
(2010) 08 AHC CK 0150
In the Allahabad High Court

Raj Rajeshwari Rawat

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-08-2010

Acts Referred:

Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 — Rule 14, 14(1), 14(2), 14(3), 14(4)

Citation : (2010) 08 AHC CK 0150

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Shukla, J.—Present writ petition has been filed by the petitioner for issuing a writ in the nature of mandamus directing and commanding the respondents to promote the petitioner on the post of Lecturer in Economics lying vacant in the institution since 01.07.2010.

2. Brief background of the case is that in the District of Pilibhit there is an institution known as S.R.M. Inter College, Bisalpur, District Pilibhit. Said institution is duly covered by the provisions of U.P. Act No. II of 1921; U.P. Act No. 24 of 1971 and U.P. Act No. V of 1982 and the 1998 Rules framed thereunder. In the institution concerned petitioner claims that he was initially appointed as Assistant Teacher in C.T. Grade on 01.08.1987 and subsequently claims that after completion of 10 years of service he has been accorded promotion on the post of Assistant Teacher in L.T. Grade w.e.f. 01.08.1997. In the institution concerned post of Lecturer in Economics on account of attaining the age of superannuation of Jay Singh Yadav. Fell vacant on 30.06.2010. Petitioner further claims that with the permission of Management he has already undertaken examination of Master Degree in Economics and thereafter result has been declared and mark sheet has been issued to him on 31.07.2010, as such his claim for being according promotion on the post of Lecturer in Economics should be considered and as requisite exercise was not being undertaken, then

present writ petition in question has been filed.

3. Learned Counsel for the petitioner Sri N.K. Mishra, contended with vehemence that in the present case in all eventuality claim of the petitioner for being accorded promotion on the post of Lecturer in Economics is liable to be considered, as on the date when selection proceedings were being undertaken eligibility criteria was duly fulfilled by petitioner and further on the first day of year of recruitment as petitioner has already appeared in the examination same should relate back to the date of examination, as such writ petition in question deserves to be allowed.

4. Learned Standing counsel contended with vehemence that on the first day of year of recruitment petitioner did not fulfil eligibility criteria and he is not liable to be promoted, as such writ petition as it has been framed and drawn is liable to be dismissed.

5. In order to appreciate respective arguments raised on behalf of the parties Section 12 of U.P. Act No. V of 1982: Rule 14 of U.P. Secondary Education Services Selection Board Rules 1998 Rules are being extracted below:

12. Procedure of Selection by promotion- (1) For each region there shall be a Selection Committee, for making selection for candidates for promotion to the post of a teacher, comprising

(i) Regional Joint Director of Education -Chairman (ii) Senior most Principal of Government Government Inter College in the region -Member (iii) Concerned District Inspector of Schools -Member/Secretary

(2) The procedure of selection of candidates for promotion to the post of a teacher shall be such as may be prescribed.

Rule 14 of Rules 1998

14. Procedure for recruitment by promotion: (1) Where any vacancy is to be filled by promotion all teaches working in trained graduates grade or certificate of training grade, if any, who possess the qualification prescribed for the post and have completed five years continuous regular service as such on the first day of the year of recruitment shall be considered for promotion to the lecturers grade or the trained graduates grade, as the case may be, without their having applied for the same.

Note: For the purposes of this sub-rule, regular service rendered in any other recognized institution shall be counted for eligibility unless interrupted by removal dismissal or reduction to a lower post.

(2) The criterion for promotion shall be seniority subject to the rejection of unfit.

(3) The Management shall prepare a list of teachers referred to in Sub-rule (1), and forward it to the Inspector with a copy of seniority list, service records, including the character rolls, and a statement in the pro forma given in Appendix-

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(4) Within three weeks of the receipt of the list from the management under Sub-rule (3), the Inspector shall verify the facts from the record of his office and forward the list to the Joint Director.

(5) The Joint Director shall consider the cases of the candidates on the basis of the records referred to in Sub-rule (3) and may call for such additional information as it may consider necessary. The Joint Director shall place the records before the Selection Committee referred to in Sub-section (1) of Section 12 and after the Committee's recommendation, shall forward the panel of selected candidates within one month to the Inspector with a copy thereof to the Management.

(6) With ten days of the receipt of the panel from the Joint Director under sub-rule(5) the Inspector shall send the name of the selected candidates to the Management of the institution which has notified the vacancy and the Management shall accordingly on authorization under its resolution issue the appointment order in the proforma given in Appendix "F" to such candidate.

6. Bare perusal of aforesaid provision would go to show that now for each region there is a Selection Committee, for making selection of candidates for promotion to the post of a teacher comprising Chairman and two members and further Sub-section (2) of Section 12 provides that procedure of selection of candidates for promotion to the post of a teacher shall be such as may be prescribed. Rule 14 of the Rules 1998 provides where any vacancy is to be filled by way of promotion all teachers working in trained graduates grade or C.T grade, if any, who possess the qualifications, prescribed for the post and have completed five years continuous regular service as such on the first day of the year of recruitment shall be considered for promotion to the lecturers grade or the trained graduates grade, as the case may be, without their having applied for the same. Further notes has also given for the purposes of this sub-rule, regular service rendered in any other recognized institution shall be counted for eligibility unless interrupted by removal dismissal or reduction to a lower post. Sub-Rule (2) of the Rule 14 of the Rules provides criterion for promotion shall be seniority subject to the rejection of unfit. Sub-Rule (3) of the Rule 14 of the Rules provides Management shall prepare a list of teachers referred to in Sub-rule (1), and forward it to the Inspector with a copy of seniority list, service records, including the character rolls, and a statement in the pro forma given in Appendix-A. Sub-Rule (4) of the Rule 14 of the Rules provides that within three weeks of the receipt of the list from the management under Sub-rule (3), the Inspector shall verify the facts from the record of his office and forward the list to the Joint Director. Sub-Rule (5) of the Rule 14 of the Rules provides that Regional Joint Director of Education shall consider the cases of the candidates on the basis of the records referred to in Sub-rule (3) and may call for such additional information as it may consider necessary. The Joint Director shall place the records before the Selection Committee referred to in Sub-section (1) of Section 12 and after the

Committee's recommendation, shall forward the panel of selected candidates within one month to the Inspector with a copy thereof to the Management. Sub-Rule (6) of the Rule 14 of the Rules provides that with ten days of the receipt of the panel from the Joint Director under Sub-rule (5) the Inspector shall send the name of the selected candidates to the Management of the institution which has notified the vacancy and the Management shall accordingly on authorization under its resolution issue the appointment order in the proforma given in Appendix "F" to such candidate.

7. Division Bench judgment in the case of Subhash Prasad v. Regional Selection Committee reported in 2004 (3) ESC 1385 has considered the purport of the first day of the year of recruitment. As per Rule 14 of 1998 Rules each and every candidate who fulfills eligibility criteria and has completed five years of continuous regular service on the first day of year of recruitment his/her claim of promotion as such has to be considered even without having applied for the same.

8. On the parameter set out, facts of the present case is being looked into. In the present case, the first day of year of recruitment would be 1st July, 2010 and accepted position is that on the said date petitioner was not having to his credit Masters Degree as his result had not at all been declared and mark-sheet in question clearly reflects that he acquired his Master Degree on 31.07.2010 then in term of Rule 14 of Rules 1998, on the first day year of recruitment petitioner was not at all eligible to be considered for promotion.

9. Petitioner has alternatively tried to contend before this Court that once his result was declared then eligibility will have to be taken into consideration not from the date when result has been declared but on the date when he appeared in the examination, as declaration of result will relate back to appearance in examination, as such he has to be accepted as eligible and for this purpose petitioner has placed reliance on the judgment in the case of Sangam Lal Pandey v. State of U.P. and Ors. Civil Misc. Writ Petition Nil of 1990 decided on 8th March, 1990 and Rakesh Kumar Khare v. U.P.S.E.C. Civil Misc. Writ Petition 4291 of 1992, decided 26.03.1992 wherein view has been taken that in case candidate has appeared in the examination then declaration of the result would relate back to the date of examination and here prior to 30.06.2010 petitioner has already appeared in the examination, as such declaration of result is of no consequence and petitioner has to be accepted as eligible. Said judgments do not lay down good law and principle stated in said judgment has already been considered and disapproved and view has been that eligibility criteria must be fulfilled on the relevant date.

10. Division Bench of this Court in the case of Dr. Raman Kumar Pandey v. U.P.S.E.S.C. reported in 1995 (1) ESC 74 has already answered the question, keeping in view that Hon'ble Apex Court has not approved the judgment of Sangam Lal Pandey (supra), in the case of U.P. Public Service Commission v. Alpana JT 1994 (1) 94 and in paragraph 12 finally concluded by observing the

principle that declaration of result relates back to examination to which it relates is no more valid.

11. Consequently, in the facts of the present case petitioner is not at all falling within the consideration zone of promotion, as issuance of writ would be nothing but exercise in futility, as such no interference is being made.

12. Consequently, writ petition is accordingly dismissed.

13. No order as to cost.