

(2007) 02 AHC CK 0135
In the Allahabad High Court
Case No : Writ Petition No.6746 (S/S) of 2000

Rakesh Kumar Shukla

APPELLANT

Vs

Joint Director (Education) & Ors.

RESPONDENT

Date of Decision : 02-02-2007

Acts Referred:

Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 — Rule 14
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 33B

Citation : (2007) 02 AHC CK 0135

Hon'ble Judges : Vikram Nath, J

Final Decision : Allowed

Judgement

Vikram Nath, J.—Heard learned counsel for the petitioner and learned Standing Counsel.

2. Counter and rejoinder affidavits have been exchanged. With the consent of the parties, this writ petition is being finally disposed of under the Rules of the Court.

3. The undisputed facts are that the petitioner was appointed as Assistant Teacher, L.T. Grade on ad hoc basis in Mathematics on 22.9.1990 in the Janta Inter College, Alambagh, Lucknow. Subsequently, under the provisions of the U.P. Secondary Education Services Selection Board Act, 1982, the services of the petitioner were regularized under Section 33B with effect from 4.8.1993. Upon the death of Shri Jawahar Lal Tripathi, Lecturer Mathematics in the institution, a vacancy arose on 22.11.1997. The petitioner claimed promotion under the 50% quota on the said post of Lecturer Mathematics. The papers were submitted and by the impugned order dated 28.6.2000, the District Inspector of Schools declined to grant approval to the promotion on the ground that the petitioner did not fulfil the condition mentioned at item No.10 of the letter of the Joint Director, Education VI Division, Lucknow dated 16.5.2000. The said letter has been filed along with the application dated 5.1.2000 being Civil Miscellaneous Application No.563 of 2007. The objection mentioned at Serial No.10 is that on the date of

vacancy, the petitioner did not possess the required eligibility.

4. Aggrieved by the said decision, the present writ petition has been filed. It has been submitted by the learned counsel for the petitioner that from a perusal of the counter affidavit and in particular paragraphs 3 and 7 thereof it is apparent that the only objection was that the petitioner had not completed five years of continuous teaching after the regularization till the date of vacancy. According to him, the respondents committed error in not including the period of his ad hoc appointment from 1990 to 1993, and therefore, the order is liable to be set aside. In support of his contention, he has relied upon decision in the case of Suman Bhatnagar (Smt.) v. State of U.P. & Ors., reported in 2001 (1) UPLBEC 76 (sic).

5. The facts as stated above are not disputed by the learned Standing Counsel. He has, however, tried to defend the order impugned in the writ petition on the ground that five years continuous service should mean that five years teaching on substantive appointment and not on ad hoc basis.

6. The contention of the learned Standing Counsel stands repelled and decided by the judgment in the case of Suman Bhatnagar (Smt.) (supra), wherein this Court dealing with the similar controversy has interpreted that the service rendered as ad hoc/temporary basis cannot be ignored and has to be counted while considering the case for promotion.

7. In view of the above situation, this writ petition stands allowed. The order dated 28.6.2000 passed by the District Inspector of Schools, Lucknow, Annexure 1 to the petition is hereby, quashed. The respondent Nos. 1 and 2 shall pass appropriate orders regarding the promotion of the petitioner, accordingly.

8. There shall, however, be no order as to costs.

(Petition allowed)