
(2010) 04 AHC CK 0086

In the Allahabad High Court

Case No : C.M.W.P. No's. 35034 and 38701 of 2000

Kasmeer Singh Yadav

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 13-04-2010

Acts Referred:

Citation : (2010) 4 AWC 4246 : (2010) 2 UPLBEC 1224

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

Bench : Single Bench

Judgement

A.P. Sahi, J.—This dispute between Shri Kashmir Singh Yadav and Shri Rampal Sahu relates to the post of Lecturer on English, which fell vacant on 10th May, 1996 in Dr. Chiranjilal Rashtriya Inter College, Kidwai Nagar, Kanpur Nagar due to the death of a permanent incumbent Shri Jagdish Narain Dixit.

2. The institution is governed by the provisions of the U.P. Intermediate Education Act, 1921 and the Regulations framed thereunder and by the provisions of U.P. Secondary Education Services Selection Board Act, 1982 and the Rules framed thereunder.

3. Shri Kashmir Singh Yadav contends that he was appointed in L.T. grade on 30th April, 1988 and was the senior most qualified teacher, entitled for being promoted in Lecturer in English in the institution. It is, however, not disputed that Shri Kashmir Singh Yadav was not M.A. in English on the date of the occurrence of vacancy, i.e., 10.5.1996. His results of M.A. in English were declared thereafter. The final year examinations of M.A. were conducted by Shri Shahuji Maharaj University, Kanpur in 1996, in which Shri Kashmir Singh Yadav had appeared in March, 1996.

4. The contention raised on behalf of Shri Kashmir Singh Yadav by Shri J. L. Srivastava, learned Counsel is that the year in which the recruitment was made, i.e., in 1997, Shri Kashmir Singh Yadav was qualified and eligible and being the senior most teacher in the L.T. grade was entitled for being promoted.

5. Shri Rampal Sahu, who is respondent in Writ Petition No. 35034 of 2000 and the petitioner in Writ Petition No. 38701 of 2000 contends that he was appointed on ad hoc basis on 6th January, 1990 in another institution namely Nehru Inter College, Araul, Kanpur Dehat, which is also recognized under the same provisions. This ad hoc appointment was regularized on 7th August, 1993 from which date Shri Rampal Sahu was appointed in substantive capacity in the L.T. grade. The Committee of Management of Nehru Inter College, Araul, Kanpur Dehat and the Committee of Management of Dr. Chiranji Lal Rashtriya Inter College, Kidwai Nagar, Kanpur Nagar passed resolutions for accepting the transfer of Shri Rampal Sahu from Nehru Inter College, Araul, Kanpur Dehat to Dr. Chiranji Lal Rashtriya Inter College, Kidwai Nagar, Kanpur Nagar. This was approved by the competent authority and Shri Rampal Sahu was appointed by way of transfer w.e.f. July, 1996 as an L.T. grade teacher in Dr. Chiranji Lal Rashtriya Inter College, Kidwai Nagar, Kanpur Nagar. Counting his previous services in the L.T. grade, which according to him is more than 5 years including the period of ad hoc appointment, Shri Rampal Sahu claimed promotion on the post of Lecturer in English. This is the genesis of dispute between these two persons.

6. It is evident that the post fell vacant on 10th May, 1996 on which date Shri Kashmir Singh Yadav was not qualified, inasmuch as, he did not possess the degree of M.A. in English and Shri Rampal Sahu had not been transferred to the institution, inasmuch as, he was not even born in the cadre so as to entitle him for consideration. The dispute began when the Committee of Management passed a resolution on 20th September, 1997, almost after 14 months of the occurrence of the vacancy, for the ad hoc promotion of Shri Kashmir Singh Yadav as ad hoc Lecturer in English. This resolution of the Committee of Management was approved by the District Inspector of Schools on 1st December, 1997. Shri Kashmir Singh Yadav was issued a letter of appointment as ad hoc Lecturer in English in pursuance of the said approval on 8.12.1997.

7. Shri Rampal Sahu, for the first time, raised a dispute on 12th December, 1997 objecting to this aforesaid approval of the proposal to promote Shri Kashmir Singh Yadav as Lecturer in English. The District Inspector of Schools vide order dated 9th January, 1998 rejected the objection of Shri Rampal Sahu and assented to the financial sanction of the ad hoc promotion of Shri Kashmir Singh Yadav with a request to the Regional Joint Director of Education, Kanpur to take a decision.

8. Aggrieved Shri Rampal Sahu filed a writ petition being Civil Misc. Writ Petition No. 19364 of 1998, which was disposed of on 6th July, 1998 by this Court with a direction to the authorities including the District Inspector of Schools to take a decision on the representation of Shri Rampal Sahu.

9. Accordingly, the District Inspector of Schools, Kanpur Nagar proceeded to issue notice and after giving an opportunity of hearing to both the claimants passed an order on 23rd April, 1999 reversing the earlier decision in favour of

Shri Kashmir Singh Yadav and accepted the claim of promotion of Shri Rampal Sahu. The District Inspector of Schools recorded a finding that since Shri Kashmir Singh Yadav was not qualified on the date of occurrence of vacancy, therefore, even though he was senior to Shri Rampal Sahu in the L.T. grade, yet he should not be promoted as he did not hold the minimum qualification of M.A. at the time of occurrence of vacancy. It was accordingly held that since Shri Rampal Sahu was qualified and his previous services including in the L.T. grade were regular, therefore, he has completed five years of experience" of teaching in L.T. grade and hence was qualified and eligible for being promoted as Lecturer in English. Against the said order of the District Inspector of Schools dated 23.4.1999 a representation was allegedly made by some office bearers of the Teachers Union at Kanpur. The said complaint was entertained by the Joint Director of Education, who passed an order on 10th May, 1999 staying the operation of the order of the District Inspector of Schools dated 29.4.1999.

10. Aggrieved by the said order of the Joint Director of Education, Shri Rampal Sahu filed a writ petition being Civil Misc. Writ Petition No. 20552 of 1999 and this Court permitted him to raise the objections before the Joint Director of Education himself, which was to be decided by the said authority. The petition was disposed of on 18.5.1999 and in pursuance thereof, the Joint Director of Education proceeded to pass an order, a copy whereof is Annexure-9 to the Writ Petition No. 35034 of 2000, upholding the claim of Shri Kashmir Singh Yadav and his approval by the District Inspector of Schools as Lecturer in English on ad hoc basis. The representation of Shri Rampal Sahu dated 24.5.1999 was rejected.

11. Aggrieved by the said order of the Joint Director of Education, Shri Rampal Sahu filed another writ petition before this Court being Civil Misc. Writ Petition No. 42617 of 1999, which was disposed of on 5.10.1999 allowing Shri Rampal Sahu to file a representation before the Director of Education (Secondary), Uttar Pradesh, Allahabad, who was to decide the claim afresh within one month.

12. The Director of Education, thereafter, has proceeded to decide the dispute vide order dated 27th July. 2000. in which he holds Shri Kashmir Singh Yadav to be not qualified and eligible for being considered for promotion and at the same time he also finds Shri Rampal Sahu to be not entitled to the post as he was not in existence in the institution on the date of occurrence of the vacancy. Thus, the claim of both these gentlemen has been rejected by the Joint Director of Education, which has given rise to these two writ petitions, one filed by Shri Kashmir Singh Yadav and the other by Shri Rampal Sahu. The second writ petition filed by Shri Rampal Sahu also sought an amendment challenging the order of the District Inspector of Schools dated 20.9.2000 whereby Shri Kashmir Singh Yadav was allowed to continue to function as an ad hoc Lecturer in English till a regular selected candidate from the Commission arrives. In this writ petition an order of status quo was passed by the Court on 5.9.2000 as was existing on the date of the impugned order.

13. Affidavits have been exchanged between these two contesting parties and

the learned standing counsel has also been heard.

14. Shri H. N. Singh, learned Counsel for Shri Rampal Sahu contends that his client has already completed five years of continuous regular service in the L.T. grade including his period of ad hoc appointment and further he was qualified and eligible in the year of recruitment in which the appointment was to be made. Shri H. N. Singh further submits that according to the own case of the opposite party he is claiming to have acquired the qualification by virtue of his having appeared in the examination in March, 1996 which according to Shri H. N. Singh is contrary to the law laid down in the case of U.P. Public Service Commission, Uttar Pradesh, Allahabad and Anr. v. Alpana 1994 (1) UPLBEC 242 : 1994 (2) AWC 675 (SC). Shri H. N. Singh submits that the declaration of the results according to this decision will not relate back to the date of last examination for the purpose of recruitment under the Rules. He further submits that, so far as his client Shri Rampal Sahu is concerned, he has served from 1990-1995 completing five years of regular service, and is supported in the aforesaid submissions in view of the law laid down in the case of Smt. Suman Bhatnagar v. State of U.P. and Ors. 2006 (1) ESC 348. This view has been further approved in the Judgment of another learned single Judge in the case of Committee of Management, Shri Krishna Inter College, Badaun through its Manager and Anr. v. State of Uttar Pradesh and Ors. 2007 (7) AWC 7598 . Shri H.N. Singh has further invited the attention of the Court to the decision in the case of Brahm Dutt Tripathi Vs. State of U.P. and Others, which has again been approved in the case of Committee of Management, Shri Krishna Inter College (supra). The said decisions relate to the definition and interpretation of the word "Year of Recruitment" as occurring in U.P. Secondary Education Services Commission Rules, 1995.

15. Shri J. L. Srivastava, learned Counsel for Shri Kashmir Singh Yadav has also relied on the same decisions to contend that his client had acquired the qualification in the year of recruitment and was, therefore, entitled for being promoted as such the order of the District Inspector of Schools originally passed in his favour deserves to be upheld. He further relies on two other decisions, the impact whereof shall be discussed hereinafter.

16. Learned standing counsel for the respondent-State contends that the impugned order passed by the Director of Education rejecting the claim of both the parties is perfectly Justified as none of them were entitled for any such benefit of either ad hoc or permanent promotion.

17. I have considered the aforesaid submissions and perused the records.

18. The first issue that has to be decided is as to what would be the date on which the qualification has to be seen. This issue need not detain this Court for long in view of the decision in the case of Committee of Management, Shri Krishna Inter College (supra) which in turn considers the judgment in the case of Sunil Kumar Mishra Vs. Regional Selection Committee and Others, and the

Division Bench judgment in the case of Subhash Prasad v. Regional Selection Committee, Gorakhpur and Ors. 2004 ALJ 3711 : 2004 (5) AWC 4755.

19. The position has been amply clarified in the case of Committee of Management, Shri Krishna Inter College (supra). The year of recruitment would mean from 1st of July of the year preceding which the vacancy is to occur. The last date of the year of recruitment would be obviously on the date when the vacancy actually occurs. This is because the date of occurrence of vacancy in the normal course is known as the date of retirement which is fixed. This mechanism has been made to ensure that the vacancies are intimated during the year of recruitment positively so that the teachers are recruited by the Board and they Join immediately after the occurrence of the vacancy without causing any loss to the academic session of the students. This ensures the availability of teachers continuously without any gap.

20. However, there is another contingency, like the present one, where the vacancy occurred on 10th May, 1996 in mid session due to the death of the teacher. Since this is an unprecedented situation, therefore also in my opinion, the vacancy has to be treated in the year of recruitment beginning from 1st July, 1996 and would end on 30th June, 1997. For this, there is another reason, namely that in the normal course Jagdish Narain Dixit, the earlier incumbent, who died was due to retire on 30.6.1997. Thus, by any calculation the year of recruitment in this case began on 1st July, 1996 and according to the 1995 Rules referred to hereinabove would continue till 30.6.1997. Logically death and retirement are both certain. What is uncertain, is the date of death. The same being unpredictable, the vacancy in such a contingency will be in the year of recruitment which follows the date of death, unless the death occurs in the same year of recruitment when the incumbent has to retire. Taking an example, that if the death occurs much earlier than the year of retirement, then in such a situation the year of recruitment for the purpose of rules would be that year which would follow the date of death. In the instant case, the incumbent Mr. Jagdish Narain Dixit died on 10.5.1996, Just one month before the year of recruitment in which he was to retire. His retirement was due on 30.6.1997 and, therefore, the year of recruitment either way would be 1.7.1996 to 30.6.1997. Having held that it has now to be seen as to whether the rival parties- were qualified in the year of recruitment.

21. The date on which the qualification has to be seen is not the date of the occurrence of vacancy but the first day of the year of recruitment. This is also evident from the ratio of the decisions, which have been referred to hereinabove. Thus, the date on which the qualification has to be held by the candidate in this case would be 1st of July, 1996.

22. According to the own case of Shri Kashmir Singh Yadav his results were declared in September, 1996. Shri J. L. Srivastava has handed over a photostat copy of the certificate given to his client by the Kanpur University, which is dated 22nd December, 1996. It is, therefore, clear that Shri Kashmir Singh Yadav had

not acquired the qualification of M.A. in English on 1st of July, 1996 and was thus not qualified and eligible for the purpose of Lecturer in English

23. The argument of Shri J. L. Srivastava that he will be presumed to have acquired the qualification in view of the law laid down in the case of Babban Singh v. Deputy Director of Education v. Region, Varanasi and Ors. 1992 (1) UPLBEC 731 : 1992 AWC (Suppl) 132, cannot be accepted as the said law, in my opinion, is contrary to the ratio of the Supreme Court in the case of U.P. Public Service Commission, Uttar Pradesh, Allahabad and Anr. v. Alpana (supra) where it has been held that the last date of the examinations cannot be held to be the date of the declaration of result. Accordingly, even if, Shri Kashmir Singh Yadav had appeared in the examinations in March, 1996, he cannot be presumed to have been qualified on 1st of July, 1996 as his results were declared much thereafter in September, 1996.

24. Shri J. L. Srivastava has raised another submission on the strength of the decision in the case of Civil Misc. Writ Petition No. 67626 of 2005, Umesh Chandra Pandey v. State of U.P. and Ors. decided on 25.10.2005 : 2005 (5) AWC 5015 to contend that the year of recruitment would be the year in which the promotion was being considered. He submits that the promotion was being considered in September, 1997 and on that date Shri Kashmir Singh Yadav was qualified. The aforesaid decision in the case of Umesh Chandra Pandey (supra) does not take notice of the Division Bench decision of Subhash Prasad u. Regional Selection Committee, Gorakhpur and Ors. (supra). The law discussed in the case of Brahm Dutt Tripathi (supra) and Committee of Management, Shri Krishna Inter College, Badaun through its Manager and Anr. (supra) lay down that the year of recruitment cannot be the year in which the Committee of Management chooses to proceed to initiate steps for recruitment. Conversely, the Committee of Management by deliberately postponing any such consideration, cannot postpone the year of recruitment. In view of this. Shri J. L. Srivastava cannot avail of any benefit of the decision in the case of Umesh Chandra Pandey (supra)

25. Thus, on both scores Shri Kashmir Singh Yadav was not qualified on the first day of the year of recruitment, i.e., 1st of July, 1996 and hence his consideration for promotion by the Committee of Management by postponing the date in September, 1997 cannot be accepted.

26. Coming to the case of Shri Rampal Sahu, the facts undisputedly are that he was appointed on 6th January, 1990 in another institution on ad hoc basis in the L.T. grade. This appointment was, however, approved by the District Inspector of Schools and subsequently Shri Rampal Sahu has been given the benefit of regularization under the relevant provisions vide order dated 7.8.1993. He had, therefore, completed more than 3 1/2 years of service on ad hoc basis, which had been approved by the District Inspector of Schools and, thereafter, was appointed in substantive capacity by virtue of the regularization order dated 7.8.1993. On the date of occurrence of vacancy, i.e., 10th May, 1996 and even

otherwise on 1st July, 1996 which is the first date of the year of recruitment, Shri Rampal Sahu had completed five years of service. The period of ad hoc services has to be counted as continuous regular service in view of the law laid down in the case of Smt. Suman Bhatnagar (supra) and in the case of Committee of Management, Shri Krishna Inter College, Badaun through its Manager and Anr. (supra). The finding to that extent against Shri Rampal Sahu by the Director of Education cannot be sustained. Once it is found that Shri Rampal Sahu had completed five years of service in the L.T. grade as on 1st of July, 1996, then it cannot be said that he was not eligible on the first date of year of recruitment. It is correct that Shri Rampal Sahu was brought by way of transfer to the present institution w.e.f. 1st July, 1996 itself and, therefore, Shri Rampal Sahu had already entered the cadre of the institution in the L.T. grade w.e.f. 1st July, 1996. His services in the previous institution has to be counted according to the Regulations and if, the same is added Shri Rampal Sahu had completed five years of service on 1st July, 1996 and was available in the institution for being considered for ad hoc promotion. The Director of Education, therefore, erred in holding that Shri Rampal Sahu was not available in the institution on the date of occurrence of vacancy, i.e., 10.5.1996, inasmuch as, it is the date of the year of recruitment as pointed out hereinabove, which is relevant and not the date of occurrence of vacancy.

27. The District Inspector of Schools by the order dated 20.9.2000 has overstepped in allowing Shri Kashmir Singh Yadav to continue on ad hoc basis till regular selection is made. Accordingly, the order dated 20.9.2000 is also unsustainable. In the result, Civil Misc. Writ Petition No. 35034 of 2000 preferred by Shri Kashmir Singh Yadav is dismissed and Civil Misc. Writ Petition No. 38701 of 2000 preferred by Shri Rampal Sahu is partly allowed and the order dated 27.7.2000, insofar as it rejects the claim of Shri Rampal Sahu, is quashed. Consequently, the order dated 20.9.2000 is also set aside and the decision of the Committee of Management dated 5.8.2000 is upheld.

28. The Director of Education (Secondary)-respondent No. 1 shall proceed to pass an appropriate order in the light of the observations made hereinabove and issue necessary directions to the subordinate Educational Authorities for implementation of the same within a period of 8 weeks from the date of presentation of a certified copy of this order before him.

Both the writ petitions stand disposed of accordingly.