

## **Sudama Singh vs Nath Saran Singh & Ors on 13 November, 1987**

**Equivalent citations: 1988 AIR 84, 1988 SCR (1)1049, AIR 1988 SUPREME COURT 84, 1988 LAB. I. C. 391, 1988 (1) SCC 57, 1988 ED CAS 1, 1987 2 ATLT 560, (1988) 1 ALL WC 257, 1988 UPLBEC 31, 1987 5 JT 338, 1988 (1) UJ (SC) 318, (1987) 4 JT 338 (SC), 1988 SCC (L&S) 173, (1988) 1 SCJ 301, (1987) 5 SERVLR 683, (1988) UPLBEC 31, (1988) 14 ALL LR 26**

**Author: E.S. Venkataramiah**

**Bench: E.S. Venkataramiah, K.N. Singh**

PETITIONER:

SUDAMA SINGH

Vs.

RESPONDENT:

NATH SARAN SINGH & ORS.

DATE OF JUDGMENT13/11/1987

BENCH:

VENKATARAMIAH, E.S. (J)

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VENKATARAMIAH, E.S. (J)

SINGH, K.N. (J)

CITATION:

1988 AIR	84	1988 SCR	(1)1049
1988 SCC	(1) 57	JT 1987	(4) 338
1987 SCALE	(2)1050		

ACT:

Uttar Pradesh Intermediate Education Act, 1921: s. 16 GG/Regulations, Chapter II, Regulation 3(1)(b)-Seniority-Ad hoc Lecturers deemed to be appointed as such on substantive basis from same date-Held seniority to be determined on the basis of age.

HEADNOTE:

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large number of teachers working in the educational institutions governed by the Uttar Pradesh Intermediate

Education Act, 1921, were appointed or promoted on an ad hoc basis. The question of regularisation of their services engaged the attention of the State Government and it was decided to amend the Act by an Ordinance. Section 16-GG was accordingly introduced on April, 21, 1977. The Ordinance was replaced by the Uttar Pradesh Education Laws Amendment Act, 1977.

The appellant and respondent No. 1 were both appointed as Assistant Teachers in an Intermediate College with effect from July 8, 1967. Respondent No. 1 was promoted by the management as Lecturer in Hindi on an ad hoc basis with effect from March 1, 1976. The District Inspector of Schools approved of it on October 5, 1976. Subsequently on November 20, 1976 he again made an order promoting both the appellant and respondent No. 1 as Lecturers in Civics and Hindi respectively on an ad hoc basis. Their services came to be regularised by virtue of the new provision. s. 16 GG, with effect from April 21, 1977. After their services were so regularised, dispute arose regarding the seniority.

While the first respondent claimed seniority over the appellant on the basis of his appointment/promotion made on March 1, 1976, the appellant claimed that he being older than the first respondent was entitled to be treated as senior by virtue of the second part of clause (b) of regulation 3(1) of the Regulations framed under the Act.

The District Inspector of Schools came to the conclusion that the fortuitous appointment/promotion of the first respondent on March 1, 1976 could not have any effect on the question of seniority between

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them, and held that since the appellant and the first respondent had been accepted to be promoted in substantive capacity on the same day, and since the appellant was older than respondent No. 1, the appellant should be considered as senior by virtue of the second sentence in clause (b) of regulation 3(1) of the Regulations.

Aggrieved by the aforesaid decision the first respondent filed a writ petition before the High Court, which was allowed, the order of the District Inspector of Schools was set aside and it was declared that the first respondent was senior to the appellant on the ground that the first respondent had been promoted to the post of lecturer on March 1, 1976, pursuant to certain orders issued under the Act which continued to be in operation until section 16GG was brought into force.

Allowing the appeal by Special Leave.

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HELD: 1. The appellant is senior to the first respondent. [1056E]

2.1 What is crucial for the purposes of the case is the date from which the appellant and the first respondent should be deemed to be holding their posts in substantive capacity. Section 16GG of the Act clearly lays down that any

teacher whose services are regularised should be deemed to have been appointed in a substantive capacity with effect from the date of its commencement. It does not say that the services of such teachers should be deemed to have been regularised with effect from the date from which they were continuously officiating in the post in question. The date of commencement of the section being April, 21, 1977 both the appellant and the first respondent, who were by then holding the posts of Lecturers on an ad hoc basis are to be deemed to have been appointed in a substantive capacity on the same date, that is, April 21, 1977. [1055G-H; 1056A]

2.2 On the question of seniority, cl. (b) of Regulation (3)(1) of the Regulations provides that the seniority of teachers in a grade shall be determined on the basis of their substantive appointment in that grade and if two or more teachers were so appointed on the same date seniority should be determined on the basis of age. [1056C]

In the instant case, the appellant is older in age than the first respondent. He should, therefore, be treated as senior to the first respondent by reason of the second sentence in cl. (b) of Regulations 3(1). [1056E-F]

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3. The High Court omitted to consider the effect on the words 'with effect from the date of the commencement of this section' in subs. (1) of s. 16GG of the Act and also sub-s. (2) of that section which provides that every teacher deemed to have been appointed in a substantive capacity under sub-s. (1) should be deemed to be on probation from the date of the commencement of the section. [1056B-C]

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3004 of 1987.

From the Judgment and Order dated 18.2.1986 of the Allahabad High Court in C.M.W.A. No. 9895 of 1985.

R.K. Jain and Mrs. Shobha Dixit for the Appellant. B.D. Agarwal, L.R. Singh and Pradeep Misra for the Respondents.

The Judgment of the Court was delivered by VENKATARAMIAH, J. Special leave granted. The appeal is heard.

The appellant, Sudama Singh, and Respondent No. 1, Nath Saran Singh, were both appointed as Assistant Teachers in L.T. Grade in the Gandhi Inter College, Chilkahar, District Ballia with effect from the same date, i.e., July 8, 1967 and were placed on probation for one year. Respondent No. 1 was promoted as Lecturer in Hindi on ad hoc basis with effect from March 1, 1976 by the Committee of Management and this action of the Committee of Management received the approval of the

District Inspector of Schools on October 5, 1976. On November 20, 1976 the District Inspector of Schools again made an order promoting both the appellant and Respondent No. 1 as Lecturers in Civics and Hindi respectively. The promotions, referred to above, had been made on an ad hoc basis. Likewise a large number of teachers, who were working in the educational institutions which were governed by the Uttar Pradesh Intermediate Education Act, 1921 (hereinafter referred to as 'the Act') had been appointed or promoted on an ad hoc basis and the question of regularisation of their services was engaging the attention of the State Government during the relevant time. As a consequence of the decision of the State Government an ordinance entitled the Uttar Pradesh Education Laws Amendment Ordinance, 1977 (U.P. Ordinance No. 5 of 1977) was promulgated on April 21, 1977. By the said Ordinance a large number of provisions in four of the laws in force in the State of Uttar Pradesh concerning education were amended. One of the laws which was amended by the said Ordinance was the Act. By the Ordinance a new provision, namely, section 16GG was introduced into the Act. The Ordinance was replaced by the Uttar Pradesh Education Laws Amendment Act, 1977. Section 16GG, which was introduced into the Act by the Ordinance, was allowed to remain in operation by the Uttar Pradesh Education Laws Amendment Act, 1977. The relevant part of section 16GG of the Act reads as follows:-

"16GG, Regularization of appointment of ad hoc teachers-(1) Notwithstanding anything contained in Sections 16E, 16F and 16FF every teacher of an institution appointed between August 18, 1975 and September 30, 1976 (both dates inclusive) on ad hoc basis against a clear vacancy and possessing prescribed qualifications or having been exempted from such qualifications in accordance with the provisions of this Act, shall, with effect from the date of commencement of this Section, be deemed to have been appointed in a substantive capacity, provided such teacher has been continuously serving the institution from the date of his appointment up to the commencement of this section.

.....

(2) Every teacher deemed to have been appointed in a substantive capacity under sub-

section (1) shall be deemed to be on probation from the date of commencement of this section.

.....

(underlining by us) Section 16GG of the Act, which is reproduced above, provided that notwithstanding anything contained in sections 16E, 16F and 16FF, every teacher of an institution appointed between August 18, 1975 and September 30, 1976 (both dates inclusive) on ad hoc basis against a clear vacancy and possessing prescribed qualifications or having been exempted from such qualifications in accordance with the provisions of the Act, should, with effect from the date of commencement of the said section, be deemed to have been appointed in a substantive capacity, provided such teacher has been continuously serving the institution from the date of his appointment up to the commencement of the said section. Sub-section (2) of section 16GG of the Act provided that every teacher deemed to have been appointed in a substantive capacity under

sub-section (1) should be deemed to be on probation from the date of commencement of the section.

The services of the appellant and the 1st respondent, who were working as teachers on ad hoc basis during the relevant period, also came to be regularised by virtue of section 16GG of the Act. After their services were so regularised dispute arose regarding the seniority between them. The question of seniority between two or more teachers working in an institution governed by the Act is governed by regulation 3 in Chapter II of the Regulations made under the Act, the relevant part of which reads thus:-

"3(1). The Committee of Management of every institution shall cause a seniority list of teachers to be prepared in accordance with the following provisions:-

(a) The seniority list shall be prepared separately for each grade of teachers whether permanent or temporary, on any substantive post;

(b) Seniority of teachers in a grade shall be determined on the basis of their substantive appointment in that grade. If two or more teachers were so appointed on the same date, seniority shall be determined on the basis of age;

..... "

While the 1st respondent claimed seniority over the appellant on the basis of his appointment or promotion made on March 1, 1976, the appellant claimed that he being older than the 1st respondent was entitled to be treated as senior to the 1st respondent by virtue of the second part of clause

(b) of regulation 3(1) of the Regulations framed under the Act which provided that if two or more teachers were so appointed on the same date, seniority should be determined on the basis of age.

The above dispute regarding the seniority between the appellant and the 1st respondent was first considered by the District Inspector of Schools, Ballia. After considering the history of the services of these two teachers, the District Inspector of Schools came to the conclusion that the fortuitous appointment or promotion of the 1st respondent on 1.3.1976 could not have any effect on the question of seniority bet-

ween the appellant and the 1st respondent. He further observed that the promotions of the appellant and the 1st respondent had actually been made as per his letter dated November 20, 1976 which read as under:-

"Office of the District Inspector of Schools, Ballia Order No. 15993-94/76/76 Date 20.11.76.

PROMOTION Following Assistant Teachers of L.T. Grade are promoted to the Lecturer's Grade on the posts mentioned against their names. Promotions have been made under Para 5 of Regulations No. Secondary/5183/15/7/76/2(18)75 Lucknow date. 7.7.76 made for the appointment of Principals for Govt. aided Private Secondary S c h o o l s .

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Sl	Teacher's Name	Pay Promotion	Post	Remarks	No.	Name	Scale in the Lecturer pay scale
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1.	Sh. Nath L.T.	Rs.400-750	Lecturer	On the post Saran Singh	Rs.300-550	Hindi	
	vacated by Order No. Ordinance 1849/651 dt.						

7.2.76 issued by Director of Education, U.P., Allahabad

2.	Sh. Sudama L.T.	Rs.400-750	Lecturer	Singh	Rs.300-550	Civics	Sd/-Illegible Tulsi Ram Jatar D.I.O.S.Ballia"
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He further observed that since the appellant and the 1st respondent had been accepted 'to be promoted in substantive capacity vide letter dated 20.11.1976 issued by the District Inspector of Schools, i.e., on the same date and since the appellant, whose date of birth was 1.4.1937 was older than Respondent No. 1, whose date of birth was 1.7.1942, the appellant should be considered as senior to the 1st respondent by virtue of the second sentence in clause (b) of regulation 3(1) of the Regulations made under the Act. The above decision of the District Inspector of Schools was conveyed to the parties by his Letter No. 2858-60/85-86 dated 13.6.1985. Aggrieved by the decision of the District Inspector of Schools, the 1st respondent filed a writ petition in Civil Miscellaneous Writ Petition No. 9895 of 1985 before the High Court of Allahabad. The learned Judge, who heard the writ petition, allowed the writ petition and set aside the order of the District Inspector of Schools and declared that the 1st respondent was senior to the appellant on the ground that the 1st respondent had been promoted to the post of Lecturer on March 1, 1976 pursuant to certain orders which had been issued under the Act and which continued to be in operation until section 16GG brought into force. This appeal by special leave is filed by the appellant against the decision of the High Court.

It is not disputed that until section 16GG of the Act came into effect the appellant and the 1st respondent were both functioning on an ad hoc basis as teachers and it was only by virtue of section 16GG of the Act that they came to be appointed as teachers in substantive capacity. Section 16GG of the Act came into effect from 21.4.1977. It provided that the teachers who were working on an ad hoc basis between August 18, 1975 and September 30, 1976 (both dates inclusive) against clear vacancies and possessing prescribed qualifications should 'with effect from the date of commencement of this section' be deemed to have been appointed in a substantive capacity provided such teacher had been continuously serving the institution from

the date of his appointment upto the commencement of this section. There is no dispute that both the appellant and the 1st respondent satisfied the conditions prescribed by section 16GG of the Act for regularising their appointment in a substantive capacity but what is crucial for purposes of this case is the date from which the appellant and the 1st respondent should be deemed to be holding their posts in a substantive capacity. Section 16GG of the Act clearly lays down that any teacher whose services are regularised should be deemed to have been appointed in a substantive capacity with effect from the date of the commencement of that section. It does not say that the services of such teachers should be deemed to have been regularised with effect from the date from which they were continuously officiating in the posts in question. The date of commencement of the section in the instant case being 21.4.1977 it should be held that both the appellant and the 1st respondent, who were by then holding the posts of Lecturers on an ad hoc basis were appointed in a substantive capacity of the same date, i.e., 21.4.1977. The High Court omitted to consider the effect of the words 'with effect from the date of the commencement of this section' in sub-section (1) of section 16GG of the Act and also sub-section (2) of that section which provided that every teacher deemed to have been appointed in a substantive capacity under sub-section (1) should be deemed to be on probation from the date of the commencement of the section. On the question of seniority between the appellant and the 1st respondent clause (b) of regulation 3(1) of the Regulations made under the Act, as already stated, provides that the seniority of teachers in a grade shall be determined on the basis of their substantive appointment in that grade and if two or more teachers were so appointed on the same date seniority should be determined on the basis of age. Since it is admitted that both the appellant and the 1st respondent had been appointed in a substantive capacity by virtue of section 16GG of the Act they must be deemed to be holding their respective posts in the substantive capacity only from 21.4.1977 on which date section 16GG of the Act came into force. Both of them should be deemed to be on probation from 21.4.1977 [Vide section 16GG(2)]. Any earlier appointment or promotion on an ad hoc basis has no bearing on the question of seniority. The appellant and the 1st respondent should be deemed to have been appointed on a substantive basis on the same date for purpose of seniority and, therefore, the appellant, who is older than the 1st respondent, should be treated as senior to the 1st respondent by reason of the second sentence in clause (b) of regulation 3(1) of the Regulations framed under the Act. We are, therefore, of the view that the High Court erred in declaring that the 1st respondent was senior to the appellant on the basis of the fortuitous promotion of the 1st respondent said to have been made on March 1, 1976.

The Judgment of the High Court is, therefore, liable to be set aside and the decision of the District Inspector of Schools has to be restored.

We accordingly allow the appeal, set aside the judgment of the High Court and make a declaration that the appellant is senior to the 1st respondent. The appeal is accordingly disposed of. No costs.

P.S.S.

Appeal allowed.

