

(2006) 02 AHC CK 0070

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 50830 of 1999

Satendra Kumar Shukla

APPELLANT

Vs

Director of Education (Madhyamik), Directorate, Joint
Director of Education, Kanpur Region, District Inspector of
Schools and Committee of Management, Sri Gandhi Adarsh
Inter College

RESPONDENT

Date of Decision : 14-02-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 5, 6, 6(6)
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 12, 32, 35
Uttar Pradesh Secondary Education Services Commission and Selection Boards Rules,
1983 — Rule 14, 9

Citation : (2006) 2 AWC 2043

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : Yogesh Kumar Saxena, for the Appellant;

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Counsel for the petitioner.

2. By this writ petition, the petitioner has prayed for a mandamus directing the respondents to deem the petitioner being promoted as Lecturer in Sanskrit in the Institution with effect from 1.7.1996 in accordance with the provision of Regulation 6(6) of Chapter II of the U.P Intermediate Education Act, 1921.

3. Brief facts necessary for deciding the writ petition are; Sri Gandhi Adarsh Inter College, Labedi, Etawah is a recognised institution under the provision of U.P Intermediate Education Act, 1921. The Institution is also governed by U.P Secondary Education Service and Selection Board Act, 1982 and U.P High School and Intermediate Colleges (Payment of Salaries of teachers and other employees) Act, 1971. The petitioner was initially appointed as C.T grade

Teacher on 20.1.1981. The petitioner was given L.T. grade with effect from 20.1.1991 and after completion of five years service in L.T he became eligible for promotion on the post of Lecturer. A post of Lecturer Sanskrit fell vacant by retirement of one Ram Gopal Dwivedi on 30.6.1996. The vacancy being under 50% promotion quota, the name of the petitioner as well as one Suresh Chandra Tewari was recommended. Petitioner came to this Court challenging the recommendation of Shri Suresh Chandra Tewari who according to the petitioner was a convicted person under Sections 302/34 I.P.C. A writ petition no. 12133 of 1997 was filed by the petitioner challenging the recommendations by the management of the name of Suresh Chandra Tewari. This Court granted an interim order dated 11.4.1987 directing that Suresh Chandra Tewari be not considered eligible for promotion. The recommendation sent by District Inspector of Schools recommending the petitioner for promotion remain pending and ultimately with the approval of Joint Director of Education dated 26.8.2004 petitioner's promotion has been approved on the post of Lecturer Sanskrit on the post which fell vacant due to retirement of Ram Gopal Dwivedi on 30.6.1996.

4. The learned Counsel for the petitioner submitted that the Committee of Management passed resolution dated 10.5.1996 recommending promotion of the petitioner as Lecturer Sanskrit which resolution was forwarded to the District Inspector of Schools and in accordance with Regulation 6(6) of Chapter II of the U.P Intermediate Education Act 1921, petitioner's promotion shall be deemed to have been approved after expiry of three weeks from the date of receipt of the proposal. The learned Counsel for the petitioner submitted that petitioner's promotion be deemed to be approved under Regulation 6(6) of the Chapter II with effect from 1.7.1996 and all consequential benefit be granted to the petitioner.

5. The learned Counsel for the petitioner has also placed reliance on the Division Bench judgment of this Court reported in 1993 (3) UPLBEC 1778 Dr. N.N Pandita v. Banaras Hindu University, Varanasi and Anr .. I have considered the submissions of the Counsel for the parties and perused the record.

6. The U.P Intermediate Education Act 1921 governed the promotion of the L.T. grade Teachers as Lecturer. Chapter II Regulation 6 provided for promotion from L.T. grade to Lecturer grade. Regulation 6 of Chapter II is extracted below:

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.

(6) Within three weeks from the date of receipt of the proposal under Clause(5)

the Inspector shall communicate his decision thereon to the Manager failing which the Inspector shall be deemed to have given his Manager failing which the Inspector shall be deemed to have given his concurrence to the resolution passed by the Committee of Management....

7. U.P. Secondary Education Service and Selection Board Act, 1982 was enacted by which procedure for selection/promotion/appointment of the teachers was substantially changed. A Selection Board was constituted for selection of the teachers through out the State. The procedure for promotion was also substantially changed. Section 12 of the Act provided for constitution of selection committee for each Region for promotion. Prior to Commission Act, the promotions from LT grade to Lecturer was to be recommended by the Committee of Management and was to be approved by District Inspector of Schools. After the enforcement of 1982 Act the District Inspector of Schools did not remain the competent authority for according approval. Section 32 of the Commission Act clearly provides that those provisions of the UP Intermediate Education Act and the Regulation made there under shall continue which are not inconsistent with the provisions of the 1982 Act or Rules made there under.

8. The Rules were framed by the State Government in exercise of power u/s 35 namely UP Secondary Education Services Commission Rules 1983 regulating the promotion and direct recruitment. Under Rule 9 of the 1983 Rules the power to approve promotion from LT grade to Lecturer was with the Commission.

9. 1983 Rules were substituted by another set of Rules namely UP Secondary Education Services Commission Rules 1995.

10. The said 1995 Rules was again substituted by another set of Rules namely Secondary Education Services Commission Rules 1998. Neither 1983 Rules nor 1998 Rules contain any deeming provision as was contained in Regulation 6(6) of Chapter II. Rule 14 of Rules 1998 providing for procedure for promotion is as follows:

14. Procedure for recruitment by promotion : (1) 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 lectures grade or the trained graduates grade, as the case may be, without their having applied for the same.

11. The submission pressed by the Counsel for the petitioner is that under the Regulation 6(6) of Chapter II petitioner's promotion shall be deemed to be approved after expiry of three weeks from submission of proposal to the District Inspector of Schools.

12. The arguments raised by the Counsel for the petitioner is misplaced. In view of Section 32 of the 1982 Act and the Scheme of the Rules 1983, 1995 and 1998

provisions of deemed approval as contained under Chapter II Regulation 6(6) does not survive, being inconsistent to scheme now provided for promotion. According to 1998 Rules which holds the fields today, there is no concept of deemed approval with regard to promotion of teacher from LT to Lecturer grade. Under the scheme of Rule 14 the Management after receipt of the name from the panel by the Joint Director of Education shall- pass a resolution, thereafter an appointment order by promotion shall be given. Thus under the scheme, there is no scope of reading any deemed approval. Section 32 read with the scheme as contained in 1995 Rules and 1998 Rules clearly makes out that Regulation 6(6) of Chapter II being inconsistent to present scheme of promotion does not survive and cannot be relied.

13. The judgments relied by Counsel for the petitioner in Division Bench judgment of Dr. Pandita's case (supra) was a case in which the Court was considering a merit promotion scheme sponsored by University Grant Commission. The said case has no applicability because in the present case, promotion is governed by Statutory rules and the rights of the candidates have to be examined according to the statutory rules. The aforesaid judgments relied by Counsel for the petitioner does not help the petitioner. Petitioner has already brought on the record the order passed by the Joint Director of Education giving regular promotion of Lecturer Sanskrit vide order dated 26.8.2004. Thus petitioner has already been promoted as Sanskrit Lecturer. The relief of the petitioner to declare his promotion having been deemed with effect from 1.1.1996 cannot be granted in view of the reasons as mentioned above. The petitioner having already been promoted as Lecturer Sanskrit, the relief in so far as promotion to the post of Lecturer Sanskrit is concerned has become infructuous.

14. With the above observations, the writ petition is dismissed.