

(2005) 05 AHC CK 0094

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 8644 of 2003

Gupteswar Tiwari

APPELLANT

Vs

Joint Director of Education and Others

RESPONDENT

Date of Decision : 12-05-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Secondary Education Services Commission Rules, 1995 — Rule 14

Citation : (2005) 4 AWC 3893

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Vinod Kumar Singh and Vinod Sinha, for the Appellant; Santosh Kumar Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri V.K. Singh Advocate on behalf of Sri Gupteshwar Tiwari, Sri Santosh Kumar Singh on behalf of Gupteshwar Nath Dubey and Standing Counsel on behalf of State authorities.

2. Mahavir Singh Intermediate College, Badilpur, Hadi, District Ballia is an institution recognized under the provisions of the U.P. Intermediate Education Act, 1921. The provisions of the said Act as also those of U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 and those of U.P. Secondary Services Selection Board, 1982 are fully "applicable to the teachers of the said institution. Sri Gupteshwar Tiwari has filed this petition against the order of the Regional Joint Director of Education dated 29/30 December, 2002 whereby he has rejected the claim set up by the petitioner, Sri Gupteswar Tiwari and has maintained his earlier order dated 4th July, 2002.

3. The facts relevant for disposal of the present writ petition are as follows:

A vacancy on the post of lecturer Sanskrit was caused in the institution on 30th

June, 1999 with the retirement of Sri Ram Kumar Mishra. The said vacancy fell within 50% quota reserved for promotion. Accordingly, the Committee of Management passed a resolution dated 7th November, 1999 granting promotion to one Sri Amar Deo Tiwari on the said post. Before any action could be taken by the competent authority, namely the District Inspector of Schools with regard to the resolution of the Committee of Management as aforesaid, an alleged application dated 15th May, 2000 is said to have been filed before the Committee of Management by Sri Amar Deo Tiwari foregoing his claim for promotion on the post of Lecturer Sanskrit. On the basis of the aforesaid alleged application of Sri Amar Deo Tiwari, the Committee of Management is said to have passed another resolution dated 31st May, 2001 granting promotion to respondent No. 5, namely Sri Gupteshwar Nath Dubey on the post of Lecturer Sanskrit. Feeling aggrieved by the aforesaid resolution of the Committee of Management dated 31st May, 2001 Sri Amar Deo Tiwari filed Civil Misc. Writ Petition No. 49888 of 2000 in this Court. The said writ petition was disposed of by this Court vide judgment and order dated 16th November, 2000 and the matter was remanded to the District Inspector of Schools to decide the objections raised by Sri Amar Deo Tiwari. The District Inspector of Schools is said to have passed an order dated 10th May, 2001 rejecting the claim set up by Sri Amar Deo Tiwari. Against the said order of the District Inspector of Schools Sri Amar Deo Tiwari filed writ petition No. 22806 of 2001, however, in the said writ petition no interim order was granted. The writ petition is said to have become infructuous in view of the retirement of Sri Amar Deo Tiwari on 30th June, 2001.

4. While the aforesaid claim of Amar Deo Tiwari was still under adjudication. The Committee of Management of the institution again passed a resolution dated 25th November, 2001 granting promotion to the respondent No. 5 on the post of Lecturer in Sanskrit on the vacancy caused on 30th June, 1999 with the retirement of Sri Ram Kumar Mishra. The Regional Joint Director of Education on the basis of papers so submitted by means of the order dated 4th July, 2002 granted approval to the promotion of Gupteshwar Nath Dubey, respondent No. 5 on the strength of the resolution dated 25th November, 2001 referred to above with a further finding that Sri Amar Deo Tiwari has since retired on 30th June, 2001, therefore, Sri Gupteshwar Nath Dubey was the only candidate eligible for promotion against the post of Lecturer Sanskrit which falls within the 50% quota reserved for promotion.

5. Sri Gupteshwar Tiwari coming to know of the aforesaid order of the Regional Joint Director of Education dated 4th July, 2002 made a detailed representation before the Regional Joint Director of Education challenging the promotion accorded to Sri Gupteshwar Nath Dubey amongst others on the ground that on the first date of the year of recruitment as provided for under the U.P. Secondary Services Selection Board Rules, 1998, Sri Gupteshwar Nath Dubey had not acquired the prescribed minimum qualification. In support of the said contention, he placed reliance upon the mark-sheet, which has been produced by the Gupteshwar Nath Dubey of his having passed M.A. examination in Sanskrit dated

19th August, 1999. According to the petitioner, Sri Gupteshwar Tiwari, the first date of recruitment in the present case would be 1st July, 1999. In support thereof the learned counsel for the petitioner has placed reliance upon the judgment of this Court in the case of Vijay Kant Singh v. Joint Director of Education, Varanasi Region, Varanasi and Ors. passed in Civil Misc. Writ Petition No. 37611 of 2003 decided on 42.10.2004 and another judgment of the Division Bench of this Court reported in 2004 (3) E.S.C. 1385 (Subhash Prasad v. Regional Selection Committee through its Chairman and Ors.).

6. On the said representation of the petitioner, Gupteshwar Tiwari, the Regional Joint Director of Education passed an order dated 22nd July, 2002 whereby he has stayed his earlier order dated 4th July, 2002.

7. Feeling aggrieved by the aforesaid order of the Regional Joint Director of Education dated 22nd July, 2002, Sri Gupteshwar Nath. Dubey filed a Civil Misc. Writ Petition No. 31508 of 2002, which was dismissed by this Court vide judgment and order dated 5th August, 2002 with a direction upon the Regional Joint Director of Education to decide the representation made by the present petitioner at the earliest possible in a time bound manner. On the basis of directions so issued by this Court dated 5th August, 2002 the Regional Joint Director of Education has passed the impugned order dated 29/30th December, 2002.

8. On behalf of the petitioner it is contended that the order passed by the Regional Joint Director of Education is based on misconception of fact as well as the law on the following grounds:-

(a) On 31st May, 2002, when a resolution is said to have been passed for promotion of Gupteshwar Nath Dubey on the post of Lecturer Sanskrit, which had fallen vacant on 30th June, 1999 with the retirement of Sri Ram Kumar Mishra, Sri Gupteshwar Nath Dubey was not eligible for such promotion as he had not acquired prescribed minimum qualification and he was not M.A. on the first date of the year of recruitment.

(b) Admittedly on 31st May, 2001, there was another teacher senior to Sri Gupteshwar Nath Dubey available in the institution for such promotion and therefore, there was no occasion for the Committee of Management to grant promotion to Sri Gupteshwar Nath Dubey. Even otherwise it is contended that in view of subsequent resolution of the Committee of Management dated 25th November, 2001 whereby the Committee of Management again resolved to grant promotion to Sri Amar Deo Tiwari the earlier resolution dated 31st May, 2001, lost all efficacy and could not have been acted upon by the Regional Joint Director of Education or by any other authority.

9. On behalf of the respondents it is contended that the order passed by the Regional Joint Director of Education is based on material facts as available on record. After the retirement of Amar Deo Tripathi on 30th June, 2001 a fresh resolution was passed by the Committee of Management on 25th November,

2001 again recommending the promotion of Gupteshwar Nath Dubey on the post of Lecturer Sanskrit and the said resolution of the Committee of Management has been approved by the Regional Level Committee on 4th July, 2002. The said order dated 4th July, 2002 of the Regional Level Committee has yet not been challenged by Sri Gupteshwar Tiwari and has become final between the parties. The controversy as such cannot be reopened in collateral proceedings and further the impugned order dated 29/30th December, 2002 is only a consequential order passed with reference to the earlier order of the Regional Level Committee dated 4th July, 2002, which has not been challenged. On the strength of the judgment of this Court reported in Ram Saran Singh Vs. Committee of Management, Adarsh Gramin Inter College and Others, , it is further contended that in the fact of the case the first date of the year of recruitment would be 1st July, 2001 and on the relevant date respondent No. 5 was possessed of all the prescribed minimum qualifications. He has also placed reliance upon the judgment reported in Harish Chand Vs. Joint Director of Education, Meerut and others, , 2004 (1) E.S.C. (Sunil kumar v. State of U.P.) for the proposition that the respondent No. 5 cannot be permitted to suffer on account of the delay on the part of the University in declaration of the result of M.A. examination.

10. I have heard learned counsel for the parties and have gone through the records. For the purposes of disposal of the writ petition it would be relevant to refer to Rule 14 of the U.P. Secondary Education Services Commission Rules, 1995 which reads as follows:--

"Procedure for recruitment by promotion-(1) Where any vacancy is to be filled by promotion all teachers working in trained graduates (L.T.) grade or Certificate of Teaching (C.T.) grade, if any, who possess the qualifications prescribed for the post and have completed five years continuous service as such on the first day of the year of recruitment shall be considered for promotion to the lecturers grade or the trained graduates (L.T.) grade, as the case may be, without their having applied for the same. "

11. The said rule admittedly regulates the procedure for recruitment and promotion on the post of Lecturer in accordance with the provisions of the U.P. Secondary Education Service Commission Act and the Rules framed thereunder. It is also not in dispute between the parties that the candidate entitled for being considered for promotion must necessarily possess all the prescribed qualifications and 5 years continuous service in the relevant grade on the first day of the year of recruitment.

12. The controversy is confined to the issue as to what would be the first day of the year of recruitment with reference to Rule 14 in the facts of the case.

13. A Division Bench of this Court in the judgment reported in 2004 (3) Education and Service Cases, page 1385 Subhash Prasad v. Regional Selection Committee and Ors. as well as the learned single Judge of this Court in Civil Misc. Writ Petition No. 3611 of 2003 decided on 12.10.2004 Vijay Kant Singh v.

Joint Director of Education has held that the year of recruitment starts from 1st July and ends on 30th June of the following calendar year. It has specifically been held that 1st July is the first date of the year of recruitment. What would be the year of recruitment in respect of a vacancy being caused has further been clarified in the aforesaid judgments and it has further been held as follows:-

"First day of the year of recruitment has to be taken of that year in which the vacancy is ascertained in terms of the rule."

14. From the legal position as settled since the post of Lecturer in Sanskrit, in the facts of the present case, was likely to fall vacant on account of retirement of Sri Ram Kumar Mishra, due to retire on 30th June, 1999, the recruitment year in respect of the said vacancy would start from 1st July, 1999 as per the rules. The candidate entitled to be considered for promotion must necessarily be possessed of all the prescribed, minimum qualifications on the first day of the year of recruitment i.e. first July, 1999. In view of the aforesaid it has to be seen as to whether Sri Gupteshwar Nath Dubey was a candidate eligible for being promoted on the post of Lecturer in Sanskrit within 50% quota reserved for promotions, strictly in accordance with the requirement of Rule 14 quoted hereinabove, on the first day of the year of recruitment. It is undisputed fact that on 1st July, 1999 Sri Gupteshwar Nath Dubey had not acquired the degree of post graduate (M.A.) in the subject of Sanskrit. The result of M.A. final (Sanskrit) examination of Gupteshwar Nath Dubey was declared on 19.08.1999. The Hon'ble Supreme Court has held that declaration of result does not relate back to the date on which the examinations are held and for determining as to what is the date on which a candidate acquires the particular educational qualification it has been held that it is the date on which the result is declared, (reference Dr. M.V. Nair Vs. Union of India (UOI) and Others, .

15. In view of the aforesaid this Court has no hesitation to hold that Sri Gupteshwar Nath Dubey was not possessed of the minimum prescribed qualifications on the first day of the year of recruitment and, therefore, Sri Gupteshwar Nath Dubey cannot be said to be possessed of the minimum prescribed qualifications on the first day of the year of recruitment. The impugned order passed by the Regional Joint Director of Education dated 29.09.2002 proceeds on misconception of fact that the qualifications of Sri Gupteshwar Nath Dubey are liable to be adjudged with reference to the date on which the Committee of Management has passed the resolution for his promotion. The aforesaid reason assigned in the order of the Regional Joint Director of Education is patently illegal and is based on misreading of Rule 14 referred to above. It is not open to the Committee of Management to dilute the mandatory requirement of Rule 14 by postponing the passing of the resolution for promotion under 50% quota. Controversy in that regard has been settled by this Court in the judgment in the case of Sunil Kumar Mishra Vs. Regional Selection Committee and Others, which has since been affirmed by a Division Bench of this Court in the case of Subhash Prasad (supra). Thus the finding in

the impugned order that Sri Gupteshwar Nath Dubey was possessed of the minimum prescribed qualifications on the day the resolution was passed by the Committee of Management is unsustainable in the eye of law and cannot clothe the illegal promotion of Sri Gupteshwar Nath Dubey with legality in any manner.

16. The Regional Joint Director of Education misdirected himself in holding that since the earlier resolution dated 07.11.1999 passed by the Committee of Management in favour of Sri Amar Dev Tiwari for promotion on the post of Lecturer in Sanskrit was not accepted by Sri Amar Dev Tiwari as per his letter dated 15th May, 2000 his claim for promotion against the post of Lecturer in Sanskrit stood lost. The Committee of Management rightly passed a fresh resolution in favour of Sri Sri Gupteshwar Nath Dubey for promotion on the post of Lecturer in Sanskrit the vacancy whereof was caused on 30.06.1999. The subsequent resolution is said to be dated 31.05.2000. It is admitted position that Sri Amar Dev Tiwari was never promoted under Rule 14 referred to above nor he was paid salary of the post of Lecturer in Sanskrit at any point of time. Sri Amar Dev Tiwari, as a matter of fact, filed Civil Misc. Writ Petition No. 4988 of 2000 which was decided by this Court on 16.11.2000 and the matter was remanded for fresh decision to the District Inspector of Schools. The District Inspector of Schools vide order dated 15.05.2001 rejected the claim set up by Sri Amar Dev Tiwari and ultimately on 30.06.2001 Sri Amar Dev Tiwari attained the age of superannuation and, therefore, the controversy with regard to Sri Amar Dev Tiwari came to an end.

17. The logical conclusion of the aforesaid facts is that the vacancy which was caused due to retirement of Sri Ram Kumar Mishra on 30.06.1999 continued as such without being filled by promotion or by direct recruitment till the passing of the resolution dated 31.05.2000 in favour of Sri Gupteshwar Nath Dubey, which has already been held above as illegal. In such circumstances the writ petition is liable to be allowed.

18. At this stage it would be worthwhile to deal with the contention raised on behalf of Sri Gupteshwar Nath Dubey to the effect that the petitioner Sri Gupteshwar Tiwari is not eligible for the post of Lecturer in Sanskrit nor he has any claim for the said post and, therefore, he has no locus to question the promotion of the petitioner. In the opinion of the Court the aforesaid contention is patently misconceived inasmuch as (a) grant of illegal promotion within 50% quota to a teacher not eligible for the same has the effect of illegally reducing the posts which are reserved for promotion quota against which other candidates working in the institution may be entitled to be considered for promotion. If no candidate is eligible for promotion in accordance with the rules, the post would necessarily be filled up by resorting to direct recruitment as a result whereof the number of seats within the quota reserved for promotion would remain unaffected. Therefore, the petitioner who is also one of the claimants for being promoted within 50% seats reserved for promotion has every right to challenge the grant of illegal promotion within 50% quota, (b) this Court after being made

aware of the fact that illegal promotion has been granted cannot permit the situation to continue as such. The Court is obliged under law to intervene in the matter and to declare that the promotion granted to Sri Gupteshwar Nath Dubey, is unjustified inasmuch as public money is involved and the power conferred upon this Court under Article 226 of the Constitution of India, to set right the illegality, which has been committed in the facts of the case, is not hampered on the pleas raised by Sri Gupteshwar Nath Dubey in any manner.

19. In view of the aforesaid the writ petition is allowed. The order dated 29/30.12.2002 passed by Joint Director of Education, annexure-12 to the writ petition is hereby quashed and it is declared that Sri Gupteshwar Nath Dubey, respondent No. 5, being not eligible for the post of Lecturer in Sanskrit on the first day of the year of recruitment in accordance with Rule 14 of the U.P. Secondary Education Services Commission Rules, 1995 is not entitled to function as Lecturer in Sanskrit in Mahavir Singh Inter College, Badilpur, Haldi, district Ballia, or to be paid salary as such.