
(2015) 02 AHC CK 0160
In the Allahabad High Court
Case No : Special Appeal No. 2107 of 2012

Chandra Prakash Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 06-02-2015

Acts Referred:

Citation : (2015) 3 ADJ 733 : (2015) 110 ALR 631 : (2015) 3 AWC 2445 :
(2015) 3 ESC 1233 : (2015) 2 UPLBEC 1236

Hon'ble Judges : Sudhir Agarwal, J; Sunita Agarwal, J

Bench : Division Bench

Advocate : Radha Kant Ojha, B.D. Pandey and Balram Ji Verma, for the Appellant; R.P. Mishra and S.K. Dwivedi, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. The order dated 2.4.2014 having been recalled vide order of date passed on restoration application, the appeal is hereby restored to its original number. As requested by learned counsel for the parties, we proceed to decide the matter finally at this stage. Heard Sri B.D. Pandey, learned counsel for the appellant, learned Standing Counsel for State-respondent and Sri R.P. Mishra, Advocate for respondent No. 8.

2. This appeal under Chapter VIII, Rule 5 of the Rules of the Court has arisen from judgment dated 5.10.2012 passed by Hon'ble Single Judge allowing Writ Petition No. 24536 of 2007 whereby the order of promotion dated 8.8.2008, of appellant, (respondent No. 8 in the writ petition), has been quashed and respondents have been directed to consider the case of respondent No. 8 (petitioner in the writ petition), for promotion on the post of Lecturer (Sociology) in accordance with rules.

3. The facts in brief giving rise to the present dispute may be narrated as under:

4. Vijay Pratap Inter College Mahaso, District Basti is a Secondary Education institution recognized by High School and Intermediate Education Board and is

governed by provisions of U.P. Intermediate Education Act, 1921 (hereinafter referred to as "Act, 1921"). For the purpose of payment of salary the College is governed by Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 (hereinafter referred to as "Act, 1971") and for recruitment of teaching staff of the College, it is governed by provisions of Uttar Pradesh Secondary Education Services Selection Board Act, 1982 (hereinafter referred to as "Act, 1982"). The petitioner (respondent No. 8 herein), was appointed as Assistant Teacher on 16.7.1973 in C.T. Grade and promoted in L.T. Grade on 10.5.1984. In the year 1983, the College was recognized for intermediate classes and four posts of lecturer in the subjects of Sociology, Hindi, Geography and English, were sanctioned vide Director of Education (Secondary)'s letter dated 27.8.1983. The said posts were filled in by appointment of Sri Param Hans and Ram Daras Singh as Lecturer (Hindi) and Lecturer (Sociology), respectively, by way of promotion. The remaining two posts were filled in by direct recruitment by appointing Sri Lal Kesh Singh as Lecturer (Geography) and Dhrub Chandra Pathak as Lecturer (English). The appointment of Sri Dhrub Chandra Pathak was ad hoc subject to availability of a candidate selected by U.P. Secondary Education Service Selection Board (hereinafter referred to as "Board").

5. The post of Lecturer (English) was advertised by the Board in Employment News dated 31.12.1988 but no recommendation could be made.

6. Sri Dhrub Chandra Pathak, however, left the job since he was selected for the post of Principal in another College i.e. Adarsh Inter College, Siktikar, Sant Kabir Nagar where he joined on 25.2.2003.

7. The post of Lecturer (Sociology) occupied by Sri Ram Darash Singh fell vacant due to his retirement on 30.6.2006. The petitioner being eligible for promotion to the said post requested Committee of Management to promote him on the said post vide application dated 29.5.2006.

8. It is said that as per seniority list of Assistant Teachers, petitioner was at serial No. 2 while appellant was at serial No. 9. The said application was rejected by Regional Joint Director, Basti vide order dated 23.2.2007. In the meantime, Committee of Management proposed promotion of appellant on the post of Lecturer (English), which fell vacant due to ad hoc lecturer having left the job, who had to join elsewhere.

9. Challenging the order dated 23.2.2007, the petitioner-respondent No. 8, Harish Chandra Pal, filed the aforesaid writ petition. It has come on record that in the meantime Committee of Management recommended promotion of appellant as Lecturer (English) by converting the said vacancy in promotion quota instead of direct recruitment, and sent a request in December, 2005 for direct recruitment on the post of Lecturer (Sociology).

10. During pendency of writ petition, appellant was promoted to the post of Lecturer (English) vide order dated 8.8.2008, which was also challenged by way

of amendment in the writ petition.

11. Hon"ble Single Judge has come to the conclusion that post of Lecturer (English) was to be filled in by direct recruitment. It was already requisitioned for direct recruitment and recruitment was pending before the Board since 1988. Sri Dhrub Chandra Pathak, in the meantime was appointed purely on ad hoc basis. This ad hoc appointment was referable to Section 18 of Act, 1982 read with U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981 issued thereunder. When Dhrub Chandra Pathak resigned on 25.2.2003, so as to join the post of Principal in another college, having been selected by Board in another recruitment, it did not result in any substantive vacancy for the first time since it was an existing substantive vacancy in respect whereof direct recruitment was already in process/pending before the Board, since 1988. In fact due to resignation of Dhrub Chandra Pathak, Committee of Management could have filled in the vacancy only on ad hoc basis. It did not result in a new substantive vacancy. Moreso, it cannot be said at all that a new vacancy of Lecturer (English) occurred in 2003.

12. 50% of vacancies in lecturers cadre are to be filled in by promotion. When Sri Ram Darash Singh Lecturer (Sociology) retired on 30.6.2006, it cannot be doubted that a vacancy in promotion quota occurred. It could not be left to the discretion of management at that stage to change source of recruitment of vacancy and earlier vacancy, which was already requisitioned to be filled in by direct recruitment, would have been altered so as to be filled in by promotion and new vacancy, which was clearly in promotion quota, to be turned in another source. Hon"ble Single Judge held that subsequent conversion was not legal and therefore, allowed the writ petition.

13. Counsel for the appellant vehemently contended that since there were two substantive vacancies, one Lecturer (English) and another Lecturer (Sociology), it was open to management to convert vacancy in its own wisdom and requirement so as to be filled in from a particular source and that is how it has been done.

14. The submission is thoroughly fallacious and misconceived. In 2003, two posts of lecturers in promotion quota were already filled in, as noticed above. The remaining two posts, which were to be filled in by direct recruitment, one was occupied by substantively appointed lecturer and another was occupied by an ad hoc lecturer and substantive direct recruitment was pending with the Board. Therefore, in 2003, it was not open to management to convert vacancy of lecturer (English) from direct recruitment to promotion, inasmuch as, it would have resulted in making three posts of lecturer to be filled in by promotion and one by direct recruitment. This would have been in the teeth of rules, which permits 50% recruitment from both the sources i.e. direct recruitment and promotion. The vacancy in promotion quota occurred after retirement of Ram Darash Singh on 30.6.2006. Before 30.6.2006, it was not open to Management to convert a vacancy, which was under recruitment from open market, so as to

be filled in by promotion since promotion quota was full. Since one vacancy in promotion quota occurred on 1.7.2006 after retirement of Ram Darash Singh on 30.6.2006, therefore, only this vacancy could have been filled in by promotion and not otherwise. The suggestion by Management to change source of recruitment of vacancy of Lecturer (English), which was requisitioned to the Board so as to be filled in by direct recruitment was clearly fallacious, illegal and without any authority of law.

15. Counsel for the petitioner despite repeated query could not tell as to how in 2003 vacancy of Lecturer (English) could have been filled in by promotion when there were already two lecturers working, having been promoted in the said cadre. The vacancy in promotion quota occurred only in 2006. The mere fact that appointment of appellant has been made in 2008 would make no difference for the reason that it is in furtherance of change of position by Committee of Management, in 2003.

16. We also requested learned counsel for the appellant to show any provision under which Committee of Management had power to treat a requisition, already sent to the Board, when advertisement and process of recruitment is already pending, to treat such requisition withdrawn or cancelled and change source of recruitment from direct to promotion. No such power vested in Committee of Management or Educational Authority has been shown to us. Thus also, what was done by management to accommodate petitioner is clearly illegal.

17. There is one more aspect, which goes to the root of the matter. A substantive vacancy of Lecturer (English) was lying in the College since 1983-84, inasmuch as, new post of Lecturer (English) alongwith three others were created vide order dated 27.8.1983 passed by Director of Education (Secondary). It is also not in dispute that it was requisitioned to the Board and recruitment process before Board is pending since 1988. The appointment of Sri Dhrub Chandra Pathak as Lecturer (English) was purely ad hoc, therefore, after he left the job, it resulted in giving an opportunity to the Management to fill in existing substantive vacancy of Lecturer (English) on ad hoc basis till the candidate recommended by Board is available.

18. Appellant obviously was not eligible on the date of occurrence of substantive vacancy of Lecturer (English) i.e. on the date of its creation. In Ram Saran Singh Vs. Committee of Management, Adarsh Gramin Inter College and Others, (2002) 3 AWC 2005 : (2002) 3 UPLBEC 2121 ; Sunil Kumar Misra v. Regional Selection Committee and others, 2004 (1) ESC 424 (All) ; Subhash Prasad Vs. Regional Selection Committee, District Inspector of Schools, Committee of Management, Lok Manya Inter College and Sunil Kumar Mishra, (2004) 5 AWC 4755 ; Brahm Dutt Tripathi Vs. State of U.P. and Others, (2005) 6 AWC 5636 : (2005) 4 ESC 2327 : (2005) 2 UPLBEC 1713 ; Gupteswar Tiwari Vs. Joint Director of Education and Others, (2005) 4 AWC 3893 and Jabar Singh Vs. Joint Director of Education, Saharanpur Region, District Inspector of Schools, Account Officer and Principal, Janta Inter College, (2007) 6 AWC 5778 : (2007) 3 UPLBEC 2760 , this Court has

held that eligibility for promotion has to be considered on the date of occurrence of vacancy and not on the date when the Management decided to fill in the same. Neither in 1983-84 nor in 1988, appellant was eligible and entitled for promotion to the post of Lecturer (English). No substantive vacancy of Lecturer (English) has occurred thereafter. Hence, question of considering appellant eligible for promotion on the post of Lecturer (English), which is substantively lying vacant from the date of its inception i.e. the date of creation of post on 27.8.1983 does not arise. The action of Management by taking this substantive vacancy of 2003 and considering question of eligibility at that time or thereafter is clearly erroneous, illegal and in the teeth of the law laid down by this Court regarding eligibility. Therefore, appellant even otherwise could not have been appointed by promotion on the said vacancy.

19. The Hon''ble Single Judge in substance, therefore, has taken an absolutely correct view in allowing writ petition and setting aside promotion of appellant on the post of Lecturer (English). The petitioner was entitled to be considered for promotion on the post of Lecturer (Sociology), which fell vacant on 1.7.2006 and therefore, a direction has rightly been issued by Hon''ble Single Judge in this regard.

20. In our view, judgment of Hon''ble Single Judge cannot said to be faulty in any manner, legally or otherwise, hence it warrants no interference. The appeal is wholly devoid of merit. Dismissed.