
(1994) 10 AHC CK 0067
In the Allahabad High Court
Case No : Special Appeal No. 691 of 1994

Brij Mohan Mishra

APPELLANT

Vs

District Inspector of Schools, Allahabad and others

RESPONDENT

Date of Decision : 25-10-1994

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Chapter 2, 6, 16 F
Uttar Pradesh Secondary Education Services Commission Rules, 1983 — Rule 9B

Citation : (1994) 10 AHC CK 0067

Hon'ble Judges : R.A.Sharma, J and M.Katju, J

Final Decision : Dismissed

Judgement

R. A. Sharma, J.—After retirement of the Principal of Radha Raman Intermediate College, Daraganj, Allahabad (hereinafter referred to as the college), the post of Principal fell vacant. The management promoted Sri Kiran Shankar Shukla, lecturer of the college, as Principal on ad hoc basis. Consequently there came into existence a short term vacancy in the cadre of lecturer. The management appointed Sri Vishal Chandra Jain, respondent no. 3, as ad hoc lecturer. However, the appointment of Sri Jain was not approved by the District Inspector of Schools, Allahabad (hereinafter referred to as the D. I. O. S.), on the ground that the post of lecturer should be filled by promotion and not by direct recruitment. This order was challenged by respondent no. 3, by means of writ petition before this court, which was disposed of with the direction to the D. I. O. S. to examine the record afresh and pass appropriate order. The D. I. O. S. found that the appellant does not have five years teaching experience in L. T. Grade and was thus not eligible for being promoted to the post of lecturer. The appointment of respondent no. 3 was accordingly approved. The above order of D. I. O. S. was challenged by the appellant, by means of writ petition, which has been dismissed by learned Single Judge. Being aggrieved, the appellant has filed this appeal.

2. We have heard Sri Dinesh Dwivedi, learned counsel for the appellant and Sri U. N. Sharma, learned counsel for the respondents,

3. The sole contention raised by learned counsel for the appellant is that for making promotion under U. P. Secondary Education Service Commission (Removal of Difficulties) (Second) Order, 1981 (hereinafter referred to as the Second Order), it is not necessary that the candidate should have five years teaching experience, because Regulation 6 of Chapter II of the Regulations framed under the Intermediate Education Act (hereinafter referred to as the Act), is not applicable to such appointment. Learned counsel for the respondent has, on the other hand, disputed the above submission.

4. Under the U. P. Secondary Education Service Commission (Removal of Difficulties) Order, 1981 (hereinreferred to as the First Order), the Management of an Institution can appoint a teacher against substantive vacancy on ad hoc basis by promotion and if eligible teacher of the institution is not available for promotion such an appointment can be made by direct recruitment also. Para 6 of the First Order lays down eligibility qualifications for appointment, according to which a candidate must fulfil essential qualifications laid down in Appendix A. referred to in Regulation 1 of Chapter II framed under the Act. Appendix A however, does not require fiveyears teaching experience on the date of occurrence of the vacancy, but such requirement is contained in Regulation 7 which has been expressly applied to the candidates who are to be appointed under the First order. Para 4 of the Second Order, which is reproduced hereinbelow, provides that every appointment under it against short term vacancies shall mutatis mutandis be subject to the condition laid down in para 6 of the First Order :

"Every appointment of a teacher under paragraph 2 shall mutatis mutandis be subject to the conditions laid down in paragraph 6 of the First Removal of Difficulties Order, 1981.""

In view of para 4, eligibility conditions for appointment either by promotion or by direct recruitment under both the orders are the same.

5. Although both the orders have not applied Regulation 6 of Chapter II to the candidates who are to be appointed thereunder, but a Division Bench of this Court in Rakesh Kumar Kaushik v. District Inspector of Schools, 1993(2) Education Service Cases, 450, has after considering relevant provisions laid down that a candidate must have teaching experience of five years to his credit on the date of occurrence of the vacancy. Accordingly it was held that a candidate not having five years continuous teaching experience on the date of occurrence of vacancy, is not eligible for being considered for promotion or appointment on ad hoc basis. Another Division Bench of this court in the case of Smt. Prem Balika Rai v. Regional Inspectress of Girls Schools (hereinafter referred to as R I G S)1993(2) UPLEEC 922, has also taken the same view. It is thus established by this Court that for ad hoc appointment under the First Order a candidate must possess requisite qualifications as prescribed by Regulation 6 of Chapter 11. Admittedly the applicant does not have this qualification and as such he was not entitled for being promoted to the post of lecturer.

6. The contention of the learned counsel for the appellant, however, is that even if requisite qualifications, as laid down in Regulation 6 of Chapter II, are applicable to ad hoc appointments under the First Order, no such qualifications are required for making ad hoc appointment against shortterm vacancy under the Second Order. This contention cannot be accepted. Eligibility qualifications as are prescribed by para 6 of the First Order, have been applied for appointment under Second Order also. This is clear from para 4 of the Second Order. Accordingly the law laid down by Division Bench of this Court, referred to above, is fully applicable to the instant case also.

7. The decision of Full Bench of this court in *Km. Radha Raizada v. Committee of Management* (Writ Petition No. 18934 of 1991, decided on 1271994) is not applicable to the instant case, because the question raised here in this appeal was neither raised before Full Bench nor was decided by it.

8. That apart, Rule 9 of the U. P. Secondary Education Services Commission Rules, 1983, which was inserted in July, 1992, has now expressly laid down that a candidate for ad hoc appointment must have five years teaching experience on the date of occurrence of the vacancy. This rule is reproduced hereinbelow :

"9B Procedure for ad hoc appointment by promotion: (1) The Management shall, in respect of vacancies to be filled by promotion consider the cases of such teachers, who are working in trained graduate (L.T.) or Certificate of Teaching (C.T.) grades and possess the qualifications prescribed under the Intermediate Education Act. 1921 or the regulations made thereunder and have put in at least five years continuous service as such on the date of occurrence of vacancy, for promotion to the lecturer or trained graduate (L.T.) grade, as the case may be, on the basis of seniority subject to rejection of unfit without their having applied for the same.

Explanation : For the purpose of this subrule :

(a) Service rendered in any other recognised institution shall count for eligibility, unless interrupted by removal, dismissal or reduction to a lower post:

(b) a teacher shall be deemed to be unfit if

(i) any criminal case involving moral turpitude is pending inquiry or trial against him; or

(ii) any disciplinary proceeding is being conducted against him.

(2) The Management shall send one for right to one of the selected teacher alongwith the copy of seniority list and his service record including character roll to the District Inspector of Schools for approval :

(3) The District Inspector of Schools, shall within ten days from the date of receipt of names under sub rule (2), send the names of approved teachers to the Management of the concerned institution and the provisions of subrules (6) and (7) or Rule 9A shall mutatis mutandis apply."

The applicant was not having such qualification. He was thus not eligible.

9. For the reasons given above, this appeal lacks merit and is accordingly dismissed.

(Appeal dismissed.)