

(1999) 04 SC CK 0114
Supreme Court of India
Case No: C.A. No. 8390 of 1995

S.M. Bawankar

APPELLANT

Vs

The Chief Officer,
Municipal Council
Tumsar and Others

RESPONDENT

Date of Decision: April 29, 1999

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: AIR 1999 SC 1964 : (1999) AIRSCW 1651 : (1999) 3 JT 295 : (1999) 3 SCALE 73 :
(1999) 9 SCC 184 : (1999) SCC(L&S) 947 : (1999) 4 Supreme 369 : (1999) 2 UJ 960 : (1999) 3
UPLBEC 1961

Hon'ble Judges: S. Saghir Ahmad, J; R.P. Sethi, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Sethi, J.

The appellant claims to have been appointed as Head Mistress on the basis of her seniority in the high schools on 25.9.1990. Respondent No. 4 is stated to have been appointed as Assistant Head Master on 5.10.1990. The President of the respondent-municipal council issued the orders for promotion of the appellant as Head Mistress on 13.7.1993. Respondent No. 4 filed a petition under Article 226 of the Constitution of India praying for issuance of an appropriate writ setting aside the order dated 13.7.1993 by which the appellant was promoted as Head Mistress with a further direction to the Chief Officer of the Municipal Council to appoint him as Head Master of the Municipal Nehru High School, Tumsar. The writ petition was allowed vide the order impugned on the ground of the respondent No. 4 allegedly being senior.

2. It is not in dispute that the seniority is a relevant term which has reference to the class, category or grade regarding which an issue is raised. A perusal of annexure

R-1 would show that the appellant had joined the school on 23.7.1957 whereas respondent No. 4 was employed on 20.8.1959. The appellant is shown to have appointed in the high school in the year 1959 whereas respondent No. 4 on 16.7.1962. It is also on record that the appellant had rendered services to teach high school classes from 1959 prior to her substantive appointment on 4.9.1968. The Municipal Council, Tumsar, the employer of the contending parties in its Resolution Annexure "B" referred to the available record including the seniority list of 1988 which had not been approved by the Standing Committee or the General Committee of the Municipal Council and found that the appellant herein was senior to the respondent No. 4 and had better experience on the post of Incharge Head Mistress on comparison of the merit of both the contenders. The Municipal Council resolved:-

On the above information it is seen that Smt. Bawankar is senior in service than Shri J.G. Gaidhane and therefore, Smt. Bawankar should be promoted on the vacant post of Head Master in Municipal Nehru Vidyalaya unanimously. The order of her promotion on the post of Headmistress should be given as early as possible.

It is resolved that seniority list of the three secondary schools should be prepared as follows : At first the seniority of Head Masters then seniority of Assistant Head Masters and Supervisors and then Assistant Teachers seniority of secondary/High Schools should be prepared. As per above the seniority should be prepared of three High Schools and same be published by affixing on office notice Boards and the said seniority list as prepared should be placed before the general committee of the council have been resolved unanimously.

3. The High Court, however, found that respondent No. 4 allegedly being in service in 1962 after acquiring qualification requisite for High School teacher had better merit than the appellant who was stated to have requisite qualification in the year 1968. She was held to be eligible for her place in the seniority from 1968 only. Finding that the Standing Committee of the Municipal Council had wrongly given seniority to the appellant, the writ petition filed by him was allowed. The appellant is justified in contending that the High Court erred in holding her to be junior to respondent No. 4 because she had acquired the requisite qualification in the year 1959 and subsequently prior to the respondent No. 4 as is evident from Annexure Rule 1. It appears that the High Court completely ignored the common seniority list of the Head Master and Assistant Head Mistresses as it existed on 12.7.1993(AnnexureR-I), and decided the case on the basis of bare averments made By the respondents No. 4 regarding his claim of seniority. The High Court was also not justified in substituting its opinion for the opinion of the appointing authority regarding the comparative merit of the two contenders. There was no occasion for the High Court to accept the contentions of respondent No. 4 regarding his claim of seniority and comparative merit. The High Court also appears to have erred in coming to the conclusion that the impugned order had the effect of reversion of respondent No. 4.

4. Looking from any angle, the judgment impugned in this appeal cannot be sustained and is liable to be set aside. However we were informed during the arguments that both the appellant and respondent No. 4 had since retired. Under the peculiar circumstances of the case but without creating any precedent, we direct that as a result of setting aside the impugned judgment of the High Court, the appellant shall be deemed to have been properly appointed as Head Mistress vide Order dated 12.7.1993 but as on account of the litigation she could not perform her duties as Head Mistress, she would not be entitled to any consequential monetary benefits except the post-retiral benefits of pension only. Similarly, without intending to be treated as a precedent we direct that as the respondent No. 4 was allowed to perform the duties of Head Master on the basis of the judicial pronouncements made in his favour, the acceptance of this appeal would not authorise the employer to recover any benefits conferred upon him on account of the judgment of the High Court. His pension or post retiral benefits would also not be adversely affected. Parties to bear their own costs.