

(1994) 09 AHC CK 0006
In the Allahabad High Court
Case No : C.M.W.P. No. 21389 of 1990

Parmatma Nand Yadav

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 09-09-1994

Acts Referred:

Uttar Pradesh Intermediate Education (Amendment) Act, 1982 — Section 32
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 5, 6, 6(1)
Uttar Pradesh Secondary Education Services Commission Rules, 1983 — Rule 3, 9

Citation : (1996) AWC 53 Supp

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Amar Nath Tripathi, for the Appellant;

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—The Petitioner sought a writ of mandamus commanding the Respondents to promote the Petitioner as ad hoc L.T. grade teacher in Nehru Inter College, Ratanpura, District Mau (hereinafter referred to as the college) with effect from 1.1.1990 and to pay salary to the Petitioner in L.T. grade with effect from the same date.

2. During the pendency of the writ petition one Rakesh Singh was appointed as L.T. grade teacher in the college which was approved by the District Inspector of Schools on 23rd October, 1990. The Petitioner filed an application for amendment of the writ petition to quash the said order. The application has been allowed.

3. The facts in brief are that Nehru Inter College Ratanpura, District Mau is a recognised institution within the meaning of U.P. Intermediate Education Act, 1921. The Petitioner was appointed in the said institution as assistant teacher in C.T. grade on ad hoc basis under the provisions of Removal of difficulties Order and Provisions of U.P. Act No. 5 of 1982. The qualification of the Petitioner was B. Sc, B.T.C. The services of the Petitioner were regularised by order dated 12.1.1986 passed by District Inspector of Schools. One Kedar Singh was lecturer

in Economics. He was promoted as Principal in the College. On the promotion of Sri Kedar Singh as ad hoc Principal of the college a post of lecturer fell vacant. One Satyadeo Singh who was L.T. grade teacher was promoted on ad hoc basis as lecturer in Economics in place of Kedar Singh. On account of vacancy caused due to ad hoc promotion of Satyadeo Singh as lecturer in Economics, a post of L.T. grade teacher in Economics fell vacant. The Petitioner claimed ad hoc promotion to the post of teacher in Economics in L.T. grade from C.T. grade. The Committee of Management of the college did not promote the Petitioner. He made a representation to the Management but the Management did not accede to his request.

4. The Management proceeded to make ad hoc appointment to the post of L.T. grade teacher in Economics by direct recruitment. The post was advertised and the various candidates applied for the post. The Selection Committee selected Rakesh Singh as assistant teacher in Economics in L.T. Grade. On 12.9.1990 the Committee of Management passed resolution for appointing Rakesh Singh. The papers were forwarded to the District Inspector of Schools for approval. The District Inspector of Schools approved his appointment on 23rd October, 1990. Rakesh Singh was issued appointment letter on 20th October 1990 and he Joined the service on 25.10.1990. The Petitioner has challenged the order of District Inspector of Schools dated 23rd October, 1990.

5. The Committee of Management passed a resolution on 1.9.1991 giving the Petitioner L.T. grade. The Petitioner is now working as teacher in L.T. grade. The only question is as to whether the Petitioner was entitled to be promoted to the post of L.T. grade teacher on the vacancy caused by promotion of Sri Satyadeo Singh. He claims that his rights have been affected as he had been given an appointment in L.T. grade on 1st September, 1991 while he should have been promoted immediately after the post in L.T. grade fell vacant on promotion of Shri Satyadeo Singh.

6. I have heard Sri A. N. Tripathi, Advocate for Petitioner and Sri Rakesh Dwivedi, Advocate for Respondent No. 4.

7. Learned Counsel for the Petitioner submitted that in accordance with Regulation 5(ii)(a) of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 40 per cent of the total number of the sanctioned posts in lecturer's grade or in the L.T. grade shall only be filled by promotion from amongst the teachers working in the institution in the L.T. and the C.T. grades respectively. The Petitioner was thus entitled to be promoted according to this Regulation. The main controversy is whether the Petitioner was qualified for being promoted to the post of assistant teacher in Economics. Regulation 6 (1) of Chapter II of the Regulations reads as under:

6 (1) Where any vacancy in the lecturer's grade or in the L.T. grade as determined under Regulation 5, is to be filled by promotion, all teachers working in the L.T. or the C.T. grade, as the case may be, having a minimum of five years

continuous substantive service to their credit on the date of occurrence of the vacancy shall be considered for promotion by the Committee of Management without their having to apply the same provided they possess the prescribed minimum qualifications for teaching the subject in which the teacher in the lecturer's grade or in the L.T. grade is required.

Note.--For purposes of this clause, service rendered by a teacher in the L.T. or the C.T. grade in any other recognised institution shall count for eligibility, unless interrupted by removal, dismissal or reduction to a lower post.

8. Sri Satyadeo Singh was teaching Economics subject in the college. The post of the teacher in Economics fell vacant and the appointment was to be made to teach only that subject. Regulation 6 clearly provides that the teacher should be promoted provided he possesses the prescribed minimum qualification for teaching the subject in which the teacher in Lecturer's grade or L.T. grade is required. The qualification for teaching Economics subject has been given in Appendix "A" of Chapter II of the Regulation. Item No. 6 provides that for teaching the students of High School in Economics the qualification in B. Sc. (Agriculture) with Economics as optional subject or B. Com. or B.A. with Economics. The Petitioner admittedly does not possess these qualifications. Learned Counsel for the Petitioner urged that these qualifications are not necessary as the promotion was to be made from C.T. grade to L.T. grade and the teacher may be permitted to teach any of the subjects. He placed reliance upon B.P. Tripathi v. State of U.P. and Ors. 1985 UPLBEC 669 wherein this Court held while interpreting the word "is required" as mentioned in Regulation 6 (1) means that the requirement of a teacher in the subject concerned. When a teacher who taught a particular subject dies, the circumstances may change and due to supervening circumstances or changed conditions a teacher may not be required for the same subject which was being taught by the deceased teacher but it may happen that the teacher may already be available for the subject which was being taught by the deceased and a teacher may be required for the other subject. In that case the minimum qualification will be considered in respect of the subject for which the promotion is to be made. In the present case there is no dispute that Satyadeo Singh was a teacher in Economics and on his promotion the post of a teacher in Economics fell vacant. The qualification with regard to the subject has to be considered. Learned Counsel for the Petitioner urged that the appointment to the post of lecturer is made subject-wise but the appointment to the L.T. grade teacher is not made subject-wise. There is no such distinction under Regulation 6. It may be that a teacher in L.T. grade is appointed and that he is not confined to teach particular subject and when a lecturer is appointed he is confined to teach a particular subject but that does not itself provide that a person will be entitled to be promoted to L.T. grade teacher in the subject in which vacancy is existing without having the minimum qualification prescribed for teaching that subject.

The Petitioner further placed reliance upon Rule 9 of U.P. Secondary Education

Services Commission Rules, 1983 before amendment of the words concerned subject" which was existing in Rule 9 but the same was deleted after the amendment. This Rule has no application to ad hoc promotions. Rule 9 of Rules 1983 contemplates promotion on a regular basis. The Petitioner was claiming promotion on the basis of U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981. It is further contended that the minimum qualification as given under Regulation 5 of Chapter II of the Regulations will not be applicable in case of ad hoc promotion under 1981 Order, referred to above. Clause 6 of the Order 1981 provides that the candidate sought to be appointed by promotion or by direct recruitment must fulfil the essential qualification laid down in Appendix "A" referred to in Regulation (1) of Chapter II of the Regulations made under the U.P. Intermediate Education Act, 1921. Section 32 of Act No. 5 of 1982 also makes the provision of U.P. Intermediate Education Act, and the Regulations made thereunder applicable in so far as they are not inconsistent with the provisions of the Act. Rule 3 of the Rules 1983 lays down the minimum academic qualification for appointment of teacher shall be as given in Regulation (1) under Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921. From the reading of all these provisions it is clear that a person who is to be promoted as assistant teacher should possess the minimum qualification to the post on which he is going to be appointed or promoted.

9. Admittedly, the Petitioner did not possess the qualification for appointment to the post of assistant teacher in Economics in L.T. grade. Respondent No. 1 was B. Sc, (Agriculture) with Economics as optional subject and was fully qualified for being appointed to the post of assistant teacher in Economics in L.T. grade.

10. Learned Counsel for the Petitioner lastly urged that the appointment of Respondent No. 4 was invalid as under para 5 (4) of U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981. It is only the District Inspector of Schools who shall cause the best candidate selected on the basis of quality points specified in Appendix. The Respondent No. 4 was selected by the Selection Committee. There is nothing to show that the Petitioner was not selected as the best candidate selected on the basis of quality points specified in the Appendix. There is no allegation that on the basis of the; quality points any other candidate was entitled to be appointed. After the selection of Respondent No. 4 as assistant teacher in L.T. grade the papers were forwarded to the District Inspector of Schools and he had approved the same by order dated 23rd October, 1990. The Petitioner had not appeared before the Selection Committee nor any other candidate raised any grievance. The District Inspector of Schools was Justified in approving the appointment of Respondent No. 4. Considering the facts and circumstances of the case, the present petition has no merits.

11. The writ petition accordingly fails and is dismissed. The parties shall, however, bear their own costs.