
(1992) 08 AHC CK 0029
In the Allahabad High Court
Case No : Special Appeal No. 268 of 1992

Babban Singh

APPELLANT

Vs

Deputy Director of Education and Others

RESPONDENT

Date of Decision : 26-08-1992

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 18, 18(1)

Citation : (1992) 4 AWC 132 Supp

Hon'ble Judges : M.K. Mukherjee, C.J.; R.A. Sharma, J

Bench : Division Bench

Advocate : Shankhatha Rai, for the Appellant; V.K. Chandel and Ram Niwas, for the Respondent

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—Both the Appellant and Respondent No. 4 have laid their claims to the post of lecturer in History in National Inter College, Saiyad Raza, Varanasi (here-in-after referred to as the college), the vacancy of which "occurred on 1-7-1988 due to retirement of Sri Triveni Lal Srivastava, who was holding that post till then. The authorised controller, acting as committee of management of the college, notified the vacancy vide his letter dated 16-6-1988 to the U.P. Secondary Education Service Commission (here-in-after referred to as the Commission) through the District Inspector of Schools (here-in-after referred to as the D.I.O.S.). The D.I.O.S., however, returned the papers pertaining to the vacancy vide his letter dated 26-9-1988 to the authorised controller as the papers were not complete. The authorised controller thereafter again submitted the papers pertaining to the notification of the vacancy to the D.I.O.S. vide his letter dated 28-11-1988. As more than two months have passed after the vacancy had occurred, the authorised controller decided to make appointment of an ad hoc lecturer (History) u/s 18(1)(b) of the U.P. Secondary Education Services Commission and Selection Board Act, 1982 (here-in-after referred to as the Act). The authorised controller proposed by his letter dated 12-12-1988 the

name of the Appellant for appointment as ad hoc lecturer to the D.I.O.S. and the D.I.O.S. by his order dated 26-12-1988 approved the ad hoc appointment of the Appellant, who joined the said post on the same day, i.e. 26-12-1988. Respondent No. 4 made a representation against the above appointment of the Appellant before, the Dy. Director of Education. The Dy. Director of Education not having decided his representation, Respondent No. 4 filed a writ petition before this Court in which direction was issued to the Deputy Director of Education to decide the representation. The Deputy Director of Education, however, rejected the representation as not maintainable. The Respondent No. 4 filed another writ petition in which this Court again directed the Deputy Director of Education to decide on merit the representation of Respondent No. 4. The Deputy Director of Education this time allowed the representation of the Respondent No. 4 holding that he was entitled to be promoted to the post of lecturer in place of the Appellant. The Appellant thereupon filed a writ petition, which has been dismissed by the learned Single Judge. Hence this Special Appeal.

2. learned Counsel for the Appellant has submitted that on 16-6-1988 when the vacancy was notified by the authorised controller to the Commission and on the date when the vacancy occurred (1-7-1988) due to the retirement of Sri Triveni Lal Srivastava, Respondent No. 4 was not eligible being not possessed of a degree of M.A. (History) and as such, he was not entitled to be promoted to the post of lecturer. In this connection learned Counsel has placed reliance on Rules 4 and 9 of U.P. Secondary Education Services Commission Rules, 1983 (here-in-after referred to as the Rules). Relevant extracts of these Rules are as under :

4. Determination and intimation of vacancies:- (1) The Management shall determine and intimate to the Commission, in the proforma given in Appendix "A" and in the manner hereinafter specified ,the number of vacancies existing or likely to fall vacant during the year of recruitment and, in the case of any post, other than the post of the head of an institution, also the number of vacancies to be reserved for candidates belonging to the scheduled caste, scheduled tribes and other category of persons in accordance with the rules or orders issued by the Government in this behalf in regard to the educational institutions. 9. Procedure for appointment by promotion :

(i) Where any vacancy is to be filled by promotion, all teachers working in L.T. or C.T. grade, who possess the minimum qualifications and have put in at least 5 years continuous service as teacher on the date of occurrence of vacancy shall be considered for promotion to the Lecturer or L.T. grade, as the case may be, without their having applied for the same.

Note :- For the purpose of this sub-rule, service rendered in any other recognised institution shall count 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 Commission through the Inspector with a copy of seniority list, service records including the character rolls and a statement in the proforma 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 and forward the list to the Commission.

(5) The commission shall, after calling for such additional information as it may consider necessary, intimate the name of the selected candidate or candidates to the Inspector with a copy of the Manager of the Institution.

(6) Within 10 days of the receipt of the intimation from the Commission under sub-rule (5), the Inspector shall send the name of the selected candidate (s) to the Manager of the concerned institution and the provisions of sub-rule (3) and (4) of Rule 8 shall mutatis mutandis apply.

Relying on the above Rules the argument of the learned Counsel is that the relevant date with reference to which the eligibility of a candidate for promotion has to be seen is the date on which the vacancy occurred. As the vacancy admittedly occurred on 1-7-1988, the Respondent No. 4 was not eligible on that date being not possessed of a degree of M.A. (History), which is a minimum requirement for promotion to the post of lecturer in History.

3. learned Counsel for the Respondents has, on the other hand, made two submissions, namely (1) before the authorised controller decided to make ad hoc appointment u/s 18(1)(b), the Respondent No. 4 became eligible as his result of M.A. (History) was published on 18-8-1988 in which he was declared successful and an information to that effect was sent to the D.I.O.S. in August, 1988 itself. In fact a representation was made by Respondent No. 4 on 20-8-1988 before the D.I.O.S. claiming the post of lecturer of History on ad hoc basis on the ground that he is senior to the Appellant and has also passed the examination of M.A. (History); and (ii) The intimation of vacancy by the authorised controller on 16-6-1988 was returned by the D.I.O.S. to the authorised controller as the same was not complete and the authorised controller thereafter sent requisition of the vacancy again on 28-11-1988 to the D.I.O.S. It is with reference to the above dated 28-11-1988 that the eligibility of a candidate for promotion has to be considered.

4. Relevant extract of Section 18, which provides for adhoc appointment of teachers is as below :

18 Ad hoc Teachers :-(1) Where the management has notified a vacancy to the Commission in accordance with the provisions of this Act, and :

(a) the commission has failed to recommend the name of any suitable candidate for being appointed as a teacher specified in the Schedule within one year from the date of such notification; or

(b) the post of such teacher has actually remained vacant for more than two months, then, the management may appoint by direct recruitment or promotion, a teacher on purely adhoc basis from amongst the person possessing qualifications prescribed under the Intermediate Education Act, 1921 or the regulations made thereunder,

As the lecturer's post was to fall vacant on 1-7-1988 the authorised controller on 16-6-1988 sent an intimation of the vacancy to the D.I.O.S. for transmitting the same to the Commission. In his letter the authorised controller has recommended the names of three persons including the Appellant for consideration for promotion by the Commission. Name of the Respondent No. 4 was, however, not included in the said list as on 16-6-1988 the said Respondent was not eligible not having passed the examination of M.A. (History). The D I.O.S. has returned the above papers and the authorised controller sent the papers again on 28-1:-1988.

5. Rules 4 and 9 relate to ascertainment of vacancy and its intimation -to the Commission by the management of the college. In the case of promotion the management of the college has to send the names of all those teachers who are eligible on the date of occurrence of vacancy for being considered by the Commission. These rules apply to those appointments only, which are required to be made on the basis of the selection made by the Commission. As the Commission is not required to make selection for ad hoc appointment of a teacher, these Rules will have no relevance in the case of appointment on ad hoc basis u/s 18 of the Act. For ad hoc appointment u/s 18, relevant date with reference to which the eligibility of a candidate has to be seen is the date on which the management, after expiry of more than two months from the date of vacancy, decide to make ad hoc appointment For this proposition we place reliance on a decision of a Division Bench of this Court in the case of Hans Raj Singh v. U.P. Secondary Education Service Commission, Allahabad (1990) 2 UP LB EC 1127, relevant extract from which is reproduced below :

It has already been settled by a Division Bench of this Court in Charu Chandra Tiwari v. District Inspector of Schools (supra) that vacancy u/s 18(1)(b) has to be filled by promotion and direct recruitment cannot be made unless a teacher in the institution is not eligible for promotion. The questions for consideration are whether the Petitioner was eligible on the relevant date and what is relevant date with reference to which eligibility has to be seen. u/s 18(1)(b) the management gets rights to make ad hoc appointments, if the post has actually remained vacant, for more than two months. The date on which the management, after expiry of more than two months from the date of vacancy, decides to make ad hoc appointment u/s 18(1)(b), is the relevant date with reference to which eligibility for purposes of promotion is to be seen. If on this date a teacher is eligible for promotion, he has got to be promoted and no appointment by direct recruitment can be made under this provision. However, if eligible teacher for promotion is not available on the aforesaid date, the management will have full

right to make ad hoc appointment by direct recruitment.

6. In the instant case authorised controller of the college decided to make ad hoc appointment u/s 18(1)(b) on 12-12-1988. The eligibility of a candidate for ad hoc appointment has to be seen with reference to the above date (12-12-1988). On this date the Respondent No. 4 was fully eligible having passed the examination of M.A. (History) in August, 1988. It is admitted to the Appellant that Respondent No. 4 is senior to him. Being senior and having passed the examination of M.A. (History), the Respondent No. 4 was entitled to be promoted to the post of lecturer in History. The order of the Deputy Director of Education and the impugned judgment of the learned Single Judge do not suffer from any infirmity. Submission of the learned Counsel for the Appellant, as such, cannot be accepted.

7. AS we are rejecting the submission of the learned Counsel for the Appellant, it is not necessary for us to deal with the second submission raised by the learned Counsel for the Respondent.

8. The Special Appeal is accordingly dismissed. In view of the facts and circumstances of the case, there shall be no order as to costs.