
(2015) 11 AHC CK 0049
In the Allahabad High Court
Case No : Special Appeal No. 528 of 2015

Kamla Prasad Chaurasia

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 11 ADJ 377 : (2016) 2 ALJ 43 : (2016) 1 AWC 846

Hon'ble Judges : Dinesh Maheshwari and Anant Kumar, JJ.

Bench : Division Bench

Advocate : Pradeep Shukla, for the Appellant; Pramendra Kumar Singh and Ravi Kishore Joshi, for the Respondent

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—By way of this intra-Court appeal, the petitioner of Service Single No. 7866 of 2005, seeks to question the order dated 01.09.2015 whereby the learned Single Judge has rejected the writ petition that was preferred on his claim for promotion on the post of Lecturer (English) after holding that the petitioner-appellant was not possessed of the requisite qualification of 5 years" regular service as LT Grade Teacher on the relevant date.

2. This appeal is reportedly time barred by 28 days. Having regard to the circumstances, while ignoring the delay, we have heard the learned counsel for the petitioner-appellant on merits.

3. After having heard the learned counsel and having perused the material placed on record, we are unable to find any reason to consider interference in the order impugned.

4. The factual aspects of the matter are not much in controversy. The petitioner-appellant was appointed on the post of LT Grade Teacher on 09.10.1996 and hence, he completed 5 years of continuous service on 08.10.2001. The case of the appellant had been that upon retirement of one incumbent holding the post

of Lecturer (English), this post fell vacant on 30.06.2001. According to the appellant, the Committee of Management of his employer Sri Shankaracharya Inter College Baldirai, Sultanpur, commenced the process of selection for the post of Lecturer (English) on 06.01.2002, and on this date, he alone was eligible for the post in question. The petitioner-appellant has averred that the necessary formalities were not completed by the Management for about 2 years until the District Inspector of Schools directed the Management to submit the documents relating to the post in question by his letter dated 22.01.2003 which was followed by other communications dated 21.02.2004 and 24.06.2004. The petitioner-appellant has further submitted that the Committee of Management was dissolved on 30.07.2004 whereafter, the District Inspector of Schools became the Authorized Controller who took necessary steps and forwarded the document for approval to the Joint Director Education Faizabad Region, Faizabad who, in turn, rejected the proposal for promotion of the petitioner-appellant on the ground that he had not completed 5 years of continuous service on 01.07.2001, the date on which the post of Lecturer (English) fell vacant.

5. With reference to the U.P. Secondary Education Services Selection Board Rules, 1998 ("the Rules"/"the Rules" of 1998) the petitioner-appellant submitted that as per the Rules and interpretation thereof by the Court, the candidate should be eligible for promotion on the first date of the year of recruitment or commencement of process of recruitment; and, as the process was initiated in this case admittedly in the month of January, 2002, he was clearly possessed of the requisite qualification on the relevant date. The petitioner-appellant also referred to the Larger Bench decision dated 14.05.2015 of this Court in the case of Raeesul Hasan. Vs. State of U.P. and others (Writ Petition No. 1593 (S/S) of 2001 and other connected matters).

6. The learned Single Judge found the said Larger Bench decision being not of any help to the petitioner-appellant and, rather the ratio thereof operating against his claim. The learned Single Judge, therefore, proceeded to decline the claim as made by the petitioner-appellant but left it open for consideration if the vacancy in question was referable to promotion quota or was being filled up by way of promotion. The learned Single Judge proceeded to dispose of the writ petition while observing as under:-

"On a close scrutiny of the aforesaid Full Bench judgment, it is evident that a candidate in the zone of eligibility is bound to fulfill requisite qualification as on the date 1st July of the recruitment year in which the vacancy is filled up. The selection process in the present case initiated on 6.1.2002 would necessarily require completion of five years" of regular service as on 1.7.2001, therefore, the submission of the learned counsel for the petitioner does not appear to be well-founded on the strength of case law referred by him. On the contrary the proposition laid down by the Full Bench proceeds to his disadvantage.

The impugned order thus, stands in consonance with the Full Bench judgment and needs no interference by this Court under Article 226 of the Constitution.

However, it is provided that in case the vacancy in question falls in promotional quota or is to be filled in by way of promotion and has not yet been filled in, the candidature of the petitioner for promotion against the said post shall be considered by the respondents strictly in accordance with rules.

The writ petition is disposed of accordingly."

7. Seeking to question the order aforesaid, learned counsel for the appellant has strenuously argued that the learned Single Judge has erred in assuming that for the selection process in question, the requirement of completion of 5 years of regular service would be referable to the date 01.07.2001. Learned counsel for the petitioner-appellant would argue that in view of the Larger Bench Decision of this Court, the year of recruitment would be the year 2004 when the Authorized Controller and the Principal of the College sent the proposal for promotion. The learned counsel has further attempted to argue that as per Section 2(1) of the U.P. Secondary Education (Services Selection Board) Act, 1982 ["the Act of 1982"] the year of recruitment is the period of 12 months commencing from the first day of July of a calendar year and hence in the present case, even if we assume that the process of selection was commenced on 06.01.2002, the year of recruitment would only be a period of 12 years commencing from the first day of July of the calendar year 2002 and by that date, the petitioner-appellant had already completed 5 years service. The submissions made on behalf of the petitioner-appellant fall short of merit and remain untenable.

8. The vacancy in question arose on 01.07.2001. Indisputably, the process of selection was initiated by the Committee of Management on 06.01.2002. Any other but subsequent dealings for completion of process cannot alter the basic date of its initiation, i.e., 06.01.2002.

9. This much of the controversy has already been settled with the above referred decision of this Court in Raeesul Hasan (supra) that for the purpose of the Rules in question, it is not the date of occurrence of vacancy but it is the year of recruitment which is relevant for determination of eligibility for promotion. The Larger Bench of this Court has answered the reference in the following terms:-

"For these reasons, we answer the reference by holding that it is not the date on which the vacancy has occurred, but the year of recruitment which is relevant for the determination of eligibility for promotion to the Lecturers" grade under the Rules of 1998. The reference is answered in the aforesaid terms. All the writ petitions shall now be placed before the regular Bench according to roster for disposal in the light of the present judgment."

10. It is noticed that although, in the earlier Rules of the year 1983, in the process of recruitment by promotion, the requirement spelt out in Rule 9 thereof had been of 5 years of continuous service as a Teacher on the date of occurrence of vacancy but in the subsequent Rules of 1995, a significant departure was made and the requirement was provided as 5 years of continuous service as on the first day of the year of recruitment that has been maintained in the Rules of

1998 but with further modulation as being that of 5 years of continuous regular service. These changes have been noticed by the Larger bench in Raeesul Hasan (supra) in the following:-

"In Rule 14 of the Rules of 1998, a change has been brought about from the corresponding provision of Rule 14(1) of the Rules of 1995, inter alia, by requiring the completion of five years" continuous regular service instead of five years" continuous service. The provisions contained in Rule 9 of the Rules of 1983 stipulated that where a vacancy was required to be filled in by promotion, teachers in the L.T. or C.T. Grade, who possessed the minimum qualifications and had at least five years" continuous service as teachers were to be considered for promotion. The norm of five years" continuous service as teacher was under Rule 9 to be considered on the date of the occurrence of vacancy. In the Rules of 1995, a conscious departure was made while formulating Rule 14 which dealt with the procedure for recruitment by promotion. Rule 14 stipulated that all teachers working in the trained graduates/L.T. Grade or Certificate of Teaching grade, who possess the minimum qualifications prescribed and have completed five years" continuous service on the first day of the year of recruitment, would be considered for promotion. Similarly, in Rule 14 of the Rules of 1998, all teachers working in trained graduates grade or Certificate of Teaching grade, who possess the qualification prescribed and have completed five years" continuous regular service on the first day of the year of recruitment are to be considered for promotion to the lecturer"s grade. Hence, both in the Rules of 1995 and in the Rules of 1998, the norm of five years" continuous service or, as the case may be, five years" continuous regular service has to be assessed on the first day of the year of recruitment. The year of recruitment is, as we have noted, defined in Section 2(1) of the Act to be a period of twelve months commencing from the first day of July of a calendar year."

11. The year of recruitment year has, of course, been defined in Section 2(1) of the Act of 1982 in the following terms:-

"(1) "Year of recruitment" means a period of twelve months commencing from first day of July of a calendar year".

12. The question is, as to what would be the "year of recruitment" for the present purpose. The petitioner-appellant claims that such year of recruitment ought to be the first day of July of the year 2002. The argument is not tenable for the simple reason that the term "year of recruitment" for the present purpose shall only be the year commencing on 01.07.2001 and ending on 30.06.2002; and not that commencing on the first day of the July of the year 2002 so as to end on 30.06.2003 because, if the process of recruitment is initiated in the month of January, 2002, the corresponding "year of recruitment" would be the year of recruitment in currency and not the year subsequent. The relevant current year for the present purpose shall remain the year that had commenced on the first day of July, 2001. This aspect of the matter stands beyond a pale of doubt when seen in the light of the observations of the Hon"ble Supreme Court

in the case of Malik Mazhar Sultan & Anr. vs. U.P. Public Service Commission & Ors.: 2006 (2) ESC 171, which have been noticed by the Larger Bench in the Raeesul Hasan (supra) while observing as under:-

"Similarly, in Malik Mazhar Sultan & Anr. vs. U.P. Public Service Commission & Ors. 9, the Supreme Court considered the expression "year of recruitment" in Rule 4(m) of the Uttar Pradesh Judicial Services Rules, 2001, which defined the expression to mean a period of twelve months commencing from the first day of July of the calendar year in which the process of recruitment is initiated by the appointing authority. The Supreme Court held that where the process of recruitment was initiated by the appointing authority on 23 November 2002, the year of recruitment had rightly been determined as 1 July 2002 to 30 June 2003, having regard to Rule 4(m)."

13. In view of the above observations and applying the illustration of Malik Mazhar Sultan (supra), the inescapable conclusion is that the relevant date of first July for the recruitment in question would be of the calendar year of 2001 i.e., 01.07.2001. The petitioner-appellant was admittedly not having the requisite qualification on the said date of reckoning as he had completed 5 years of service only on 08.10.2001.

14. Thus, the claim of the petitioner-appellant has rightly been rejected and the learned Single Judge has rightly declined to interfere. The learned Single Judge has yet been considerate in providing that if the vacancy fell in promotional quota and was yet to be filled in by way of promotion, the candidature of the petitioner-appellant would be considered by the respondents in accordance with the Rules. The petitioner-appellant is not entitled to any other relief.

15. Thus, this appeal, being devoid of substance, stands dismissed.