

(2005) 07 AHC CK 0106

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No's. 7529 and 21019 of 2004

Narendra Singh, Mukesh Kumar, Raj Kamal and Chandra
Prakash Sharma

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 19-07-2005

Acts Referred:

Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 — Regulation 7(2)
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 16

Citation : (2005) 6 AWC 5323

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Ashok Khare and Irshad Ali, for the Appellant; V.P. Rai, K.A. Ansari, Bheem Singh and P.N. Saxena and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—In writ petition No. 7529 of 2004: Sri Narendra Singh and three others, claiming to be validly promoted as Assistant Teachers in L.T. grade in Sri Ummed Rai Bhartiya Inter College, Hayatnagar, Sambhal, Moradabad, have prayed for quashing the orders dated 20.1.2004, 4.2.2004, 10.2.2004, 12.2.2004 and 17.2.2004 passed by respondent No. 3, 2, 4, 5 & 6 respectively by which the respondent-educational authorities have cancelled the order dated 23.5.2003 of District Inspector of Schools, Moradabad approving recommendations of the Committee of Management of the Institution to promote petitioners as L.T. Grade teachers. They have also prayed for payment of their regular salary.

2. In writ petition No. 21019 of 2004, Sri Jata Shanker Sharma and Sri Yogesh Kumar Sharma claiming to be senior to Sri Narendra Singh, Mukesh Kumar, Raj Kamal and Chandra Prakash Sharma (respondents 4 to 7) have prayed for a direction restraining the respondents 2 & 3 from making payment of salary to respondents 4 to 7 in the promotional pay of L.T. grade, and to promote the

petitioners in L.T. grade in pursuance of Government Orders dated 26.2.2003 and 1.12.2003.

3. I have heard Sri Ashok Khare, Senior Advocate, assisted by Sri Irsihad Ali for petitioners in writ petition No. 7529 of 2004 and for respondents 4 to 7 in the connected writ petition. Sri K.A. Ansari appeared and made submissions on behalf of respondents 7 and 8 in writ petition No. 7529 of 2004 and for petitioners in writ petition No. 21019 of 2004.

4. Briefly stated the facts giving rise to these petitions are that Sri Ummed Rai Bhartiya Inter College Hayatnagar, Sambhal, Moradabad is an educational institution regulated by U.P. High School and Intermediate Education Colleges (Payment of Salaries to Teachers and Other Employees) Act, 1971. The provisions of U.P. Secondary Education Services Selection Board Act, 1982 are also applicable to the institution.

5. The Institution is running classes from class I to class XII. The Primary section attached to the Intermediate College is a part and parcel of the institution. The institution was initially a Junior High School. It was upgraded as High School in the year 1971 and then Intermediate College vide sanction dated 3.3.1986. The primary section attached to the institution was brought within the purview of the Payment of Salary Act, 1971 vide Government Order dated 1.10.1989. There was one sanctioned post of teachers in C. grade, eight in C.T. grade and five in L.T. grade. The J.T.C./C.T. grade was declared as dying cadre in 1989 and thus all the posts became L.T. grade posts, It is alleged in paragraphs 8 and 9 that out of 14 sanctioned posts of L.T. grade teachers, 11 posts were lying vacant due to death and retirement. By Government Order dated 26.2.2003, the State Government decided to fill up 25% of Assistant Teachers by promotion from the Assistant Teachers of the Primary Section attached to the Intermediate College. It is contended that Sri Narendra Singh, petitioner No. 1 was appointed as Assistant Teacher on 1.2.1988, Sri Mukesh Kumar, petitioner No. 2 was appointed as Assistant Teacher on 11.12.1987, Sri Raj Kumar, petitioner No. 3 was appointed as Assistant Teacher on 1.12.1988 and Sri Chandra Prakash Sharma, the petitioner No. 4 was also appointed on 1.12.1988. These appointments were approved by the District Inspector of Schools by his order dated 21.3.1990 and 21.11.1990. These petitioners are qualified for appointment as Assistant Teachers and that the Committee of Management of the institution vide resolution dated 28.3.2003 resolved to grant promotions to these petitioners and consequently they were promoted on 28.3.2003 and therefore, the papers were submitted for approval to the District Inspector of Schools, Moradabad. The approval was granted by the District Inspector of Schools, Moradabad on 23.5.2003 after which they joined and have been paid salary.

6. Sri Jata Shanker and Yogendra Kumar Sharma , respondents 7 & 8 made complaint to the District Inspector of Schools, Moradabad on 30.5.2003 that they are senior to Sri Narendra Singh and others and have been ignored for promotion.

7. These complaints were rejected by the Inspector on 7.6.2003, holding that the complainant Jata Shanker Sharma has not rendered satisfactory work as a teacher and that he is not eligible for promotion in the subject of Hindi. Sri Yogendra Kumar Sharma, respondent No. 8 is not senior to the promoted persons and that his services are also not satisfactory, he is also not a trained teacher and is not eligible for promotion.

8. The complainants approached Regional Joint Director of Education XII Region, Moradabad, who issued notice to the promotees and the management. In the meantime, the District Inspector of Schools, Moradabad by his order dated 12.2.2004 cancelled the promotions pending the orders to be passed by the higher authorities. The Additional Director of Education by his order dated 4.2.2004, the Deputy Director of Education by his order dated 20.1.2004 and the Regional Joint Director by his order dated 10.2.2004 also issued directions to cancel the promotions.

9. Sri Narendra Singh and three others, on one hand, and the contesting respondents Sri Jata Shanker Sharma and Sri Yogendra Kumar Sharma, have jointed issues in both the writ petitions on their seniority and eligibility for promotions. The State, however, in the counter affidavit of Sri Ravindra Singh, District Inspector of Schools, Moradabad has not denied that by Government Order dated 26.2.2003, Regulation 7(2)(a) of Chapter II of Regulation made under U.P. Education Act, was amended, providing that 25% sanctioned post of L.T.. grade teachers in the Intermediate Colleges and High Schools attached to primary sections and where such teachers are getting payment of salary under the U.P.. High School and Intermediate Colleges (Payment of Salary to Teachers and Other Employees) Act, [1971, shall be filled by promotions by Committee of Management from such teachers working in primary section, who have completed 5 years of service and are trained with information to the Inspector. He, however, submits in his counter affidavit that the question of such promotions is still under consideration of the State Government. By Government Order dated 11.2.2003, the Director of Education (Secondary) U.P., issued letters to all the Joint Director of Education and District Inspector of Schools in U.P. that the matter of amendments in U.P. Secondary Education Services Selection Board Act, 1982 Rules and Regulations is still under consideration of the State Government , and until such amendment is made, the matter of promotions of the teachers of the attached primary section may be kept in abeyance.

10. Learned Standing Counsel submits that in view of this letter of Additional Director of Education (M), U.P. dated 1.12.2003 the promotions have been cancelled. He submits that u/s 16 of the U.P. Secondary Education Services Commission and Selection Board, Act, 1982, the recruitment and promotion in recognized and aided educational institutions, other than minority institution, can be made only in accordance with the provisions of the Act, Rules and Regulations made under the Act. The U.P. Secondary Education Services Commission Selection Board Rules, 1998 provides to fill up the vacant posts of Assistant

Teachers and Lecturers by direct recruitment and promotion in the ratio of 50% each. The method and manner of promotions have been laid down under these Rules. The Government Order cannot supersede the provisions of the, Act and the Rules and thus until the rules are amended, the promotions could not be given.

11. Sri Ashok Khare, learned counsel for the petitioner submits that the notification dated 26.2.2003 amended Regulation 7(2)(a) and provided for promotion of teachers of the attached primary section getting salary under Payment of Salary Act, 1971, According to him, after the amendment of Regulation 7(2)(a), the Committee of Management was authorized to promote 25% vacancies on the sanctioned post of Assistant Teachers in L.T. Grade and consequently, the petitioner Narendra Singh and others were rightly promoted. He submits that the letter of the Additional Director of Education, cannot take away the benefit granted by Regulation 7(2)(a) of the Regulations under Chapter II of U.P. Intermediate Education Act, 1921. He further submits that the District Inspector of Schools, had no authority to review his orders and cancel the approval granted by him and for this proposition, he has relied upon the judgement in J. Chandra v. Director of Education U.P. Allahabad, 1983 UPLBEC 21 B.P. Tripathi v. State of U.P. and Ors. 1985 UPLBEC 669. He submits that the petitioner Narendra Singh and others were duly appointed and are eligible for promotion. There are large number of vacancies on the post of Assistant Teachers, affecting the teaching work and the interest to the students. He has also relied upon in Pati Ram Pal v. District Inspector of Schools, 1993(1) UPLBEC 319 in which it was held that it is the committee of management which has to take into consideration the strength of the students in particular subject, qualification of teachers and the subjects which he can teach, and thus even if the respondents Jata Shanker Sharma and others are senior, it was for the Committee of Management to decide as to which qualified teacher had to be promoted. Sri K.A. Ansari, on the other hand, submits that the promotions of respondent No. 4 to 7 were illegal. Sri Jata Shanker Sharma and Sri Yogesh Kumar Sharma had made representation which were pending with the Director of Education on which notices were issued by him. The Joint Director had sent his report on 17.2.2004 to the Additional Director of Education for consideration on which the promotion of Sri Narendra Singh and others were cancelled. He submits that Shanker Sharma and Yogendra Shanker Sharma are fully qualified and trained teachers and are senior to Narendra Singh and others and that instead of filling up eight vacancies, the management arbitrarily promoted only Sri Narendra Singh and others ignoring the seniority of Jata Shanker Sharma and Yogendra Kumar Sharma.

12. The issue of inter-se seniority and the claim of promotion will arise only when the promotion can be legally made. Regulation 7(2)(a) was amended vide notification dated 26.2.2003. It, however, can apply only to the minority institution which are exempted from the provisions of U.P. Secondary Education and Selection Board Act, 1982. After the enforcement of the Act of 1982, the

appointment by direct recruitment and promotion can only be made in any recognised and aided educational institution imparting secondary education, under the provisions of the U.P. Secondary Education Selection Board, Act, 1982 and Rules and Regulations., made under it, Section 16 of the Act of 1982 has not been amended so far, nor there is anything in the Rules of 1998 made under the Act of 1982 permitting the committee of management to promote the teachers of the primary sections. The amendment of Regulation 7(2)(a), therefore, does not give any right to the petitioners in either of the writ petitions to claim promotions and salary on the promoted post. The Committee of Management did not have a authority to promote! the petitioners and thus the District Inspector of Schools, Moradabad has rightly cancelled his orders of approval passed without any authority in law.

13. Both the writ petitions are consequently dismissed.