
(2008) 10 AHC CK 0048
In the Allahabad High Court

Amar Bahadur Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 24-10-2008

Acts Referred:

Citation : (2008) 6 AWC 6286

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the petitioner, Standing Counsel for respondent No. 1 to 3, Sri H. Prasad for respondent No. 4 and Sri A.K. Malviya, who has filed his vakalatnama today on behalf of respondent No. 5 which is taken on record.

2. This writ petition is directed against an order dated 22.9.2008 passed by the Joint Director of Education, Azamgarh-respondent No. 2, by which he has withdrawn his earlier order dated 20.11.2007 granting promotion to the petitioner.

3. The facts as culled out from the writ petition and the annexures appended thereto are that Janta Inter College, Dubari in the district of Mau is governed under the provisions of U.P. Intermediate Education Act, 1921, the U.P. Act No. 24 of 1971 and the U.P. Act No. 5 of 1982.

4. The petitioner claims his initial appointment on 20.7.90 in the institution as L.T. grade teacher which was approved by the DIGS Azamgarh. He also claims that his services had been thereafter regularised by order dated 12.7.1995. At the time of appointment he was BA and B. Ed. and now also has Master degree in Economic from Purvanchal University.

5. The post of principal fell vacant with passage of time and one Sri Kamla kant Upadhya said to be the senior most teacher was granted ad-hoc appointment on

the post till regular selection by the Commission.

6. Sri Bhagat Singh a teacher in the institution was selected by the Commission and appointed by the institution. This was challenged by Sri Kamla Kant Upadhyia in writ petition in which he was not granted any interim order. Special appeal No. 5887 of 2000 filed by Kamla Kant Upadhyia was disposed of vide judgment and order dated 16.10.2000 with direction to the Director of Education to decide the claim of the appellant. The representation of Sri K.K. Upadhyia pursuant to aforesaid judgment was rejected by the Director vide his order dated 19.9.2001. The order was then challenged in writ petition before the Lucknow bench of the High Court and is said to have been decided somewhere in year 2004-05 but its copy has not been appended on the ground that it is not available with the petitioner. The dispute regarding the post of principal brought about by the officiating ad-hoc principal Sri K.K. Upadhyia thus become final.

7. It is submitted that on appointment of Sri Bhagat Singh as principal by direct promotion a substantive vacancy of lecturer in Economics arose. Two substantive posts of lectures in the institution of Hindi and History subjects also fell vacant in the meantime. It is stated that there are ten sanctioned posts of lectures in the college, five of which i.e. 50 % are filled up by direct recruitment by Kamla Kant Upadhyia, Bhagwandas, Ramanuj Pandey, Kripa Shankar Singh and Amar Nath Pandey lectures in English, Maths, Chemistry, Sanskrit and Physics respectively whereas three posts have been filled by promotion of Sri Prakash Pandey, Janakdev Prasad and Prabhakar Singh lectures in Hindi, Geography and Physics subjects respectively and two of the posts of lectures are vacant as stated earlier.

8. The Management by resolution dated 4.12.2005 resolved for promotion of the petitioner on the post of lectures (Economics) one Sri Guru Narain Singh as lecturer (Hindi) and Jang Bahadur Prasad as Assistant teacher in L.T. grade as lecturer (History). The papers of the petitioner and respondent No. 5 only are said to have been transmitted by the Committee of Management to the Joint Director of Education through the officer of the DIOS Azamgarh. By order dated 22.11.2007 approval was granted to the promotion of the petitioner on the post of lectures (Economics) by the Joint Director of Education.

9. According to the petitioner the date of occurrence of the vacancy has wrongly been transcribed as 10.10.2004 by the Joint Director of Education and the order dated 22.11.2007 is said to have been intimated to the college authorities under letter dated 29.1.2008 of the DIOS.

10. The petitioner claims that he has been given charge of the post of lecture economics w.e.f. 30.1.2008. However, he by means of application dated 14.2.2008 is said to have requested the Joint Director of Education to correct the date of occurrence of the vacancy. It is also claimed that pursuant to the aforesaid order of promotion the petitioner has been continuously working as lecturer in economics and has been paid salary w.e.f. 30.1.2008 for the said post, but by the impugned order dated 22.9.2008, the Joint Director of

Education, Azmagarh Region has withdrawn his earlier order of promotion dated 20.11.2007.

11. The order impugned is assailed on the ground that it has been passed on a complaint made by respondent No. 5 before the Chairman, Scheduled Caste and Scheduled Tribes, Commission, Lucknow inter alia that no lecturer had been appointed or promoted in the institution belonging to Scheduled Caste community, as such the appointment of the petitioner was in violation of the Acts and Rules framed for providing reservation to the candidates belonging to those Sections of the society.

12. From the impugned order it appears that the petitioner had been informed about the date of hearing but he did not appear. Perusal of the impugned order also shows that the post of lecturer in economics was vacant on 7.8.96 whereas the petitioner was granted promotion to the aforesaid post on the basis of wrong date of occurrence of vacancy i.e. 10.10.2004.

13. It is contended by the learned Counsel for the petitioner that the impugned order dated 22.9.2008 is ex parte as the petitioner had not received any notice as referred to in the impugned order and as such the impugned order is in violation of settled principles of natural justice and is liable to be quashed. As regards complaint made by respondent No. 5 is concerned, it is stated that out of 10 sanctioned posts of lecturers 5 posts had already been filled up by direct recruitment and the remaining 5 posts were to be filled up by way of 50% promotional as per roster issued by the State Government.

14. It is also submitted that out of aforesaid 5 posts of promotional quota one post is required to be filled up by Scheduled Caste candidate and as by resolution dated 4.12.2005 the proposal in favour of respondent No. 5 has already been made by the Committee of Management being a reserved category candidate under the Scheduled Caste quota as such there was no infirmity in the order of the promotion of the petitioner which has been withdrawn by the impugned order dated 22.9.2008.

15. The relevant portion of the impugned order dated 22.9.2008 is as under:

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04-09-2008 dks ,oa i=kad&em@2840&42@08&09 fnukad 15&09&2008 ds }kjk fnukad 20&9&2008 dks frfFk fu/kkZfjr djrs gq, lquokbZ gsrq volj iznku djrs gq, fo|ky; iz/kkukpk;Z @ izcU/kd ftyk fo|ky; fujh{k d] em ,oa Jh vej cgknqj flag vuqifLFkr jgs A fnukad 20&9&2008 dks izcU/kd dh vksj ls vf/kd`r Jh izeksn dqekj ik.Ms; lapkyd dks vf/kd`r fd;k x;k A Jh ik.Ms; us vius fyf[kr vfHkdFku esa ;g mYys[k fd;k gS fd iz/kkukpk;Z ds ekSfyd :i ls fjDr in ij Jh Hkxr flag izoDrk Lo:i fnukad 06&08&1998 dks iz/kkukpk;Z ds in ij dk;ZHkkj xzg.k fd, bl izdkj fnukad 07&08&1996 ls izoDrk vFkZ"kkL= ds mDr fjDr in dks fnukad 10&10&2004 ls fjDr fn[kk dj laLFkkf/kdkjh;ksa @ Jh vej cgknqj falag lO v0 us inksUufr dk vkns"k izkIr dj fy;k A fjfDr dh frfFk 07&08&96 dks Jh flag izoDrk in ij inksUufr dh vgZrk ugh j[krs gS A izcU/kd ds dFku rFkk layXu i=tkrksa ds ijh{k.k ls Li"V gS fd izoDrk vFkZ"kkL= dk in ekSfyd

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16. Learned Counsel for the respondents submits that it is clear from the perusal of the impugned order that it refers to an order of promotion obtained by the petitioner by fraud and concealment of material facts and that the petitioner has been promoted on the basis of wrong date of occurrence of vacancy.

17. Learned Standing counsel has supported the case of the respondents to the effect that the petitioner was not qualified for being appointed on the post of lecturer when the vacancy had occurred.

18. In rebuttal, learned Counsel for the petitioner has submitted that the petitioner has not concealed any fact and it is only because litigation was going on between Kamla Kant Upadhyaya and Bhagat Singh which came to an end in the year 2004-05 and that the proceedings were taken up for filling up the post by the Committee of Management by resolving to appoint the petitioner. It is stated that after the order dated 20.11.2007 was passed and duly intimated to the Joint Director of Education on 14.2.2008 an application was moved by the petitioner which is still pending but the aforesaid order dated 20.11.2007 was not corrected since the Joint Director of Education had been transferred in the month of March, 2008. It is vehemently stated that respondent No. 5 was appointed in the institution in question as Assistant Teacher in L.T. Grade on 2.2.98, hence on the date of occurrence of vacancy as has been mentioned in

the impugned order dated 7.8.96 he was himself not qualified to be promoted to the aforesaid post of lecturer in economics. It is pointed out that since Scheduled Caste and Scheduled Tribes, Commission vide its order dated 26.8.2008 directed the Joint Director of Education to fill up the post of Scheduled Caste and having regard to the fact that the impugned order has been passed on the dictates of the Chairman, Scheduled Caste and Scheduled Tribes under political pressure the same is liable to be quashed. It is also stated that the Joint Director of Education has no power to review his order and for this reason too the impugned order is void and without jurisdiction.

19. Reliance has also been placed by the learned Counsel for the petitioner upon the judgment rendered in *Harish Chandra v. Joint Director of Education* 2000 (3) ESC 2008 wherein according to the petitioner, the Court has held that the recruitment year will be treated as the year in which the resolution has been passed by the Committee of Management and as such as per the Rule 14 of 1998 Rules the recruitment year in respect of the petitioner's case is in the year 2005-06 as such there is no infirmity in the promotion of the petitioner.

20. After hearing learned Counsel for the parties it appears that the vacancy for the post of lecturer in economics accrued in the year 1996. According to the admitted position, the educational qualification of the petitioner at that time was B.A.B.Ed., therefore, he was not qualified for appointment on the said post on 7.8.96 when the vacancy had accrued. He has subsequently also obtained Master degree from Poorvanchal University.

21. Admittedly also, out of 10 posts two posts are to be filled up by SC/ST candidates. It appears that the Committee of Management has ignored the case of respondent No. 5 against which he has moved a complaint before the Chairman SC/ST, Commission. To my mind, it can not be said that the impugned order has been passed on the dictates of the Chairman, SC/ST, Commission as no direction has been issued by the SC/ST, Commission or even by the Joint Director of Education to appoint respondent No. 5. In fact, the Joint Director of Education has considered the fact that the petitioner had obtained Master degree in economics from Poorvanchal University in 2004 and he was not eligible for the said post of lecturer in economics on 7.8.1996 when the vacancy had occurred.

22. Even if it is accepted that the petitioner did not receive any notice from the Joint Director of Education as mentioned in the impugned order, hence could not appear, he has failed to prove his case before this Court when opportunity was granted to him to assail the orders impugned with liberty.

23. In fact it appears that the Committee of Management deliberately showed the post to have become vacant on 10.10.2004 whereas the vacancy had occurred on 7.8.96 and concealing this fact the Management in collusion with the petitioner recommended for appointment of the petitioner on the post of lecturer in economics which was granted but on coming to know about the correct facts on the basis of complaint made by respondent No. 5 to the Chairman SC/ST

Commission, the matter was re-examined by the Joint Director of Education who after considering the facts has passed the impugned order.

24. In so far as the question of review is concerned, suffice it to say that the authority who has passed the order has inherent power to review and correct his order.

25. For the reasons stated above, the writ petition is dismissed. No order as to costs.