
(1998) 11 AHC CK 0104
In the Allahabad High Court
Case No : C.M.W.P. No. 23040 of 1988

Jagdish Tripathi

APPELLANT

Vs

U. P. Secondary Education Services Commission, Allahabad
and others

RESPONDENT

Date of Decision : 07-11-1998

Acts Referred:

Uttar Pradesh Secondary Education Services Commission Rules, 1983 — Rule 9

Citation : (1999) 1 AWC 669 : (1999) 2 UPLBEC 88

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Smt. S.V. Misra, for the Appellant; S.C. and K.S. Shukla, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Seth, J.—The petitioner alleges that a vacancy in the post of Lecturer had occurred on 30.6.1985. The petitioner had appeared in the M.A. examination in Philosophy in March, 1985, but the result was declared on 30.9.1985. But, however, ignoring the claim of the petitioner, despite being senior to respondent No. 5, the Committee of Management had promoted respondent No. 5 who acquired the same qualification earlier than 30.6.1985.

2. Mr. Vivek Mishra, learned counsel for the petitioner had assailed the promotion granted to the respondent No. 5 on the ground that the petitioner having appeared in the M.A. examination in March, 1985. and he was declared successful in September, 1985. the petitioner should be deemed to have qualified before 30.6.1985 inasmuch as the declaration of result relates back when he had completed the" examination, therefore, the petitioner"s candidature cannot be ignored on account of any disqualification and he being senior to respondent No. 5 by reason of the provisions contained in Rule 9 of the U. P. Secondary Education Service Commission Rules, 1983, he should have been given the promotion to the post of Lecturer instead of respondent No. 5. He also relied on

a decision of this Court rendered by a Division Bench in Writ Petition No. nil of 1988. Sangam Lal Pandey v. State of U. P. and others, decided on 8.3.1990, a copy where is marked as Annexure-RA-1 to the rejoinder-affidavit.

3. Mr. R. S. Mishra, learned counsel for respondent No. 5. on the other hand, contends that Rule 9 of 1983 Rules prescribes that the question is to be decided on the date of occurrence of the vacancy. Appearance in examination does not determine the qualification. Unless a person is declared successful in the examination, he cannot be said to have acquired the qualification and the declaration of result cannot lead back. A person can be said to have acquired the qualification when the result is declared and not before. He further contends that decision in the case of Sangam Lal Pandey (supra), cited by Mr. Vivek Mishra is no manner a good law in view of the decision in the case of Dr. Raman Kumar Pandey v. Sukhram Pal Singh Sehrawat and others 1995 (1) ESC 74 wherein this Court had held that a person is deemed to be qualified only on the declaration of the result.

4. I have heard learned counsel for the parties at length.

5. The facts are not in dispute. Mr. Vivek Mishra does not dispute that qualification is to be determined on the date of occurrence of the vacancy. But he had stressed the point that the petitioner shall be deemed to be qualified from the date when the examination was over and declaration will lead back to the date when the examination was complete. particularly in view of the fact that the session in which the petitioner had appeared is relevant. Declaration may be delayed but it is the session in which he had obtained the relevant qualification since the occurrence of vacancy also relates to the session of the school which ends on 30.6.1985.

6. Mr. R. S. Mishra had also relied on the decision in the case of Keshadeo Ram Dargan v. District Inspector of Schools, Haridwar and others 1997 (2) ESC 892 (All) ; as well as the decision in the cases of U.P. Public Service Commission U.P., Allahabad and Another Vs. Alpana, ; Sanjay Kumar Singh v. District Inspector of Schools 1997 (3) UPLBEC 2210 and Ikramul Haq Vs. District Inspector of Schools, Allahabad and others, .

7. In the case of Alpana (supra), it was held that a person must possess the qualification on the last date of submission of application pursuant to an advertisement. Unless he possesses the qualification by virtue of declaration of result, he cannot be deemed to be qualified or eligible. Following the decision in the case of Alpana (supra), in. the case of Dr. Raman (supra), it was held that the date of declaration of result is the relevant date. Other decisions cited by Mr. R. S. Mishra also support the same contention and had taken same view, following the decision of the Apex Court in Alpana (supra).

8. Rule 9 of 1983 Rules prescribes that if on the date of occurrence of vacancy, there are eligible candidate in the school, then the vacancy should be filled up on ad hoc basis by promotion without their " having applied for the same.

Therefore, the consideration that is to be undertaken is as it stood on the date of occurrence of the vacancy. Thus, if the date of occurrence of the vacancy becomes relevant then the question of consideration is confined on the date of occurrence of the vacancy as to whether the person is qualified or not.

9. Mere appearance in the examination does not make a person qualified unless the result is declared and he is found successful. The appearance of examination does not entitle a person ipso facto to be declared passed unless the papers" submitted by him are assessed. The assessment culminates into finality on the declaration of the result. The declaration of result is not an independent or distinct or separate action. The process of examination is a continuous process, which consists of appearance in the examination, assessment of the paper and then the declaration of the result. The examination is complete only on the declaration of the result, and therefore, mere appearance in the examination cannot be said to be a complete part of the examination. Following the decisions cited by Mr. R. S. Mishra, it appears that the case cited by Mr. Mishra in the case of Sarigam Lal (*supra*), is no longer a good law.

10. In view of the discussions made above, it appears that the petitioner cannot be said to be qualified on the date of occurrence of the vacancy since admittedly the result was declared on 30.9.1995. Thus, there is no merit in this writ petition. The writ petition, therefore, fails and is accordingly dismissed. However, there will be no order as to cost.