

(2012) 10 AHC CK 0206

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 31177 of 2007

Mahendra Pratap Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:

Citation : (2013) 1 ADJ 146 : (2013) 2 AWC 1568 : (2013) 137 FLR 513 :
(2013) 1 UPLBEC 198

Hon'ble Judges : Arvind Kumar Tripathi, J

Bench : Single Bench

Advocate : Radha Kant Ojha, for the Appellant; A.K. Tripathi, A.K. Yadav, Rajjan Lal, R.P. Dubey and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Arvind Kumar Tripathi, J.—Heard learned counsel for the petitioner, learned Standing Counsel and Counsel for Respondent No. 4 The U.P. Secondary Education Service Selection Board, Allahabad. The present petition has been preferred against the impugned order dated 2.7.2007 passed by the District Inspector of Schools, Allahabad Respondent No. 3. (Annexure 6 to the Writ Petition) with the prayer for quashing of the aforesaid order. Further prayer is to issue mandamus to consider case of the petitioner for promotion to the post of L.T. Grade teacher under 25% quota and also pass appropriate order for appointment on the post of L.T. Grade and making payment of salary.

2. Brief facts of the case are that the institution known as Lai Bahadur Shastri Technique Inter College, Manda, Allahabad is a recognized and aided institution under the U.P. Intermediate Education Act. The payment of salary to the staff is made under the provisions of the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 (hereinafter referred to as "Act 1971"). The services of the institution is governed by the provisions of the U.P. Secondary Education Services Selection Board Act 1982 (hereinafter referred to as "Act 1982") and rules framed thereunder. The

institution is imparting education from Class 1 to 12. The Primary Section is attached with Intermediate College hence the service conditions of the Assistant Teachers who are working in the Primary Section are also governed by the Act 1982 and the U.P. Intermediate Education Act. From Class 6 to 12, the said institution was already into grant-in-aid list. The Primary Section which was attached with the institution was put into grant-in-aid list w.e.f. 1.10.1989 and the Assistant Teachers of the Primary Section are also getting salary under the provisions of Act 1971. The District Inspector of Schools (hereinafter referred to as "the D.I.O.S") by order dated 6.3.1990 further gave consent for payment of salary to the petitioner and other similarly situated persons. The petitioner is a senior most Assistant Teacher appointed in B.T.C. Grade whose qualification is M.A., B.Ed. and Sahityacharya. He was appointed on 1.8.1980 as Assistant Teacher in Primary Section and his services have been confirmed by the Committee of Management on 11.8.1981. In the Junior High School, there were 16 posts of L.T. Grade after C.T. Grade was merged in L.T. Grade. Out of 16 sanctioned posts of L.T. Grade, none of the teachers has been promoted from B.T.C. Grade to C.T. Grade or L.T. Grade. Prior to abolition of C.T. Grade when it was declared as dying cadre in 1989, there was a provision for promotion of 50% teachers from B.T.C. to C.T. Grade and C.T. to L.T. Grade under the provisions of Chapter II of the U.P. Intermediate Education Act. State of U.P. by orders dated 25.2.2003 and 25.11.2005 made necessary amendment in the U.P. Intermediate Education Act and it was provided that 25 % posts of L.T. Grade will be filled up by making promotion from amongst B.T.C. Teachers who are duly qualified for promotion to the post of L.T. Grade. Sub Rule 7(1)(ka) and 2(ka) were amended and inserted by notification dated 26.2.2003. When two posts fallen vacant on 30.6.2003. After retirement of the teachers in L.T. Grade who were teaching in Hindi and Social Science, the claim of the petitioner was to be promoted under 25% quota. Against that two vacant posts, on recommendation one Shiv Sagar Sonkar, Scheduled Caste candidate was selected by the U.P. Secondary Education Service Selection Board and joined the institution in reserve category on 18.1.2005. The another post is still vacant on retirement of the then Assistant Teacher Sri Rajnath Sharma. The Committee of Management under 25% quota for promotion from B.T.C. To L.T. Grade recommended case of the petitioner by resolution dated 29.9.2006 before the D.I.O.S. for approval by letter dated 8.12.2006. However the D.I.O.S. by letter dated 2.7.2007 informed that name of one Nit Lal has been recommended by the Selection Board and who was to be permitted to join. Being aggrieved by impugned order, present petition has been filed.

3. Counsel for the petitioner submitted that since Primary Section is also part and partial of the Intermediate College. Earlier there was provision for promotion from B.T.C. Grade to C.T. Grade, however in the year 1989, the C.T. Grade was declared dying cadre and subsequently the Assistant Teachers who were working on the post of C.T. Grade were merged and regularised on the post of L.T. Grade, hence, there was no post for promotion of the B.T.C. Grade Teachers. The matter

was considered in the case of Smt. Samantika Chatterjee Vs. Regional Inspectress of Girls School, Allahabad and others, (1990) 1 UPLBEC 239) . It was held considering all the relevant facts that Assistant Teachers in Primary Section are entitled for promotion to the post of C.T. Grade and when in the year 1989-90, C.T. Grade was abolished then they were entitled to be promoted from B.T.C. to L.T. Grade. For promotion from B.T.C. to L.T. Grade was also considered in the case of Smt. Aruna Ghos v. State of U.P. and others, 1995 UPLBEC 763 and it was held by this Court that if an Assistant Teacher has completed 10 years of service in B.T.C. Grade, then he was entitled for promotion to L.T. Grade. The teachers who have completed five years service in B.T.C. Grade and five year in C.T. Grade, merely abolition of C.T. Grade, right of promotion of B.T.C. Grade teachers could not be taken away.

4. He further submitted that after said judgments, the State of U.P. has considered and necessary amendment was made by issuing orders dated 26.2.2003 and 25.11.2005, in provisions of the U.P. Intermediate Education Act and provisions of the U.P. Secondary Education Services Selection Board Act, by amendment it was provided that 25 % posts of L.T. Grade will be filled by making promotion amongst the B.T.C. Grade teachers who are duly qualified for the post of L.T. Grade. He also submitted that when two posts out of 16 fell vacant after retirement of Hindi and Social Science teachers, one Scheduled Caste candidate namely Sri Shiv Sagar Sonkar was selected by the U.P. Secondary Education Services Selection Board and he joined the institution in reserve category on 18.1.2005. However one post was vacant in Hindi due to retirement of Sri Rajnath Sharma. Hence, the petitioner was claiming his promotion being senior most teacher who was duly qualified to be appointed in L.T. Grade under 25 % quota fixed for the B.T.C. Teachers. There are 16 sanctioned posts of teachers hence out of them, 4 teachers are to be promoted from B.T.C. Grade. However claim of the petitioner was not considered and instead of considering the claim of the petitioner, now by impugned order dated 2.7.2007 it was informed by the D.I.O.S. that one Sri Nit Lal was selected as Assistant Teacher in L.T. Grade against the post for which there was claim of the petitioner for promotion whose name was recommended by the Committee of Management. Hence act of the D.I.O.S. is illegal, arbitrary and against the provisions applicable to the institution.

5. Learned Standing Counsel submitted that there is no clear provision for promotion in L.T. Grade from B.T.C. Grade and the teachers of the Primary Section has no right to be promoted in the L.T. Grade. He further submitted that the post was vacant in the year 2003-and the requisition was sent to the Board on 2.2.2006 for the appointment of the teacher from reserve category Scheduled Caste and subsequently, the selection was made hence the petitioner is not entitled to claim promotion on that post.

6. Considered the submissions of counsel for the parties. It has not been denied by the respondents that after judgment of this Court in the case of Smt.

Samantika Chatterjee Vs. Regional Inspectress of Girls School, Allahabad and others, (1990) 1 UPLBEC 239) and in Smt. Aruna Ghos v. State of U.P. and others, 1995 UPLBEC 763, the amendment was made by State of U.P. by notification dated 26.2.2003 and in Rule 7 Sub-Rule 1 (ka) and 2(ka) were added by which 25% posts were reserved for promotion from amongst the teachers of Primary Section attached with the College who have completed five years of service and are qualified to be promoted to the post of L.T. Grade teachers. By Government Order dated 25.11.2005, it was provided that while counting 25% posts if there is a fraction for direct appointment and promotion then the same will be considered and counted one post to be filled by promotion. In the present case, there is no dispute that there are 16 teachers and 50% teachers to be appointed by promotion then 25 % have to be promoted from amongst the teachers of Primary Section from the B.T.C. Grade. There is also no dispute that the petitioner has completed more than the experience of five years required for promotion and he was also qualified to be appointed as L.T. Grade teacher. Out of 8 posts, 25% are to be filled from amongst the Primary teachers. 25 % promotional quota for the basic teachers would be two posts of L.T. Grade teachers. Even if one Scheduled Caste candidate has been appointed because earlier there was requisition then for another post which was vacant, the petitioner was entitled to be promoted to L.T. Grade if otherwise, he was eligible and qualified. There is no denial that he was eligible and qualified to be promoted on the post of L.T. Grade teacher. According to counter-affidavit, the requisition was sent for direct recruitment on 2.2.2006. In para 11 of the Counter-Affidavit filed by the respondent No. 6, it was mentioned that the requisition was sent on 2.2.2006 however the post fell vacant in the year 2003. The amendment was made for 25% promotion from amongst the primary teachers on 26.2.2003 hence after that notification, there was no occasion to sent the requisition for direct recruitment in February, 2006, if the eligible and qualified teachers were available to be promoted from Primary Section. In view of the aforesaid discussion and in view of the facts and circumstances of the present case, the petitioner was entitled to be promoted. Hence, the direction and order dated 2.7.2007 issued by the D.I.O.S. respondent No. 3 (Annexure 6 to the Writ Petition) is hereby quashed. If the selected candidate has not been accommodated as yet at any other place, he may be accommodated against any other vacant post of Assistant Teacher. The claim of the petitioner will be considered and examined afresh in view of the aforesaid observation and in accordance with law after following the procedure for selection by promotion constituting the Selection Committee.

7. Accordingly, the present petition is hereby allowed. No order as to cost.