

(1992) 07 AHC CK 0062
In the Allahabad High Court
Case No : Special Appeal No. 339 of 1992

Nand Kishore

APPELLANT

Vs

U.P. Secondary Education Services Commission and Others

RESPONDENT

Date of Decision : 13-07-1992

Acts Referred:

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 6(1)
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 18(1)
Uttar Pradesh Secondary Education Services Commission Rules, 1983 — Rule 9, 9(1)

Citation : (1992) 3 AWC 1352 : (1993) 1 UPLBEC 201

Hon'ble Judges : M.K. Mukherjee, C.J.;Sudhir Narain, J

Bench : Division Bench

Advocate : Rakesh Kumar and R.G. Padia, for the Appellant; A.K. Singh and Ashok Khare, for the Respondent

Final Decision : Dismissed

Judgement

1. This Special Appeal has been filed against the judgment of the learned Single Judge dated May 6, 1992, dismissing the writ petition filed by the Appellant

2. The Appellant had filed a writ petition challenging the order dated 29th January 1992 passed by the U.P. Secondary Education Services Commission, Allahabad (hereinafter referred to as "Commission"), by which the Commission informed the District Inspector of Schools, Allahabad and other persons that Ram Nawal Singh, Respondent No. 6 has been selected for appointment to the post of Lecturer in Public Inter College, Motihar, Allahabad (hereinafter referred to as the College).

3. Briefly the facts are that one Raghunath Singh was Lecturer in History in the College. He died on 11th May 1989. The Petitioner was appointed as ad hoc Lecturer in History in the College by the Committee of Management, The Committee of Management further notified the vacancy to the Commission. The Commission advertised the post and a selection took place The Selection

Committee recommended the name of the Respondent No. 6 and by letter dated 29th January 1992 the Commission recommended the name of Ram Nawal Singh for appointment as Lecturer in the vacancy caused on the death of Sri Raghunath Singh.

4. The Appellant filed the writ petition He claimed that he was entitled to be promoted as the promotion quota was 40% for such appointment and he being the seniormost teacher and qualified to be appointed as Lecturer, was entitled to be appointed. The learned Single Judge did not agree with his contention and the writ petition was dismissed by order dated May 6, 1992 against which this Special Appeal has been filed.

5. Learned Counsel for the Appellant urged that he was the senior most Teacher qualified and was entitled to be promoted and no direct recruitment by selection could be made by the Commission.

6. There is no dispute that in case the Appellant is duly qualified and a seniormost Teacher he could be promoted to the post of Lecturer in the vacancy caused on the death of Raghunath Singh, But it has been found that he was not qualified on the date of occurrence of vacancy.

Rule 9 of the U.P. Secondary Education Services Commission Rules provides as follows:

9. Procedure for appointment by promotion (1) where any vacancy is to be filled by promotion, all teachers working in L.T. or C.T. Grade, who possesses the minimum qualifications and have put in at least 5 years continuous service as teacher in the concerned subject on the date of occurrence of vacancy shall be considered for promotion without their having applied for the same.

Note :--For the purpose of this Sub-rule, service rendered in any other recognised institution shall count for eligibility unless interrupted by removal, dismissal or reduction to a lower post.

7. A perusal of Rule 9(1) makes it clear that for being considered for promotion it is necessary that a teacher is working in L.T. or C.T. grade for at least five years continuously in the concerned subject and possesses the minimum qualification on the date of occurrence of vacancy. The vacancy occurred on 11th May 1989 when Raghunath Singh had died. The Petitioner did not possess minimum qualification on the date of occurrence of vacancy.

8. Learned Counsel for the Appellant urged that it was not necessary for him to possess the minimum qualification on the date on which the vacancy occurred and the relevant date for consideration of the minimum qualification will be the date when the Management had decided to make appointment.

9. In support of his submission he placed reliance on the decision in Hans Raj Singh v. U.P. Secondary Education Service Commission, Allahabad (1990) 2 UP LB EC 1127. It was a case of ad hoc appointment u/s 18(1)(b) of the U.P.

Secondary Education Service Commission and Selection Board Act, 1982 (hereinafter referred to as the Act). It was observed that the date on which the management, after expiry of more than two months from the date of vacancy, decides to make ad hoc appointment u/s 18(1)(b), is the relevant date with reference to which eligibility for purposes of promotion is to be seen. Relying on this decision, the same view was taken in *Yogendra Nath Singh v. District Inspector of Schools, Jaunpur* (1991) 1 UP LB EC 484. Section 18(1)(b) provides that where the Management has notified a vacancy to the Commission in accordance with the provisions of the Act and the post of such teacher has actually remained vacant for more than two months then the Management may appoint by direct recruitment or promotion, a teacher purely on ad hoc basis from amongst the persons possessing qualifications prescribed under the Intermediate Education Act, 1921 or the Regulations framed there under. The limitation is that the Management does not acquire a right to make ad hoc appointment either by direct recruitment or promotion before the expiry of two months from the date, the Management has notified the vacancy. There is no period prescribed for making ad hoc appointment by the Managing Committee. The Committee of Management had to make appointment for a limited period and in this context, the Court observed that the relevant date for the purpose of considering the eligibility of a teacher for promotion is the date when the Management decides to make appointment. The Court was not invited to consider Rule 9(1) of U.P. Secondary Education Services Commission Rules, 1983. It is not a case of ad hoc appointment and, therefore the law laid down in these cases are not applicable. We are not called upon to decide the question as to whether Rule 9(1) will also be applicable in a case of ad hoc appointment also.

10. The Commission is bound to make recommendation of a candidate considering the eligibility strictly in accordance with U.P. Education Services Commission Rules, 1983. It cannot ignore Rule 9(1) while considering claim of any teacher for promotion when a vacancy has occurred. A vacancy occurs when a permanent incumbent to it resigns, retires or dies. The creation of vacancy is not dependent on the appointment to the said post and when it is made. In *Dinesh Pratap Singh v. State of U.P.* 1986 UP LB EC 85, the Court while considering the question regarding the eligibility of a teacher for appointment as provided under Regulation 6(1) of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, the provision of which were in pari materia with Rule 9(1) of the Rules, took the view that the eligibility has to be taken into consideration on the date when the vacancy arose and the vacancy was held to have occurred on the date when permanent incumbent retired from service.

11. In *Krishna Dutt Singh v. District Inspector of Schools, Gorakhpur* 1989 (1) UP LB EC 588 while considering the validity of Sub-rule (I) of Rule 9, the Court took the view that in case the date of occurrence of vacancy is to be fixed at the discretion of the Committee of Management or any other authority. It would give rise to uncertainty and various kinds of mal practices will arise. The validity of the rule was upheld and it was observed as follows:

The completion of procedure for selection of teachers by promotion, as indicated above, will naturally take some time. Neither the Commission will be in a position to know nor the candidate will be able to ascertain the date of selection which would be uncertain. The inherent uncertainty of the date of the selection with reference to which the five years period of continuous service might be determined according to the provisions of Rule 9(1) may give rise to various kinds of mal practices such as favouritism, nepotism etc, in the actual working of those provisions. In order to favour a particular candidate or to exclude a particular candidate from consideration, the time gap may be prolonged or shortened by the Management or other authorities in respect of the performance of various acts assigned to them by or under Rule 9. Therefore, the choice of date of selection as the relevant date for determining the requisite period of continuous service would not be reasonable and would have no nexus with the object of the rule, as it would not served the purpose. The contention of the learned Counsel for the Petitioner in this behalf must fail accordingly.

12. Lastly, it may be pointed out that if the submission of the counsel for the Appellant is accepted then while interpreting the word "date of occurrence of vacancy" the "date when the Committee of Management has decided to make appointment is the date of vacancy" should be read. This will be against the principle of interpretation of statutes. It is settled principle that the words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise (vide *Kanai Lal Sur Vs. Paramnidhi Sadhukhan*, , *Mahadeolal Kanodia Vs. The Administrator-general of West Bengal*, . Referred to in *Union of India v. Filip Tiago De Gamma of Vedum Vasco De Gama* AIR 1990 SC 981 . There is no ambiguity in the language of Rule 9 and it does not involve any interpretation.

13. The contention of the learned Counsel that the date when the Committee of Management decides to make appointment should be taken as the date for consideration of the eligibility of the candidate, must, therefore, fail.

14. The next submission of the learned Counsel for the Petitioner was that the qualification was that the candidate should have passed M A. Examination in the subject concerned. The Petitioner had appeared in the examination on 30th April 1989 and the result was declared on 1st September 1989 and he was declared passed. The date of the declaration of result will relate back to the date of the examination. He relied upon the decision in *Sangam Lal Pandey v. State of U.P.* 1990 (1) UP LB EC 706.

15. The Appellant in para 5 of the petition stated that examination of M.A. in Ancient Indian History and Culture was held in the month of April 1989 and the last paper was held on 30-4-1989 but the result was declared on 1-9-1989. This fact has been denied in para 6 of the counter affidavit and it was stated that the paper of Master of Arts in the Ancient Indian History and Culture, conducted by

the Kanpur University was held on 13-5-1989. The Appellant was a candidate in the said examination conducted by the Kanpur University from K.P. College Allahabad. The Respondent has filed photostat copy of the attendance sheet of the 1989 examination demonstrating that the last paper was held on 13-5-1989 and the attendance sheet bears signature of the Appellant. This fact has not been denied in para 6 of the rejoinder affidavit. Raghunath Singh died on 11th May 1989 and the last paper was held on 13th May 1989. In view of these facts, the Appellant cannot claim that he should be treated as declared "passed" on 11th May 1989 when the examination itself had not been completed by that date.

16. The learned Counsel for the Respondents submitted that the Respondent No. 6 is senior to the Appellant and was entitled to be promoted in preference to him, in case selection is not accepted. It is, however, not necessary to go into that question of fact in the present appeal. We find no infirmity in the judgment of the learned Single Judge.

17. In the result, the appeal is dismissed. However, there shall be no order as to costs.