
(2017) 02 AHC CK 0052
In the Allahabad High Court
Case No : Special Appeal No. 1018 of 2012

Satya Prakash Saxena

APPELLANT

Vs

Regional Deputy Hihger Education Officer

RESPONDENT

Date of Decision : 20-02-2017

Acts Referred:

Citation : (2017) 3 AILLJ 330 : (2017) LIC 2313

Hon'ble Judges : V.K. Shukla and Mrs. Sangeeta Chandra, JJ.

Bench : Division Bench

Advocate : K. Ajit, Advocate, for the Appellant; C.S.C. and Kshitij Shailendra, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

1. Satya Prakash Saxena is assailing the validity of the Judgment and order dated 6.4.2012 passed by learned Single Judge in Civil Misc. Writ Petition No. 37724 of 1998, Satya Prakash Saxena v. Regional Higher Education Officer, Agra and others wherein the learned Single Judge has proceeded to turn down the request of petitioner-appellant assailing the validity of the approval granted on the recommendation of the selection committee for promotion and the order passed by Regional Higher Educational Officer according approval to the same.

2. Brief fatual matrix is that at Mainpuri, there is a Post Graduate College known as Chitrugupta Degree College, Mainpuri affiliated to Agra University, Agra. The affairs of the said institution in question is run and managed strictly in consonance with the provisions as contained under the U.P. State Universities Act, 1973 and the first Statute framed thereunder.

3. In the institution concerned, one O.P. Agrawal was performing and discharging duties as Office Superintendent who attained his age of superannuation on 20.11.1997. In view of this, the Institution concerned took a resolve to fill up the said post by way of promotion and, accordingly, in the said direction, exercise was undertaken wherein petitioner as well as one Avinash Chandra Saxena

participated and the Selection Committee made recommendation in favour of Avinash Chandra Saxena for promotion on the said post and the papers were forwarded to the Regional Office, Agra Region, Agra for approval of the recommendation made by the Selection Committee for promotion and the Regional Higher Education Officer, Agra in his wisdom, has proceeded to accord approval to the same. The said proceedings has been subjected to challenge in Civil Misc. Writ Petition No.37724 of 1998 before learned Single Judge and the said challenge has not found favour with the learned Single Judge and, accordingly, present special appeal is there.

4. Sri K. Ajit, learned counsel for the appellant submitted with vehemence that the institution in question is a B. Grade recognised institution, accordingly, the post of Office Superintendent Grade II is liable to be filled up in the same way and manner as post of Head Clerk is required to be filled and by no stretch of imagination, an Accountant could have been promoted as it has been done in the present case.

5. Learned Standing Counsel as well as Sri Kshitiz Shailendra, learned counsel for the respondents, on the other hand, contended that rightful approval has been accorded and whatever action has been taken, same is strictly in consonance with the provision as contained under U.P. State Universities Act 1973 and the first statutes framed thereunder.

"In order to appreciate the issues raised relevant provisions of the first Statute of the University of Agra providing for various categories of the post and minimum qualification for the appointment to the post specified therein are being looked into. The posts as specified in Statute 20.06 are:-

- i. Clerical staff which includes head clerk;
- ii. Laboratory Assistant;
- iii. Librarian/Deputy Librarian;
- iv. Office Superintendent
- v. Accountant
- vi. Bursar
- vii. Class four staff,
- viii. Any other post; not covered by the preceding clauses clause.

The minimum qualification as provided for appointment to the post of head clerk and Office Superintendent in the Statute 20.06(1) (i) and (iv) are as under :

(1)"(i) Clerical Staff - For the post of routine clerk, assistants, head-clerk- cum-accountant and head clerk, Intermediate or an examination recognised by the State Government as equivalent thereof:

Provided that in the case of head-clerk-cum-accountant and head clerk experience on the post of routine clerk or assistant in a post-graduate or degree or intermediate college for a period of at least ten years shall be necessary.

(iv) Office Superintendent- For the post of Office Superintendent degree from a recognised university established by law together with at least ten years" working experience as Head Clerk or Accountant in a college affiliated to or associated with a university or in any other similar institution."

6. Further Statute 20.03 (3) provides procedure for appointment to the post of head clerk, office Superintendent etc. which is also relevant and quoted below:

"(3) Appointment to the post of Head-Clerk-Cum-Accountant, Head Clerk, Accountant, Office Superintendent and Bursar shall be made by promotion (on the basis of the recommendations of the Selection Committee in the manner provided in clause(6) according to seniority, subject to suitability and fitness from amongst the existing employees having required qualifications. In case of non-availability of qualified and suitable candidates from amongst the existing staff, appointments on such posts may be made by direct recruitment on the basis of (the recommendation of the Selection Committee in the manner provided in clause (6) after advertisement of the vacancy in newspapers."

7. The constitution of Selection Committee for appointment to the post of Head clerk, Office Superintendent, Accountant etc. has been provided in the Statute 20.03 (6) (b). The selection Committee as provided in Statute 20.03 (6) (b) consist of four members. The same is quoted below:

(6)"(b) The Selection Committee for the appointment to the remaining posts referred to in clause (1) or clause (3) either by direct recruitment or by promotion shall consist of :

- i. the Head of the management or a member of the management nominated by him who shall be the Chairman;
- ii. the Principal of the College;
- iii. the District Inspector of Schools;
- iv. the District Employment Officer or an Officer authorised by him in this behalf.

8. It is further relevant to refer to section 49 (o) of the U.P. State University Act, 1973, which reads as under :

"49. Statutes- Subject to the provisions of this Act, the Statutes may provide for any matter relating to the University and shall in particular, provide for-

"(o) the number, minimum qualifications and experience, the emoluments and other conditions of service, including the age of retirement and provisions relating to compulsory retirement of salaried employees(not being teachers) of the University or an affiliated or associated college, and the preparation and maintenance of record of their service;"

9. On the parameters of the statutory provision that has been holding the field and relied upon by learned Single Judge also, this much is clear that as far as post of Office Superintendent is concerned, same is required to be filled up by an incumbent who has at least ten years" working experience of Head Clerk or Accountant in a college affiliated with the university or similarly situated other institutions. A full-fledged mechanism is also provided for as to how the post in question is required to be filled up.

10. Once accepted position is that the incumbent, who has attained the age of superannuation, had been performing and discharging duties as Office Superintendent and the post of Office Superintendent has been separately dealt with under the statutes and constitution of Selection Committee for appointment to the post of Head Clerk, Office Superintendent, Accountant has been provided as per statutory provision 20.03(6)(b), then the action has to be taken accordingly and, in the present case, there is no challenge that Selection Committee has not been properly constituted and petitioner- appellant has not participated in the proceedings in question. Once petitioner-appellant had taken his chance and had participated in the selection process and having failed in the same, the petitioner cannot be permitted to reassert and make a challenge that post of Head Clerk was redesignated as Office Superintendent Grade II and, in view of this, the procedure that is provided for filling up the post of Head Clerk should have been adhered to and ought to be filled by Routine Grade Clerk working in the Institution. In such a situation and in this background, the learned Single Judge is absolutely right when she proceeds to make a mention that post of Office Superintendent has been described separately and source of recruitment of both posts is different and for the post of Head Clerk, working experience as routine Grade Clerk is required whereas for the post of Office Superintendent, working experience of Head Clerk or Accountant in the College is required.

11. Much capital has been sought to be made out by the letter dated 12.1.1993 wherein the Regional Deputy Director of Education has made some queries based on Government Order dated 8.9.1982. Merely because some queries have been made, the same shall not dilute the statutory provision as contained under U.P. State Universities Act, 1973 and the first statutes framed thereunder until and unless necessary amendments are not made in statutory provisions.

12. Consequently, in the facts of the case, once petitioner has taken his chance by participating in selection process and having failed to make place for himself, the challenge is bound to fail.

13. With these observations, the present appeal is dismissed.