

Keshav Ram Agnihotri

Vs

Distt. Inspector of Schools, U. P. and Others

Civil Appeals Nos. 3772-73 of 1992

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

21.01.1998

ORDER

1. The appellant was appointed on 4-7-1963 as Science teacher for the intermediate classes of the second respondent-Kisan Inter College, Bahraich in the State of Uttar Pradesh. After the summer vacation of 1964, he was reappointed to teach Science to the intermediate classes for the educational year 1964-65 by Respondent 2. In September 1964, the appellant was selected for the Postgraduate Condensed Diploma Course in Physics being conducted by the Lakhanav University. Thereupon the appellant was permitted to attend the diploma course on paid leave by Respondent 2; and an agreement was entered into between the appellant and the management of Respondent 2-College dated 18-10-1964 under which it was agreed that after the appellant obtains the diploma he shall serve Respondent 2-College for a period of two years at the salary of Rs. 175 p.m. in the scale of Rs. 175-350 plus DA (which is the scale of a Lecturer). An obligation was also imposed upon the appellant to serve the said College for a period of two years after his completing the diploma course. During the period when the appellant was attending the diploma course, he continued to receive salary from Respondent 2.

2. After completing the diploma course in May 1965, the appellant resumed as a teacher in Respondent 2's College for teaching Physics to intermediate classes. On 15-5-1965, the result of the diploma course was announced declaring the appellant as having passed the diploma course. With effect from 1-7-1965, the appellant was appointed as a Lecturer to teach Physics in Respondent 2's College. Respondent 2 applied to District Inspector of Schools by the letter of 15-12-1965 for approval of the appointment of the appellant as a Lecturer in Physics on the pay scale of a Lecturer. The said letter refers to the fact that the appellant was deputed to the Lucknow University by the said College for the Educational Session 1964-65 to pass the diploma course in Physics. Having passed the diploma course, he continued in the service of Respondent 2-College. Accordingly, at a meeting of the Management Committee of Respondent 2 held on 2-12-1965, he was appointed to teach Physics at the College on a pay of Rs. 175 per month. The District Inspector of Schools, by his letter dated 13-1-1966, pointed out to Respondent 2 that after the U.P. Intermediate Education (Amendment) Act, 1958, a certain procedure is required to be followed while making the appointment of teachers. This had not been done in the case of the appellant. Hence the College should follow the procedure and then submit his case for approval. Accordingly on 14-2-1966, the Manager of Respondent 2-College wrote a letter to the District Inspector of Schools stating that the post was advertised in order to regularise the appointment of the appellant; and pursuant to the advertisement, since the only candidate was the appellant, he was selected and appointed. The College requested that his appointment should be approved from 1-7-1965. The District Inspector of Schools by his letter dated 22-2-1966 stated, "... I have to approve the appointment of Keshav Ram Agnihotri, as Science teacher in the approved scale as prescribed by the Department."

3. In this connection, the appellant has also relied upon a GO No. A1/6302/XV-1606(25)/1963 dated 13-1-1966 whereunder the Governor was pleased to order that the Science teachers of the inter classes of non-Government Aided Higher Secondary Schools, who were B.Sc., LT and had passed the Postgraduate Condensed Diploma Course, may be allowed the Lecturer's scale of Rs. 175-10-215-EB-15-330 with effect from the date they were appointed to teach Science to the intermediate classes. This order was made applicable to the teachers who had passed the Condensed Diploma Course in the year 1964-65 or subsequently. It was, therefore, applicable to the appellant. There is also a subsequent modification of the said order which modification is dated 19-4-1966. It sets out that Science teachers who are B.Sc. whether trained or untrained, and have passed the Postgraduate Condensed Diploma Course may be allowed Lecturer's scale. The appellant was thus eligible for Lecturer's scale w.e.f. 1-7-1965. Respondent 2 had also asked for approval of his appointment in the Lecturer's scale with effect from 1-7-1965 which approval was granted on 22-2-1966. He was since continued as a Lecturer in Physics in the said school. Respondent 3 was appointed as a Lecturer in Biology on 9-7-1965. The approval of his appointment has been granted by the District Inspector of Schools on 17-8-1965.

4. In view of the fact that the appellant was appointed with effect from 1-7-1965 as Lecturer in Physics, in the seniority lists published by the second respondent in 1977 and in 1984, the appellant was shown as senior to Respondent Respondent 3, the latter having been appointed on 9-7-1965. In 1989, however, by a resolution of the Committee of Management dated 21-1-1989, it was decided to treat the appellant as junior to Respondent 3 because the letter of approval in respect of Respondent 3 was issued prior to the letter of a approval in respect of the appellant. Accordingly, in the seniority list which was published in the year 1989, Respondent 3 was shown as senior to the appellant. On 28-2-1989, the appellant filed an appeal before the District Inspector of Schools which was dismissed on 19-6-1989. In the meanwhile, the post of Principal became vacant on 30-6-1989. Respondent 2 appointed Respondent 3 as Principal on ad hoc basis. The appellant filed writ petitions in the High Court challenging the appointment of Respondent 3 as Principal and also the order of Respondent 1 denying him seniority over Respondent 3. These writ petitions were dismissed Hence the present appeals have been filed.

5. From the above narration, it is clear that Respondent 2-College had considered the appellant as having been appointed as Lecturer in Physics from 1-7-1965 right from inception. In fact, they asked for approval of his appointment with effect from 1-7-1965. This approval has been granted on 22-2-1966. The letter of approval does not indicate that the request for approval of his appointment with effect from 1-7-1965 was rejected or that the approval was for his appointment from 22-2-1966. The letter of approval refers to the management's request for approval which letter is of 14-2-1966 and grants the approval. The Management had treated this as an approval to the appointment of the appellant from 1-7-1965. This is clearly reflected in the earlier seniority lists of 1977 and 1984 where the date of appointment of the appellant has been shown as 1-7-1965. Respondent 3, in these seniority lists, has been placed below the appellant because the date of appointment of Respondent 3 is shown as 9-7-1965. In both these seniority lists, it is clear that the date of appointment has not been shown with reference to the date of approval being granted. After 24 years, just when the post of Principal was about to fall vacant, the seniority as between the appellant and Respondent 3 has been abruptly changed.

6. We do not see any justification for bringing about such a change after a period of 24 years. We have not been shown any provision under which the date of appointment has to be considered as the date when approval was granted. The appellant has, in fact, worked in the Lecturer's grade with Respondent 2-College from 1-7-1965. As a matter of fact, he worked earlier also with Respondent 2

as a Science teacher. Respondent 2 had given him permission to undergo the Condensed Diploma Course at Lucknow University under a bond which obliged him to serve Respondent 2 for a period of two years after completing his Diploma Course which also placed Respondent 2 under an obligation to engage him as a Lecturer for a period of two years after his completing the Diploma Course. He was accordingly appointed on the Lecturer's Grade from 1-7-1965, that is to say, the beginning of the academic year 1965-66 on his completion of the Condensed Diploma Course. In the seniority list, therefore, he was rightly shown as appointed with effect from 1-7-1965. There was no intention to break his service up to 22-2-1966 which is the date when the letter of approve was issued. In fact, throughout, he had worked as a Lecturer in Respondent 2's a College.

7. Another important factor which must weigh in the present case is the delay of 24 years on the part of Respondent 2 in what they term as a correction of mistake in respect of the inter se seniority between the appellant and Respondent 3.

8. On both these counts, the appeals are allowed. The impugned judgment and order of the High Court is set aside. The writ petitions filed by the appellant before the Allahabad High Court, Lucknow Bench being Writ Petitions Nos. 8571 of 1989 and 975 (MS) of 1991 are accordingly allowed.