

[2009] 6 S.C.R. 880

A SURENDRA SINGH BENIWAL  
v.  
HUKAM SINGH & ORS.  
(Civil Appeal No. 2766 of 2009)

B APRIL 23, 2009

**[MARKANDEY KATJU AND H.L. DATTU, JJ.]**

*REGULATIONS FRAMED UNDER UTTAR PRADESH  
INTERMEDIATE EDUCATION ACT, 1921:*

C *r.61(2)(b) – Seniority of a transferee teacher – Held: A  
teacher, on being transferred on his own request, would be  
placed at the bottom of the seniority list of teachers serving  
on the same cadre in the transferee institution – Teacher  
D concerned having sought voluntary transfer was rightly placed  
at the bottom in the seniority list of the transferee college –  
Judgment of High Court set aside – Writ petition of teacher  
concerned dismissed.*

E CIVIL APPELLATE JURISDICTION : Civil Appeal No.  
2766 of 2009.

From the Judgment & Order dated 20.06.2007 of the High  
Court of Uttarakhand at Nainital in Special Appeal No. 19 of  
2007.

F Rajiv Dhavan, Dinesh Kumar Garg and M.A. Khan for the  
Appellants.

Deba Prasad Mukherjee, Sunil Kumar Singh (for Jatinder  
Kumar Bhatia) and Amit Kumar for the Respondents.

G The following Order of the Court was delivered:

**O R D E R**

H 1. Leave granted.

SURENDRA SINGH BENIWAL v. HUKAM SINGH & 881  
ORS.

1-A. This appeal is directed against the impugned judgment dated 26.6.2000 passed by the Division Bench of the High Court of Utrakhand by means of which the Division Bench dismissed the Special Appeal filed by the appellant against the judgment of learned Single Judge who had dismissed the review petition filed by the appellant.

2. The brief facts of the case are that respondent No.1 was appointed as Lecturer in English on 15.1.1981 in Murli Manohar Inter College Ishurteel, District Muzaffarnagar. Thereafter, respondent No. 1, on his own request, was transferred from the Murli Manohar Inter College to Panna Lal Bhalla Municipal Inter College, Hardiwar on 21.7.1997. Since then the respondent No.1 has been continuously working in the said institution as lecturer in English. The appellant was promoted as lecturer in Panna Lal Bhalla Municipal Inter College on 6.11.1989. The authorities concerned issued seniority list on 26.12.2000 showing the date of appointment of respondent No. 1 as lecturer in English w.e.f. 15.1.1981 while the date of seniority of appellant was shown as 6.11.1989. The seniority list was issued after the approval of District Inspector of Schools. Appellant was given *ad-hoc* promotion to the post of Principal on 1.7.2001.

3. Respondent No. 1 made a representation before the authority concerned regarding his seniority and claimed that he should be placed at serial number 1 in the seniority list on the basis of his seniority as lecturer as the respondent No.1 was much senior to the appellant, but to no avail.

4. Feeling aggrieved by the seniority list, respondent No. 1 filed a writ petition before the High Court. The learned Single Judge by order dated 8.12.2006 allowed the writ petition.

5. Aggrieved by the order of learned Single Judge, he appellant filed a review petition which was rejected by order dated 23.2.2007.

A 6. Against the dismissal of review petition, the appellant filed a Special Appeal before the High Court which was also dismissed on 20.6.2007. Hence, the present appeal by special leave.

B 7. We have heard learned counsel appearing for the parties and have gone through the record.

8. The short question involved in this case is about the interpretation of Rule 61(2) of the Regulations framed under U.P. Intermediate Education Act, 1921 which reads as under:

C "61(2): A teacher on being transferred in pursuance of this Chapter-

D (a) shall become the teacher of the institution to which he has been transferred and his pay and service condition shall remain the same unless legally varied.

(b) shall be placed at the bottom of the seniority list of the teachers serving on the same cadre and category in the institution.

E (c) in compliance to the provisions of sub-clause(b) the service rendered prior to the transfer in the institution from which the teacher has been transferred shall be treated as service rendered to the institution to which he has been transferred."

F 9. A perusal of clause (b) of the aforesaid Rule shows that if a teacher goes on voluntary transfer from one institution to another, then the transferee teacher shall be placed at the bottom of the seniority list of the teachers serving on the same cadre and category in the transferee institution. As regards clause (c), in our opinion, it has to be read harmoniously with clause (b) and so reading it, we are of the opinion that clause (c) deals with matters other than seniority e.g. pensionary benefits etc. However, as regards seniority, the clear rule has

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SURENDRA SINGH BENIWAL v. HUKAM SINGH & 883  
ORS.

been laid down in clause (b) i.e. that if a teacher seeks voluntary transfer from college/institution to another college/institution, the transferee teacher shall be placed at the bottom of the seniority list. The reason for making Rule 61(2)(b) is obvious. When a teacher applies for voluntary transfer from one college to another, then if his seniority in the old college is maintained in the new college, there would be great heart burning in the teachers in the transferee college. Hence, the rule was made that if a teacher applies for voluntary transfer from one college to another, such a transfer can only be done by placing the transferee teacher at the bottom of the seniority list of the teachers serving on the same cadre and category in the transferee institution.

10. As regards the words "same cadre and category", much has been made out of it in the impugned judgment. However, we are of the opinion that the interpretation given in the impugned judgment is not correct.

11. Since the respondent No. 1 applied for a voluntary transfer, obviously, he has to be placed at the bottom of the seniority list of the lecturers already working there. This is the meaning of the words "same cadre and category".

12. In the facts and circumstances of the case, this appeal is allowed and the judgment of the Division Bench as well as of learned Single Judge are set-aside. The writ petition is dismissed. No orders.

R.P.

Appeal allowed.