

U. P. Basic Shiksha Parishad and Another

Vs

Hari Deo Mani Tripathi and Others

Director of Basic Education, U.P. and Others

Vs

Raghunandan and Others

Civil Appeals Nos. 5279-82 of 1992 with No. 5278 of 1992

(S.C. Agarwal, Yogeshwar Dayal JJ)

07.12.1992

JUDGMENT

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YOGESHWAR DAYAL, J.--

1. Special leave granted.

2. With the consent of learned' counsel for the parties the appeals themselves were heard and are now being disposed of. The relevant petitions are -- SLPs (C) Nos. 458, 459, 460 and 463 of 1992 arising out of a common judgment and order dated 7-3- 1991 passed by the learned Single Judge of the Allahabad High Court in Civil Writ Petitions Nos. 21168, 19861, 21169 of 1987 and 4685 of 1988 respectively as well as SLP (C) No. 6145 of 1992 arising out of a judgment and order dated 4-10-1991 passed by a Single Judge of the Allahabad High Court in Writ Petition No. 6648 (SS) of 1991.

3. For facility of reference we are dealing with facts arising in SLP (C) No. 458 of 1992. In this matter respondent concerned is Hari Deo Mani Tripathi. He was appointed as an untrained Assistant Teacher on 27-11-1963 and he obtained the certificate of training on or about 16- 8-1973.

4. In other civil appeals the names of the respondents, their dates of appointment and the dates of their obtaining the certificate of training am as under :

#----- Name Date of Date of appointment
obtaining training certificate-----Appeal
arising out of SLP (C)No. 459 of 1992 1. Dinesh Pande 23-11-1961 11-3-1976 2. Hridayanand Singh
30-8-1 960 11-5-1976 3. Ram Nakshatara 16-2-1966 11-7-1975 Prakash 4. Madan Kishore Singh 7-
2-1966 11-3-1976 5. Harihar Singh 18-8-1962 1-3-1969 Appeal arising out of SLP (C)No. 460 of
1992 1. Hari Prakash 18-3-1970 1-6-1975 2. Saleswar Singh 18-8-1964 11-8-1972 3. Smt Khudaiza
Khatoon 20-3-1969 6-8-1973 4. Mohammed Yasin 3-12-1968 6-8-1973 5. Ram Nagina 14-9-1968
23-3-1973 6. Rai Mangal 2-11-1960 11-3-1976 Singh Appeal arising out of SLP (C)No. 463 of 1992
Badri Prasad 23-11-1963 1970 Tripathi Appeal arising out of SLP (C) No.6145 of 1992 1.

Raghunandan 29-7-1960 1976 2. Krishna Gopal 1-8-1961 1970 3. Ram Sharan 27-1-1960 1972 4. Parmanowar Saknab Singh 10-6-1962 1976 5. Vishwamohar Nath 8-8-1962 1976-----
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5. All the respondents in the aforesaid appeals were appointed as untrained Assistant Teachers in the Junior Basic Schools in Uttar Pradesh (Primary Schools) between the years 1959 to 1966. There is no dispute about the fact that they were temporarily appointed and were untrained at the time of their appointments.

6. During the years 1987-1988 the petitioners in the High Court (respondents in the present appeals) filed writ petitions. They inter alia stated the date of their initial appointments as teachers in Basic Schools in District Deoria, which were under the Zila Parishad in the State of Uttar Pradesh, except Badri Prasad Tripathi, sole respondent in civil appeal arising out of SLP (C)'No. 153 of 1992 who was appointed as Assistant Teacher in Basic School in Mirzapur District in Uttar Pradesh.

7. It was stated in the writ petition that in 1972 U.P. Basic Education Act (for short '1972 Act') came into force whereunder the U.P. Board of Basic Education (for short 'the Board') was constituted. It was also stated that as per Section 9 of the 1972 Act all the teachers working under the Zila Parishad became teachers under the Board and were deemed to be in the service of the Board.

8. Some additional facts in the case of Hari Deo Mani Tripathi, may also be noticed at this stage.

9. This respondent earlier filed a writ petition in 1987 which had been disposed of by the Division Bench of the Allahabad High Court whereby the Basic Shiksha Adhikari was directed to dispose of his representation⁷ and consider his case for promotion as Headmaster. He filed his representation which was rejected by the District Basic Shiksha Adhikari, Deoria on 9-10-1987, inter alia, for the reason that Hari Deo Mani Tripathi received the required training as teacher in 1973 and that he was appointed substantively as Assistant Teacher thereafter. It was stated that the untrained teachers were appointed as ad hoc teachers to the post of Assistant Teachers. This decision was communicated to Hari Deo Mani Tripathi vide letter dated 12-10-1987. In his writ petition he inter alia had also challenged this order of the District Basic Shiksha Adhikari, Deoria dated 9-10-1987. The relief of quashing of the said order was in addition to the other common reliefs claimed by all the respondents in the writ petitions before the High Court.

10. In the writ petitions the respondents herein had prayed for a writ of mandamus directing the appellants herein not to promote junior teachers on the post of Headmasters from the list prepared and to give all the benefits to the writ petitioners from the date on which they were entitled to promotion to the post of Headmasters.

11. The High Court has noticed that the writ petitioners have been in continuous service from the date of their initial appointments. The High Court also noticed that Hari Deo Mani Tripathi received training and got training certificate in 1973. He was given the pay scale of trained teacher only thereafter. As noticed earlier the other respondents acquired training between 1972 to 1975, except Haridhar Singh, who received the training in 1968-69, and Badri Prasad Tripathi and Krishna Gopal who received training in 1970. There is no dispute about these facts.

12. The main contention of the writ petitioners before the High Court was that the initial date of their appointment as Assistant Teacher and not the date of their training should be taken as the date of their appointment in the substantive capacity as Assistant Teacher. In other words it was a

common case that their substantive appointment should be taken from the date of their initial appointment irrespective of the fact that they were untrained teachers at the time of the initial appointment. It was contended before the High Court that trained and untrained teachers were of the same class i.e. Assistant Teachers. It was contended that after they had received the training any disparity between them had come to an end. They alleged that there were no rules governing the seniority and hence, the date of their initial appointment was relevant to determine their seniority. The case of the appellants, who were respondents' before the High Court, was that the eligibility of primary school teachers was the training certificate as well as on the non-availability of the trained teachers, untrained teachers could have also been appointed but their scale was less and they were appointed on a fixed pay and formed a different class. The case of untrained teachers and trained teachers could not be equated. It was only after the training that they got the scale of trained teachers and it is from the date of their getting the scale that they shall be deemed to have been substantively appointed on this post.

13. The learned Judge of the High Court relying upon a decision of the same High Court in *Jagdish Narain Shastri v. Basic Shiksha Parishad, Etawah* [Civil Misc. Writ Petition No. 10920 of 1986, decided on 7-8-1986] took the view that there was no difference between the trained and untrained teachers and in the absence of any rule or government order, the seniority could not have been determined with effect from the date of the training but should have been from the date of the initial appointment. The High Court held that regardless of training, the trained and untrained teachers did not form two classes and in the opinion of the High Court they formed a same cadre except that the untrained teachers had the disadvantage of lesser pay but the disadvantage came to an end after they took the training. The High Court further observed that the writ petitioners had long uninterrupted and continuous service before the Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 (for short '1981 Rules') came into force and had taken the training before the said Rules. It was held that their seniority should be determined from the date of initial appointment and that there was no justification for holding their substantive appointment from the date of training. The High Court had also noticed that the persons who had already been promoted as Headmasters of the Basic Schools and who were likely to be affected by the re-fixation of the seniority of the writ petitioners, whereby the writ petitioners may become senior to the persons who had already been promoted as Headmasters, had not been impleaded as parties. The High Court recorded the concession on behalf of the writ petitioners that since they were interested in getting their promotion and having their seniority fixed, they did not want to disturb the Headmasters already selected. Consequently the High Court directed that the seniority of the writ petitioners be fixed afresh and thereafter they be considered for promotion and yet the High Court directed that the selections/promotions already made would not be disturbed or affected.

14. Before we deal with the submissions made on behalf of the learned counsel for the parties, it would be useful to understand the different enactments and the Rules made thereunder as applicable.

15. In 1922 there was an Act called the United Provinces District Boards Act, 1922. Rules were framed under this Act being the Education Rules contained in Chapter XI of the Boards Manual. These Rules were applicable to the writ petitioners. In 1958, an Act called the 'Antarim Zila Parishad Act' was enacted. This Act did not repeal the aforesaid Rules in Chapter XI of the Boards Manual and no Rules were made under this Act. In 1958 the 'Antarim Zila Parishad Act' was repealed by the 1961 Act known as 'Kshetra Samitis Br Zila Parishads Adhiniyam'. By virtue of Section 270 of this Act of the Rules and Regulations etc. made under the 1922 Act, which were not inconsistent with the provisions of the 1961 Act, continued to be in force until superseded. No Rules were, however, made under the 1961 Act. In 1972 the 'Uttar Pradesh Basic Education Act, 1972'

(U.P. Act 34 of 1972) was enacted and by virtue of Section 9 thereof the aforesaid Education Rules contained in the Manual continued to apply to the employees who were transferred to the Board constituted under the 1972 Act on the same terms and conditions till they were altered by the Rules framed by the State Government in this behalf. The Rules under the 1972 Act were framed in 1981 only.

16. The relevant Rules regarding the appointment of Assistant Teachers contained in Chapter XI of the Manual are 13-A, 14(iii)(e), (n), (g), 15, 16, 17, 18, 24-A and 24-B. They read thus :

"13-A. Specialist teachers, e.g., teachers of English, agriculture, rural knowledge and manual training, may be appointed as assistant masters in Hindustani middle schools provided they are certified to be qualified for the post by the inspector of schools in accordance with departmental orders. They shall be paid not less than Rs 30 per mensem and not more than Rs 50 per mensem. They shall be considered for promotion to the headmasterships of Hindustani middle schools with other assistant masters of equal length of service in middle schools.

14. Promotions and appointments to and grade of pay in middle or primary schools shall be made as follows :

#(i)-(ii) * * *##

(iii) The following post shall be filled by promotion, seniority in the Board's service being taken into consideration in cases of equal merit :

#(a)-(d) * * *##

(e) The posts of headmasters in primary schools in the grade of Rs 22 per mensem. These posts shall be filled by the promotion of assistant masters in primary schools in the grade of Rs 20 mensem.

(f) The posts of assistant masters on Rs 20 per mensem. These posts shall be filled by the promotion of assistant masters in the grade of Rs 19 per mensem.

(g) The posts of assistant masters on Rs 19 per mensem. These posts shall be filled by the promotion of assistant masters in the grade of Rs 17 per mensem.

15. The Board shall not appoint any person as a headmaster of a primary school who does not hold a certificate from a normal school or training school. Headmaster of primary schools shall be graded on the following scale of pay :

50 per cent on Rs 22 per mensem.

30 per cent on Rs 25 per mensem.

20 per cent on Rs 30 per mensem.

16. The Board shall not appoint any person as assistant master of a primary school or as master in a preparatory school who does not hold at least a primary teachers' certificate. Such teachers shall be graded on the following scale of pay :

30 per cent on Rs 17 per mensem.

50 per cent on Rs 18 per mensem.

20 per cent on Rs 20 per mensem.

17. Where no candidate qualified as above is available for the posts mentioned in Rules 13, 15 and 16, the Board may appoint teachers with lower qualifications, subject to the approval of the divisional inspector of schools and may offer lower rates of pay: provided that all headmasters shall receive the rates of pay as laid down in Rule 15, that no person shall be appointed as assistant master in a middle Hindustani school who does not hold at least a primary teachers' certificate, and that no untrained teacher shall be appointed as headmaster of a primary school unless he had put in three years' approved service under the Board before 1-3-1919.

18. Where under the preceding rule an untrained assistant teacher is appointed by the Board his pay shall be Rs 12--1--14 (twelve rupees rising to fourteen rupees by an annual increment of one rupee on approved service) per mensem and shall not exceed Rs 14 per mensem unless he obtains a training school certificate, provided that the Board may have higher rates of pay to untrained teachers who had put in at least five years' meritorious service under the Board before 1-3-1919, and may grade such teachers, after they have put in ten years' meritorious service, from the date of their appointment under the Board and if they have passed the vernacular final examination, with trained assistant masters in primary schools.

24-A. The Board shall depute annually untrained teachers and candidates to a Government normal school for training in such numbers and to such normal schools as may be fixed by the department.

24-B. District Board candidates for admission to Government normal schools, Government central training schools and District Board training schools, shall be selected in the following descending order :

(a) untrained teachers in permanent service whose age does not exceed the limit prescribed by Government;

(b) untrained teachers holding temporary or officiating posts whose age does not exceed the limit prescribed by Government.

(c) candidates standing the highest in the list maintained in accordance with Rule 14.

All such selection shall conform to the orders of Government about the representation of the various communities [vide Rule 22(1)(i)(d)]."

17. It may be noticed from Rules 14(iii)(e), (f) and (g) that Assistant Teachers were drawing salary in the grades of Rs 17 per mensem, Rs 19 per mensem and Rs 20 per mensem and they were eligible for being promoted to the posts of Headmaster in the grade of Rs. 22 per mensem.

18. It is clear from Rule 16 that a person was not eligible to be appointed as an assistant master of a primary school who does not hold at least a primary teachers' certificate and it was these teachers who

were given the grades in the percentage mentioned therein and it was from these Assistant Teachers, who were to be promoted as contemplated by sub-rules (e), (f) and (g) of Rule 14(iii). It is further clear that those persons who did not have primary teachers' certificate could, under Rule 18, be appointed by the Board in the scale of Rs. 12-1-14, the increment being of rupee one on approved service and the salary could not exceed Rs. 14 per mensem unless he obtains the training school's certificate, subject to the other provisions of Rule 18. Again the Board had to depute untrained teachers to government schools for training as per the number of fixed by the department and they were to be selected as provided for in Rule 24-B.

19. As we have noticed earlier in 1958 'Antarim Zila Parishad Act' was enacted which did not repeal the aforesaid Education Rules contained in Chapter XI of the Manual and no rules were either framed under the 'Antarim Zila Parishad Act'. The 1958 Act, as stated earlier, was repealed by the 1961 Act known as the 'Kshetra Samitis & Zila Parishads Adhiniyam'. Section 270 of the 1961 Act reads thus :

"270. Continuation of appointments, taxes, budget estimates, assessments etc. - Save as expressly provided by the provisions of this Chapter -

(a) any appointment, delegation, notification, notice, tax, order, direction, scheme, licence, permission, registration, rule, bye-law, regulation form made, issued, imposed or granted under the United Province District Boards Act, 1922 or the Uttar Pradesh, Antarim Zila Parishad Act, 1958 or any other law in force in any local area immediately before the appointed date shall, insofar as it is not inconsistent with the provisions of this Act, continue in force until it is superseded by any appointment, delegation, notification, notice, tax, order, direction, scheme, licence, permission, registration, rule, bye-law, regulation and form made, issued, imposed or granted under this Act or any other law aforesaid, as the case may be; and

(b) all budget estimates, assessments, valuations, measurements and divisions made under the United Provinces District Boards Act, 1922 or the Uttar Pradesh Antarim Zila Parishad Act, 1958, before the appointed date shall, insofar as they are consistent with the provisions of this Act, be deemed to have been made under this Act."

20. The result of this section was that the aforesaid Rules contained in Chapter XI of the Boards Manual also continued under the 1961 Act as they were not inconsistent with the provisions of 1961 Act. No rules were framed under the 1961 Act. Then came the 1972 Act. Under this Act rules were framed in 1981 and on the coming into force of 1981 Rules the Rules of 1922 stood superseded.

21. By virtue of Section 9 of the 1972 Act old employees became the employees of the Board on the same terms and tenure which they were holding under the Education Manual. Relevant part of Section 9 of the 1972 Act read thus :

"9. Transfer of employees. - (1) On and from the appointed day every teacher, officer and other employees serving under a local body exclusively in connection with basic schools including any supervisory or inspecting staff, immediately before the said day shall be transferred to and become a teacher, officer or other employee of the Board and shall hold office by the same tenure, at the same remuneration and upon same other terms and conditions of service as he would have held the same if

the Board had not been constituted and shall continue to do so unless and until such tenure, remuneration and other terms and conditions are altered by the rules made by the State Government in that behalf :

Provided that any service rendered under the local body by any such teacher, officer or other employee before the appointed day shall be deemed to the service rendered under the Board:

Provided further that the Board may employ any such teacher, officer or other employee in the discharge of such functions under this Act as it may think proper and every such teacher, officer or other employee shall discharge those functions accordingly."

22. At this stage certain important facts need be noticed which are not in dispute:

(a) That at the time of the initial appointment the writ petitioners were not qualified for appointment as Assistant Teachers as they did not have the requisite training certificate and were appointed as untrained Assistant Teachers;

(b) That they were appointed as ad hoc/temporary Assistant Teachers;

(c) That they received lower pay scale than the teachers who were appointed on substantive basis having the requisite training certificate;

(d) That till 1987 the respondents did not challenge the seniority of promotion of persons who have initially been appointed as trained teachers even though such persons were appointed after the initial appointment of the writ petitioners but before the date when the writ petitioners acquired the training,

(e) That Hari Deo Mani Tripathi, when he filed the writ petition in 1987 filed an extract of the seniority list of the teachers of primary schools of the area whose appointments were made between March 1965 to December 1967 but did not challenge the seniority list and no relief was claimed against the said seniority list;

(f) That separate lists were maintained in respect of the persons appointed on substantive basis as trained teachers and those who were appointed as untrained teachers. Those, who were in the untrained teachers' list were brought on the trained teachers' list after they had obtained the necessary qualification as a trained teacher; and

(g) That higher scale was being given to trained teachers whereas lower pay scale was being given to untrained teachers. Hence only when they obtained the requisite qualification the untrained teachers started getting the scale of trained teachers.

Rule 22 of 1981 Rules provides as under :

"Seniority. (1) The seniority of a teacher in a cadre shall be determined by the date of his appointment in a substantive capacity :

Provided that if two or more persons are appointed on the same date their seniority

shall be determined according to the order in which their names appear in the lists referred to in Rule 17 or Rule 18, as the case may be,

Note. - A candidate selected by direct recruitment may lose his seniority if he fails to join without valid reasons when a vacancy is offered to him. Whether the reasons in any particular case are valid or not shall be decided by the Appointing Authority.

(2) The seniority of a teacher who has been transferred from one local area to another in accordance with the provisions of Rule 21 shall be placed at the bottom of the list of teachers of the corresponding class or category pertaining to the local area to which he has been transferred, as on the date of orders for transfer are passed. Such a person shall not be entitled to any compensation."

23. Historically, as we have noticed earlier, untrained Assistant Teachers used to be employed when trained teachers were not available and the untrained Assistant Teachers became trained Assistant Teachers only on their getting requisite certificate of training and from that date only they were treated as regular Assistant Teachers getting the proper scale of pay meant for them. It is the trained Assistant Teacher who alone was eligible for promotion to the post of Headmaster. There were three scales even for trained Assistant Teachers and it was trained Assistant Teacher in the highest scale who was eligible for being promoted as Headmaster. When the 1981 Rules came into force the writ petitioners had by then become trained Assistant Teachers and as such under Rule 22 only the date of appointment as trained Assistant Teacher in a substantive capacity is to be seen and not the date of appointment as untrained Assistant Teacher.

24. Reliance by the High Court on the case of Jagdish Narain Shastril is not proper as that case related to Assistant Teacher of Sanskrit employed under Rule 13-A of the Manual for whom no qualification of trained teacher was required and thus the judgment in that case was of no avail to the learned Judge in the present case. In the past also the seniority lists were being maintained separately for trained Assistant Teachers and untrained Assistant Teachers.

25. Thus the respondents, untrained teachers, are of a different class and cannot rely upon the service as untrained Assistant Teachers in the lower grade with the trained Assistant Teachers drawing higher grade of pay.

26. The learned counsel for the writ petitioners/respondents herein submitted that the provisions contained in 1922 Education Manual stood repealed in view of Section 274 of the 1961 Act. This provision does not repeal the 1922 Rules contained in the Manual and the said rules were continued by specific provisions of Section 270 reproduced earlier.

27. The result is that the appeals are allowed and the impugned judgments of the High Court dated 7-3-1991 passed in Civil Writ Petitions Nos. 21168, 19851, 21169 of 1987 and 4695 of 1988 and dated 4-10-1991 passed in Writ Petition No. 6548 (SS) of 1991 are set aside and the writ petitions are dismissed. Parties are, however, left to bear their own costs.

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