
(2016) 07 AHC CK 0219
In the Allahabad High Court
Case No : Special Appeal No. 822 of 2015

Govind Singh Tyagi

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 04-07-2016

Acts Referred:

Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 — Rule 14

Citation : (2016) 9 ADJ 53 : (2017) 2 AILLJ 209 : (2016) 119 ALR 724 : (2016) 4 UPLBEC 2793

Hon'ble Judges : Arun Tandon and Sunita Agarwal, JJ.

Bench : Division Bench

Advocate : Mohd. Afzal and A.K. Rai, Advocates, for the Appellant; C.S.C, for the Respondents

Final Decision : Dismissed

Judgement

1. This Special Appeal under Chapter VIII, Rule 5 of the Allahabad High Court Rules has been filed against the judgment of the learned Single Judge dated 7th September, 2012 whereby Civil Misc. Writ Petition No. 45424 of 2012 (Govind Singh Tyagi v. State of U.P. and others) filed by the present petitioner has been dismissed.

2. Facts in short leading to the present writ petition are as follows:-

Sri Gandhi Smarak Inter College, Muzaffara Bagarpur, Panchsheel Nagar, District Ghaziabad is a recognised Intermediate College receiving grant in aid from the State Government. The provisions of the Intermediate Education Act, 1921 and the Regulations framed thereunder as well as the provisions of the U.P. Secondary Education (Services Selection Board) Act 1982 and the U.P. Secondary Education Services Selection Board Rules, 1998 and the Regulations framed thereunder are fully applicable to the teachers of the said institution.

3. From the records of the present writ petition, it is apparent that the vacancy on the post of Lecturer in Sociology arose on 5th March, 1981. According to the

petitioner the said vacancy when it was within promotion quota but no teacher with qualification was available in the feeding cadre was advertised for direct recruitment, but it could not be filled. Thus it continued to remain under the Promotional Quota.

4. It is further the case of the petitioner that he was engaged as a subject expert in the said institution in terms of the Government Order dated 13th June, 2000 and thereafter he was absorbed as Assistant Teacher vide order dated 17th May, 2007. The Committee of Management had undertaken the proceeding for promotion against the post of Lecturer (Sociology) which fell vacant on 5th March, 1981. Recommendation for promotion of the petitioner against the said vacancy was forwarded to the District Inspector of Schools for approval. The District Inspector of Schools vide letter dated 21st June, 2012 returned the papers so received from the Committee of Management after rejecting the proposal for promotion of the petitioner. Resultantly the petitioner filed the aforesaid writ petition with the prayer to set aside the order of the District Inspector of Schools and to direct the respondents to grant promotion to the petitioner as lecturer in Sociology.

5. Before the learned Single Judge, it was contended on behalf of the petitioner that under Rule 14 of the 1998 Rules, five years of continuous service in the feeding cadre namely LT grade in the instant case, had to be computed on the first day of the year of the recruitment and since the Committee of Management had decided to fill the vacancy through promotion of the petitioner in the year 2012, the petitioner stood qualified as he had completed five years of continuous service as LT grade teacher in the institution on the said date.

6. Accordingly, his promotion was liable to be approved by the District Inspector of Schools, decision to the contrary was totally illegal and unsustainable.

7. Counsel for the petitioner has placed reliance upon the Full Bench judgment of the High Court in the Case of Raeesul Hasan v. State of U.P., 2015 (6) ADJ 778 (LB) (DB) as well as upon the judgment of the Division Bench of this Court in the Case of Vijay Kumar Sonkar v. State of U.P. and 2 others namely Special Appeal No. 547 of 2015 decided on 12.8.2015.

8. Learned Single Judge has specifically recorded that the vacancy against which promotion was being claimed, was in existence on the date of commencement of the U.P. Secondary Education Services Selection Board Rules, 1998. The rules do contemplate that if any vacancy in the year of recruitment cannot be filled by promotion due to non-availability of a suitable candidate, the post may be filled by direct recruitment.

9. Learned Single Judge has come to a conclusion that the appointment of the petitioner in the feeding cadre itself was made in the year 2007, much after the date when the vacancy on the post of lecturer came into existence i.e. in the year 1981, i.e. when the petitioner was not even born in the cadre of teacher in the institution. He had no case for consideration for promotion against the said

vacancy as he was not within the zone of consideration on the relevant date of occurrence of vacancy or the 1st date of the year of recruitment.

10. Counsel for the petitioner has reiterated before us the same grounds which had been taken before the learned Single Judge. He referred to the same judgments which have been mentioned therein, including the Full Bench judgment of this Court in the case of Raeesul Hasan (supra).

11. We may record that the Full Bench of the Court in the case of Raeesul Hasan (supra) was considering the issue as to what would be the date on which a candidate must be considered to have completed five years of service for being eligible for promotion on the post of lecturer under the Rules, 1998. The Full Bench to answer the said question as follows:-

"For these reasons, we answer the reference by holding that it is not the date on which the vacancy has occurred, but the year of recruitment which is relevant for the determination of eligibility for promotion to the Lecturers" grade under the Rules of 1998."

12. It will be seen that the Full Bench has held that the first date of the year of the recruitment is relevant for the determination of eligibility for promotion to the post of Lecturers" grade under the Rules, 1998.

13. What would be the first date of the year of recruitment has been settled by a number of Division Benches of this Court in the case of Subhash Prasad v. Regional Selection Committee, 2004 (3) ESC 1385, Poonam v. State of U.P. 2008 (1) ADJ 273 (DB) and Vijai K. Singh v. Joint Director of Education 2008 (1) 183 (DB),

14. In view of the law so declared, we have no hesitation to hold that the question which has been answered by the Full Bench does not help the petitioner-appellant in the present appeal.

15. In the instant case, the petitioner was not even born in the feeding cadre on the date of occurrence of the vacancy in the Lecturer grade on the first date of the year of the recruitment as the Rules 1998. The petitioner can have no claim for consideration for promotion. There is no error in the judgment of the learned Single Judge.

16. The appeal is dismissed.