Laws Amendment Ordinance, 1977 (U.P. Ordinance 5 of 1977) was promulgated on April 21, 1977. By the said Ordinance a large number of provisions in four of the laws in force in the State of Uttar Pradesh concerning education were amended. One of the laws which was amended by the said Ordinance was the Act. By the Ordinance a new provision, namely, Section 16-GG was introduced into the Act. The Ordinance was replaced by the Uttar Pradesh Education Laws Amendment Act, 1977. Section 16-GG, which was introduced into the Act by the Ordinance, was allowed to remain in operation by the Uttar Pradesh Education Laws Amendment Act, 1977. The relevant part of Section 16-GG of the Act reads as follows :

16-GG. Regularization of appointment of ad hoc teachers. -

(1) Notwithstanding anything contained in Sections 16-E, 16-F and 16-FF, every teacher of an institution appointed between August 18, 1975 and September 30, 1976 (both dates inclusive) on ad hoc basis against a clear vacancy and possessing prescribed qualifications or having been exempted from such qualifications in accordance with the provisions of this Act, shall, with effect from the date of commencement of this section, be deemed to have been appointed in a substantive capacity, provided such teacher has been continuously serving the institution from

the date of his appointment up to the commencement of this section.

# \* \* \*###

(2) Every teacher deemed to have been appointed in a substantive capacity under sub-section (1) shall be deemed to be on probation from the date of commencement of this section.

3. Section 16-GG of the Act, which is reproduced above, provided that notwithstanding anything contained in Sections 16-E, 16-F and 16-FF, every teacher of an institution appointed between August 18, 1975 and September 30, 1976 (both dates inclusive) on ad hoc basis against a clear vacancy and possessing prescribed qualifications or having been exempted from such qualifications in accordance with the provisions of the Act, should, with effect from the date of commencement of the said section, be deemed to have been appointed in a substantive capacity, provided such teacher has been continuously serving the institution from the date of his appointment up to the commencement of the said section. Sub-section (2) of Section 16-GG of the Act provided that every teacher deemed to have been appointed in a substantive capacity under sub-section (1) should be deemed to be on probation from the date of commencement of the section.

4. The services of the appellant and respondent 1, who were working as teachers on ad hoc basis during the relevant period, also came to be regularised by virtue of Section 16-GG of the Act. After their services were so regularised dispute arose regarding the seniority between them. The question of seniority between two or more teachers working in an institution governed by the Act is governed by Regulation 3 in Chapter II of the Regulations made under the Act, the relevant part of which reads thus :

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;

5. While respondent 1 claimed seniority over the appellant on the basis of this appointment or promotion made on March 1, 1976, the appellant claimed that he being older than respondent 1 was entitled to be treated as senior to respondent 1 by virtue of the second part of clause (b) of Regulation 3(1) of the Regulations framed under the Act which provided that if two or more teachers were so appointed on the same date, seniority should be determined on the basis of age.

6. The above dispute regarding the seniority between the appellant and respondent 1 was first considered by the District Inspector of Schools, Ballia. After considering the history of the services of these two teachers, the District Inspector of Schools came to the conclusion that the fortuitous appointment or promotion of respondent 1 on March 1, 1976 could not have any effect on the question of seniority between the appellant and respondent 1. He further observed that the promotions of the appellant and respondent 1 had actually been made as per his letter dated November 20, 1976 which read as under :

# Office of the District Inspector of Schools, Ballia Order No. 159993-94/76/76  
Dated November 20, 1976. PROMOTION##

Following Assistant Teachers of L.T. Grade are promoted to the Lecturer's Grade on the posts mentioned against their names. Promotions have been made under Para 5 of Regulations No. Secondary/5183/15/7/76/2(18)75 Lucknow dated July 7, 1976 made for the appointment of Principals for Government aided Private Secondary Schools.

#-----Sl. Teacher's Pay  
Promotion in Post RemarksNo. Name Scale the pay scale Lecturer-----  
-----1 Sh. Nath L.T. Rs. 400-750 Lecturer On  
the post Saran Singh Rs. 300-500 Hindi vacated by Order No. Ord- inance/1849/651  
dt. February 7, 1976 issued by Director of Ed- ucation, U.P., Allahabad2 Sh. Sudama  
L.T. Rs. 400-750 Lecturer Singh Rs. 300-550 Civics-----  
----- Sd/- Illegible Tulsi Ram Jatar D.I.O.S. Ballia##

7. He further observed that since the appellant and respondent 1 had been accepted 'to be promoted in substantive capacity vide letter dated November 20, 1976 issued by the District Inspector of Schools', i.e., on the same date and since the appellant, whose date of birth was April 1, 1937 was older than respondent 1, whose date of birth was July 1, 1942, the appellant should be considered as senior to respondent 1 by virtue of the second sentence in clause (b) of Regulation 3(1) of the Regulations made under the Act. The above decision of the District Inspector of Schools was conveyed to the parties by his Letter No. 2858-60/85-86 dated June 13, 1985. Aggrieved by the decision of the District Inspector of Schools, respondent 1 filed a writ petition in Civil Miscellaneous Writ Petition No. 9895 of 1985 before the High Court of Allahabad. The learned judge, who heard the writ petition, allowed the writ petition and set aside the order of the District Inspector of Schools and declared that respondent 1 was senior to the appellant on the ground that respondent 1 had been promoted to the post of Lecturer on March 1, 1976 pursuant to certain orders which had been issued under the Act and which continued to be in operation until Section 16-GG was brought into force. This appeal by special leave is filed by the appellant against the decision of the High Court.

8. It is not disputed that until Section 16-GG of the Act came into effect the appellant and respondent 1 were both functioning on an ad hoc basis as teachers and it was only by virtue of Section 16-GG of the Act that they came to be appointed as teachers in substantive capacity. Section 16-GG of the Act came into effect from April 21, 1977. It provided that the teachers who were working on an ad hoc basis between August 18, 1975 and September 30, 1976 (both dates inclusive) against clear vacancies and possessing prescribed qualification should 'with effect from the date of commencement of this section' be deemed to have been appointed in a substantive capacity provided such teacher had been continuously serving the institution from the date of his appointment up to the commencement of this section. There is no dispute that both the appellant and respondent 1 satisfied the conditions prescribed by Section 16-GG of the Act for regularising their appointment in a substantive capacity but what is crucial for purposes of this case is the date from which the appellant and respondent 1 should be deemed to be holding their posts in a substantive capacity. Section 16-GG of the Act clearly lays down that any teacher whose services are regularised should be deemed to have been appointed in a substantive capacity with effect from the date of the commencement of that section. It does not say that the services of such teachers should be deemed to have been regularised with effect from the date from which they were continuously officiating in the posts in question. The date of commencement of the section in the instant case being April 21,

1977 it should be held that both the appellant and respondent 1, who were by then holding the posts of Lecturers on an ad hoc basis were appointed in a substantive capacity on the same date, i.e., April 21, 1977. The High Court omitted to consider the effect of the words 'with effect from the date of the commencement of this section' in sub-section (1) of Section 16-GG of the Act and also sub-section (2) of that section which provided that every teacher deemed to have been appointed in a substantive capacity under sub-section (1) should be deemed to be on probation from the date of the commencement of the section. On the question of seniority between the appellant and respondent 1 clause (b) of Regulation 3 (1) of the Regulations made under the Act, as already stated, provides that the seniority of teachers in a grade shall be determined on the basis of their substantive appointment in that grade and if two or more teachers were so appointed on the same date seniority should be determined on the basis of age. Since it is admitted that both the appellant and respondent 1 had been appointed in a substantive capacity by virtue of Section 16-GG of the Act they must be deemed to be holding their respective posts in the substantive capacity only from April 21, 1977 on which date Section 16-GG of the Act came into force. Both of them should be deemed to be on probation from April 21, 1977 [vide Section 16-GG(2)]. Any earlier appointment or promotion on an ad hoc basis has no bearing on the question of seniority. The appellant and respondent 1 should be deemed to have been appointed on a substantive basis on the same date for purposes of seniority and, therefore, the appellant, who is older than respondent 1, should be treated as senior to respondent 1 by reason of the second sentence in clause (b) of Regulation 3(1) of the Regulations framed under the Act. We are, therefore, of the view that the High Court erred in declaring that respondent 1 was senior to the appellant on the basis of the fortuitous promotion of respondent 1 said to have been made on March 1, 1976. The judgment of the High Court is, therefore, liable to be set aside and the decision of the District Inspector of Schools has to be restored.

9. We accordingly allow the appeal, set aside the judgment of the High Court and make a declaration that the appellant is senior to respondent 1. The appeal is accordingly disposed of. No costs.

</html