

(1999) 01 AHC CK 0032**Allahabad High Court****Case No:** C.M.W.P. No. 367 of 1999

Sarvajeet Singh

APPELLANT

Vs

Director of Education

RESPONDENT

(Madhyamik) and others

Date of Decision: Jan. 28, 1999**Citation:** (1999) 1 AWC 838 : (1999) 3 UPLBEC 125

Hon'ble Judges: D.K. Seth, J

Bench: Single Bench

Advocate: A.K. Shukla, for the Appellant; A.P. Sahi and G.K. Singh, for the Respondent

Final Decision: Disposed Of

Judgement

D.K. Seth, J.

By an order dated 12.12.1997 the dispute regarding the seniority between the petitioner and respondent No. 6 was decided against the petitioner and in favour of respondent No. 6. A copy of the said order is Annexure-7 to the writ petition. The petitioner had challenged the said order by means of writ petition No. 4766 of 1998. The said writ petition was dismissed on the ground of alternative remedy by granting liberty to the petitioner to prefer an appeal.

2. Learned counsel for the petitioner Mr. A. K. Shukla submits that though the petitioner had preferred an appeal but the same has not been decided and is still pending. Before the appeal is decided, the respondents are purporting to fill up the post by promotion. The question of promotion is dependent on the outcome of the dispute of seniority. Therefore, the order dated 17.11.1998 by which the District Inspector of Schools had asked the Principal of Kisan Inter College to send requisition could not be issued. Therefore, he prays that the order dated 17.11.1998 contained in Annexure-10 to the writ petition should be quashed.

3. Shri A. P. Sahi, learned counsel for respondent No. 6, on the other hand, contends that mere pendency of the appeal does not prevent from filling up of the post by

promotion. He draws my attention to the order dated 12.12.1997 contained in Annexure-7 to the writ petition and points out that on facts. It was conclusively found on the basis of the record and reports of the District Inspector of Schools that the petitioner was junior to respondent No. 6 since he did not have lien in the post in L. T. grade whereas respondent No. 6 had such lien in L. T. grade which is apparent from the report dated 7.7.1997 of the District Inspector of Schools. Therefore, according to him, there was no basis on which the petitioner could base his claim. Therefore, the writ petition should be dismissed.

4. T have heard learned counsel for the parties at length.

5. As rightly contended by Shri Sahi, pendency of the appeal does not operate ipso facto as an order of stay. It is open to the respondents to fill up the post by promotion if they so desire. But the fact remains that the appeal of the petitioner is pending. It is incumbent upon the appellate authority to decide the same as early as possible. In case the appeal succeeds, the question of promotion which is dependent on the seniority of the contending parties would be affected. In that view of the matter, the appellate authority is hereby directed to decide the appeal as early as possible preferably within a period of four weeks from the date a certified copy of this order is communicated to him. The appellate authority shall give opportunity to respondent No. 6 who would be free to submit his objection within two weeks from date before the appellate authority.

6. The post may be filled up by promotion in terms of order dated 17.11.1998 impugned in this writ petition. But however, the said filling up of post would be subject to the result of the appeal of the petitioner.

7. The writ petition is thus disposed. However, there will be no order as to cost.