
(2012) 07 AHC CK 0221
In the Allahabad High Court
Case No : C.M.W.P. No. 33822 of 2010

Rajendra Prasad Awasthi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-07-2012

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Regulation 5

Citation : (2013) 2 AWC 2164

Hon'ble Judges : Pradeep Kumar Singh Baghel, J

Bench : Single Bench

Advocate : Kshetresh Chandra Shukla, for the Appellant; Mukesh Shukla, Kamlesh Shukla and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Pradeep Kumar Singh Baghel, J.—The petitioner is an Assistant Teacher in an Intermediate College. He has preferred this writ petition for quashing of the order dated 13.4.2010 passed by the District Inspector of Schools. Auraiya, whereby he has issued a direction to the Committee of Management to promote the respondent No. 5, Ram Babu Katheria as a Lecturer. The relevant and necessary facts are as follows:

Shri Lukman Singh Tikam Singh Inter College (for short "the College") is a recognised institution. In this college, education is imparted up to the level of Intermediate classes. The provisions of Intermediate Education Act, 1921, the regulations framed thereunder, U.P. High School and Intermediate College (Payment of Salaries of the Teachers and Other Employees) Act, 1971 (for short the Act, 1971) and U.P. Secondary Education Service Selection Board Act, 1982 are applicable for the teachers and other employees. The affairs of the college are managed by a recognised Committee of Management, the respondent No. 4 herein.

The petitioner was initially appointed as an Assistant Teacher in B.T.C. Grade in

the year 1974. He earned his promotion as Assistant Teacher in C.T. Grade in the year 1977 and he was further promoted as an Assistant Teacher in L.T. Grade in the year 1987. It is stated that the petitioner's service record is unblemished. The petitioner possesses the essential qualifications for appointment as a lecturer as he did his graduation, post graduation and Bachelor of Education Degrees. The detail of his educational qualification is not necessary as it is not in issue.

2. The core issue which calls for determination is with regard to the applicability of reservation under the promotional quota. It is stated that there are six substantive posts of lecturer in the college. In terms of Regulation 5 of Chapter-II of the U.P. Intermediate Education Act, the 50 percent of the vacancies have to be filled up through direct recruitment and 50 percent by way of promotion. At present, out of six posts only one post of lecturer (history) is filled up by promotion by one Vijay Pal Yadav. It is stated that one Indrabhan Singh Sengar, who was a Lecturer in Sociology, proceeded on medical leave from 6th July, 2001. The petitioner was asked by the Committee of Management and the Principal of the College to take classes of Sociology in Intermediate classes.

3. On 30.6.2006, one Sri Nanhoo Singh Pal, a Lecturer in Hindi reached at the age of his superannuation. Thus, a substantive vacancy occurred. As per the roster, the first post under the promotional quota was to be offered to reserve category candidates, however, no scheduled caste candidate was available, therefore, the Committee of Management sent the requisition to the U.P. Selection Board (for short "the Board") for the recruitment of a Lecturer by direct recruitment.

4. In the meantime. Indrabhan Singh Sengar, who was on medical leave, took voluntary retirement. Consequently, the post of lecturer in Sociology fell vacant. Sri Shri Ram Das Dohra was already working as a Lecturer who is a Scheduled Caste candidate under the direct recruitment quota, the petitioner made an application for his promotion under the promotional quota on the post of Lecturer in Sociology. The respondent No. 5 herein, who belongs to scheduled caste candidate, also made an application for his promotion under the Scheduled Castes quota.

5. The District Inspector of Schools, Auraiya. vide his communication dated 3.2.2010 asked the Committee of Management to send the documents pertaining to respondent No. 5 for his promotion on the said post.

6. The petitioner submitted his representations dated 5.2.2010 and 13.2.2010 drawing the attention of District Inspector of Schools that the first post under the promotional quota was already sent to the Board for the purpose of direct recruitment as no candidate under the Scheduled Caste category was available at the time when the post of Hindi fell vacant. However, ignoring the representation of the petitioner, the District Inspector of Schools on 17.3.2010 issued a direction to the Committee of Management to promote the respondent No. 5 as a Lecturer.

7. The Committee of Management in its reply dated 8.4.2010 brought to the

notice of the District Inspector of Schools that the respondent No. 5 is not entitled for promotion. The Committee of Management has pointed out that only one post can be reserved for Scheduled Caste candidate and at present, one Lecturer of the said category is already working in the institution and another post for promotion was sent to the Board for the direct recruitment under the scheduled caste category. It was also pointed out that in case, the respondent No. 5 is promoted then out of six posts, three posts shall be reserved for the Scheduled Caste candidates and it would exceed 21% of this quota. The copy of the communication sent by the Committee of Management is on record as Annexure-10 to the writ petition.

8. Ignoring the aforesaid representations of the Committee of Management, the District Inspector of Schools issued a direction dated 8.4.2010 to the Committee of Management to promote the respondent No. 5, failing which the salary of the Principal and Head Clerk shall be stopped.

9. Feeling aggrieved by the direction of the District Inspector of Schools. Auraiya, dated 8.4.2012, the petitioner has filed the Instant writ petition wherein an interim order was passed by this Court on 8.6.2010.

10. The respondent No. 3, the District Inspector of Schools has filed a counter-affidavit, wherein, his stand is that there are six posts of Lecturer in the institution. Out of six posts of Lecturer, four Lecturers are working at present. Out of four Lecturers two lecturers have been appointed under the direct recruitment quota and two of them are working on promotional quota. The two posts of Lecturer are still lying vacant in the institution; one post will come under the promotional quota and another under the direct recruitment. As there is no reserve class candidate working under the promotional quota, the Committee of Management has been directed to promote the respondent No. 5 as a Lecturer.

11. I have heard Sri K.S. Shukla, learned counsel appearing for the petitioner and learned standing counsel for the State.

12. It is a common ground that there are six sanctioned posts of lecturer: three posts fall under the direct recruitment and remaining three posts under the promotional quota in term of U.P. Secondary Education Service Selection Board Act, 1982.

13. I shall now consider the legal question whether, out of three posts of Lecturer under the promotional quota, one post can be filled up by the candidates belonging to the Scheduled Caste category, or not? This issue is no more res-integra.

14. In the case of Smt. Pholpati Devi Vs. Smt. Asha Jaisawal and Others, , a Division Bench of this Court had occasion to deal with almost similar facts. In that case, there were seven posts of Lecturer sanctioned in the institution, out of which five posts were already occupied. Out of the five posts three posts were filled up by direct recruitment and two posts were filled up by the promotion.

Thus, only two posts were lying vacant. Since none of the promotees was working as lecturer in the college belonging to scheduled caste, the Committee of Management treated one vacancy of Lecturer under the reserve quota for Scheduled Castes and consequently, an Assistant Teacher from Scheduled Caste candidate was promoted to the post of Lecturer who was much junior to the petitioner herein. The Division Bench following the decision of the Supreme Court in the case of R.S. Garg Vs. State of U.P. and Others, , held that the percentage of the reservation for the Scheduled Castes is only one post and if out of four vacancies, one post is reserved for Scheduled Caste candidates, the 21 percent quota would be exceeded to minimum extent of reservation prescribed for them. The relevant part of the judgment is extracted herein below:

7. In the case in hand, there were only seven sanctioned posts of Lecturers wherein 50% were to be filled in by direct recruitment and 50% by promotion. Therefore, at the best four posts would have been available for one source of recruitment, i.e., direct recruitment or promotion. The reservation for Scheduled Castes is 21%. If we treat one of the vacancies in either of the source of recruitment in the institution as reserved for Scheduled Caste, it would be more than 21%. The Apex Court in R.S. Garg Vs. State of U.P. and Others, , has held as under:

40. We are not concerned with the reasonableness or otherwise of the percentage of reservation. 21% of the posts have been reserved for Scheduled Tribe candidates by the State itself. It thus, cannot exceed the quota. It is not disputed that in the event of any conflict between the percentage of reservation and the roster, the former shall prevail. Thus, in the peculiar facts and circumstances of this case, the roster to fill up the posts by reserved category candidates, after every four posts, in our considered opinion, does not meet the constitutional requirements.

The aforesaid decision was approved by the Full Bench of this Court in the case of Heera Lal v. State of U.P. and others, 2011 (6) All CJ 664 : 2010 (6) ADJ 1. The Full Bench quoted para-28 of R. S. Garg (supra) which reads as under:

28. The rule of roster and the concept of a running account of the roster, therefore, would commence only if there are five or more posts for extending the benefit of 21% reservation in favour of the Scheduled Caste category. A numerically less strength figure, below the required number, would, therefore, not allow the roster to be operated, as a roster is there to implement the rule of reservation and not a tool to create reservation. As noticed in the judgments of the Apex Court that in the event of any conflict between the percentage of reservation and the applicability of the roster, the former would prevail. Thus, in no event can the percentage of reservation be inflated or enhanced by the illusionary or imaginative application of the rule of roster. If such Interpretation as suggested by the State is given then the same would amount to a non-constructive existence of a miscalculated proof in the words of the famous German Mathematician Leopold Kronecker (1823-91). In legal terms this would

violate the mandate of the constitution and in cases of promotion it would not be in conformity with the same.

The same view has been taken by the Division Bench in case of Dr. Vishwajeet Singh and Others Vs. State of U.P. and Others, , passed in Writ-A No. 48149 of 2003. Relevant would it be to mention that Heera Lal (FB) has approved the Vishwajeet Singh case (supra) as well as Smt. Pholpati Devi case (supra).

15. It is stated at the bar that SLP filed against the case of Heera Lal (supra) has been dismissed and in the SLP filed against the judgment of Vishwajeet Singh's case, the leave has been granted. Apparently, the case of Pholpati Devi and Heera Lal arose under the U.P. Secondary Education Service Selection Board Act, 1982 and the facts of the aforesaid case is similar to the facts of the case in hand. But the case of Vishwajeet Singh and others pertains to Higher Education Service Commission Act, 1980. However, this Court, in all the three aforementioned cases, has followed the law laid down by the Supreme Court.

16. Principles of law emanate from the above mentioned case are for the promotion of a Scheduled Caste candidate under the promotional quota, five posts must be available in the cadre only then a candidate under the Scheduled Caste can be promoted.

17. I have to bear aforementioned principle in the mind while adverting to rival submissions, indisputably, only three posts of Lecturers are available there under the promotional quota out of six sanctioned posts. As the law laid down in the above noted case for promotion at least five posts ought to have been existed in the present case. Since, there are only three posts, no such promotion is possible for a Scheduled Caste candidate as a Lecturer in Sociology. The up shot of the above discussion is that the impugned order dated 13.4.2010 passed by the District Inspector of Schools, Auraiya, deserves to be set aside. Accordingly, it is set aside. The matter is remitted back to the respondent No. 2, the Regional Committee, Kanpur Region. Kanpur to consider the promotion of the petitioner, in the light of the observations made herein above, within a period of two months from the date of communication of this order after affording opportunities to concerned parties.

The writ petition is allowed.

Parties will bear their own costs.