
(2010) 11 AHC CK 0256
In the Allahabad High Court
Case No : Special Appeal No. 1104 of 2007

Ram Badai Yadav

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 01-11-2010

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 18

Uttar Pradesh Secondary Education Service Condition Rules, 1995 — Rule 15, 16

Citation : (2011) 1 ADJ 269 : (2011) 2 AWC 2092 : (2011) 2 UPLBEC 983

Hon'ble Judges : Sunil Ambwani, J; Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. We have heard Shri R.C. Dwivedi, learned Counsel for Shri Ram Badai Yadav, the Petitioner-Appellant. Learned Standing Counsel appears for Respondent Nos. 1, 2 and 4. Shri T.N. Tiwari has entered appearance on behalf of Shri Govind Tiwari-Respondent No. 3. Shri Satya Prakash Gupta holding his brief has appeared in the matter

2. A vacancy on the post of Lecturer in Hindi in promotion quota occurred on the retirement of the then Lecturer on 30.6.1996. The Committee of Management notified the vacancy to the Secondary Education Service Commission, and proceeded to fill it up by resolution dated 17.7.1996, recommending appointment of Shri Govind Tiwari. The District Inspector of Schools approved the appointment on 31.12.1997. Shri Ram Badai Yadav, the next in seniority in LT grade claiming promotion on the same post of Lecturer in Hindi in promotional quota filed a Writ Petition No. 3300 of 1998 alleging that Shri Govind Tiwari did not possess the requisite qualification for promotion provided in the schedule appended to U.P. Intermediate Education Act providing for MA degree in Hindi as essential qualification, with 5 years continuous service as such, on the date of occurrence of vacancy on 1.7.1996 under Rule 16 of the U.P. Secondary Education Service Condition Rules, 1995.

3. Learned Single Judge found that the result of Shri Govind Tiwari-Respondent No. 3 of MA examination in Hindi was declared on 14.7.1996. He was recommended by the resolution of the Committee of Management for appointment by promotion on 17.7.1996. Relying upon *Sangam Lal Pandey v. State of U.P. and Ors.*, (1990) 1 UPLBEC 706, it was held that the result will relate back to the date on which Shri Govind Tiwari appeared in the examination. He possessed necessary qualification on the date of vacancy, and was thus qualified and eligible for the post. The findings recorded by the learned Single Judge are quoted as below

In *Sangam Lal Pandey v. State of U.P. and Ors.*, (1990) 1 UPLBEC 706, it has been clearly held that irrespective of the date of declaration of result the date on which the last paper of the examination in which the candidate appeared would be the date of deemed possession of requisite qualification.

The last paper of M. A. Final Examination of Hindi was held on 30.3.1996 when the vacancy arose on 1.7.1996 and the result of M. A. (Hindi) Examination was declared on 14.7.1996 wherein he was declared passed in I Ind Division. Thus, Respondent No. 3 was possessing necessary qualification on the date of occurrence of vacancy and was thus qualified for the post according to relevant rules.

Sanskrit as one of the subjects at graduation level is not a requirement for promotion in case such teacher is appointed in L.T. Grade prior to 5.4.1975. According to Government notification dated 16.3.1979 those teachers appointed prior to 5.4.1975 for teaching High School classes according to regulations prevailing at that time if possessed other qualification in that event B.A. With Sanskrit is not necessary for the purposes of promotion to the post of Lecturer in Hindi for Intermediate classes.

Admittedly Respondent No. 3 was appointed on regular basis in L.T. Grade on 7.8.1972, i.e., prior to 5.4.1975 according to Government notification dated 16.3.1979 B.A. with Sanskrit was not the requirement in case of promotion of Respondent No. 3 to the post of Lecturer in Hindi.

The U.P. Secondary Education Service Rules, 1983 and the U.P. Secondary Education Service Rules, 1995 are applicable to the case under which 5 years' continuous service in L.T. Grade besides possession of requisite qualification on the date of occurrence of the vacancy for promotion to the next higher grade is essential which were possessed by Respondent No. 3. Thus, he was rightly promoted to the post of Lecturer in Hindi which was also approved by the District Inspector of Schools vide impugned order dated 31.12.1997.

The criteria laid down for promotion under the aforesaid rules is seniority subject to rejection of unfit. Since Respondent No. 3 was appointed in L.T. Grade on 7.8.1972 he had more than 5 years continuous service in L.T. Grade in July 1996 when the promotion was made and was thus fully qualified for the post and was rightly granted ad-hoc promotion by the committee of management which was

also approved by the D.I.O.S.

4. It is not denied that Shri Govind Tiwari was restrained from functioning by an interim order passed by learned Single Judge and thereafter on 22.8.2007 by the Division Bench of this Court in this special appeal. He has superannuated on 30.6.2008 without working on the post of Lecturer in Hindi.

5. Rule 16 of the U.P. Secondary Education Service Commission Rules, 1995 provides as follows:

16. Procedure for ad hoc appointment by promotion.--(1) where ad hoc appointments of teachers, in respect of the vacancies to be filled in by promotion, are to be made u/s 18 of the Act, the Management shall consider the cases of such teachers who are working in trained graduates (L.T.) or certificate of Teaching (C.T.) GRADES AND POSSESS THE QUALIFICATIONS PRESCRIBED UNDER THE Intermediate Education Act, 1921 or the regulations made there under and have put in at least five years" continuous service as such on the date of occurrence of vacancy, for promotion to be lecturers or trained graduates (L.T.) grade, as the case may be, on the basis of seniority subject to rejection of unfit without their having applied for the same.

Explanation.--For the purpose of the sub rule-

(a) Service rendered in any other recognized institution shall count for eligibility, unless interrupted by removal, dismissal

(b) a teacher shall be deemed to be unfit if-

(i) any criminal case involving moral turpitude is pending enquiry or trial against him

(ii) any disciplinary proceeding is being conducted against him.

(2) The Management shall forward the name of the selected teachers along with the copy of seniority list and his service record including character roll to the Inspector for approval.

(3) The Inspector shall, within ten days from the date of receipt of names under Sub-rule (2) send the names of approved teachers to the management of the concerned institution and the provisions of Sub-rules (6) and (7) of Rule 15 shall mutatis mutandis apply

6. Shri Dwivedi submits that Rule 16 provides that on the date of occurrence of vacancy person teaching in LT Grade or CT Grade claiming promotion on the post of Lecturer in the promotion quota should possess minimum qualification prescribed under the Intermediate Education Act, 1921, and must have put in atleast 5 years continuous service. Both these conditions are essential for being eligible to consider for promotion. Shri Govind Tiwari was not eligible as he did not possess the minimum qualification that is M.A. in Hindi on the date of occurrence of vacancy. The vacancy occurred on 1.7.1996, whereas his result of

MA examination was declared on 14.7.1996. Even if he had passed MA examination on the day, when he was considered for selection by the Committee of Management on 17.7.1996, he could not get the benefit of appointment as he should have possessed essential qualification on the date of occurrence of vacancy and not on the date of selection. Shri Dwivedi has relied upon the judgment in U.P. Public Service Commission U.P., Allahabad and Another Vs. Alpana, , in- which the Supreme Court held that the candidate appearing in the U.P. Judicial Service Examination in accordance with the Rules and advertisement should have passed LLB examination on the date of filing of application and not on the date of interviews. Her eligibility to be appointed would not be counted from the date, when she had appeared in the examination but on the day, when she was required to fill the application.

7. A Division Bench of this Court in Dr. Raman Kumar Pandey v. Sukhram Pal Singh Sehrawat and Ors. 1995 (1) ESC 74 (All), relied upon the aforesaid judgment of the Supreme Court in U.P. Public Service Commission v. Alpana, in recording finding that the judgment in Sangam Lal Pandey v. State of U.P. (Supra) has been overruled by the view taken in U.P. Public Service Commission v. Alpana. The reasoning given in Sangam Lal Pandey is that the qualification will relate back to the date, when the person appeared in examination, no longer holds good and could not have been relied upon by the learned Single Judge to decide the matter in favour of Shri Govind Tiwari.

8. In Dr. Raman Kumar Pandey (Supra) the Division Bench held as follows:

The principle that declaration of the result of the examination dates back to the examination to which it relates is no more valid as the decisions of this Court laying down this principle have been overruled by the Supreme Court. Sri Sukhram pal Singh was as such not eligible for being promoted to the post of lecturer in Military Science

9. Shri Satya Prakash Gupta appearing for Shri Govind Tiwari submits that the qualification has to be seen on the date of selections and not on the date of occurrence of vacancy. Under Rule 16 the candidate is not required to possess both the requirement, namely qualification and experience. The eligibility on the date of occurrence of vacancy is with reference to the experience and not qualification. If the result of the examination is declared after the occurrence of vacancy but before the selections, the benefit of promotion cannot be denied.

10. It is admitted that Shri Govind Tiwari was senior to Shri Ram Badai Yadav, the Petitioner Appellant. He possessed 5 years continuous service in LT grade on the date of occurrence of vacancy on 1.7.1996 and had acquired the essential qualification of MA in Hindi on 14.7.1996 before the resolution was passed to select him. His appointment in any case would not come into force with effect from the date, when approval was given as on which date he was definitely possessing the requisite qualification Shri Gupta would submit that though the qualification and experience, are eligibility conditions under Rule 16, they have to

be read separately for the purposes of cut off date. The date of occurrence of vacancy is relative only to the experience and not to the qualification. He would submit that educational qualification and experience are disjunctive and that the word "and" has to be read in the context in which eligibility condition is related to the date of occurrence of vacancy.

11. In U.P. Public Service Commission v. Alpana (Supra) the Supreme Court has held that the person should be eligible to apply for the post on the date, when application is made. It was not only requirement of the advertisement but was also requirement under the Rules.

12. The judgment has been followed in Dr. Raman Kumar Pandey's case to hold that earlier decision of this Court in Sangam Lal Pandey (Supra) was overruled.

13. In this case selection could not have been held for at least two months after the notification of the vacancy. The vacancy had arisen on 1.7.1996, and that selections were held on 17.7.1996. The Committee of Management was thus not authorised to make selection. The argument, however, will not benefit the Petitioner, in as much as the eligibility has to be ascertained on the date of occurrence of the vacancy and not on the date of selection. We do not find substance in reading the educational qualification and experience separately, as condition of eligibility under Rule 16 for promotion from LT grade or CT grade to Lecturer grade. The word "and", in between the educational qualifications and experience in Rule 16 cannot be read disjunctively. Both the conditions must be fulfilled to be eligible for promotion. Shri Govind Tiwari had appeared in the examination. Admittedly his result was declared on 14.7.1996, 14 days before the occurrence of the vacancy. He was, therefore, not eligible to be considered for promotion for which the Petitioner Appellant Shri Ram Badai Yadav was next in line and was also eligible to be considered.

14. It is admitted that Shri Govind Tiwari was not allowed to join and had not worked on the post of Lecturer.

15. The special appeal is allowed. The judgment of learned Single Judge dated 3.7.2007 in Writ Petition No. 42598 of 1997 and 3300 of 1998 is set aside.