

(2013) 03 AHC CK 0212

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 12440 of 2013

Kaley Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Citation : (2013) 5 ADJ 258 : (2013) 97 ALR 836 : (2013) 3 AWC 3012 : (2013) 137 FLR 1049

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : B.P. Yadav and Mahendra Kumar Yadav, for the Appellant; H.P. Shukla and S.C. Dwivedi, for the Respondent

Final Decision : Allowed

Judgement

A.P. Sahi, J.—Heard Sri B.P. Yadav, learned counsel for the petitioner and Sri Kushwaha for the Respondent No. 6. It is not necessary to issue notice to the Respondent No. 5 at this stage keeping in view the nature of the order as proposed to be passed with the consent of all the parties represented before the Court including the learned Standing Counsel for the Respondent No. 1, 2 and 3 and Sri Dwivedi for the Board-respondent No. 4. Learned counsel for the Respondent No. 6 states that he does not propose to file any counter-affidavit at this stage.

2. The petitioner contends that the post of Lecturer in Hindi fell vacant on 30th June, 2011. There are four posts in the entire cadre of the Lecturer in the Institution. These are undisputed facts. Two posts fall within the promotion quota. There is no dispute about the availability of the post under the said quota for promotion.

3. The dispute appears to have been raised on account of the requisition sent by the Committee of Management treating the said post under the direct recruitment quota presumably, on the ground that there was no candidate

available for being promoted on the post in question. This requisition was sent in 2010 itself on the basis whereof the respondent Board proceeded to notify the vacancy for being filled up by direct recruitment. The respondent No. 6 has been accordingly recommended after being selected for being appointed as lecturer in Hindi on the said post.

4. In between it appears that the petitioner had staked his claim for promotion and the Joint Director of Education on 20.8.2011 passed an order accepting the proposal of promotion against the same post in spite of the fact that the post had been requisitioned to the Board for being filled up by direct recruitment.

5. This anomaly appears to have occurred on account of the fact that on the one hand the Management claims to have sent the information of the proposal of promotion of the petitioner and on the other hand it had already requisitioned the vacancy for being filled up by way of direct recruitment.

6. The impugned order has now been passed cancelling the promotion order of the petitioner on the ground that the aforesaid facts were withheld from the Joint Director of Education while proceeding to get an order of promotion in favour of the petitioner.

7. I have perused the impugned order and it proceeds on this presumption that the fact of requisition for direct recruitment was not brought to the knowledge of the Joint Director of Education and hence the order of promotion of the petitioner has been recalled with a direction that the Respondent No. 6 be appointed on the post in question.

8. Learned counsel for the petitioner contends that the petitioner was fully qualified and eligible and the order dated 20.8.2011 could not have been reviewed on the ground of the alleged non intimation of the fact of the promotion of the petitioner. He further submits that even otherwise, the petitioner is qualified and eligible and no selection could have been held nor the post could have been requisitioned for being filled up by way of direct recruitment.

9. Replying to the said submissions Sri Kushwaha submits that apart from the fact that correct facts were not brought to the knowledge of the Regional Level Committee while considering the promotion of the petitioner, the fact that the petitioner was not eligible and qualified for being promoted is also a reason for setting aside the promotion order of the petitioner. Sri Kushwaha submits that the petitioner was not holding a post graduate degree on the date when the vacancy occurred.

10. Having considered the aforesaid submissions, the issue relating to sending of the requisition by the Committee of Management in 2010 itself is not disputed between the parties. Obviously this requisition was sent much before the vacancy actually occurred on 30th June, 2011. It is also undisputed that when the said requisition was sent, the petitioner was not qualified or eligible for being considered for promotion.

11. However, the rule of promotion requires that the candidate claiming promotion after the occurrence of the vacancy should be duly eligible and qualified on the first day of the year of the recruitment. Consequently, the petitioner ought to hold the necessary qualification for consideration on 1st July, 2011. If the petitioner became a post graduate on the said date then in that event the petitioner would be entitled to be considered for promotion as he would be holding the requisite qualification on the first day of the year of recruitment.

12. In the event, the petitioner does not hold the said educational qualification on the aforesaid day, then things would be different and the committee would be entitled to requisition the said post for being filled up by direct recruitment. Unfortunately, the impugned order nowhere reflects any disqualification as pointed out by Sri Kushwaha against the petitioner.

13. During the course of argument Sri Kushwaha has produced a letter dated 7th November, 2012 said to have been sent by the District Inspector of Schools to the Joint Director of Education alleging that the petitioner obtained the decree of post graduation only after 6th July, 2011. On the other hand Sri Yadav contends that the petitioner has obtained a certificate from the Registrar of Mahatma Jyotibaphule, Ruhelkhand University certifying that the results of the petitioner were declared on 1.7.2011 and the mark-sheet was issued on 6th July, 2011. He, therefore, submits that on 1st July, 2011 the results having been declared, the petitioner will be deemed to be in possession of the said qualification. It is for this reason that the promotion was approved by the competent authority on 20.8.2011.

14. In the opinion of the Court, this question has not been gone into nor any fact relating to the said claim has been noted in the impugned order. Accordingly, the order dated 30.1.2013 and the consequential order of the appointment of the Respondent No. 6 are hereby quashed. The Writ Petition is allowed. Sri Kushwaha contends that since the Respondent No. 6 has joined, therefore, there he should be permitted to continue. This argument cannot be accepted inasmuch as the petitioner had already been promoted on 20.8.2011 which promotion is now sought to be set aside in order to accommodate the petitioner. The Respondent No. 2, Joint Director of Education shall now proceed to examine the said rival claims in the light of the facts stated above only with regard to the possession of the educational qualification of the petitioner and proceed to pass an order within six weeks of the date of presentation of a certified copy of this order.