

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 733 OF 2008

SRI CHHEDI PRASAD SINGH

Appellant (s)

VERSUS

BANKESHWAR PANDEY & ORS.

Respondent(s)

(With office report)

WITH Civil Appeal NO. 734 of 2008

(With office report)

Date: 20/09/2011 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE CYRIAC JOSEPH

HON'BLE MR. JUSTICE T.S. THAKUR

For Appellant(s) Mr. Shekhar G. Devasha, Adv.
 Mr. Gireesh, Adv.
 Mr. Rajesh Tiwari, Adv.
 Mr. V.N. Raghupathy, Adv.

For Respondent(s) Mr. Adarsh Upadhyay, Adv.
 Mr. Abhishek Chaudhary, Adv.
 Mr. Gaurav Bhatia, Adv.
 Mr. Siddharth Sengar, Adv.

Mr. T.N. Singh ,Adv
Mr. Vikas K. Singh, Adv.
Mr. Vikram Singh, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeals are allowed in terms of the
signed order.

(Neetu Sachdeva)
Sr. P. A.

(Renuka Sadana)
Court Master

(signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 733 OF 2008

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Appellant (s)

VERSUS

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WITH

Civil Appeal NO. 734 of 2008

O R D E R

Civil Appeal No.733 of 2008 is filed against the

judgment dated 25.4.2007 of the High Court of Allahabad
in Civil Misc. Writ Petition No.10530/2003. The
appellant Sri Chhedi Prasad Singh was respondent No.6 in
the Writ Petition which was filed by Bankeshwar Pandey,
who is respondent No.1 in the appeal. The dispute
related to seniority between Chhedi Prasad Singh and
Bankeshwar Pandey. The Writ Petition was allowed by the
High Court accepting the contention of the writ
petitioner that he was senior to Chhedi Prasad Singh.
Aggrieved by the judgment in the Writ Petition, Chhedi
Prasad Singh filed a review petition being Civil Misc.
Review Petition No.140224/2007. By order dated
26.7.2007, the review petition was rejected by the High
Court. Challenging the said order dated 26.7.2007 passed
in the review petition, Civil Appeal No.734/2008 has

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been filed by Chhedi Prasad Singh. Since the issues
arising in both the appeals are the same, the appeals
were heard together and they are being disposed of
through this common order.

The appellant Chhedi Prasad Singh was appointed as
temporary LT Grade Teacher in Swami Vivekanand Higher
Secondary School, Rampur on 5.4.1974. Later he was
given substantive appointment as LT Grade Teacher on
4.9.1974 and the said appointment was approved by the
District Inspector of Schools, Deoria on 6.9.1974. He
was promoted as lecturer in Economics on 24.2.1985 and
the said promotion was approved by the Director of
Education on 15.4.1985. On completion of 10 years of
service as lecturer, he was granted selection grade in
the cadre of lecturers w.e.f.24.2.1995 as per letter
dated 18.12.1995 of the District Inspector of Schools,
Deoria.

The respondent No.1 Bankeshwar Pandey was appointed
as lecturer in Physiology in the above-mentioned college

on 23.9.1985 and he joined service on 19.10.1985. On

completion of 10 years of service, respondent No.1 was granted selection grade in the cadre of lecturers w.e.f 19.10.1995.

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When a vacancy of principal arose, the Managing Committee of the college through a resolution dated 23.6.2001 decided to appoint the appellant as Principal temporarily and accordingly the appellant took charge as Principal on 1.7.2001. Thereupon, respondent No.1 sent

representation to the departmental authorities claiming that he is senior to the appellant and, therefore, he should have been appointed as Principal.

The said

representation was considered and rejected by the Joint Director of Education, VII Region Gorakpur as per his order dated 31.1.2003. The Joint Director declared Sri Chhedi Prasad Singh as senior to Shri Bankeshwar Pandey.

Aggrieved by the decision of the Joint Director of Education, respondent No.1 filed Civil Misc. Writ Petition No.10530/2003 in the High Court. The High Court allowed the Writ Petition and declared the writ petitioner senior to Chhedi Prasad Singh on the ground that the appellant was promoted as lecturer only on 5.12.1985 whereas respondent No.1 was appointed as lecturer on 19.10.1985.

After considering the submissions made by the learned counsel for the parties and perusing the materials placed on record, we find that the High Court

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appears to have overlooked the fact that the appellant was promoted as ad-hoc lecturer on 24.2.1985 and the

said appointment was approved by the Director of Education. The High Court also ignored the fact that in granting selection grade to the appellant, the department counted the appellant's service as lecturer from 24.2.1985. The Department proceeded on the basis

that the appellant completed 10 years of service as lecturer on 24.2.1995 and accordingly he was granted selection grade w.e.f 24.2.1995. At the same time, respondent No.1 was granted selection grade only w.e.f 19.10.1995 as he had joined service as lecturer only on 19.10.1985. The management of the college always treated the appellant as senior to respondent No.1. In such circumstances, there was no justification for declaring respondent No.1 as senior to the appellant merely on the ground that approval for his substantive appointment to the cadre of lecturer was given only on 5.12.1985.

In our view the appellant was entitled to be treated as senior to the respondent No.1 in the cadre of lecturers and the management rightly preferred him for appointment as Principal. Hence, the impugned

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judgment and order of the High Court are set aside.

We are informed that pursuant to the judgment of the High Court and in the absence of any stay order in the appeal, the appellant had to hand over charge of Principal to respondent No.1 and since then respondent No.1 has been functioning as Principal of the college. In the meanwhile, the appellant retired from service on 30.6.2009 and respondent No.1 is still in service and is continuing as Principal of the college. In such circumstances, notwithstanding the setting aside of the impugned judgment and order of the High Court, the appellant cannot be actually reinstated as Principal in the college. But he will be deemed to have continued as Principal till the date of his superannuation (i.e.30.6.2009) and on that basis pensionary benefits shall be granted to him. However, as the appellant has not actually worked as Principal during the relevant period he will not be entitled to any arrears of salary.

Though respondent No.1 was entitled to be promoted as Principal only on 1.7.2009 since respondent No.1 had actually worked as Principal even prior to 1.7.2009 based on the impugned judgment, it will not be just or

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proper to recover any amount from the salary paid to respondent No.1 during the said period prior to 1.7.2009. However, it will be open to the department to refix his salary in the cadre of Principal on the basis that he was promoted to the post of Principal only on 1.7.2009, the date on which the vacancy of Principal would have arisen due to the retirement of the appellant on 30.6.2009.

The appeals are allowed in the above terms. No order as to costs.

.....J.
(CYRIAC JOSEPH)

NEW DELHI
SEPTEMBER 20, 2011

.....J.
(T.S. THAKUR)