
(2012) 03 AHC CK 0085
In the Allahabad High Court
Case No : Special Appeal No. 1311 of 2007

Hari Shanker Sharma

APPELLANT

Vs

Ram Shiromani Shukla and Others

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Citation : (2012) 4 ADJ 550

Hon'ble Judges : Rakesh Tiwari, J;Dinesh Gupta, J

Bench : Division Bench

Advocate : Manish Kumar Nigam and Indra Raj Singh, for the Appellant; A.K. Yadav, Dharmendra Kumar Srivastava, Kshetresh Chandra Shukla, G.C. Upadhyay and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Rakesh Tiwari, J.—Heard learned counsel for the parties and perused the record. This special appeal is directed challenging the validity and correctness of the order dated 22.1.2007 passed by learned single Judge in Civil Misc. Writ Petition No. 9499 of 2006 Ram Shiromani Shukla v. State of U.P. and others.

2. Learned counsel for the appellant has submitted that on 30.6.2000 Sri Sita Ram Saxena, Hindi lecturer in L.B. J.P. Inter College, Tilhar, Shahjahanpur retired from service and the District Inspector of Schools, Shahjahanpur sent the requisite papers to Joint Director of Education, Bareilly Region, Bareilly for considering promotion of the appellant on the said post under 50% promotional quota. The committee headed by the Joint Director of Education promoted the appellant on the post of lecturer Hindi on 11.1.2001. On 8.3.2001 the appellant joined on the said post and started getting salary etc. but thereafter by order dated 30.6.2005 the U.P. Secondary Education Service Selection Board passed an order for absorption of one Brij Pal on other post of Hindi lecturer by direct recruitment.

3. Per contra, learned counsel for respondent No. 1 Ram Shiromani Shukla as

submitted that Sri Shiv Kumar Pathak retired from service in the year 1997 from the post of Lecturer in Hindi in L.B. J.P. Inter College, Tilhar, Shahjahanpur. This vacancy was notified and requisition was sent to the U.P. Secondary Education Service Selection Board for filling the vacancy by direct recruitment. In the year 1998 Advertisement No. 1 of 1998 was published by the Board. Respondent No. 1 was selected on 10.5.2000 in pursuance of the said advertisement, but appointment letter was not issued in his favour instead one Sri Brij Pal was promoted on 30.6.2005 on the said post, who joined his services on 30.9.2005. It is then that Respondent No. 1 filed Writ Petition No. 20049 of 2005 claiming appointment on the post of Lecturer Hindi in the institution as he was at sl. No. 2 in the select list. This writ petition was disposed of by the Court on 9.8.2005 with a direction to the District Inspector of Schools, Shahjahanpur to consider his representation. On 13.1.2006 the District Inspector of Schools, Shahjahanpur passed an order and held that the vacancy caused was under 50% quota and the appellant Hari Shanker Sharma promoted on the said post. Again on 22.1.2007 respondent No. 1 filed Civil Misc. Writ Petition No. 9499 of 2005 against the order dated 13.1.2006 and the order dated 13.1.2006 was quashed by the learned single Judge on 22.1.2007 against which the present appeal has been filed. On 3.10.2007 the division bench passed an order directing the appointing authority to permit respondent No. 1 to join on the post of lecturer. On 30.6.2008 the appellant has retired from service. The respondent further submits that Advertisement No. 1 of 1998 was never challenged by the appellant and respondent No. 1 is still working as Hindi lecturer.

4. In support of his contention, learned counsel for the respondent has placed reliance upon a judgment in *Devendra Kumar Singh v. State of U.P. and others*, 2006(1) ESC 355 (All)(DB).

Learned single Judge in his order dated 22.1.2007 has held thus :

From perusal of the record it is apparent that admittedly the institution in question send the requisition for filling up the vacancy of Lecturer in Hindi to the Board as required under the Commission act and the Board accordingly notified the vacancy and at that point of time the respondents did not raise any objection against the notification of vacancy of the post of lecturer in Hindi in the institution in question. That being the position in my view if the institution in question intimated the vacancy of lecturer in Hindi to the Board it itself shows that there was a clear vacancy on the said post and if the respondent management of the institution in question had any grievance it should have raised objection/grievance, if any, at that relevant point of time when the requisition was sent by the institution or at the most when the Board notified the vacancy for direct recruitment through selection process. In such circumstances the conduct of the respondents in not disputing the existence of vacancy at that very point of time when the same was notified by the Board, they should not be allowed to raise any objection with regard to existence of vacancy on the post of lecturer in Hindi in the institution in question.

In view of the above said facts of the case and in view of the aforesaid Division Bench decision rendered in Devendra Kumar Singh (Supra) which is fully applicable to the facts and circumstances of the present case, the respondents are estopped to say that no vacancy existed on the post of lecturer in Hindi in the institution run by the respondent No. 4 at that point of time when the vacancy was notified by the Board for direct recruitment. In such circumstances of the case, it was obligation on the part of the State respondents to give appointment on the post of Lecturer in Hindi to the petitioner in the institution in question or in any other institution where they found him suitable for the same as they had duly selected him through selection process in accordance with law.

5. It appears from the record and the arguments advanced by learned counsel for the parties that the appellant has tried to confuse the issue. It is apparent from the record that a requisition for the vacancy was sent by the institution in the year 1998 which was to be filled up by direct recruitment. The appellant had been selected against that vacancy, but thereafter he could not join the post. The post on which respondent No. 1 is claiming appointment by promotion is not the same vacancy which was requisitioned in the year 1998. The vacancy on which the appellant claims appointment on the post of lecturer in Hindi arose in the year 2000 on the retirement of Sri Sita Ram Saxena. The papers for his promotion were forwarded by the District Inspector of Schools.

6. We are, therefore, of the considered opinion that if the appellant had any grievance for appointment on the post of lecturer in Hindi that was advertised in 1998, he could have taken legal recourse to it but not having done so, he cannot claim the post which was not in existence when he was selected in 1998 as it came into existence on vacancy having been caused in year 2000 which was to be filled up by promotion. Therefore, he could not join on promotional post as a direct recruit pursuant to the selection in the year 1998.

7. From the affidavit filed alongwith this appeal also, it is apparent that the appellant was about 61 years of age in April, 2007 at the time of swearing the affidavit in this appeal. He has since retired from service.

8. Learned counsel for the appellant has not been able to show any illegality in the impugned order. We, therefore, confirm the findings recorded by the learned single Judge and dismiss the appeal. There shall be no order as to costs.