
(2002) 05 AHC CK 0042
In the Allahabad High Court
Case No : C.M.W.P. No. 2018 of 2000

Ram Saran Singh

APPELLANT

Vs

Committee of Management, Adarsh Gramin Inter College and
Others

RESPONDENT

Date of Decision : 17-05-2002

Acts Referred:

Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 — Rule 14

Citation : (2002) 3 AWC 2005 : (2002) 3 UPLBEC 2121

Hon'ble Judges : Janardan Sahai, J

Bench : Single Bench

Advocate : Dev Raj, for the Appellant; M.P. Singh and Ashok Khare, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Janardan Sahai, J.—The dispute in the present case relates to promotion to the post of Lecturer in Hindi in. Adarsh Gramin Inter College Chandok, Bijnore, which is an institution recognised by the U. P. High Schools and Intermediate Education Board. It appears that the committee of management has passed a resolution dated 24.8.1999 for promotion of the respondent No. 4 as Hindi Lecturer and the papers recommending him have been sent by the Manager and the Principal of the institution in Form A. Copy of the resolution has been annexed as Annexure-9 and copy of the Form A as Annexure-10. The petitioner has prayed for quashing the resolution dated 24.8.1999 and the recommendation dated 2.12.1999 Annexures-9 and 10 to the writ petition and has also prayed for mandamus to consider the name of the petitioner for the post of Lecturer in Hindi.

2. According to the petitioner, one Somi Ram Arya, Lecturer in Hindi was posted as officiating Principal of the institution from 1.7.1994 and he superannuated on 30.6.1999 and the committee of management resolved to promote respondent No. 4 on the post of Hindi Lecturer and has sent his name in Form-A. It is alleged

that respondent No. 4 was not eligible for promotion on the date the vacancy occurred. He did not have Master's Degree in Hindi on that date and he is also otherwise not eligible inasmuch as he does not have Sanskrit as one of his subjects for the Bachelor's Degree. It is also contended that the petitioner was eligible and his name ought to have been sent by the management for consideration.

3. The first question calling for consideration in the present case is the date of occurrence of the vacancy. In paragraph 11 of the counter-affidavit of the committee of management, it is stated that Somi Ram Arya, permanent lecturer was granted promotion as ad hoc Principal. In paragraph 12 of the counter-affidavit, it is stated that Somi Ram Arya retired from service on 30.6.1999, thereby causing a substantive vacancy on post of Lecturer Hindi on 30.6.1999 and that this vacancy was to be filled up under 50% quota for promotion. In the rejoinder-affidavit, the averment that Somi Ram Arya permanent Lecturer in Hindi was granted ad hoc promotion as Principal has not been disputed. It is also not in dispute that Somi Ram Arya superannuated on 30.6.1999 and thus substantive vacancy on the post of Lecturer occurred on 30.6.1999. The contention of the learned counsel for the petitioner that the vacancy occurred on 1.7.1994 is not acceptable inasmuch as this fact is not disputed that Somi Ram Arya was promoted on ad hoc basis as Principal and substantive vacancy on the post of Lecturer in Hindi arose only on the retirement of Somi Ram Arya.

4. On these facts, the relevant rule which would govern promotion to the post of Lecturer would be Uttar Pradesh Secondary Education Services Selection Board Rules, 1998. Rule 14 of the said rules lays down the procedure for recruitment by promotion. Rule 14 (1) of the said rule reads as follows :

"14. Procedure for recruitment by promotion.--Where any vacancy is to be filled by promotion, all teachers working in trained graduates grade or certificate of teaching 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."

5. The year of recruitment has not been defined in the aforesaid rules but has been defined in Section 2 (I) of the U. P. Secondary Education Act, 1982, which is as follows :

"Tear of recruitment" means the period of twelve months commencing from first day of July of a calendar year."

6. The contention of Shri Dev Raj, learned counsel for the petitioner is that on 1.7.1999 respondent No. 4 was not eligible for promotion as he did not have Master's Degree in Hindi on that date. The case of the petitioner is that result of M.A. Final examination of 1999 conducted by M.J.P. Rohilkhand University, Bareilly, was published in Amar Ujala on 25.6.1999 and the result of respondent

No. 4 who was having roll No. 38008 was shown as incomplete which fact is clear from the Gazette of the University. The petitioner has annexed copy of the extract of the newspaper dated 25.6.1999 and of the Gazette of the University as Annexures-7 and 8 to the writ petition. In the counter-affidavit of respondent No. 4, it is stated in paragraph 14 that respondent No. 4 passed M.A. In Hindi prior to 1.7.1999 but due to some clerical mistake, the result of the respondent No. 4 was shown in the 1st Paper (Adhunik Hindi Kavya) as incomplete as marks not available. The case of respondent No. 4 is that he was actually absent due to illness and when he approached the University and made a query as to why his result was declared incomplete, the University accepted it as a clerical mistake and his result was declared showing him as successful candidate. In paragraph 13 of the counter-affidavit of the committee of management, a similar stand has been taken. From the perusal of the Gazette of the University, filed as Annexure-8 to the writ petition, in which the result has been shown as incomplete and the statement of marks awarded by the University, Annexure-3 to the counter-affidavit of respondent No. 4 in which it has been shown that respondent No. 4 had obtained 422 marks out of 900 and absent in paper-1 (Adhunik Hindi Kavya), it is clear that there has been no change in the marks awarded to respondent No. 4. It was a mistake on the part of the University to show the result of respondent as incomplete on 25.6.1999, when the result of M.A. Final Hindi examination of M.J.P. Rohilkhand University was published. There was no fault on the part of respondent No. 4 for the delay in declaration of his result. Even the marks, which had been awarded to respondent No. 4, were not altered and respondent No. 4 was declared having passed in IIIrd division on the basis of same marks. In such a situation where the result of the examination of M.A. Final Hindi had been declared on 25.6.1999 and by mistake of the University, the entry of "incomplete" was made against roll number of respondent No. 4, which was subsequently corrected, declaration of result would relate back to the date when the result of other candidates appearing in the examination was declared. It was merely a clerical mistake on the part of the University in not declaring the result of respondent No. 4 on 25.6.1999 along with other candidates. The respondent No. 4 cannot be made to suffer on account of this clerical mistake on the part of the University.

7. Learned counsel for the petitioner relied upon U. P. Public Service Commission, Uttar Pradesh. Allahabad and Anr. v. Alpana 1994 (2)AWC 675 (SC) : 1994 (1) UPLBEC 242. In that case, respondent Alpana had appeared in L.L.B. Examination before the last date for submitting the application for Competitive Examination of U. P. Nyayik Sewa (Munsif) Examination for appointment to U. P. Nyayik Sewa (Munsif) but her result was not declared. The Public Service Commission was of the view that on the last date for submission of the application, the respondent Alpana was not having degree of Bachelor of Law, and not eligible. The High Court took a contrary view and held that result would relate back to the date of the examination. The Apex Court set aside the judgment of the High Court and held that in the absence of any rule, the

respondent Alpna could not be held to be eligible merely on the basis that she had appeared in the examination. The decision of the Apex Court in this case is distinguishable. In the present case, the result of M.A. Hindi had already been declared by the University on 25.6.1999 and it was by a clerical mistake on the part of the University that the result of respondent No. 4 was shown, as incomplete, which mistake was later on corrected. Non-declaration of the examination results of the candidates in general stands on a footing different from a case of correction. The doctrine of relation back has been applied in various situations to do justice. Thus an amendment in the plaint relates back to the date of the suit. A correction in the decree relates back to the date of the decree unless it causes prejudice to a third party--M.T. Indrani v. Maharaj Narain. 1927 Oudh 217 . In a case of correction, the doctrine of relation back to the date of declaration of result of the examination in general would be applicable. In any case, the candidate cannot be made to suffer merely on account of clerical mistake of the University. It is not a case where selection process is complete and the selection is under challenge. On facts in this case, justice can be done to the petitioner without causing prejudice to any person.

8. It was also urged on behalf of the respondent No. 4 that the process for recruitment continues until the select list is prepared and as in any case the petitioner has become eligible before the selection committee has conducted the exercise the petitioner's candidature cannot be turned down. He submits that recruitment year would be the year in which the recruitment takes place. He relies upon 1994 Supp (2) SCC 490, (Harish Chandra Ram v. Mukh Ram Debey and Ors.) , for the meaning of recruitment year and upon Sat Pal Gupta and Another Vs. State of Haryana and Others, Pajulla Kumar Swain v. Prakash Chandra Mishra 1993 (25) ATC 242 and K. Narayanan v. State of Karnataka 1994 (26) ATC 724, for the meaning of the expression recruitment. In Harish Chandra Ram, the Apex Court held that recruitment year is the year in which the recruitment takes place and not each of successive years in which the vacancy exists. We shall now examine whether principle can be applied in the context of Rule 14. A bare reading of the Rule 14 (3) would show that it postulates that the names of the eligible candidates with reference to Rule 14 (1) would be sent by the Management Committee. When we go back to Rule 14 (1), it refers to eligibility as on the 1st day of the year of recruitment. The necessary implication is that at the time the list is sent under Rule 14 (3), the 1st day of the year of recruitment is already over. Year of recruitment in the context of Rule 14 is not with reference to the year in which the selection is actually made. The cases cited by the learned counsel for the respondent do not advance the interpretation placed by him in the context of the language of Rule 14.

9. The next contention of the petitioner is that the respondent No. 4 did not have Sanskrit as one of the subjects in Graduation. Learned counsel for respondent relies upon a Government order dated 25.4.1977, copy of which has been filed as Annexure-4 to the counter-affidavit of respondent No. 4. Reading of the said Government order shows that for promotion to the post of Lecturer, it is not

necessary to have Sanskrit as a subject in B.A. where the teacher concerned was appointed to teach High School classes before 5.4.1975. The exemption from having Sanskrit as one of the subjects in graduation was given to all such teachers who were appointed to teach High School in any subject. This Government order applies to promotions to the post of Hindi Lecturer. The case of respondent No. 4 is covered by this Government order inasmuch as respondent No. 4 was appointed in L.T. grade on 1.7.1972 prior to 5.4.1975 as stated in paragraph 15 of the counter-affidavit of respondent No. 4. The contention of the petitioner's counsel that under Rule 11 Explanation the statement of vacancies is to be sent group wise and as the petitioner is language teacher, which is a separate group, whereas respondent was working in general group and, therefore, the petitioner is ineligible has no weight. The Explanation applies to direct recruitment and to vacancies in L.T. grade. The vacancies in Lecturer's Grade are to be notified subjectwise.

10. The counsel for the petitioner next contended that procedure provided under Rule 14 was not followed inasmuch as management was required to prepare list of all the eligible teachers and was required to forward them to the District Inspector of Schools in Appendix-A but the name of petitioner was not considered. Perusal of Rule 14 shows that criteria for promotion are seniority subject to rejection of unfit.

11. The contention of learned counsel for respondent No. 4 is that respondent No. 4 being senior to the petitioner, he is entitled to be considered first and it is only if he is found unfit, that the name of any other eligible teacher can be considered. It is also submitted by him that the petitioner has not made any categorical averment that his name has not been sent in the list of eligible candidates and in any case no prejudice will be caused to the petitioner inasmuch as respondent No. 4 is senior to petitioner and at this stage, where the matter is pending consideration before the Joint Director of Education, this Court ought not to interfere.

12. in paragraph No. 16 of the counter-affidavit of respondent No. 4, it is stated that respondent No. 4 was appointed on 1.7.1972 as L.T. grade teacher while the petitioner was appointed on 23.11.1973 in the C.T. grade and that respondent No. 4 is senior to the petitioner. In paragraph 9 of his rejoinder-affidavit, the petitioner has stated "it is not disputed that the respondent No. 4 is senior to the petitioner in L.T. grade....." It is thus clear that the respondent No. 4 is senior to the petitioner. As Rule 14 provides the criteria for promotion as seniority, subject to the rejection of unfit, the case of respondent No. 4 is liable to be considered first and only if he is found unfit, would the petitioner be considered. The petitioner would, therefore, suffer no prejudice by the consideration of the name of respondent No. 4 before that of the petitioner. However, as the selection may take some time, this part of the matter of calling for the name of other candidates who were eligible on the relevant date under Rule 14 is left open to be considered by the Joint Director of Education.

13. For all these reasons, the writ petition has no force and is accordingly dismissed.