

(2008) 12 AHC CK 0240

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15963 of 1987

Satyendra Mishra

APPELLANT

Vs

Additional Director of Education and others

RESPONDENT

Date of Decision : 02-12-2008

Acts Referred:

Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 — Rule 10(b) (ii), 11

Citation : (2008) 12 AHC CK 0240

Hon'ble Judges : S.U.Khan, J

Final Decision : Allowed

Judgement

S.U. Khan, J.—After the elevation of learned Counsel who was representing respondent No. 5, Smt. Usha Srivatava notice was issued to her to engage another Counsel. However, she did not engage any other Counsel. Accordingly, on the date of hearing arguments of learned Counsel for the petitioner, learned Standing Counsel representing respondent Nos. 1 to 3 were heard.

2. Rajarshi Tandon Balika Mahavidalaya, Bhatpar Rani, district Deoria is recognised aided intermediate college governed by provisions of U.P. Intermediate Education Act, 1921 and U.P. Payment of Salary Act (U.P. Act No. 24 of 1971 and U.P. Secondary Education Service Selection Board Act, 1982. Smt. Sujana Yunis, a teacher in L.T. Grade was promoted to the post of Principal after retirement of the Principal. Petitioner who was working in C.T. Grade was promoted to the post of L.T. Grade which fell vacant due to promotion of Smt. Sujana Yunis as Principal. Smt. Sujana Yunis was appointed as Principal on 29.10.1979. R.I.G.S. approved the promotion of the petitioner through order dated 1.2.1980. Through impugned order dated 2.6.1987, Annexure 2 to the writ petition passed by Additional Director of Education (Secondary) U.P. the order of R.I.G.S. dated 1.2.1980 through which promotion of the petitioner was approved was set aside. However, representation of the respondent No. 5, Smt. Usha Srivastava was also rejected.

3. In the impugned order promotion of petitioner has been held to be illegal and set aside on the ground that Smt. Sujana Yunis was teaching English and Geography while petitioner was teaching Science, hence petitioner could not be promoted on the post falling vacant due to promotion of Smt. Sujana Yunis. The dispute arose as respondent No. 5 gave a representation stating therein that she should have been promoted on the post which fell vacant due to promotion of Smt. Sujana Yunis and not the petitioner. Respondent No. 5 had also filed a writ petition in this regard which was disposed of through order dated 11.12.1986 directing the Additional Director of Education to decide the matter. In pursuance of the said order impugned order was passed.

4. Respondent No. 5 also contended that she was senior to the petitioner, as she was appointed on the post of teacher on 1.8.1973 while petitioner was appointed on 20.10.1973, both in C.T. grade. However, the petitioner contended that she was appointed on 26.7.1973 and respondent No. 5 was appointed on 18.8.1973. In the impugned order it was held that respondent No. 5 was teaching Hindi, Economics and Sociology, hence, she was also not qualified to be promoted on the post falling vacant by promotion of Smt. Sujana Yunis who was teaching English and Geography. However, in the impugned order it was held that petitioner was senior to respondent No. 5 as she was appointed on 26.7.1973 while respondent No. 5 was appointed on 13.8.1973. The view of R.I.G.S. holding the petitioner to be senior than respondent No. 5 in her order, dated 1.2.1980 was approved by the impugned order.

5. Learned Counsel for the petitioner has cited a Division Bench authority in B.P. Tripathi v. State of U.P., 1985 UPLBEC 669=1985 (11) ALR 114 (Sum) holding that for promotion an eligible candidate must be considered and it is not necessary that a teacher teaching particular subject only should be considered.

6. In the year 1998, U.P. Secondary Education Service Selection Board Rules, 1998 have been framed and under the said Rules for the first time concept of group wise teacher has been incorporated under Rule 11. Language group consist of subjects of Hindi, Sanskrit, Urdu, Persian and Arabic. Science group consist of science and mathematics. General group consist of subjects not covered in any of the other groups specified in the said rules. The subjects of English and Geography are not specified in any of the groups, hence are covered by general group. However, Rule 11 deals with direct recruitment.

7. 50% teachers in lecturer grade should be by direct recruitment and 50% by promotion from amongst teachers of trained graduate grade (L.T. Grade). As C.T. Grade had already been abolished hence there is no provision of promotion from C.T. Grade to L.T. Grade in the Rules of 1998. The question as to whether for promotion under 50% promotion quota under Rule 10 (b) (ii) group wise consideration of teacher is necessary or not need not be decided as the Rules of 1998 cannot be made applicable retrospectively to the situation which was prevailing 18 years before i.e., in 1979/1980. Accordingly, in view of the aforesaid authority this writ petition is allowed. Impugned order is set aside and the order

of D.I.O.S. dated 1.2.1980 is approved.

8. Through an interim order dated 21.8.1987 operation of the impugned order dated 2.6.1987 had been stayed until further orders. The said stay order is continuing till date.

9. Writ petition is accordingly allowed as above.