
(2004) 04 AHC CK 0155
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 18553 of 2001

Asha Jaiswal (Smt.)

APPELLANT

Vs

Joint Director of Education and Others

RESPONDENT

Date of Decision : 22-04-2004

Acts Referred:

Constitution of India, 1950 — Article 16(4), 16(4A)
Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 — Section 3(1)
Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 — Rule 14
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 10

Citation : (2004) 2 UPLBEC 1837

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : Nambar Singh and Sanjeev Singh, for the Appellant; Ganga Prasad and Sandeep Mukherjee and S.C., for the Respondent

Final Decision : Allowed

Judgement

R.B. Misra, J.—Heard Sri Nambar Singh, assisted with Sri Sanjeev Singh, learned Counsel for the petitioner and Sri Ganga Prasad, learned Counsel for respondent No. 4 and Sri Sandeep Mukherjee, learned Standing Counsel for the State.

2. With the consent of the learned Counsel for the parties, the writ petition is decided at this stage in view of the Second Proviso to Rule 2 of Chapter XXII of the Allahabad High Court Rules, 1952.

3. In this petition prayer has been made for writ of certiorari quashing the order dated 19.4.2001 passed by Joint Director of Education, Varanasi Region, Varanasi whereby the respondent No. 4 Smt. Phoolpati Devi, was appointed as a lecturer in Zila Panchayat Palika Inter College, Chandauli, District Chandauli in the promotional quota treating her as a reserved category candidate.

4. According to the petitioner, she was appointed on the post of Assistant

Teacher, CT Grade on 11.11.1970 and the respondent No. 4 was appointed to the post of Assistant Teacher in CT Grade on 29.3.1979. One post of Lecturer in Economics had fallen vacant on 30.6.2000 on the retirement of Smt. Prem Lata Singh. The petitioner claimed to be senior to the respondent No. 4, therefore, she claimed her entitlement for being promoted to the post of Lecturer in Economics in the College. The Committee of Management and District Inspector of Schools, Chanduali have also recommended the matter to the Joint Director of Education, Varanasi Region, Varanasi for promoting the petitioner to the post of lecturer in Economics in the College under the 50% quota for promotion. Earlier Smt. Urmila Chaudhari was already promoted to the post of lecturer in History in the College, therefore, the Scheduled Caste quota was already filled by promotion. Even though reservation in promotion was not provided at all. According to Article 16(4-A) of the Constitution of India, it is provided that State may provide for reservation in the matter of promotion by making provisions in the law, in service in favour of SC and ST. The State of U.P. has enacted, the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act 1994 (hereinafter referred to as the U.P. Act No. 4 of 1994) in which it is provided in Section 3(1) that the reservation shall be provided at the stage of direct recruitment only but not in promotion as the law was when the impugned order was passed.

5. In the light of Section 10 of the Uttar Pradesh Secondary Education Services Selection Boards Act, 1982 read with Rule 14 of Uttar Pradesh Secondary Education Services Selection Boards Rules, 1998 the reservation shall be provided at the stage of direct recruitment and not at the stage of promotion, therefore, in the present case, no reservation in promotion could be provided at the stage of promotion. For convenience the relevant provisions are extracted below :

"Section 10, Procedure of section by direct recruitment.--(1) For the purpose of making appointment of a teacher, by direct recruitment, the management shall determine the number of vacancies existing or likely to fall vacant during the year of recruitment and in the case of a post other than the post of Head of the Institution, also the number of vacancies to be reserved for the candidates belonging to the Scheduled Castes, the Scheduled Tribes and Other Backward Classes of citizens in accordance with the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, and notify the vacancies to the Board in such manner and through such officer or authority as may be prescribed.

(2) the procedure of selection of candidates for direct recruitment to the post of teachers shall be such as may be prescribed :

Provided that the Board shall, with a view to inviting talented persons, give wide publicity in the State to the vacancies notified under Sub-section (1)."

"Rule 14. Procedure for recruitment by promotion.--(1) Where any vacancy is to

be filled by promotion all teachers working in trained graduates grade or Certificate of Teaching grade, if any, who possess the qualifications prescribed for the post and have completed five years continuous" regular service as such on the first day of the year of recruitment shall be considered for promotion to the lecturers grade or the trained graduates grade, as the case may be, without their having applied for the same.

Note.--For the purposes of this sub-rule, regular service rendered in any other recognized institution shall be counted for eligibility, unless interrupted by removal, dismissal or reduction to a lower post.

(2) The criterion for promotion shall be seniority subject to the rejection of unfit.

(3) The Management shall prepare a list of teachers referred to in Sub-rule (1), and forward it to the Inspector with a copy of seniority list, service records, including the character rolls, and a statement in the pro forma given in Appendix "A".

(4) Within three weeks of the receipt of the list from the Management under Sub-rule (3), the Inspector shall verify the facts from the record of his office and forward the list to the Joint Director.

(5) The Joint Director shall consider the cases of the candidates on the basis of the records referred to in Sub-rule (3) and may call for such additional information as it may consider necessary. The Joint Director shall place the records before the Section Committee referred to in Sub-section (1) of Section 12 and after the Committee's recommendation, shall forward the panel of selected candidates within one month to the Inspector with a copy thereof to the Management.

(6) Within ten days of the receipt of the panel from the Joint Director under Sub-rule (5), the Inspector shall send the name of the selected candidates to the Management of the Institution which has notified the vacancy and the Management shall accordingly on authorization under its resolution issue the appointment order in the pro forma given in Appendix "F" to such candidate."

6. According to Full Bench decision of Andhra Bank Scheduled Tribe Employees' Welfare Association Vs. Andhra Bank, Hyderabad, Andhra Bank Scheduled Tribe Employees Welfare Association v. Andhra Bank, it may be noted that the reservation in promotion cannot be provided unless the State makes special provision for the same in prevailing law; The aforesaid view was reiterated in PNT Scheduled Caste/Tribes P and T Scheduled Caste/Tribe Employees' Welfare Association (Regd.) and Others Vs. Union of India (UOI) and Others, in Paragraph 4, where it was observed that Article 16(4) is only an enabling clause which empowers the Government to enact a legislation for providing reservations. According to Ajit Singh and Others Vs. The State of Punjab and Others, there is no fundamental right for imposing any constitutional duty upon the State under Articles 16(4) and 16(4-A) of the Constitution but they are only

in enabling provision, empowering the Government for providing reservation, therefore, in the circumstances, since the State of U.P. has not provided in law, providing for reservation in promotion in the fact and circumstances of the present case.

7. Whereas according to respondent No. 4, a post of lecturer in "Economies" had fallen vacant due to retirement of Economics lecturer. The petitioner as well as the respondent No. 4 claimed for promotion as Economics lecturer. The relevant paper along with service records of both parties were forwarded by the Chairman of the Institution to the District Inspector of Schools and thereafter the District Inspector of Schools in his turn forwarded the same to the Joint Director of Education. The case of promotion of both was considered by the Committee constituted at the level of Joint Director of Education and the service record of the both parties were scrutinized and the petitioner was found most suitable and promoted to the post of lecturer and the Manager of the Institution was directed to issue appointment letter. Accordingly appointment letter was issued and the respondent No. 4 joined her duties as lecturer in Economics and teaching the students of the Institution regularly since the date of appointment i.e. 5.5.2001 and getting salary in lecturer grade.

8. There are seven posts of lecturers sanctioned in the Institution out of which five posts of lecturer were already filled up (three posts by direct recruitment and two posts by way of promotion) but no Scheduled Caste candidates was ever promoted in the Institution. There existed post of lecturers in subject of Economics and in Psychology on retirement of teachers. The respondent No. 4 having requisite qualification was promoted as Economics lecturer on the basis of suitability and other posts of Psychology lecturer fell vacant could not be filled up. The U.P. Act No. 4 of 1994 and Sections 3 (1), (5) (7) of the Act No. 4 of 1994 deals with reservation in favour of Scheduled Caste and Scheduled Tribes persons recruitment as well as promotion.

9. As contended on behalf of respondent No. 4 the controversy regarding reservation in the matter of promotion is set at rest by the Supreme Court in a case of Vishnudas Trading as Vishnudas Kishandas Vs. Vazir Sultan Tobacco Co. Ltd., Hyderabad and another, wherein the promotion treated as constitutional as well as fundamental rights of Scheduled Caste and Scheduled Tribes community. It has argued on behalf of respondent No. 4 that the High Court of Judicature at Allahabad in case of V.K. Banerjee v. State of U.P. and Ors., reported in 1999 (1) ESC 644 : (1999) 1 UPLBEC 768 (Alld.) , has held that the reservation quota in promotion increase from 18% to 21% in favour of the Scheduled Caste candidates u/s 3 of U.P. Act, 1994.

10. I have heard learned Counsel for the parties, I find that the promotion of respondent No. 4 made on the ground of reservation policy is not in consonance to the provisions of Act and Rules. Undisputedly, the petitioner was senior to the respondent No. 4 and was appointed about eight and half years before in CT Grade and there cannot be any reservation in the promotion in the garb of the

assertions that the reserve category are not in the cadre strength. Therefore, the order dated 19.4.2001 passed by the Joint Director of Education, Varanasi Region, Varanasi is not legally sustainable, therefore, it is set aside and the petitioner is treated to be senior to the respondent No. 4 and to be given promotion. The respondents are directed to consider the case of the petitioner and for extending the benefit declaring her senior most to the respondent No. 4 in the College within two months from the date of issuance of certified copy of this order.

11. In view of the above observations the writ petition is allowed. No order as to costs.