

Qamar Jahan

Vs

U.P. Public Services Tribunal and Others

Civil Appeal No. 9106 of 1994

(Sujata V. Manohar, D. P. Wadhwa JJ)

20.11.1997

ORDER

1. This appeal relates to the promotion granted to Respondent 4-Narain Devi as Headmistress of Junior High School on 25-4-1978. By the same order the appellant-Qamar Jahan was appointed as Assistant Teacher in Junior High School. The appellant challenged this order before the U.P. Public Services Tribunal. The Tribunal allowed the application of the appellant holding that she should have been appointed as Headmistress, Junior High School, instead of Respondent 4. The High Court, however, set aside the order of the Tribunal and has upheld the order of 25-4-1978. Hence the present appeal is filed by Qamar Jahan.

2. According to the appellant she was senior to Respondent 4 and hence she was entitled to be appointed Headmistress of Junior High School under the order of 25-4-1978.

3. As far as we can gather from the record, the appellant was appointed as Assistant Teacher in Primary School on 12-10-1962. Respondent 4 was appointed as Assistant Teacher of Primary School prior to the appellant on 11-9-1961. The appellant was, however, confirmed as a Primary School Teacher on 10-12-1963 while Respondent 4 was confirmed on 11-2-1965. The appellant claims to have worked as Headmistress, Primary School from 31-7-1971. Respondent 4 was appointed as Headmistress, Primary School from 21-4-1975. The appellant was appointed as officiating Headmistress of Junior High School on 31-3-1975. She continued to officiate as Headmistress of Junior High School for a period of three months up to 30-6-1975, after which she seems to have been reverted on 30-6-1975 as Assistant Teacher in Primary School. When the appellant was reverted as Assistant Teacher, Primary School, Respondent 4 was appointed to officiate as Headmistress, Junior High School on 1-7-1975. She continued to so officiate till her appointment as Headmistress, Junior High School on 25-4-1978. By the same order the appellant was promoted as Assistant Teacher, Junior High School. This is how the facts have been found by the High Court.

4. According to the appellant she continued to officiate as Headmistress even after 30-6-1975 up to the date of the impugned order of 24-5-1978. However, she has not produced a single document in support of her contention. By contrast, Respondent 4 was appointed as Headmistress of Primary School on 25-4-1975. She continued as Headmistress of Primary School upto 1-7-1975, when she was appointed to officiate as Headmistress of Junior High School. She continued to officiate as Headmistress of Junior High School from 1-7-1975 till the date of impugned order of 25-4-1978 when she was substantively appointed to the post. The High Court has found that while Respondent 4 was officiating as Headmistress of Junior High School and held the substantive post of Headmistress of Primary School just prior to the impugned order, the appellant had officiated as

Headmistress of Junior High School only for three months up to 30-6-1975 and she was holding the post of Assistant Teacher in Primary School at the time of the impugned order of 25-4-1978.

5. If this is the factual position, the claim of the appellant to be senior to Respondent 4 has been properly rejected by the High Court. Assuming for the sake of argument that one must consider the seniority of the two in the cadre of Assistant Teachers in Primary School, the date of initial appointment of Respondent 4 is prior to the date of initial appointment of the appellant. On this basis also the appellant cannot be senior to Respondent 4 only because the appellant was confirmed prior to Respondent 4. Seniority usually depends on the length of continuous service. We have not been shown any rule for calculating seniority on the basis of date of confirmation.

6. Respondent 4 has also submitted that the post of Headmistress in the Junior High School is a selection post and she has been selected on merit. Respondents 2 and 3 are unable to throw any light on this aspect of the matter. They simply rely upon the U.P. Recognised Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 which came into effect on 13-2-1978. Under these Rules the post of Headmistress of Junior High School is a selection post and Rule 9 of these Rules provides for the constitution of a Selection Committee for the appointment of Headmaster/Headmistress as also for the appointment of Assistant Teacher in Junior High School. The procedure for selection is also laid down. Respondents 2 and 3, however, have not produced any material at any stage of these proceedings to show whether these Rules have been complied with or whether the selection of Respondent 4 was as per these Rules.

7. In the absence of any averment by any of the parties in this connection, we decline to examine this question except for the purpose of noting that the post of Headmistress in a Junior High School is a selection post. The order of 25-4-1978, however, refers to "promotion" of Respondent 4 as Headmistress of Junior High School and the "promotion", inter alia, of the appellant as Assistant Teacher in Junior High School. If this promotion is on merit and not only on the basis of seniority, then on that count also, the present appeal cannot succeed.

8. In the premises and in the absence of any decisive factual data, we do not see any reason to set aside the findings of the High Court. The appeal is, therefore, dismissed. In the circumstances, there will be no order as to costs.