

(2002) 08 AHC CK 0203

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 21849 of 2000

Kusum Lata Ujalayan

APPELLANT

Vs

Joint Director of Education and Others

RESPONDENT

Date of Decision : 08-08-2002

Acts Referred:

Uttar Pradesh Secondary Education Service Commission (Amendment) Act, 1998 — Section 1(2), 7

Uttar Pradesh Secondary Education Service Rules, 1983 — Rule 9B

Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 — Rule 16

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 12, 12(2), 18

Uttar Pradesh Secondary Education Services Commission Rules, 1995 — Rule 16(1)

Citation : (2002) 5 AWC 3728 : (2002) 3 UPLBEC 2665

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : A.K. Yadav, Vinod Sinha and S.P. Singh, for the Appellant; P.S. Verma, A.K. Verma and Abhinav Upadhyay and S.C., for the Respondent

Final Decision : Allowed

Judgement

A.K. Yog, J.—Sri Devi Mandir Kanya Inter College, Khatauli, Muzaffarnagar (for short called, the College) admittedly is a Government aided Girls Inter College which is a recognised Institution as contemplated under the provisions of the U.P. Intermediate Education Act, 1921 (as amended up to date) and the provisions of Payment of Salaries Act, U.P. Secondary Education Services Commission Act (as amended from time to time), Rules and Regulations framed thereunder.

2. The petitioner was initially appointed as Assistant Teacher (C.T. Grade) in the College on August 8, 1988 on ad hoc basis on substantive vacancy vide appointment letter dated 8.8.1988/Annexure-1 to the writ petition. The petitioner could not join the post for some reasons and being constrained, filed Writ Petition No. 5247 of 1989 in which the learned Single Judge passed interim order on the application of the petitioner directing that subject to any further

orders passed by this Court, the respondent Nos. 1, 2 and 3 shall allow the petitioner to join the Institution as Teacher in the C.T. Grade and pay her salary due to her in C.T. Grade regularly on month to month basis. It is further ordered that in case the writ petition is ultimately dismissed as against the petitioner, she shall refund the entire amount received by her by virtue of the said interim order dated 18.5.1989 (Annexure-2 to the writ petition). The Manager of the Institution vide letter dated 7.6.1989 (Annexure-3 to the writ petition) addressed to the petitioner written with reference to her application along with aforementioned interim order dated 18.5.1989, informed that she should join the College immediately as Assistant Teacher in C.T. Grade.

3. The petitioner joined the College in pursuance to the aforesaid order, issued by the Manager of the College on 12.6.1980, as is evident from the certificate issued by the Principal of the College dated 3.7.1992 (Annexure-4 to the writ petition).

4. It appears that in view of the then existing provisions under the law, the Regional Inspectress of Girls Schools, Region-I, Meerut vide letter dated 11.8.1992 (Annexure-5 to the writ petition), addressed to the Principal/Manager of the College with reference to their letter dated 3.7.1992, recommending for regularisation of the service under Government Order dated 6.4.1991, accorded approval for regularising the services of the petitioner w.e.f, 6.4.1991 and treating the petitioner on one year's probation w.e.f, the said date. The said letter of the R.I.G.S. further shows that the petitioner was appointed on the basis of her selection as per regional office letter dated 8.8.1988. A perusal of the Annexure-5 further shows that the R.I.G.S. did send back the original record of the petitioner with reference to the Regional Office letter dated 8.8.1988.

5. The Deputy Director of Education-II, Region-Ist, Meerut vide letter dated 19.7.1995/Annexure-7 to the writ petition, addressed to the Manager, with reference to the Management's proposal for making temporary/ad hoc promotion of the petitioner, informed that petitioner's promotion as Assistant Teacher (L.T. Grade) was being approved with the condition that in case it is discovered in future that any facts are concealed, the responsibility would be on the Management. The said order of the Deputy Director of Education (Annexure-7 to the writ petition) shows that the petitioner was promoted against substantive vacancy as Assistant Teacher (L.T. Grade), against 50% promotion quota, which was earlier held by Smt. Dayal Satsangi who had retired. The said approval of the promotion appears to have been accorded in favour of the petitioner in view of U.P. Secondary Education Service Rules, 1983 or U.P. Secondary Education Services Commission Rules, 1995 which were published in U.P. Gazette, Part-I, dated August, 1995.

6. Whatever be the Rules existing at the relevant time, the position in law was the same viz., any person who had continuously served as Assistant Teacher (C.T. Grade) for five continuous years, was eligible and entitled for being considered and promoted as Assistant Teacher (L.T. Grade) on ad hoc basis.

Reference be made to Rule 9-B inserted vide Government Notification published in U.P. Gazette, Part-I Ka, dated 4.9.1993. Rule 9-B of Rules, 1983 requires that the Management shall in respect of the vacancies to be filled by promotion consider the cases of such Teachers who are working incertificate of teaching (C.T.) grade and possess the qualifications prescribed under the Intermediate Education Act, 1921 or the Regulations made thereunder and have put in at least five years, continuous service as such on the date of occurrence of vacancy for promotion totrained graduate (L.T.) grade, on the basis of seniority subject to rejection of unfit without their having applied for the same.

7. The aforesaid Rule did not require a C.T. Grade Teacher before he/she is/was to be considered for ad/hoc/temporary promotion in higher grade to have completed five year's continuous service on substantive basis.

8. The U.P. Secondary Education Services Commission Rules, 1995 (which were published in Gazette dated 5.8.1995) also contemplate ad hoc promotion and prescribed ad hoc appointment by promotion. Rule 16(1) of the said Rules, 1995 lays down that where ad hoc appointments of the Teachers in respect of the vacancies to be filled in are to be made u/s 18 of the Act, the Management shall consider the cases of such Teachers who are working in.....certificate of teaching (C.T.) Grade and process the qualifications prescribed under the Intermediate Education Act, 1921 or the Regulations made thereunder and have put in at least five years" continuous service as such on the date of occurrence of vacancy for promotion to the.....trained graduate (L.T.) gradeon the basis of seniority subject to rejection of unfit without their having applied for the same. Then it would be seen that eligibility criterion for ad hoc appointment by promotion remains the same as was position under Rules, 1983 and it is crystal clear that concerned authority accorded approval to the ad hoc promotion of the petitioner in accordance with relevant Rules in force at the relevant time.

9. By passage of time U.P. Secondary Education Service Commission Act, 1981 undergone certain amendments as a consequence of enforcement of U.P. Act No. 25 of 1998. U.P. Act No. 25 of 1998 was published in U.P. Extraordinary Gazette, Par-I, dated 27.7.1998. By Section 7 of the Amending Act, Chapter III containing Section 12 was inserted which lays down procedure of selection by promotion and contemplates that there shall be a Selection Committee consisting of Regional Joint Director of Education-Chairman; Seniormost Principal of Government Inter College in the region-Member and concerned District Inspector of Schools-Member-Secretary. The amended Section 12(2) lays down the procedure of selection of candidates for promotion to the post of a Teacher shall be such as may be prescribed i.e., to say the procedure prescribed under the Rules in exercise of Rules making power under the original Act.

10. It may be noted that even the said Amending Act No. 25 of 1998 was published in U.P. Gazette on 25.7.1998 but it was given retrospective effect. Section 1(2) of the said Amending Act reads "It shall be deemed to have come into force on April 20, 1998." The reason appears to be that before Act No. 25 of

1998 was published in the Gazette, new Rules called, U.P. Secondary Education Service Selection Board Rules, 1998 were published vide notification dated July 13, 1998. As a consequence of the aforementioned U.P. Act No. 25 of 1998 and Rules, 1998, referred to above, the procedure for ad hoc appointment by promotion w.e.f, the enforcement of the aforesaid Act, 1998 and Rules, 1998, has to be dealt with as per Rule 16 of Rules, 1998 which merely prescribes, apart from the other conditions, that the Management shall consider the cases of such Teachers who were working in certificate of teaching course (C.T. Grade) possess the qualifications prescribed under the Intermediate Education Act, 1921 and the regulations made thereunder and have put in at least five years" continuous service as such on the date of occurrence of vacancy for promotion to the trained graduate (L.T. Grade) on the basis of seniority subject to rejection of unfit without their having applied for the same. The Explanation appended to Rule 16 further provides that the services rendered in any other recognised institution were to be counted for eligibility unless interrupted by removal, dismissal or reduction to a lower post. From the Explanation it is explicitly clear that the Rule did not require at all substantive continuous service of five years as otherwise the Explanation ought to have been "substantive service" rendered in any other institution. The language implied for framing relevant rule dealing with the procedure for ad hoc appointment by promotion thus nowhere requires that the Teachers should have been substantively appointed and rendered substantive service of five years.

11. It is well settled principle of law of interpretation that any provision should be construed liberally in favour of person who seeks the advantage of it in case it is not in direct conflict with any statutory provision.

12. I am of the opinion that there is no hurdle or obstacle in interpreting five years continuous service to include both regular/substantive or temporary or substantive or ad hoc tenure. There is no reason to deviate from this approach. A Teacher who Teaches and discharge duties possessing minimum qualification as is being discharged by other counter part, though appointed and working on substantive basis, makes no difference as far as expression of word "teaching" is concerned. Hence, the benefit of ad hoc promotion should not and could not be denied on any logical or rational basis.

13. Learned Counsel for the petitioner has placed reliance upon a decision in the case of Riaz Ali Vs. State of U.P. and others, The said decision rendered by the learned Single Judge has also adopted the same reasoning as mentioned above.

14. It is interesting to note that the Joint Director of Education, Saharanpur Region, Saharanpur has in the very "beginning of the impugned order dated 27.10.1999 Annexure-8 to the writ petition, referred to U.P. Act No. 25 of 1998 and with reference to the provisions of the said Act/Regulations mentioned that the case of the petitioner was scrutinised by Regional Committee (the Court believes to be the Regional Selection Committee as already noticed above in the judgment) and reviewed the order of approval granted by Deputy Director of

Education (II), First Region, Meerut vide order dated 19.7.1985 Annexure-7 to the writ petition. In the end of the impugned order under the column "reason for not being eligible for promotion it is mentioned that the petitioner has not put in 5 years, continuous substantive service as provided under U.P. Secondary Education Service Commission Rules, 1982 and other Amending Act and provisions (without referring to specific Amending Act or Rules).

15. No provision has been brought to the notice of this Court. Even otherwise, this Court has not been able to find out one which may have conferred jurisdiction/ authority upon any one for reviewing/sitting in appeal over the decision of the Deputy Director of Education (II), First Region, Merrut entitling the Joint Director of Education or Regional Selection Committee to review the earlier order dated 19.7.1995 whereby the Deputy Director of Education had accorded approval to the ad hoc promotion of the petitioner.

16. In view of the above, this Court finds :

(1) The Regional Selection Committee or the Joint Director of Education has no authority/jurisdiction to review the order granting ad hoc promotion in favour of the petitioner vide order dated 19.7.1995. Annexure-7 to the writ petition, and

(2) The reason given in the impugned order dated 27.10.1999 (Annexure-8 to the writ petition) itself is not sustainable in view of the provisions, relevant Act, Rules and Regulations and for that matter U.P. Secondary Education Service Commission Act (as amended up to date) and the Rules framed thereunder itself did not permit for reviewing earlier order passed in 1995 or even otherwise on merit requires substantive service.

17. Before parting with the judgment, it may be noted that in Para 16 of the writ petition, the petitioner mentioned that no opportunity was given to her before the impugned order was passed. The said fact has however, been sworn on the basis of the legal advice. Learned Counsel for the petitioner submits that the petitioner is prepared to file supplementary affidavit but the Court does not find it expedient in view of the fact that the impugned order could not be sustained on merit itself. Moreover, in Para 12 of the counter-affidavit, the respondents while replying to the averments made in Para 16 of the writ petition, categorically stated that there was no necessity for giving opportunity of hearing to the petitioner. The said para has been sworn on the basis of the record. This shows that the respondents admit on the basis of their record that no notice or information of any kind was given to the petitioner before the impugned order was passed.

18. In the result, the impugned order dated 27.10.1999, recommending the decision of the Regional Selection Committee, cannot be sustained and is hereby quashed. The order granting ad hoc promotion to the petitioner dated 19.7.1995/ Annexure-7 to the writ petition is hereby affirmed. It is further directed that the petitioner shall be entitled to all consequential benefits, ignoring the impugned order, if any, available under the law.

19. The writ petition stands allowed.

20. No order as to costs.