
(2002) 03 AHC CK 0083
In the Allahabad High Court
Case No : C.M.W.P. No. 36146 of 1998

Kuldeep Chand Kapoor

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-03-2002

Acts Referred:

Citation : (2002) 3 AWC 1887 : (2002) 2 UPLBEC 1525

Hon'ble Judges : Vineet Saran, J;G.P. Mathur, J

Bench : Division Bench

Advocate : R.G. Padia and Prakash Padia, for the Appellant; P.R. Maurya, S.C., for the Respondent

Final Decision : Allowed

Judgement

G.P. Mathur, J.—This writ petition under Article 226 of the Constitution has been filed for quashing of the order dated 26.6.1998 of the State Government by which Sri Chandra Deo Ram, respondent No. 4, was appointed as Head of Department of Composition in the Northern Regional Institute of Printing Technology, Allahabad.

2. There is an institute known as the Northern Regional Institute of Printing Technology at Allahabad (hereinafter referred to as the Institute). It imparts a three-years course for award of a diploma in printing technology. The Institute is controlled, financed and managed by the State Government and is governed by U. P. Pravidhik Shiksha Adhiniyam, 1962. The service conditions of the staff of the Institute are governed by the U. P. Technical Education Gazetted Officers Services Rules, 1990 (hereinafter referred to as the rules), which have been made by the Governor of Uttar Pradesh in exercise of power conferred by the proviso of Article 309 to the Constitution.

3. The petitioner, Kuldeep Chand Kapoor, was appointed as demonstrator in the institute on 28.9.1966. He became a junior instructor on 17.6.1970 and, thereafter, lecturer in the Department of Composition on 19.7.1972. Sri Chandra

Deo Ram, respondent No. 4 who belongs to Scheduled Caste, was appointed as lecturer in the Department of the Graphic "Reproduction and Lithography on 7.8.1982. The petitioner is thus senior to respondent No. 4 by 10 years. By the impugned order dated 26.6.1998 the State Government appointed respondent No. 4 as the Head of Department of Composition and it is this order which is the subject-matter of challenge in the present writ petition.

4. Dr. R. G. Padia, learned counsel for the petitioner has assailed the appointment of respondent No. 4 as Head of Department of Composition on three grounds. The first ground is that respondent No. 4 did not possess the necessary educational qualification for the post of Head of Department of Composition. The second ground is that he had not put in at least five years of service as lecturer in the subject of composition, which is an essential requirement for promotion to the post of Head of Department. The third ground is that under the relevant service rule, the appointment on the post of Head of Department has to be made on the basis of seniority subject to rejection of unfit and as the petitioner is 10 years" senior to respondent No. 4, his appointment is wholly illegal. Sri P. R. Maurya, learned counsel for respondent No. 4, has submitted that Sri Chandra Deo Ram holds the same qualification as that of the petitioner and has put in more than 5 years of service as lecturer as he had been appointed on the said post on 7.8.1982 and, therefore, he possesses the necessary qualification for being appointed as the Head of Department. He has further submitted that under the roster made by the State Government, the post of Head of Department of Composition had been- reserved for a Scheduled Caste candidate and respondent No. 4 being the seniormost lecturer in the Institute belonging to Scheduled Caste, he was rightly appointed as the Head of Department of Composition. Learned standing counsel, who has appeared for respondent Nos. 1 and 2 (State of U. P. and Director, Technical Education) has supported the stand taken by Sri P. R. Maurya, learned counsel for respondent No. 4. He has also submitted that as per the roster, the post of Head of Department of Composition was reserved for a Scheduled Caste candidate and, consequently, the petitioner could not claim appointment on the said post on the ground that he is senior to respondent No. 4.

5. In order to appreciate the contention raised at the Bar, it will be convenient to notice the relevant provisions of the Rules 3 (i), 4, 5, 6 and 22 of the rules read as follows :

Rule 3 (i)--"Service" means the Uttar Pradesh Technical Education Gazetted Officer"s Service which covers all the group "A" gazetted posts in the Directorate of Technical Education, Institute of Research, Development and training, Board of Technical Education, Government Polytechnic, both boys and girls", Government Leather Institutes, Northern Regional Institute of Printing Technology and Government Secondary Technical Schools.

Rule 4 (1)--The strength of the service and of each category of posts therein shall, until orders varying the same are passed under sub-rule (1), be as given in

Appendix-I.

Provided that :

(1) the appointing authority may leave unfilled or the Governor may hold in abeyance any vacant post, without thereby entitling any person to compensation.

(2) the Governor may create such additional permanent or temporary post as he may consider proper.

Rule 5--Recruitment to the various categories of posts in the service shall be made from the sources mentioned against each category, in Appendix-I :

Provided that if suitable and eligible candidates are not available for promotion, the posts may be filled by direct recruitment through the Commission.

Rule 6--Reservation for the candidates belonging to the Scheduled Castes, Scheduled Tribes and other categories shall be in accordance with the orders of the Government in force at the time of recruitment.

Rule 22-A person working in the service may be transferred from one Institute or Office to another, on any equivalent post."

6. Rule 5 provides that recruitment to the various categories of posts in the service shall be made from the sources mentioned against each category in Appendix-1. Appendix-I describes the various categories of posts, the total number of posts and source of recruitment. Category IX in Appendix-I is the post of Head of Department in the Northern Regional Institute of Printing Technology. The number of sanctioned permanent posts is 3 and the source of recruitment is as follows :

100 per cent by promotion, through Department Selection Committee, on the basis of seniority subject to rejection of the unfit from amongst substantively appointed officers of the subject in category XI, who "have put in at least 5 years service in the scale of Rs. 2200-4000 or higher scale, if any.

7. It is the admitted case of the parties that out of three permanent posts, one post has been kept in abeyance and at present, there are only two posts of Head of Department.

8. The question whether Sri Chandra Deo Ram, respondent No. 4, possesses necessary educational qualification and whether he has put in at least 5 years service may be examined first. The contention of the learned counsel for the petitioner is that respondent No. 4 had not studied the subject of Composition nor he was working as lecturer in the Department of Composition and, therefore, he lacked the essential minimum qualification to be appointed as Head of Department of Composition. The respondent No. 4 was also a student of the same institute and he passed the final year examination from the said Institute in the year 1976. The petitioner has placed material on record to show that the Institute imparts instructions and conducts examination in two disciplines of

printing technology. One discipline is known as "Letter Press Printing" and the other discipline as "Graphic Reproduction and Lithography", which is also known as Lithography. Composition is a subject in the Letter Press Printing discipline. In reply to counter-affidavit of respondent No. 4, the petitioner has filed a rejoinder-affidavit (sworn on 3.5.1999) wherein a copy of the syllabus of diploma courses in printing technology in the institute which was enforced from 1970-71 session has been annexed. The syllabus mentions as follows :

DIPLOMA COURSE PRINTING TECHNOLOGY IN LETTERPRESS AND LITHOGRAPHY GROUP

In the first year subjects like Composition, Letter Press Machine Work, Litho Machine Work, Graphic Reproduction were common to both the groups. This has been specifically mentioned as common to Letter Press Printing and Lithography. In the second year, the subjects of study had been divided in separate groups. Three subjects viz. Science, Binding and Design were common to both the groups. But the remaining subjects were divided in two groups viz, under the heading "For Letter Press Printing Group" and "For Lithography Group". The subject of Composition was a course of study for Letter Press Printing Group but was not a course of study in Lithography Group. The position was similar for practicals. There were some common subjects and also separate subjects for two groups. Composition was a subject for practicals under Letter Press Printing Group, and not in the Lithography Group. The position was exactly similar for the final year (3rd year). There were some common subjects for both the groups like business management, costing, printer science and design and also separate subjects for the two groups. Composition was one of the subjects of study under the Letter Press Printing Group and was not a subject of study for Lithography Group. The syllabus for practical examination was also similar containing some common subject and also separate subjects for the two groups. Composition was a subject for practicals in the Letter Press Printing Group and not for Lithography Group. The respondent No. 4 has not placed on record the diploma awarded to him but a copy of the marks-sheet of his final year examination, which he passed in 1976 has been filed by the petitioner along with the rejoinder-affidavit. The marks-sheet mentions as follows :

FINAL YEAR EXAMINATION IN PRINTING TECHNOLOGY (LITHOGRAPHY GROUP)

9. The subjects mentioned in the marks-sheet are exactly the same which are mentioned for Lithography Group in the syllabus for final year examination. The marks-sheet shows that respondent No. 4 did not study the subject of Composition as a course of study. The petitioner, Kuldeep Chand Kapoor, has placed on record the diploma awarded to him in the year 1963 (filed along with supplementary counter-affidavit, sworn on 10.2.2002) and the relevant part thereof is being reproduced in the same manner :

DIPLOMA IN PRINTING TECHNOLOGY (Letter Press Printing)

10. The diploma also mentions the subjects in which he was examined and

Composition is mentioned at SI. No. 3. The material on record shows that at the relevant time when the petitioner and respondent No. 4 studied in the Institute and passed their diploma, there were two branches or disciplines, namely. Letter Press Printing and Lithography Group and that composition was not a subject of study in the second year and third year (final year) for Lithography Group. It was a course of study in the Letter Press Printing Group only, and a student in the said group had to study the subject of Composition (both theory and practical) in the second year and third year. Respondent No. 4 obtained the diploma in Lithography Group and, consequently, he did not study the subject of Composition in second and third years. As Head of Department of Composition, he will be required to teach the said subject in second year and third year which he himself never studied. It is therefore, obvious that he does not possess the educational qualification to be appointed as the Head of Department of Composition.

11. Sri P. R. Maurya has submitted that respondent No. 4 studied Composition as a subject in the first year and, therefore, he holds the necessary qualification. The argument is wholly misconceived. If the Composition is taught as a subject in the second year and third year of the diploma course, it obviously means that a student studying the said subject would be learning and acquiring higher and advanced knowledge of the said subject. The course of study for award of a degree of engineering by practically all Engineering Colleges including Indian Institute of Technologies, Regional Engineering Colleges, etc., is common for all the branches in the first year. The specialisation for different disciplines like civil, electrical, mechanical and electronics starts from second year onwards and after passing the final examination a student qualifies as Civil Engineer, Electrical Engineer or Mechanical Engineer. A student getting a degree of Civil Engineering cannot claim that as he has studied the subject of mechanics or electronics in the first year, he is also qualified as a mechanical or electronics engineer. Generally, the basics of all the subjects of various branches are taught in the first year but in subsequent years courses vary leading to specialisation in different fields. On the material brought on record, it is established beyond any shadow of doubt that respondent No. 4 has not studied the subject of Composition as he was in the Lithography Group and, consequently, his appointment as the Head of Department of Composition is wholly illegal.

12. Appendix-I shows that the posts of Head of Department in the Institute has to be filled in by promotion through Departmental Selection Committee on the basis of seniority subject to rejection of the unfit from amongst the substantively appointed officers of the subject in category XI, who have put in at least five years service in the scale of Rs. 2200-4000 or higher scale, if any. Category XI is lecturers in the institute. The zone of consideration is confined to lecturers of the subject and not all the teachers. Therefore, substantively appointed lecturers of the subject, who have put in at least five years service alone are eligible to be appointed as Head of Department. The petitioner has filed a supplementary affidavit (sworn on 28.1.1992) wherein copies of faculty assignment of

Department of Composition in the institution for the years 1989-90 to 1997-98 have been filed as Annexures-1 to 9. The assignment mentions the names of the lecturers, their teaching assignment and the number of lectures per week which were required to be given by them. In the Department of Composition, the name of the petitioner, Kuldeep Chand Kapoor, is mentioned as Lecturer from 1989-90 to 1994-95 and as Incharge of the Department from 1995-96. The name of Sri Chandra Deo Ram, respondent No. 4 does not find place anywhere in the Department of Composition. Copies of the faculty assignment of Department of Graphic Reproduction and Lithography for the years 1989-90 to 1997-98 have also been filed as Annexures-11 to 19 to the affidavit. The name of Chandra Deo Ram finds place in all these assignments and they also mention the number of lecturers assigned to him. The name of respondent No. 4 finds place in the faculty assignment of Department of Composition for the first time in the year 1998-99 and the reason for this is obvious as before the commencement of the session, he had been appointed as Head of Department of Composition by the impugned order of the State Government dated 26.6.1998. The correctness of these documents has not been challenged from the side of respondent No. 4. No material has been placed by respondent No. 4 to show that he has taught the subject of Composition as a lecturer. On the contrary, the material on record shows that in the preceding 9 years prior to the passing of the impugned order, he was throughout teaching in the Department of Graphic Reproduction and Lithography. The irresistible conclusion which follows is that respondent No. 4 has absolutely no experience of teaching the subject of Composition. He, therefore, does not possess the requisite five years experience in the subject and, consequently, he is not qualified to be appointed as the Head of Department of Composition.

13. In view of the findings recorded above, it is not necessary to examine the third contention of the learned counsel for the petitioner. However, as some arguments have been raised, we may notice the same briefly.

14. Dr. R. G. Padia has submitted that according to Annexure-1 of the rules, appointment on the post of Head of Department in the Institute is to be made by promotion through Departmental Selection" Committee and the criterion is seniority subject to rejection of unfit. Therefore, while considering the question of promotion the Selection Committee has to exclude those candidates, who are unfit and, thereafter, the seniormost person has to be given promotion. Learned counsel has submitted that there was no reason for rejecting the candidature of the petitioner as he had unblemished record of service. He was seniormost lecturer in the subject of Composition and was also 10 years senior to respondent No. 4, and, therefore, he ought to have been appointed as the Head of Department. Learned counsel for the respondent No. 4 and learned standing counsel have, on the other hand, submitted that the post of Head of Department of Composition had been reserved for a Scheduled Caste candidate and keeping that in view respondent No. 4 had been promoted on the said post. In paragraphs 8 and 9 of the counter-affidavit filed on behalf of the State of U. P.

(sworn in Hindi by Sri R P. Singh), it is averred that there are two posts of Head of Department in the Institute, out of them one post had been filled in by a general category candidate and, therefore, the other post had to be filled in by a candidate of reserved category according to the roster wherein Sri Chandra Deo Ram had been appointed. A copy of the roster made by the State Government on 10.10.1994, whereunder posts at serial Nos. 1, 6, 11, 16 and 21 onwards have been reserved for Scheduled Castes candidates, has been filed as Annexure-CA-2 to the affidavit.

15. In reply Dr. Padia has submitted that as per Rule 4 (2) and Appendix-I of the rules, there are three sanctioned posts of Head of Department in the Institute, but one post" has been kept in abeyance. Factually, there are only two posts. There are two separate and distinct disciplines in the Institute, namely, Letter Press Printing and Graphic Reproduction and Lithography, and each of them has a post of Head of Department. It is thus urged that it is a single cadre post and, consequently, any reservation on the said-post would amount to 100 per cent reservation in favour of a Scheduled Castes candidate which would violate the guarantee enshrined under Article 16(1) and (2) of the Constitution.

16. Rule 6 provides that reservation for candidates belonging to Scheduled Castes, Scheduled Tribes and others categories shall be made in accordance with the orders of the Government enforced at the time of recruitment. The word used in the rule is "recruitment". In view of the language used in Rule 5 "recruitment" would here mean not only the initial recruitment in the service but also promotion to a higher post. The institute is the only one of its type in the State which Imparts education in the field of printing technology. The courses of study imparted in the institute and the diploma awarded to the candidate clearly show that there are two distinct and separate disciplines known as Letter Press Printing and Graphic Reproduction and Lithography, Composition is a subject of study in the Letter Press Printing discipline. A lecturer teaching in the discipline of Letter Press Printing cannot be appointed as Head of Department in the discipline of Graphic Reproduction and Lithography and vice versa. At present, there are two posts of Head of Department, one for each of the two disciplines and they are entirely distinct and separate. The post in question is, therefore, a single cadre post. To illustrate the point, if a State has a single medical college which has only one post of Professor of Medicine and one post of Professor of Surgery, then for a reader in either of the departments, there is only one available post of professor where he may be promoted. In such a factual situation, the posts of Professor of Medicine and Professor of Surgery are a single cadre post though the medical college has two posts of Professor.

17. Sri Kripa Shanker Singh, learned standing counsel has submitted that Rule 22 shows that a person working in the service may be transferred from one institution or office to another on any equivalent post and, therefore, it is not a single cadre post. In our opinion, Rule 22 can have no application here for the reason that there is only one institute in the State, i.e. the institute in question

which imparts teaching leading to diploma in printing technology. This factual position is admitted. Further, there is no averment in the counter-affidavit filed on behalf of the respondents that there is any other institute of similar type. Printing technology is a specialised field and a lecturer or Head of Department in the Institute cannot be transferred anywhere else as there is no institute of the same type in the State of U. P. Rule 22 may apply to other technical institutes like Government Polytechnics which are in large numbers and where teaching is imparted for award of diplomas in the same disciplines like civil, electrical, mechanical, etc. There is no material on record to show that a lecturer or Head of Department of the Institute has ever been transferred. The institute being the only one of its type in the State of U. P. factually there cannot be a situation where the number of available post of Head of Department of one discipline may be more than one. It may be pointed out that in the Appendix-I the Polytechnics (category-X) have been described in a general manner as there are a large number of such Polytechnics, but the Institute, namely, the Northern Regional Institute of Printing Technology, has been specially referred to by its name in the categories IX and XI. Thus, there cannot be even a slightest doubt that the post in question is a single cadre post.

18. The principle laid in *Chakradhar Paswan Vs. State of Bihar and Ors*, that if there is only one post in the cadre, there can be no reservation with reference to that post either for recruitment, at the initial stage or for filling up a future vacancy in respect of that post and that a reservation which would come under Article 16(4) of the Constitution presupposes the availability of at least more than one post in that category is fully application here. The view taken in *Dr. Chakradhar Paswan's* case (supra) has been approved by a Constitution Bench in the *Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association and Others*, In *S. R. Murthy v. State of Kamataka*. 2000 SCC (L & S) 49 , challenge was made to the promotion of a Scheduled Caste candidate on the post of Head of Section (Ceramics) in a Government Polytechnic, which was repelled by the Administrative Tribunal on the ground that it was a promotional post and all promotional vacancies had to be rotated in accordance with the roster. The Apex Court relying upon the *Post-graduate Institute of Medical Education and Research* (supra) held that since the post in question was a single post, the application of the roster for the purpose of promotion was not permissible. In view of these authoritative pronouncements, the reservation in favour of a Scheduled Caste candidate on the post of Head of Department of Composition is clearly invalid and unconstitutional. Sri Singh, learned standing counsel, has submitted that it has been held in *State of Uttar Pradesh Vs. Dr. Dina Nath Shukla and another*, , that even in a single post of Professor, the rule of reservation should be applied by applying the principle of rotation. This is a judgment by a Bench of two Hon''ble Judges. *Post-graduate Institute of Medical Education* (supra) has been decided later by a Constitution Bench and *S. R. Murthy* (supra) is also a later Judgment by a larger Bench. We are bound to follow the ratio of aforesaid cases.

19. For the reasons mentioned above, the writ petition succeeds and is hereby allowed. The impugned order of the State Government dated 26.6.1998 promoting Sri Chandra Deo Ram, respondent No. 4 on the post of Head of Department of Composition in the Northern Regional Institute of Printing Technology, Allahabad is quashed. The State Government is directed to pass a fresh order for making appointment on the post of Head of Department of Composition in the Institute in the light of the observations made above and in accordance with law.