

Dharam Vir Singh Tomar

Vs

Administrator, Delhi Administration and Others

Civil Appeal No. 2413 of 1991 (Arising out of SLP (C) No. 118 of 1982)

(S. C. Agarwal, A. M. Ahmadi JJ)

07.05.1991

ORDER

1. Special leave granted.

2. Heard counsel for the appellant, the contesting respondent 5 and the Delhi Administration. The grievance of the appellant is that although he was senior to respondent 5 Vasu Chimnani, he was not placed in the selection grade while his junior was granted that very scale. To support his contention of seniority, our attention was drawn to Annexure 'A' appended to the affidavit of January 4, 1982 (page 21). That document shows that the appellant was appointed on November 1, 1972, whereas respondent 5 was appointed on May 1, 1973. This would show that he was senior to respondent 5. It is obvious from the clarification issued by the Director of Education dated April 4, 1973, Annexure 'AA' (page 22) that Selection Grade to teachers was to be given on the basis of seniority, subject to fitness. The expression 'fitness' means that there should not be any adverse entry in the character rolls of the concerned person at least for the last three years and no disciplinary proceedings should be pending against him. So far as the appellant is concerned indisputably there was no adverse entry in his CRs not was any disciplinary proceeding pending against him at the relevant point of time. Therefore, he was clearly fit to be placed in the Selection Grade and since he was senior to respondent 5, it is difficult to understand how his claim was by-passed.

3. It was said that he was declared surplus and therefore, he was not entitled to be placed in Selection Grade. There are two difficulties in accepting this contention. Firstly, he was senior to respondent 5, then he ought not to have been declared surplus. Secondly, even according to Rule 47(4) of the Delhi School Education Rules, 1973, he was entitled to carry his seniority to the school where he was posted on being declared surplus. Therefore, by being declared surplus he could not lose his seniority. So far as the qualifications go, it is clear from Annexure 'A' (page 21) that he was M.A., B.Sc., (Ag.) M.Ed., whereas respondent 5 was B.A. B.Ed. This would show that he was better qualified than respondent 5 and even on that ground he was entitled to be placed in selection grade.

4. For the above reasons we are of the opinion that he was wrongly by-passed and he ought to have been placed in the Selection Grade on the date his junior, respondent 5, was placed therein. We direct that he be placed in the Selection Grade w.e.f. the date his junior, respondent 5 was granted that benefit and he may be granted all monetary benefits accruing from such placement within a period of three months from today. The appeal is allowed accordingly with no order as to costs.

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