
(2005) 11 AHC CK 0118
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 69086 of 2005

Dinesh Kumar Srivastava

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 08-11-2005

Acts Referred:

Citation : (2005) 11 AHC CK 0118

Hon'ble Judges : A.P.Sahi, J

Final Decision : Allowed

Judgement

A. P. Sahi, J.—Heard Sri K.C. Shukla, learned Counsel for the petitioner and learned Standing Counsel for the respondent Nos. 1, 2 and 3.

2. Petitioner Dinesh Kumar Srivastava, claims promotion on the post of the Lecturer in Hindi, which has fallen vacant on 306 2002. The petitioner has been appointed by the U.P. Secondary Services Commission on 6101997. The petitioner completed five years experience in the year 2002. It is evident that the petitioner was not qualified on the date of occurrence of vacancy.

3. However, the controversy in the present writ petition centres round the fact that the petitioner's claim for promotion was considered in the year 2003. The Committee of Management is stated to have passed a resolution on 172003 for promoting the petitioner as Lecturer in Hindi in the Institution as the post fell within 50% quota. The aforesaid resolution was forwarded to the District Inspector of Schools, who turned it down vide order dated 7112003. The petitioner feeling aggrieved, approached this Court by filing writ petition No. 7206 of 2004, which was allowed on 2322004 and the order of the District Inspector of Schools was set aside by recording a categorical finding that the qualification/eligibility has to be seen in the year of recruitment which is 2003 and the first day of recruitment is 1st July, 2003. The matter was remitted back to the respondent for decision afresh. The District Inspector of Schools appears to have sent the matter to the Regional Level Committee headed by the Joint Director of Education and matter has been deliberate, whereupon the impugned

order dated 1392005 has been passed by the Regional Level Committee headed by the Joint Director of Education, rejecting the claim of the petitioner on the same ground on which the District Inspector of Schools had earlier rejected the claim of the petitioner.

4. The Regional Level Committee headed by the Joint Director of Education interpreted the words year of recruitment to be the date on which the vacancy arose. The aforesaid interpretation is clearly in the teeth of the judgment of this Court rendered inter parties on 2322004. Even otherwise the interpretation given by the respondent is untenable in the eyes of law, inasmuch as, the year in which the vacancy arose cannot always be the year of recruitment and a situation may arise as in the present case that the post, which falls vacant cannot be claimed by any person in the Institution on account of being deficient in qualification. It is quite possible that a qualification may be acquired by passage of time and as such, such persons may become entitled for claiming promotion as has happened in the present case. There is no evidence atleast in the present controversy to indicate that there is some other claimant, whose claim was being defeated in order to extend the benefit to the petitioner. The interpretation given would, therefore, render the provisions of Rule 14 nugatory. In such situations, this Court has already interpreted the year of recruitment, in the case of the petitioner specifically, by stating that the first date of the year of recruitment in the present case would be 172003. In these circumstances, it would not be open to the Regional Level Committee to issue contrary to Rule 14.

5. In view of the aforesaid reasons, this Court is of the considered opinion that the impugned order is contrary to law and is, therefore, liable to be set aside.

6. The order dated 1392005 is quashed and the respondent Joint Director of Education is directed to consider the claim of the petitioner and pass appropriate order treating the petitioner to have acquired the qualification as on 272003 and to keep in mind the inter parties judgment delivered by this Court on 232 2004 as well.

7. Accordingly the writ petition succeeds and is allowed with no order as to costs.