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SHITLA PRASAD SHUKLA

v.

STATE OF U.P. & ORS.

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MAY 19, 1986

[E.S. VENKATARAMIAH AND M.P. THAKKAR JJ.]

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Uttar Pradesh Intermediate Education Act, Sections 16 E and 16 F, scope of—Construction—Whether section 16E speaks of retrospective exemption being granted—Seniority, who can claim—Court's duty to interfere in matters of fixation of inter-se seniority.

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The appellant who was initially working as an Assistant Teacher started teaching Hindi in the Intermediate classes upon the institution being upgraded though he was not qualified to be appointed as a Lecturer in Hindi. As he did not possess the requisite qualification of B.A. in Sanskrit, he applied for an exemption under section 16E, though originally refused was however sanctioned by an order of the Board dated 23.7.1963. While fixing the inter-se-seniority, his appointment date was taken as 23.7.1963 and respondents 5 and 6 were treated as Seniors as they joined on 19.12.62 and 1.7.63 respectively. The appellant challenged it by moving a writ petition in the Allahabad High Court with a prayer that the exemption related back to his initial appointment. The High Court dismissed the Writ Petition and hence the appeal by special leave.

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Dismissing the appeal, the Court

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HELD: 1. The Language of section 16E of the Uttar Pradesh Intermediate Education Act does not admit of the construction that the exemption granted by the Board must relate back to the date of making the application seeking exemption. Section 16E could be construed as enabling the Board to exercise the power to grant exemption prospectively after considering the report and taking into account the relevant circumstances which would by the very nature of things be with prospective effect and not with retrospective effect. Otherwise, it would be to hold that any unqualified person can be appointed even without the minimum qualifications subject to *post facto* exemption being granted.

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Till the exemption is granted the person is not qualified to be appointed.

In other words he would be lacking in the basic qualification for being appointed. This deficiency cannot be made good with retroactive exemption unless the provision itself expressly or by necessary implication contemplates such a course of action. Section 16E does not satisfy this test. Thus it would appear that retrospective exemption could not have been granted and in point of fact was not granted in the present case. Even otherwise, it is not sufficient to show that retrospective exemption could have been granted. [111B-F]

Further though the appellant was working as a lecturer, it was not under any authority of law for there is no provision which empowers the college to allow any unqualified person to teach or to appoint him as such in anticipation of his disqualification being removed in future. Till the exemption was granted appellant was not even a teacher in the eye of law though he was allowed to teach by the indulgence of the college authorities. The disqualification was removed only on July 23, 1963 when the Board granted the exemption. [111H; 112A-B]

2. An employee must belong to the same stream before he can claim seniority vis-a-vis others. One who belongs to the stream of lawfully and regularly appointed employees does not have to contend with those who never belonged to that stream, they having been appointed in an irregular manner. Those who have been irregularly appointed belong to a different stream, and cannot claim seniority vis-a-vis those who have been regularly and properly appointed, till their appointments became regular or are regularised by the appointing authority as a result of which their stream joins the regular stream. At that point of confluence with the regular stream, from the point of time they join the stream by virtue of the regularisation, they can claim seniority vis-a-vis those who join the same stream later. The late comers to the regular stream cannot steal a march over the early arrivals in the regular queue. [112C-E]

3. In matters of seniority the Court does not exercise jurisdiction akin to appellate jurisdiction against the determination by the competent authority, so long as the competent authority has acted bonafide and acted on principles of fairness and fairplay. In a matter where there is no rule or regulation governing the situation or where there is one, but is not violated, the Court will not overturn the determination unless it would be unfair not to do so. [112E-F]

A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2609 of 1984

From the Judgment and Order dated 12th April, 1984 of the Allahabad High Court in Civil Misc. Writ Petition No. 713 of 1980.

B V.M. Tarkunde and Pramod Swarup for the Appellant.

S.N. Kacker and R.B. Mehrotra for the Respondents.

The Judgment of the Court was delivered by

THAKKAR, J. Seniority is the bone of contention.

C The dispute centres round the question as to whether the High Court was right in affirming the view taken by the District Inspector of Schools that Respondents Nos. 5 and 6 were senior to the appellant in the lecturer's grade in the Kashiraj Maha Vidyalaya Inter College, Orai, District Varanasi.

D The dispute regarding *inter-se* seniority having arisen amongst the aforesaid three persons, the District Inspector of Schools examined the issue and rendered a decision¹ dated January 8, holding that Respondent Nos. 5 and 6 were senior to the appellant in the lecturer's Grade having regard to the fact that their appointment in the grade became effective from 19-12-62, 1-7-63 and 23-7-1963 respectively.

E The appellant challenged the decision by way of a Writ Petition to the High Court. The High Court affirmed the decision of the District Inspector of Schools and dismissed the Writ Petition. Thereupon the Writ Petitioner in the High Court has approached this Court by way of the present appeal by special leave.

F The appellant was initially working as an Assistant Teacher in the aforesaid institution which was upgraded into an Intermediate College under the provisions of the Intermediate Education Act. The appellant started teaching Hindi in the Intermediate classes upon the institution being upgraded, though he was not qualified to be appointed as a lecturer in Hindi as per the relevant regulations² which en-

1 Under Regulation 3(1)(f) of Chapter II of the Regulations framed under the UP Intermediate Education Act.

2. Vide Appendix 'A' to the Regulations read with Regulation 1 of Chapter II read with section 16E of the Act,

joined that the minimum educational qualification for being appointed as a lecturer in Hindi was M.A. in Hindi and B.A. with Sanskrit whereas the appellant did not possess the requisite qualification of B.A. in Sanskrit. It is not in dispute that the appellant did not possess the requisite qualification viz. B.A. degree in Sanskrit and was therefore not entitled to be appointed in the lecturer's grade as lecturer (Hindi) having regard to the prohibition contained in Section 16-F of the Intermediate Education Act³. The appellant however could have been appointed as a lecturer in Hindi if he was exempted from possessing such qualifications, in exercise of powers under sub-section (i) of Section 16-E of the Act⁴. The appellant made an application for exemption as envisaged by Section 16-E of the Act. This application was granted by the Board of High School and Intermediate Education, U.P. by its order dated July 23, 1963. The contention of the appellant is that though the Board had actually granted exemption only on July 23, 1963, he must be deemed to have been exempted from November 4, 1960, the date on which he made the application for exemption. If the appellant is right in his submission that although he was factually exempted by the order of July 23, 1963 he must be deemed to have been exempted with retrospective effect from November 4, 1960, the appellant must succeed. If this contention is considered to be untenable the appellant must fail. The High Court has taken the view that the appellant is entitled to be treated as having become duly qualified with the actual date of the grant of exemption on July 23, 1963 and that he cannot be treated as having been granted exemption with retrospective effect. In this view of the matter the appellant's seniority vis-a-vis Respondents 5 and 6 has been computed on the basis that the appellant was appointed on July 23, 1963 when he became qualified for being appointed to the lecturers' grade. The appellant has contended that the High Court has committed an error in not accepting his plea and has reiterated the same submissions before this Court.

The first question which must be answered is as to whether the

3. Sec. 16-F. "Subject to the provisions hereinafter specified, no person shall be appointed as a Principal, Head Master or teacher in a recognized institution unless he (a) possesses the prescribed qualifications or has been exempted under sub-section(1) of Section 16-E"

4. Section 16-E." (1) Qualifications for appointment as Principals, Head Masters and teachers of different subjects at different stage of the course shall be as prescribed by regulations: Provided that the Board may after considering the report of the Director exempt any person from the requirements of minimum qualifications having regard to his experience education and other attainments."

- A plea of the appellant that he must be treated as having been exempted from possessing the qualification with retrospective effect is well founded. We are of the opinion that the District Inspector of Schools was right in taking the view that the appellant was absorbed as a lecturer with effect from the date on which the appellant had actually secured the exemption.

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Developments in regard to the application for exemption took the following course⁵:

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4-11-1960: The appellant filed an application for exemption before the Board of High School and Intermediate Education, UP (Board).

6-1-1962: The Board had informed the appellant that his application for exemption was not in the proper form and that he should submit his application in the proper form.

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15-1-1962: The appellant filed the application in the proper form.

10-4-1962: The Deputy Director of Education requested the appellant to obtain the minimum educational qualification (B.A. Degree in Sanskrit) by appearing in examination either from Varanasi Sanskrit Vishwavidyalaya or from Gorakhpur University.

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12-9-1962: The appellant replied to this communication and stated therein that he was not in a position to pass the B.A. Examination in Sanskrit in the University mentioned by the Board.

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23-7-1963: After prolonged correspondence, the Board granted the exemption.

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Thus it is clear that the Board was not inclined to grant the exemption to the appellant and had insisted on the appellant securing the requisite qualification by appearing in an examination, from an appropriate institution. The Board was disinclined to grant the request till late 1962. When this is the factual position, how can the appellant contend that the Board must be deemed to have granted the exemp-

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5. As per facts stated on oath by Respondent No. 5 in his counter-affidavit of July, 1984 (p. 50 of the Appeal Paper-book) which have not been specifically controverted by the appellant in the Rejoinder affidavit (p. 73 of the Appeal Paper-book).

tion from the date of his application i.e. November 4, 1960? In this factual backdrop it is futile to contend that the Board had granted exemption with restropective effect or that the exemption must relate back to the date of the making of the application. Besides, the language of Section 16-E of the Act does not admit of the construction canvassed on behalf of the appellant viz. that the Board can grant exemption with retrospective effect. It is in terms provided that the exemption may be granted by the Board only after considering the report of the Director having regard to the experience, education and other attainments of the person sought to be appointed. It would be reasonable to construe the Section as enabling the Board to exercise the power to grant exemption prospectively after considering the report and taking into account the relevant circumstances which would by the very nature of things be with prospective effect and not with retrospective effect. To accede to the construction canvassed on behalf of the appellant would be to hold that any unqualified person can be appointed even without the minimum qualifications subject to *post-facto* exemption being granted. Till the exemption is granted the person is not qualified to be appointed. In other words he would be lacking in the basic qualification for being appointed. This deficiency cannot be made good with retroactive exemption unless the provision itself expressly or by necessary implication contemplates such a course of action. Section 16-E does not satisfy this test. Thus it would appear that retrospective exemption could not have been granted and in point of fact was not granted in the present case. Even otherwise, it is not sufficient to show that retropective exemption could have been granted. It must also be shown that retrospective exemption was in fact granted. In the present case the factual background clearly shows that the Board had not granted retrospective exemption. In fact the Board was not inclined to grant the exemption at all and was insisting that the appellant should obtain the requisite qualification. And the Board finally made up its mind to grant exemption only on July 23, 1963. Unless the view is taken that whenever exemption is granted it must be treated as having been granted with retrospective effect, if there is such power, the appellant cannot succeed. There is no warrant in law or logic for taking such a view. The High Court was therefore perfectly justified in repelling the contention urged on behalf of the appellant and in dismissing the Writ Petition.

There is also one more dimension of the matter. Though the appellant was working as a lecturer, it was not under any authority of law for there is no provision which empowers the college to allow any

- A unqualified person to teach or to appoint him as such in anticipation of his disqualification being removed in future. Till the exemption was granted appellant was not even a teacher in the eye of law though he was allowed to teach by the indulgence of the college authorities. The disqualification was removed only on July 23, 1963 when the Board granted the exemption. How could he have claimed seniority vis-a-vis respondents nos. 5 and 6 who possessed the requisite qualifications and became regularly and lawfully appointed teachers much prior thereto?

C An employee must belong to the same stream before he can claim seniority vis-a-vis others. One who belongs to the stream of lawfully and regularly appointed employees does not have to contend with those who never belonged to that stream, they having been appointed in an irregular manner. Those who have been irregularly appointed belong to a different stream, and cannot claim seniority vis-a-vis those who have been regularly and properly appointed, till their appointments became regular or are regularized by the appointing authority as a result of which their stream joins the regular stream. At that point of confluence with the regular stream, from the point of time they join the stream by virtue of the regularization, they can claim seniority vis-a-vis those who join the same stream later. The late comers to the regular stream cannot steal a march over the early arrivals in the regular queue. On principle the appellant cannot therefore succeed. What is more in matters of seniority the Court does not exercise jurisdiction akin to appellate jurisdiction against the determination by the competent authority, so long as the competent authority has acted bonafide and acted on principles of fairness and fairplay. In a matter where there is no rule or regulation governing the situation or where there is one, but is not violated, the Court will not overturn the determination unless it would be unfair not to do so. In any view of the matter the appellant who did not even belong to the stream of regularly (he was allowed to teach only in an irregular and unauthorized manner) and lawfully appointed lecturers cannot claim seniority against any one already in the stream before he joined the stream himself. The view taken by the High Court is unexceptionable.

- G .This appeal must accordingly fail and be dismissed with no order as to costs.

S.R.

Appeal dismissed.