

(2003) 12 AHC CK 0033
In the Allahabad High Court
Case No : C.M.W.P. No. 18134 of 1993

Rama Shanker Singh

APPELLANT

Vs

D.I.O.S. and Others

RESPONDENT

Date of Decision : 18-12-2003

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Regulation 7(2)

Citation : (2004) 2 AWC 1163 : (2004) 2 UPLBEC 1612

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : Ashok Khare, K.K. Misra and V.K. Singh, for the Appellant; Rakesh Bahadur, S.C., for the Respondent

Judgement

R. B. Misra, J.—Heard Sri Ashok Khare learned counsel for the petitioner as well as learned standing counsel.

2. In this petition the prayer has been made quashing the order dated 23.3.1993, passed by the District Inspector of Schools, Gorakhpur (Annexure-6 to the writ petition) whereby the D.I.O.S. has refused the payment of salary by saying that the teachers of primary school could never be validly promoted to the vacant post of teachers in High School and Intermediate College.

3. According to the petitioner, he was appointed as assistant teacher in primary section on 8th July, 1970 in Neena Thapa Inter College, Gorakhpur, a recognised and aided educational institution governed by the provisions of U. P. Intermediate Education Act, 1921 (in short called "Act 1921") and U. P. Secondary Education Service Commission and Selection Act (Act No. 5 of 1982) and U. P. High School and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971, i.e., (U. P. Act No. 24 of 1971). The education in the aforesaid institution is imparted from classes I to XII, classes I to V are known as primary section of the college. The appointment of the petitioner in the primary section was made in the BTC grade and was placed at serial No. 2 in the order of seniority. The person at seniority No. 1 has only educational qualification of

Intermediate, Whereas the education qualification of the petitioner is M.A. (Political Science) and B.Ed. and as such the petitioner has better claim of appointment as assistant teacher in L.T. grade in the said college. One Sri Markandey Singh was granted ad hoc promotion and was approved to the post of lecturer from L.T. grade temporarily and as such the short term vacancy of assistant teacher in L.T. grade came into existence, whereupon, by a resolution dated 7.6.1992 of the Management of the said college, the petitioner was appointed in the said grade. The resolution also authorised the Principal/Manager for placing the petitioner against a substantive vacancy of the L.T. grade, in case the petitioner's performance was satisfactory. The C.T. grade was declared dying cadre w.e.f. 11.8.1989 and the teachers in C.T. grade were upgraded in L.T. grade teachers and were getting their salary in the L.T. grade. On 12.11.1992, a substantive vacancy of L. T. grade came into existence in the said college by virtue of death of Sri Ram Nakshettra Rai, a permanent assistant teacher in L.T. grade. In such circumstances, the Principal of college requested to the Manager on 16.11.1992 that the petitioner be permitted to teach against the aforesaid vacancy and an order dated 17.11.1992 to that effect was passed. The Manager granted such promotion and in consequence thereto the petitioner has been continuously teaching "Hindi" to High School Classes in the said college.

4. All papers pertaining to the appointment of the petitioner was forwarded to the District Inspector of Schools who refused to accord approval and returned the papers by the impugned order dated 23.3.1993 (Annexure-6 to the writ petition). The said refusal order referred two grounds, namely (i) there did not exist any resolution dated 7.6.1992 and (ii) no promotion is permissible from the primary section to L.T. grade pay scale.

5. According to the petitioner Regulation 5 in Chapter II made under the U. P. Intermediate Education Act, 1921, 50% of the total number of the sanctioned posts in the lecturers grade or in L.T. grade (shall only be filled by promotion), from amongst the teachers working in the institution in the L.T. and C.T. grade respectively. In the present case since the C.T. grade was declared as the dying cadre and teachers working in C.T. grade were converted into L.T. grade, in such circumstances, 50% promotion in L.T. grade could only be made from the teachers teaching in B.T.C. grade, provided that they are in possession of the requisite educational qualification for being promoted in L.T. grade.

6. According to the petitioner in Intermediate Education Act, 1921, the promotion of B.T.C. grade teachers to C.T. grade of pay scale was to made on completion of five years of service and as such the petitioner having been qualified should have been promoted to C.T. grade after his appointment in primary section on 8.7.1970. The relevant Regulation of Chapter II of Act, 1921, are as follows :

"7. (1) Every vacancy in the post of teachers in the C.T. grade or in the J.T.C./ B.T.C. grade shall except as provided in Clause (2) be filled by direct recruitment.

(2) Where in an Institution any teacher working in the J.T.C./ B.T.C. grade has

passed Intermediate or any equivalent Examination or is a trained graduate and has completed 5 years of service in that grade, he shall be promoted in the C.T. grade by the committee of management and information of such promotion shall be immediately conveyed to the Inspector.

(3) If the Inspector has reason to believe that any promotion under Clause (2) has been made in contravention of the Act and the regulation then without prejudice to any other action that may be taken in this behalf, he may refer the case to the Director whose decision in the matter shall be final."

According to the judgment laid down by this Court in the case of Smt. Samantika Chatterjee v. Regional Inspector of Girls School 1990 (1) UPLBEC 239 scope of Regulation 7 (2) are wide enough to include all the teachers working in the J.T.C./ B.T.C. grade in an institution irrespective of the classes assigned to them. The judgment further clarifies that for the purpose of automatic promotion to the C.T. grade teachers who are assigned the task of teaching classes VI, VII and VIII stand on the same footing. There is no rational basis for segregating the teachers who are employed for teaching the students of classes I to V and the teachers who are assigned the task of teaching the classes of VI, VII and VIII, such a classification was treated as arbitrary.

7. In the light of the aforesaid judgment any teacher teaching in primary section shall get an automatic promotion to C.T. grade and subsequently in L.T. grade as contended on behalf of the petitioner.

8. The contents of paragraph 4 of the counter-affidavit on behalf of the District Inspector of Schools, Gorakhpur and the Accounts Officer, Office of the D.I.O.S., Gorakhpur, indicates that the institution is recognised under the provisions of "Act 1921", only from class VI to class XII, and not from class I to class XII. The primary section run by the college is attached to the intermediate section only for the purposes of payment of salary to the teachers and other employees of the college under the Payment of Salary Act. For rest of the matters the primary section attached to the college is a independent unit run by the committee of management, which has no concern at all with the higher secondary and intermediate sections run from class VI to class XII of the institutions.

9. According to para 5 of the counter-affidavit, the petitioner's appointment was made in primary section of the college in B.T.C. grade and he has no concern or claim regarding the other sections run by the college.

10. According to para 7 of the counter-affidavit, the petitioner cannot be appointed as assistant teacher in L.T. grade in higher secondary and intermediate sections of the college that is from class VI to class XII as he was appointed in B.T.C. grade teacher in primary sections and therefore, he has continued as such. The relevant regulations deal with the provisions of promotion of J.T.C., B.T.C. and C.T. grade teacher, i.e., Regulation 7 (1) and (2) of Chapter II of the Regulations of "Act 1921", has been deleted and as such the petitioner is not entitled for promotion from post of assistant teacher in C.T. grade in primary

section of the college to the higher secondary and intermediate section of the college.

11. According to para 8, the C.T. grade in higher secondary or intermediate colleges that is from classes VI to XII have been abolished and converted into L.T. grade. However, the post of C.T. grade in primary schools and primary sections attached to the intermediate college and run as an independent unit have not been abolished or converted into L.T. grade. The petitioner is therefore, not entitled for being promoted from C.T. grade to L.T. grade from primary section to intermediate section of the college.

12. According to para 9 of the counter-affidavit the promotion of Sri Markandey Singh from L.T. grade to lecturer grade was under 50% quota rule, therefore, the consequential vacancy/occurred in L.T. grade is to be filled up by way of promotion from the suitable and qualified teachers working in C.T. grade in the high school and intermediate sections of the college and not from the B.T.C. grade teachers working in primary sections attached to the college. Accordingly, one Sri Krishna Singh has been appointed to the said post and her appointment has also been approved/concurred by the respondent No, 1. The petitioner has however not made party to Shri Krishna Singh in the present writ petition.

13. According to paras 12 and 15 of the counter-affidavit, the vacancy arose due to the death of Sri Ram Nachhatra Ral is to be filled up by way of direct appointment and not by way of promotion. Moreover, it was substantive vacancy and the power of appointment to the said post is with the D.I.O.S./R.I-G.S. and not with the management. The college is recognised under the provisions of "Act 1921", from classes VI to XII and from classes I to XII and therefore, the provisions of "Act 1921" and rules and regulations are applicable to the teachers and employees of intermediate colleges from classes VI to XII and not to the teachers of primary schools/sections attached to the intermediate college which run as independent unit. The attachment of primary section to the college is only for purposes of payment of salary under the provisions of Payment of Salary Act, 1971 and for no other purposes. In the aforesaid circumstances, respondent No. 3 had no authority to promote the petitioner to the said post.

14. According to paras 13 and 16 of the counter-affidavit, since the petitioner was not entitled to be promoted and as such her promotion by the committee of management was wholly illegal and therefore, she is not entitled to continue to the post in question and to get salary for the same, however, if the management had allowed the petitioner to continue to the post in question, the liability of payment of salary to the petitioner if any, would be over the management from its own resources, as the appointment of the petitioner has already been disapproved by the D.I.O.S., by order dated 23rd March, 1993.

15. According to the counter-affidavit filed by respondent No. 3 Sri K. K. Prasad when the said post in question to be claimed by the petitioner for promotion is being considered then according to the G.Os. dated 8.3.1973 and 12.7.1978

enclosed as Annexures-C.A. 1 and C.A. 2 respectively in its counter-affidavit. Indicate that such promotional post if any was to be fulfilled by the candidates of the scheduled caste and since Bansh Raj and Khun Khun Prasad were of the scheduled caste category, as such they are entitled to avail the benefit of Government orders. There are 18 posts of teachers to be fulfilled by S.C. candidates as L.T. teachers and four of the said 18 posts were to be fulfilled by the promotion from S.C./S.T. candidates and since there was only a scheduled caste teacher at the relevant time teaching in the college and three posts were to be fulfilled by three S.C. candidates and the above two named persons being qualified and eligible were to be considered for promotion. According to Sri K. K. Prasad the resolution dated 7.6.1992 is forged and fictitious document and anti-dated. In these circumstances, the petitioner is not entitled to any appointment or the salary as claimed by him.

16. The endeavorance has been made on the part of the petitioner through the rejoinder-affidavit to controvert the contents of the counter-affidavits and to reiterate the contents of the writ petition.

17. The other relevant provisions of the regulation of Chapter II of "Act 1921", provides as below :

" 1. The minimum qualifications for appointment as Head of Institution and Teachers in any recognised institution, whether by direct recruitment or otherwise, shall be as given in Appendix A.

4. Where any junior high school is recognised as a high school u/s 7, a permanent or temporary teacher of such school, possessing the minimum qualification under Regulation 1, shall be deemed to be permanent or temporary teacher, as the case may be, of such high school, provided that the services of a temporary teacher who is not selected for appointment in accordance with the provisions of the Act and the regulations shall be dispensed with after giving him one month's notice in that behalf or one month's pay in lieu of such notice.

Explanation.--Nothing in this regulation shall be construed to mean that high school includes Classes I to V :

(1) x x x x x x x

(2) x x x x x x x

(3) x x x x x x x

5. (1) Every vacancy in the post of teacher in a recognised institution shall, except as otherwise provided, in Clause (2), be filled by direct recruitment.

(2) (a) Fifty per cent of the total number of the sanctioned posts in lecturer's grade or in the L.T. grade shall only be filled by promotion from amongst the teachers working in the Institution in the L.T. and the C.T. grades respectively and promotions shall be made subject to availability and eligibility of such teachers for promotion.

(b) if more than fifty per cent of the total number of the sanctioned posts in the lecturer's grade or as the case may be, in the L. T. grade have already been filled by promotion, the persons already promoted shall not be reverted.

(c) in computing fifty per cent of the post under Clause (a) fraction of less than one half shall be ignored while fraction of one-half or more shall be reckoned as one.

Explanation. -- (1) The expression "sanctioned post" means any post not being a post created temporarily for a specified period, which is created by an order of the authority competent to create such post and includes a post on which appointment has been made with the approval of the Inspector.

(2) The post held by a teacher who, while working in an Institution in a lower grade was appointed to a higher grade in that institution through direct recruitment shall not be deemed to have been filled by promotion.

(3) For purposes of this regulation, teachers duly appointed in any manner prior to the coming into force of the Intermediate Education (Amendment) Act, 1958 (U. P. Act No. XXXV of 1958) shall be deemed to have been appointed through direct recruitment.

6. (1) Where any vacancy in the lecturer's grade or in the L.T. grade as determined under Regulation 5, is to be filled by promotion, all teachers working in the L.T. or the C.T. grade, as the case may be, having a minimum of five years continuous substantive service to their credit on the date of occurrence of the vacancy shall be considered for promotion by the committee of management without their having to apply for the same provided they possess the prescribed minimum qualifications for teaching the subject in which the teacher in the lecturer's grade or in the L.T. grade is required.

Note.--For purposes of this clause, service rendered by a teacher in the L.T. or the C.T. grade in any other recognised institution shall count for eligibility, unless interrupted by removal, dismissal or reduction to a lower post.

(2) Selection for promotion to the next higher grade shall be made on the basis of service standing, achievements in service, academic qualifications and integrity.

8. If any teacher is aggrieved by any decision of the committee of management under Regulations 5, 6 or 7, he may make a representation against such decision to the Inspector within two weeks from the date thereof. The Inspector may pass such orders as he deems fit on such representation within three weeks from the date of receipt thereof, which shall be given effect to by the committee of management immediately.

The C.T. grade teachers is a dying cadre and that would mean that no teacher can now be appointed to C.T. grade nor can any post be created in the C.T. grade. However, it would not effect the teachers who are already working as C.T.

grade teachers. They are to be converted into L.T. grade teachers subject to certain conditions. Law does not permit C.T. grade teachers to be thrown out or their services be dispensed with. Bar is created only with regard to appointment of C.T. grade teachers and creation of post of C.T. grade teachers.

Promotional quota post can be filled by direct recruitment if no one is available for promotion. Mumtax Ahmad Vs. Deputy Director of Education, Allahabad and others, ."

18. It will be observed that in terms of paragraph 12 of the G.O., a teacher would be entitled to get L.T. grade if he has completed 5 years" service in C.T. grade and 10 years" satisfactory service as a teacher and is possessed of the requisite training and other academic qualifications. The petitioner has certainly completed 5 years" service in C.T. grade but the question whether 10 years of his overall tenure as a teacher was satisfactory is a question which requires to be determined. In case it is found that his overall service as a teacher during last 10 years had been satisfactory, he would be entitled to L.T. grade. Aruna Ghosh (Smt.) v. State of U. P. 1996 (3) AWC 1525 : 1995 (3) ESC 92 : 1995 (2) UPLBEC 763 (All).

19. The fact that the provisions to make C.T. grade entitled for appointment was deleted by means of Notification No. 4168/15-7-10 (160)-1991-TC, dated 19.8.1992 would not affect the right already acquired by petitioner. The G.O. dated 19.8.1992 omitting Regulation 7 (2) cannot be given retrospective effect so as to affect the right already acquired by the petitioner under the said provision as it stood before its omission w.e.f 19.8.1992. The stand taken in the counter-affidavit that the petitioner was not entitled to C.T. grade merely because of the omission of Regulation 7 (2), in view of the notification dated 19.8.1992, cannot, therefore, be countenanced. Aruna Ghosh (Smt.) v. State of U. P. 1995 (3) ESC 92 : 1995 (2) UPLBEC 763 (All).

20. I have heard learned counsel for the parties and have perused the records. I find that the petitioner was working in B.T.C. grade but he never endeavoured to get himself allocated in C.T. grade for which he might have claimed after having served for more than five years in B.T.C. grade and if the C.T. grade was not granted to the petitioner from B.T.C. grade after five years and he was aggrieved by the benefit not allocated to him in view of Regulation 7 (2), he was to make representation against the decision of the committee of management to the Inspector of Schools and the Inspector of Schools was to pass a necessary order in view of Regulation 8. Since the petitioner has never worked in C.T. grade, therefore, the petitioner cannot be said to have completed five years service in C.T. grade irrespective of the fact that he had more than 10 years length of service in the college. Since the teacher who had worked for more than five years and had 10 years satisfactory service as a teacher and was in possession of the requisite training and other qualifications was entitled to get L.T. grade. Here the petitioner had never been duly appointed in L.T. grade and by virtue of allowing to work for some time in L.T, grade, he cannot be said to have been duly

promoted in L.T. grade. The petitioner here was working in B.T.C. grade and teaching in primary section of the same college and despite the fact that the primary section was allocated in the same college and the college was only recognised in "Act 1921", from classes VI to XII and there is no specific provision for allowing any teacher working in primary section of a college to be automatically promoted in L.T. grade in higher secondary or intermediate college and the post which had fallen vacant in L.T. grade, if any, was to be fulfilled by promotion post by a scheduled caste category candidate as the quota of reserve category candidate was not sufficient in the said college. In this circumstances, the petitioner while teaching in the primary section in B.T.C. grade was not entitled to be promoted to the vacant post of a C.T. grade teacher to L.T. grade teacher in the high school or intermediate college.

21. In view of the above observations, prayer made in the writ petition cannot be granted. Therefore, the writ petition is dismissed.