

(1985) 08 AHC CK 0038
In the Allahabad High Court
Case No : Writ Petition No. 8484 of 1979

B.P. Tripathi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-08-1985

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Regulation 6, 6(1), 6(5)

Citation : (1985) 08 AHC CK 0038

Hon'ble Judges : R.M. Sahai, J;Om Prakash, J

Bench : Division Bench

Advocate : K.N. Upadhyay and S.P. Gupta, for the Appellant; Ratnakar Bharti, for the Respondent

Final Decision : Allowed

Judgement

Om Prakash, J.—Claiming a writ of certiorari this petition has been filed by the Petitioner for quashing the Order dated 12.10.1979 (Annexure-8 to the writ petition) passed by the District Inspector of Schools, Bareilly (for short, the DIOS). The Petitioner also prays for a writ of mandamus directing the Respondents not to interfere in his working as a teacher in L.T. Grade.

2. The Petitioner was promoted to C.T. grade from J.T.C. gated in the year 1965 with effect from 08.07.1964 in Gulab Rai Inter College, Bareilly. He is double M.A. in Hindi and Sanskrit. On account of the death of a teacher, namely, Sri Raendra Kumar Sharma, a vacancy occurred in the aforesaid college in L.T. grade and the Petitioner was promoted in that vacancy to the L.T. grade by the Committee of Management, which passed a resolution on 20th May 1979. The resolution was then sent to the DIOS, for being approved. The DIOS accorded his approval on 19th June 1979.

3. Respondent No. 4 who is M.A. in Economics, made a representation on 24.05.1979 to the Manager of the College through the Principal against the resolution being passed by the Committee of Management for the promotion of

the Petitioner. The case of the Petitioner is that despite the representation dated 24.05.1979, the DIOS accorded his approval on 19th June 1979, but his successor considering the second representation dated 6th July 1979 (Annexure-4 to the petition) of the Respondent No. 4 passed the impugned Order dated 12.10.1979 (Annexure-8 to the petition) that the resolution dated 20.05.1979 of the Committee of Management recommending the promotion of the Petitioner in L.T. grade was inoperative and illegal. By his Order dated 12.10.1979, the DIOS, declared the Respondent No. 4 as having been promoted to the L.T. grade from the beginning of the session 1979-80 in the vacancy of Sri Rajendra Kumar Sharma.

4. Aggrieved by the aforesaid order, the Petitioner filed the instant petition. Two counter affidavits have been filed one by the Respondents No. 1 and 2 and the other by Respondent No. 4. There is no counter-affidavit by the Respondent No. 3. In paragraph 7 of his counter-affidavit, the Respondent No. 4 states that Sri Rajendra Kumar Sharma who was teaching English and Hindi to High School classes, expired on 13.04.1978 and, therefore, a vacancy arose in the subjects English and Hindi, therefore, only a teacher who was qualified to teach Hindi and English to the High School classes, was to be promoted. Jibs the Petitioner did not possess the requisite qualification to teach English, the Respondent No. 4 contended that his promotion to L.T. grade was wholly illegal and invalid vide resolution dated 20th May 1979. In their counter-affidavit, the Respondent No. 1 and 2 raised two grounds: (1) that the Committee of Management violated Regulation 6(5) in having passed the resolution dated 20th May 1979 and, therefore, the same was illegal, and (2) that the Petitioner was merely B.A. with General English, while Respondent No. 4 was B.A. with English Literature and Hindi Literature and that for appointment of a English teacher, who was required after the death of Sri Rajendra Kumar Sharma, minimum qualification prescribed for an English teacher under Regulation I of Appendix A is B.A. with English Literature. The Petitioner having not possessed the minimum qualification with English Literature, the Respondents contend that the resolution dated 20th May 1979 recommending the promotion of the Petitioner to the L.T. grade, in the vacancy of Sri Rajendra Kumar Sharma, was wholly illegal.

5. We have heard learned Counsel for the parties at some length. The question for consideration is: whether the order dated 12.10.1979 (Annexure-8 to the petition) passed by the successor DIOS declaring the resolution dated 20th May 1979 of the Committee of Management as illegal and declaring the Respondent No. 4 as having been appointed from the beginning of the session 1979-80 in the vacancy of Sri Rajendra Kumar Sharma is valid. The validity of the resolution dated 20th May 1979 has been challenged on two grounds firstly, that there was violation of Regulation 6, and, secondly, that the Petitioner was not qualified to be promoted in the vacancy of Sri Rajendra Kumar Sharma, as he did not possess the minimum qualification of B.A. with English Literature. So the first point for consideration is whether there was violation of Regulation 6. Regulation 6(1) enjoins upon the Committee of Management to consider all teachers

working in the C.T. grade, having a minimum of five years continuous substantive service to their credit on the date of occurrence of vacancy in the L.T. grade to be filled by promotion, without their having to apply for the same, provided they possess the prescribed minimum qualifications for teaching the subject in which the teacher in the L.T. grade is required. Regulation 6(5) runs as follows:

6(5). In respect of any teacher selected for appointment by promotion in accordance with these regulations the Manager of the institution shall, within a week from the date of the resolution passed by the Committee of Management in regard to such appointment forward (the proposal for the concurrence of the Inspector together with) a copy of such resolution and a statement showing the following particulars:

Adverting to the aforesaid Regulations, Sri Ratnakar Bharti, learned Counsel for the Respondents argued that as required by Regulation 6(1), the names of all the teachers who were eligible to be promoted, were not considered by the Committee of Management, while passing the resolution dated 20th May 1979 recommending the name of the Petitioner for promotion to the L.T. grade and that as required by Regulation 6(5) the names of all eligible candidates for promotion, their qualification and length of their service from the date of their substantive appointment in the grade from which they are to be promoted were not sent to the DIOS. The submission of Sri S.P. Gupta learned Counsel for the Petitioner is that the Committee of Management did consider the names of all the eligible teachers before passing the resolution dated 20th May 1979 and that the DIOS having detected the omission on the part of the Committee of management in not complying with the provisions of Regulation 6(5)(vi) called upon the Committee of Management to send the necessary service details of all the eligible candidates and this direction of the DIOS had been duly complied with. Though no counter-affidavit has been filed by Respondent No. 3, but a reply (Annexure-6 to the petition) that was sent to the DIOS on behalf of the Committee of Management, has been filed. It is averred that the Petitioner was considered to be the most suitable candidate in the vacancy of Sri Rajendra Kumar Sharma on account of his seniority and merit out of the three eligible candidates and, therefore, he was promoted to the L.T. grade. Sri Gupta, therefore, submits that it is incorrect to say that names of all eligible candidates were not considered by the Committee of Management while passing the resolution dated 20th May, 1979. Then Sri Gupta drew our attention to the impugned order Annexure-8 to the petition. Before passing the order, the DIOS gave the history of the case in the beginning of the order. Stating the history of the case, the DIOS pointed out that details of the service of the eligible candidates, as envisaged by Regulation 6(5)(vi) were, required by his predecessor from the Committee and that the said details had been received on 18.06.1979. So the DIOS has himself admitted the fact in the impugned order (Annexure-8) that the details, as contemplated by Regulation 6(5) (vi) had been furnished on 18.06.1979, meaning thereby a day before the approval was

accorded to the resolution on 19.05.1979. The DIOS having received the necessary details regarding service of the eligible candidates a day before according approval to the resolution dated 20th May, 1979, it will be presumed, unless established otherwise, that the LIO had considered all the materials, envisaged by Regulation 6(5)(vi) before giving the approval on 19.06.1979 to the resolution dated 20th May, 1979. Sri Bharti argued for the Respondent that the information as required by Regulation (5), which the Committee of Management was called upon to furnish, was not received by the DI Oi till 19.06.1979, when the approval was accorded and that the approval was given without taking into consideration the service record of all the eligible candidates. There is no basis of this argument, rather the DIOS has himself stated the facts in the beginning of the impugned Order dated 12.10.1979 contrary to the submission of Sri Bharti. It is fully borne out from the order dated 12.10.1979 itself that there is no violation of Regulation 6(5)

6. Then the question is: whether there was vacancy in English subject. Adverting to the reply of the Committee of Management dated 17.07.1979 Annexure 6 to the writ petition, addressed to the DIOS Sri Gupta submits that a teacher was required to teach Hindi and not English. In the reply Annexure-6, the Manager of the Committee clearly stated that in the last two years there was a considerable change in the policy of the Government in which there was more stress on Hindi than English. It was stated that adequate teachers were available to teach English but the Hindi teachers were short and, therefore, there was a need of Hindi teacher in L.T. grade. This is how, the Petitioner, who is M.A. in Hindi and Sanskrit and was senior most, was considered to be most suitable to be promoted to L.T. grade than his other colleagues. The point is whether here a teacher was required for English subject or Hindi. Regulation 6(1) fully answers this question. This Regulation says that the Committee of Management shall consider all the teachers working in C.T. grade having a minimum of four years continuous service to their credit on the occurrence of the vacancy. Without their having to apply for the same, where any vacancy in the L.T. grade is to be filled by promotion, provided they possess the prescribed minimum qualification for teaching the subject in which the teachers in the L.T. grade is required. The expression "one teaching the subject in which the teacher in the L.T. grade is required" cannot be read as "for teaching the subject which was being taught by the teacher whose vacancy is to be fulfilled." If the deceased Sri Rajendra Kumar Sharma was a teacher in English then in view of Regulation 6(1) it is not necessary that there will be a vacancy in English subject. The names of all eligible persons having the prescribed minimum qualification will be considered under Regulation 6(1) for the subject in which the teacher is required. The last words "is required" of Regulation 6(1) are very important to decide this controversy. The point is who will take decision as to in which subject a teacher is required. This decision will always be made by the Committee. When a teacher who taught a particular subject, dies, the circumstances may change and due to supervening circumstances or changed conditions a teacher may not be required

for the same subject which was being taught by the deceased teacher but it may happen that a teacher may already be available for the subject which was being taught by the deceased and a teacher may be required for the other subject. This exactly has been stated in their reply Annexure-6 by the Committee that due to the change in the policy of administration giving more emphasis to Hindi, a teacher for Hindi was required and adequate teachers were available for English. Regulation 6 cannot be interpreted so as to mean that vacancy will arise only in the subject which was being taught by the deceased teacher. Such interpretation will not only be against the plain language of Regulation 6(1) but it will render the working of the College not only difficult but impossible. The only reasonable interpretation of Regulation 6(1) is that the question in which subject a teacher is required, will always be decided by the Committee and not by the fact as to which subject was being taught by the deceased teacher. The Committee in the instant case thought it expedient on the death of Sri Rajendra Kumar Sharma that a teacher in Hindi is required and not a teacher in English, as enough teachers were there to teach English at that time. So it is wrong to say that the Petitioner, who is M.A. in Hindi and Sanskrit was promoted to teach Hindi when a teacher for English was required. So the conclusion is that there is no violation of Regulation 6.

7. The Petitioner took up several legal pleas challenging the order Annexure

8. We do not consider it necessary to take up the legal pleas being raised by the Petitioner, as the order (Annexure-8) is not at all sustainable on merit. We, therefore, hold that the approval was validly accorded by the DIOS to the resolution dated 20th May, 1979, inasmuch as, the Committee considered the names of all eligible candidates and as the DIOS also, to whom the necessary information, which the Petitioner was called upon to furnish, was furnished, considered the record of all the eligible candidates to having come to the conclusion that the resolution dated 20th May 1979 was legally passed by the Committee. The resolution dated 20th May 1979 being not illegal in any way, the successor DIOS was not right in passing the impugned order Annexure-8.

9. In the result, the petition succeeds and is hereby allowed. The Respondents are directed not to interfere with the working of the Petitioner in the L.T. grade, to which he was promoted vide resolution dated 20th May, 1979, which was approved by the DIOS on 19.06.1979. The Petitioner shall get costs of Rs. 200/- from the contesting Respondents.