

(2008) 09 AHC CK 0255**Allahabad High Court****Case No:** None

Sri Ram Swaroop Kainthola

APPELLANT

Vs

Director of Education
(Secondary), District Inspector of
Schools, Committee of
Management and Sri Ganga
Singh Bisht

RESPONDENT

Date of Decision: Sept. 11, 2008**Citation:** (2008) 3 UPLBEC 2456**Hon'ble Judges:** Sudhir Agarwal, J; S. Rafat Alam, J**Bench:** Division Bench**Final Decision:** Dismissed**Judgement**

S. Rafat Alam and Sudhir Agarwal, JJ.

This matter has been listed for orders with the office note dated 10.07.2007. We are of the view that the notice sent to respondent No. 3 shall be deemed to have served in view of the provisions contained under Chapter VIII, Rule 12, Explanation II of the High Court Rules. However, on the request made by learned Counsel for the parties the appeal itself is taken up for hearing on merits and is being decided at this stage.

2. Heard Sri Deepak Jaiswal learned Counsel for the appellant, learned Standing Counsel for respondents No. 1 and 2 and Sri Srikant Shukla, learned Counsel appearing for respondent No. 4.
3. Aggrieved by the judgement dated 20.11.1997, whereby Hon"ble Single Judge has dismissed the Writ Petition No. 32056 of 1997 of the petitioner-appellant (hereinafter referred to as the "petitioner") disputing his seniority qua respondent No. 4, the petitioner has filed this intra Court appeal under the Rules of the Court.
4. The submission of learned Counsel for the petitioner is that in B.T.C. grade the petitioner and respondent No. 4 were appointed on the same date i.e. 01.08.1977

and in C.T. Grade also they were promoted on the same date i.e. 19.01.1985. The respondent No. 4 was promoted in L.T. grade on ad hoc basis on 26.04.1990 while the petitioner was promoted in L.T. grade on 09.01.1995 after completion of his 10 years of service in C.T. Grade as per the Government Order dated 03.06.1989. But in view of the Regulation 3(l)(b) of Chapter II of the Regulations framed under U.P. Intermediate Education Act, 1921 he contended that the seniority of teachers in a grade shall be determined on the basis of their substantive appointment in that grade, therefore, the petitioner was entitled to be treated senior to respondent No. 4 on the basis of age. He submitted that the Hon'ble Single Judge has erred in law in not considering this aspect of the matter correctly.

5. However, we do not find any force in the submission. From the record it is evident that in B.T.C. grade and in C.T. Grade both petitioner and respondent No. 4 were appointed and promoted on the same date but throughout, respondent No. 4 was treated senior to the petitioner and that was never challenged by him. The respondent No. 4 being senior in C.T. Grade was granted promotion on ad hoc basis in L.T. grade on 26.04.1990 and was regularised on 30.06.1996 when the post fell substantially vacant due to the retirement of the incumbent. That promotion of respondent No. 4 was also not challenged by petitioner at any point of time. As his own case the petitioner was given L.T. grade on 09.01.1995. That being so, the respondent No. 4 in all circumstances is senior to the petitioner in L.T. grade having been appointed in the said grade much earlier to the petitioner. Moreover, the petitioner was not promoted in L.T. grade on 09.01.1995 but was allowed the said scale pursuant to the Government Order dated 03.06.1989 after having been completed his 10 years in C.T. grade.

6. This Court in *Vipin Kumar v. D.I.O.S. and Ors.* 1993 (2) ESC 456, held that mere grant of pay scale in a particular grade is not equivalent to holding of substantial cadre in a particular grade. In para 9 of the judgement the Division Bench has said:

A Teacher who is working in L.T. grade is to be promoted to the post of Lecturer's grade in the sense that he is to be promoted to the post of Lecturer in an institution. A teacher may be given Lecturer's pay scale but he may not be given the post. Unless he is given a post the mere fact that he has been given Lecturer's pay scale will not be taken as to have given him the post of Lecturer unless he is duly promoted to the said post in accordance with the provisions of a Statute.

7. In the present case here is a matter where it is the grant of L.T. grade after rendering 10 years service in C.T. grade but the law laid down in *Vipin Kumar* (supra) would ipso facto apply with full force.

8. To the same effect is the view taken in *Virendra Pandey v. State of U.P. and Ors.* 1994(24) ALR 19 and *Km. Sheela Sanyal v. State of U.P. and Ors.* 1995 ALJ 589. A Single Judge of this Court (Hon'ble Dr. B.S. Chauhan, J., as His Lordship then was) in *Madan Gopal Agrawal v. The District Inspector of Schools, Bijnor and Ors.* 1996 (3)

ESC 202 after referring to the relevant Government Orders said that grant of L.T. grade under the aforesaid Government Orders is personal and it does not mean holding of a post in L.T. grade inasmuch as, when such person would retire it would result in a vacancy in C.T. grade and not in L.T. grade. The incumbent cannot be said to hold post of Assistant Teacher in L.T. grade. Another Single Judge of this Court (Hon"ble Ashok Bhushan, J.) in Writ Petition No. 39731 of 2000, Ansal Lal Jha v. District Inspector of Schools, Badaun and Anr. decided on 13.02.2006 has followed the same. Besides, one of us (Hon"ble Sudhir Agarwal, J.) has also taken the same view in Smt. Bharti Roy v. Deputy Director of Education II, Kanpur and Ors. 2008(2)ESC 911. We are in respectfully agreement with the view taken in the aforesaid judgements. Since the petitioner was never appointed in L.T. grade but was only granted said pay scale as per the Government Order dated 03.06.1989, it is evident that he has no occasion to claim seniority over respondent No. 4 who has been promoted in L.T. grade and that too on regular basis w.e.f. 30.06.1996.

9. In the circumstances, we do not find any error legal or factual in the judgement under appeal.

10. The appeal lacks merit and is accordingly dismissed.