

**(2006) 10 AHC CK 0092**  
**In the Allahabad High Court**

Committee of Management, Shaheed Bhagat Singh Inter  
College

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision :** 16-10-2006

**Acts Referred:**

Constitution of India, 1950 — Article 16

**Citation :** (2006) 10 AHC CK 0092

**Hon'ble Judges :** Arun Tandon, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Arun Tandon, J.—It is admitted to the petitioner that there is only one Class III post duly sanctioned/created in Shaheed Bhagat Singh Inter College, Budhina Kalan, Muzaffar Nagar. The Committee of Management of the Institution (Petitioner) alleges to have resorted to direct recruitment against the said vacancy, and alleges that respondent No. 3 has been appointed by direct recruitment against the said Class III post. The papers transmitted to the District Inspector of Schools, Muzaffar Nagar for grant of financial approval to the appointment of respondent No. 3 have been rejected after recording a finding that the vacancy is required to be filled by promotion. The order of the District Inspector of Schools dated 24.07.2006 is under challenge in the present Writ Petition.

2. Counsel for the petitioner submits that in view of the Regulation 2(2) of Chapter III of the Regulations framed under the Intermediate Education Act, a single post of Class-III is necessarily to be filled by direct recruitment inasmuch as if the same is earmarked for promotion, it will amount providing 100% reservation, which is legally not permissible it is also submitted that under relevant Regulation 50% quota has been provided for promotion against Class - III post. Since 50% of ONE will worked out to half, it is within the discretion of the Committee of Management to fill the vacancy either by direct recruitment or

by promotion.

3. Lastly, it is contended that the Division Bench Judgment in the case of *Jai Bhagwan Singh v. District Inspector of Schools. Gautambudh Nagar and Ors.* reported in present case, as the Court had not adjudicated upon the issue as to whether a single Class-III post in Intermediate College can be filled by Direct Recruitment or not and, therefore, the issue requires adjudication by this Court. Reference has also been made to the letter of the Director dated 15.06.1996 (Annexure 2 to the Writ Petition) wherein it has been provided that single Class-III post in an Intermediate College shall be filled by Direct Recruitment.

4. I have heard counsel for the parties and have gone through the records of the present Writ Petition. For appreciating the controversy, raised on behalf of the petitioner, it will be worthwhile to reproduce Regulation 2(2) of Chapter-III of the regulations framed under the U.P. Intermediate Education Act, 1921:-

(2) Fifty per cent of the total number of sanctioned posts of head clerk and clerks shall be filled among the serving clerks and employees through promotion. If employee possesses prescribed eligibility and he has served continuously for 5 years on his substantive post and his service record is good, then promotion shall be made on the basis of seniority, subject to rejection of the unfit.

If any employee is aggrieved by any decision or order of the management committee in this respect then he can make representation against it to the Inspector within two weeks from the date of such decision or order. Inspector on such representation can make such orders as he thinks fit. Decision of the Inspector would be final and promptly executed by the management.

Note- In calculating fifty per cent of posts parts less than half would be left and half or more than half post would be deemed as one.

5. From the aforesaid statutory provision, it is apparently clear that it provides for the 50% seats of Class-III posts to be filled by promotion, the note added to the regulation clarifies as to what would be the position with regard to half and more than half being worked out for calculating the 50% in respect of the number of posts available in an institution. According to the note appended half or more than half of the fraction is to be treated to be one. Therefore, it logically follows that if there is only one post of Class III, created in an institution 50% of which would work out to half, which according to the note has to be taken as ONE and, therefore, it has necessarily to be earmarked for promotion.

6. It is further worthwhile to refer to the Division Bench Judgment of this Court in the case of *Jai Bhagwan Singh v. District Inspector of Schools (Supra)* wherein, after referring to various judgments of the Hon"ble Supreme Court, it has been clarified that earmarking of a single vacancy for the purpose of promotion does not amount to reservation and, therefore, it is not violative Article 16(1) of the Constitution of India.

7. The Division Bench in Paragraph 19 has held as follows:

In view of the foregoing discussions, we answer the reference in the following words;

(i) A single post of Class-III available in an Intermediate College governed by the 1921 Act can be filled by way of promotion; and,

The case of Palak Dhari Yadav (Supra) has not been correctly decided.

8. Lastly, it is contended that the Regulation 2(2) contemplates pural posts in the institution namely Head Clerk and Clerk. Therefore, unless two posts are created in the institution, the provision for promotion will not apply.

9. In the opinion of the Court, the interpretation placed on Regulation (2) Clause-2 is based on complete misreading of the provision inasmuch as creation of post is done by the State Government having regard to the requirement of the institution and the financial capability of the State at a particular point of time. It cannot be said that unless there are two posts, the provision for promotion will not apply.

10. In view of the aforesaid, contentions raised on behalf of petitioner lack merit.

11. Writ Petition is dismissed