

(2011) 08 AHC CK 0107
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 32406 of 2011

Jagdish Prasad Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:

Uttar Pradesh Secondary Education Services Commission Rules, 1983 — Rule 4, 4(1)
Uttar Pradesh Secondary Services Commission Rules, 1988 — Rule 1, 11, 11(1),
11(2), 11(4)

Citation : (2011) 8 ADJ 815 : (2011) 6 AWC 5522 : (2011) 131 FLR 422

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Sudhir Agarwal, J.—Heard Sri Siddharth Khare, learned counsel for the petitioner, Sri J.N. Maurya, learned counsel for the respondent No. 2 and learned Standing Counsel for respondent Nos. 1, 3 and 4 and perused the record.

2. Writ petition is directed against recommendation dated 24.2.2011 made by respondent No. 2 recommending respondent No. 6 for appointment on the post of Principal in Sri Ram Krishna Inter College, Vidya Mandir, Chandpur Patwadh Azamgarh.

3. Learned counsel for the petitioner submitted that the vacancy for the post of Principal has occurred on 1.7.1998 and it was immediately requisitioned to the Commission. Admittedly the petitioner was not one of the two senior-most teachers in the institution. The selection proceeding was challenged by some others before this Court on various grounds and entire bunch of the writ petitions was allowed by a Division Bench of this Court vide judgment dated 16.10.2003 in leading Writ Petition No. 11322 of 2002 but in appeal the Apex Court has reversed the judgment and dismissed the appeal. Thereafter the selection has been finalized and the respondent No. 6 has been recommended for the post of Principal in the institution. But in the meantime petitioner has attained seniority

and is one of the two senior-most teachers in the institution due to retirement of earlier senior-most teachers and therefore, without considering the petitioner, impugned selection made is wholly illegal.

4. In my view the submission is thoroughly misconceived. What learned counsel for the petitioner is trying to contend is that if there is some delay in selection proceedings and in the meantime two senior-most teachers whose names were liable to be sent to U.P. Secondary Education Services Selection Board (hereinafter referred to as "Board"), retire the said names can be substituted by the subsequent upper movement after retirement and that is how the situation shall remain fluid and will continue to change from time to time. It cannot be the intention of the legislation in making such a provision. I find that the scheme of the Statute does not permit any such inference.

5. The procedure for making recruitment for the post of principal or headmaster is contained in Rules 11 and 12. However, for our purpose Rule 11(1), (2) (a), (b) and 12(6) are relevant and reproduced below:

11. Determination and notification of vacancies.-(1) For the purposes of direct recruitment to the post of teacher, the management shall determine the number of vacancies in accordance with sub-section (1) of Section 10 and notify the vacancies through the Inspector, to the Board in the manner hereinafter provided.

(2)(a) The statement of vacancies for each category of posts to be filled in by direct recruitment including the vacancies that are likely to arise due to retirement on the last day of the year of recruitment, shall be sent in quadruplicate, in the proforma given in Appendix "A" by the Management to the Inspector by July 15 of the year of recruitment and the Inspector shall, after verification from the record of his office, prepare consolidated statement of vacancies of the district subject-wise in respect of the vacancies of lecturer grade, and group-wise in respect of vacancies of trained graduates grade. The consolidated statement so prepared shall, alongwith the copies of statement received from the Management, be sent by the Inspector to the Board by July 31 with a copy thereof to the Joint Director:

Provided that if the State Government is satisfied that it is expedient so to do, it may, by order in writing, fix other dates for notification of vacancies to the Board in respect of any particular year of recruitment:

Provided further that in respect of the vacancies existing on the date of the commencement of these rules as well as the vacancies that are likely to arise on June 30,1998, the Management shall, unless some other dates are fixed under the preceding proviso, send the statement of vacancies by July 20,1998 to the Inspector and Inspector shall send the consolidated statement in accordance with this sub-rule to the Board by July 25, 1998.

Explanation.-For the purpose of this sub- rule the word "group-wise" in respect of the trained graduates grade means in accordance with the following groups,

namely:

(a) Language This group consists of the subjects of Hindi, Sanskrit, Urdu, Persian and Arabic.

(b) Science This group consists of the subjects of Science and Mathematics;

(c) Art and Craft

(d) Music

(e) Agriculture

(f) Home Science

(g) Physical Education

(h) General This group consists of the subjects not covered in any of the foregoing groups.

(b) With regard to the post of Principal or Headmaster, the Management shall also forward the names of two senior-most teachers, alongwith copies of their service records (including character rolls) and such other records or particulars as the Board may require, from time to time.

Explanation.-For the purpose of this sub-rule "senior-most teacher" means the senior-most teachers in the post of the highest grade in the institution, irrespective of total service put in the institution.

12. Procedure for direct recruitment-

(1).

(6) The Board, having regard to the need for securing due representation of the candidates belonging to the Scheduled Castes/Scheduled Tribes and other Backward Classes of citizens in respect of the post of teacher in lecturers and trained graduates grade, call for interview such candidates who have secured the maximum marks under sub-clause (4) above/and for the post of Principal/Headmaster, call for interview such candidates who have secured maximum marks under sub-clause (5) above in such manner that the number of candidates shall not be less than three and not more than five times of the number of vacancies.

Provided that in respect of the post of the principal or Headmaster of an institution the Board shall also in addition call for interview two senior-most teachers of the institution whose names are forwarded by the Management through Inspector under clause(b) of Sub-rule (2) of Rule 11.

6. From a perusal of Rule 11(2)(a) it is evident that as and when a vacancy occurs or is likely to occur a requisition for making recruitment to the said vacancy shall be sent by the management in proforma Appendix A by July 15 of the year of recruitment. After verification of the record by his office, the

Inspector shall prepare a consolidated list of vacancies of the district, subject-wise, and shall send it to the Commission. Sub-rule (b) of Rule 11(2) further makes it obligatory for the management to send names of two senior-most teachers alongwith copy of their service record to the Commission. The management shall also place such other record as the Board may require from time to time. Sub-rule (4) of Rule 11 further directs that in any year of recruitment the Inspector shall on the basis of his office record declare the vacancy and notify the same to the Board if the Management fails to notify vacancy by the date specified in Sub-rule (2) of Rule 11.

7. The scheme of the rule makes it very clear that recruitment has to be made with reference to the year of recruitment in which the vacancy has occurred and the requisition needs be sent to the Board. The obligation upon the management to send names of the two senior-most teachers conferred by rule 11(2)(b) shows that the said names have to be sent alongwith the requisition under Rule 11(2) (a), meaning thereby that the names of senior-most teachers would not vary from time to time since the names are to be sent alongwith the requisition with reference to the direct recruitment. For the post of headmaster or principal and only these names are to be considered by the Board. Rule 12 (6) makes it clear that only those teachers whose names have already been received by the Board, i.e. of the two senior-most teachers, shall be issued interview letters. Proviso to rule 12(6) refers to the date when names of such teachers have been forwarded under Rule 11 (2)(b).

8. Learned counsel for the petitioner submits that in case there is a delay in selection and in the meantime the senior-most teacher retires, the very purpose of sending names would become meaningless as none would be available for consideration for the post of principal or headmaster. If the contention of the learned counsel is accepted, then with the passage of time and delay, if any, names of the senior-most teachers would go on varying and there shall be no certainty about the names of the two senior-most teachers to be considered. However, a perusal of Rule 11(2)(b) and 12(6) collectively makes the contention of the learned counsel untenable. The post of principal or headmaster is to be filled in by direct recruitment so a right has been conferred upon two senior-most teachers with reference to date of vacancy to have an opportunity to be considered for the highest post in their institution, i.e. Principal or the headmaster. It is not a case of promotion so as to vary from time to time.

9. A *pari materia* provision contained in Rule 4 (1)(ii) of the U.P. Secondary Services Commission Rules, 1983, came up for consideration before a Division Bench of this Court in *Nandkishore Prasad v. U.P. Secondary Education Services Commission, Allahabad and others*, (1990) 1 UPLBEC 539 , and this Court in paragraphs 4 and 5 of the judgment held as under:

4. Rule 4(ii) of the U.P. Secondary Education Services Commission Rules, 1983 provides that in regard to the post of head of an institution, the Management shall also forward the names of two senior-most teachers copies of their service

records and such other record or particulars as the Commission may require from time to time for consideration by the Commission when the question of appointment of the Principal of the Institution is to be considered by the Commission.

5. Sub-rule (ii) of Rule 4, quoted above, in our opinion, clearly intends that on the date when the vacancy arose, on that date, the management is called upon to find out who are the two senior-most teachers whose names are to be forwarded to the Commission hence the date when the vacancy arose would be the relevant date for the purposes of Rule 4(ii). Merely because of a subsequent event, if another teacher becomes the senior-most teacher in the college, he does not have a right to ask the manage to send his name also. If the interpretation is not taken then the result will be the process of selection by the Commission will never be completed as the name of the senior-most teachers would go on changing and the process of forwarding names will also continue. This does not take away the right of the said teacher to be considered for the post of Principal of the Institution if he has applied for the same. In the circumstances so far as this petition is concerned, we do not find any merit in the same. The petition is accordingly dismissed.

(emphasis added)

10. Since Rule 11(2)(b) of 1988 Rules is worded similarly, what has been interpreted by the Division Bench in Nand Kishore Prasad's case (*supra*), in my view, it would apply to the interpretation of Rule 11(2)(b) of 1988 Rules and is consistent to the view I have taken and I stand fortified from the aforesaid Division Bench Judgment. Learned counsel for the petitioner could not place anything to persuade me to take a different view.

11. In view of the aforesaid discussion, I have no hesitation in holding that if by the time the selection is made one or both the senior-most teachers retire, then non-consideration of the next one or two senior-most teachers would be contrary to the scheme of the Rules. Only such teachers are to be considered whose names are sent alongwith requisition under Rule 1 (a) and it would not go on changing with the passage of time.

12. I, therefore, find no merit in the writ petition. Dismissed.