

(2011) 08 AHC CK 0194

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 31736 of 2011

Shayam Lal and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-08-2011

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 10, 2(I), 2(K), 35
Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 — Rule 10, 11, 11(2), 11(3), 12
Uttar Pradesh Secondary Education Services Commission and Selection Boards Rules, 1983 — Rule 4, 4(1), 6

Citation : (2011) 8 ADJ 277

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Dilip Gupta, J.—The Petitioners, who are working as Lecturers in Physics and English in T.R.M. P.B.A.S. Inter College, Modinagar, Ghaziabad (hereinafter referred to as the "Institution") which is a recognised institution under the provisions of U.P. Intermediate Education Act, 1921 (hereinafter referred to as the "1921 Act") have filed this petition for quashing the selection proceedings initiated by the U.P. Secondary Education Services Selection Board, Allahabad (hereinafter referred to as the "Board") for the post of Principal of the Institution under the provisions of the U.P. Secondary Education Services Selection Board Act, 1982 (hereinafter referred to as the "1982 Act") and the Rules framed thereunder. A further direction that has been sought is that the claim of the Petitioners may also be considered for the post of Principal since they are the two senior most Lecturers working in the Institution.

2. It is stated that Advertisement No. 2/2008 was issued by the Board for appointment of a Principal in the Institution. Number of applications were received and after scrutinising them the Board issued interview letters to the eligible candidates, including the letters dated 3rd February, 2011 to the two

senior most teachers in the Institution as is required under the Rules for appearing before the Interview Board on 7th March, 2011. According to the Petitioners, these two senior most teachers R.P. Mittal and Ratan Babu Maheshwari attained the age of superannuation on 30th June, 2011 and, therefore, could not be considered for appointment as regular Principal of the Institution. The Petitioners who are at Serial Nos. 3 and 4 in the seniority list claim that they should have been called for interview for the post of the Principal but as they were not called this petition has been filed for the reliefs stated above.

3. Sri R.K. Ojha, learned Counsel for the Petitioners placed the Rules framed by the State Government u/s 35 of the Act and pointed out that initially the U.P. Secondary Education Services Commission Rules, 1983 (hereinafter referred to as the "1983 Rules") had been framed. Rule 4 of the said Rules contained the procedure for determination and intimation of vacancies to the Commission in the proforma given in Appendix "A" which stipulated that names of two senior most Lecturers working in the Institution and the records should be sent with the requisition to the Board. Subsequently, the U.P. Secondary Education Services Commission Rules, 1995 (hereinafter referred to as the "1995 Rules") were framed underwhich the earlier provision for sending the names of two senior most Lecturers was deleted. However, the U.P. Secondary Education Services Selection Boards Rules, 1998 (hereinafter referred to as the "1998 Rules") were framed. Rule 11 of the 1998 Rules deals with the determination and notification of the vacancies while Rule 12 deals with the procedure for direct recruitment. Appendix "A" to the 1998 Rules does not contain any column for mentioning the names of two senior most Lecturers in the Institution and nor does it require the sending of their records with the requisition as was necessary under Appendix "A" to the 1983 Rules. He, therefore, submits that if the two senior most Lecturers working in the Institution at the time of sending of the requisition to the Board are not eligible to be considered for appointment as Principal of the Institution at the time the interview is to take place as they have attained the age of superannuation in the meantime, the Board should call the next two senior most teachers of the Institution for interview.

4. Learned Standing Counsel appearing for the State and Sri A.K. Yadav, learned Counsel appearing for the Respondent-Board, however, submitted that there is no substantial change in the 1998 Rules so far as this issue is concerned and only two senior most teachers working in the Institution when the requisition is sent to the Board can be called for interview for the post of Principal of the Institution.

5. I have considered the submissions advanced by the learned Counsel for the parties.

6. In order to appreciate the contentions advanced by the learned Counsel for the parties, it will be appropriate to refer to the relevant provisions of the Act as also the 1983 Rules and the 1998 Rules.

Sections 2(k), 2(l) and 10 of the Act are quoted below:

2(k) "Teacher" means a person employed for imparting instruction in an institution and includes a Principal or a Headmaster.

(l) "Year of recruitment" means a period of twelve months commencing from first day of a calendar year.

....

10. Procedure of selection by direct recruitment - (1) For the purpose of making appointment of a teacher, by direct recruitment, the management shall determine the number of vacancies existing or likely to fall vacant during the year of recruitment and in the case of a post other than the post of Head of the Institution, also the number of vacancies to be reserved for the candidates belonging to the Scheduled Castes, the Scheduled Tribes and other Backward Classes of citizens in accordance with the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, and notify the vacancies to the Board in such manner and through such officer or authority as may be prescribed.

(2) The procedure of selection of candidates for direct recruitment to the posts of teachers shall be such as may be prescribed:

Provided that the Board shall, with a view to inviting talented persons, give wide publicity in the State to the vacancies notified under Sub-section (1).

(emphasis supplied)

7. Thus, u/s 10 of the Act, the Management shall determine the Vacancy on the post of Principal existing or likely to fall vacant during the year of recruitment and notify it to the Board in such manner and through such officer as may be prescribed. "Year of recruitment" has been defined to mean a period of twelve months commencing from first day of a calendar year and "teacher" is defined to include a Principal.

8. Section 35 of the Act provides that the State Government may, by notification, make Rules for carrying out the purposes of the Act.

9. The relevant portion of Rules 4(1) and 6 of the 1983 Rules framed u/s 35 of the Act are quoted below:

4. Determination and intimation of vacancies. - (1) (i) The Management shall determine and intimate to the Commission, in the proforma given in Appendix "A" and in the manner hereinafter specified, the number of vacancies existing or likely to fall vacant during the year of recruitment and in the case of any post, other than the post of the head of an institution, also the number of vacancies to be reserved for the candidates belonging to the scheduled caste, scheduled tribes and other category of persons in accordance with the rule or rules issued by the Government in this behalf in regard to the educational institution.

(ii) In regard to the post of head of an institution the Management shall also forward, mutatis mutandis in the manner hereinafter specified, the name of two senior-most teachers, copies of their service records (including character rolls) and such other record or particulars as the Commission may require from time to time.

Explanation.- For the purpose of this sub-rule "senior-most teachers" means the senior teachers in the post of the highest grade in the institution, irrespective of total service put in the institution.

6. Procedure for recruitment - The Commission shall, scrutinize the applications and having regard to the need of securing due representation of candidates belonging to the Scheduled Castes and Scheduled Tribes and other categories, referred to in Rule 4, call for interview such number of candidates as it may consider proper:

Provided that, in respect of the post of the head of an institution, the Commission shall also call for interview two senior-most teachers of the institution whose names are forwarded by the management under Sub-rule (1) Rule (4);

(emphasis supplied)

Appendix "A" to the 1983 Rules, on which reliance has been placed by the learned Counsel for the Petitioner, is quoted below:

APPENDIX "A" (See Rules 4 and 9) REQUISITION FORM FOR THE RECRUITMENT OF CANDIDATES FOR APPOINTMENT OF THE POST OF TEACHER/HEAD OF INSTITUTIONS (to be sent in quadruplicate)

1. (i) Name of Institution.

(ii) Place

(iii) District

(iv) Number of students ... Class ... Section... No.

(v) Names of Subjects: High School/Inter

(vi) No. of Teachers:

2. (i) Names(s) of the post(s) for which selection is to be made

(ii) Number of Post

(iii) Qualifications for the post(s)

(iv) Pay scale of the post

3. Where the post for which selection to be made, is of Lecturer of L.T. Grade.

(i) Total number of sanctioned posts

(ii) Number of posts already filled by-

(a) direct recruitment

(b) promotion.

3-A. Where the post for which selection is to be made is of Principal, names of two senior-most teachers possessing requisite qualifications for the post of Principal, in order of seniority and their

(a) educational qualifications,

(b) teaching experience,

(c) administrative experience, if any

Note. - Copies of the service records (including character rolls) shall be sent with the requisition.

4. Number of posts, if any, reserved for-

(a) Scheduled Caste

(b) Scheduled Tribe

(c) Backward Class

5. Names of all candidates eligible for promotion; their qualifications and length of service from the date of regular appointment in the grade from which promotion is to be made;

6. Any other information that the Commission may desire to have. Certified that the above information is correctly recorded and verified from the relevant documents.

Manager

Verified and forwarded to the Regional Deputy Director of Education ... Region.

District Inspector of Schools/ Regional Inspectress of Girls Schools

Forwarded to the Secretary, U.P. Secondary Education Service Commission, Allahabad.

Deputy Director of Educational Region.

(emphasis supplied)

10. The selection of the Principal of the Institution under Advertisement No. 2/ 2008 is being made under the 1998 Rules and Rules 10(a), 11 and 12(6) of the 1998 Rules which are relevant for the purposes of the petition are quoted below:

10. Source of recruitment - Recruitment to various categories of teachers shall be made from the following sources:

(a) Principal of an Intermediate By direct recruitment

College or Headmaster of a High School.

....

11. Determination and notification of vacancies. - (1) For the purposes of direct recruitment to the post of teacher, the management shall determine the number of vacancies in accordance with Sub-section (1) of Section 10 and notify the vacancies through the Inspector, to the Board in the manner hereinafter provided.

(2) (a) The statement of vacancies for each category of posts to be filled in by direct recruitment including the vacancies that are likely to arise due to retirement on the last day of the year of recruitment, shall be sent in quadruplicate, in the proforma given in Appendix "A" by the Management to the Inspector by July 15 of the year of recruitment and the Inspector shall, after verification from the record of his office, prepare consolidated statement of vacancies of the district subject-wise in respect of the vacancies of lecturer grade, and group-wise in respect of vacancies of trained graduates grade. The consolidated statement so prepared shall, alongwith the copies of statement received from the Management, be sent by the Inspector to the Board by July 31, with a copy thereof to the Joint Director.

Provided that if the State Government is satisfied that it is expedient so to do, it may, by order in writing, fix other dates for notification of vacancies to the Board in respect of any particular year of recruitment:

Provided further that in respect of the vacancies existing on the date of the commencement of these rules as well as the vacancies that are likely to arise on June 30, 1998, the Management shall, unless some other dates are fixed under the preceding proviso, send the statement of vacancies by July 20, 1998 to the Inspector and Inspector shall send the consolidated statement in accordance with this sub-rule to the Board by July 25, 1998.

.....

(b) With regard to the post of Principal or Headmaster, the Management shall also forward the names of two senior- most teachers, alongwith copies of their service records (including character rolls) and such other records or particulars as the Board may require from time to time.

Explanation : For the purpose of this sub-rule "senior-most teachers" mean the senior-most teachers in the post of the highest grade in the institution, irrespective of total service put in the institution.

12. Procedure for direct recruitment-

(1).....

(6) The Board, having regard to the need for securing due representation of the candidates belonging to the Scheduled Castes/Scheduled Tribes and other

Backward Classes of citizens in respect of the post of teacher in lecturers and trained graduates grade, shall call for interview such candidates who have secured the maximum marks under Sub-clause (4) above/and for the post of Principal/Headmaster, call for interview such candidates who have secured maximum marks under Sub-clause (5) above in such manner that the number of candidates shall not be less than three and not more than five times of the number of vacancies.

Provided that in respect of the post of the Principal or Headmaster of an institution the Board shall also in addition call for interview two senior-most teachers of the institution whose names are forwarded by the Management through Inspector under Clause (b) of Sub-rule (2) of Rule 11.

(emphasis supplied)

Appendix "A" to the 1998 Rules, which has also been referred to by the learned Counsel for the Petitioner, is also quoted below:

APPENDIX "A" (See Rules 11(2) and 14(3) Requisition Form for the Recruitment of Candidates for Appointment to the post of Teacher/Principal/Headmaster (to be sent in quadruplicate)

1. (i) Name of Institution.....
- (ii) Place.....
- (iii) District.....
- (iv) Number of students..... Class..... Section.....
No.
- (v) Names of Subjects; High School/Intermediate.....
- (vi) No. of Teachers.....
2. (i) Names(s) of the post(s) for which selection is to be made.....
- (ii) Number of Post.....
- (iii) Qualifications for the post(s).....
- (iv) Pay scale of the post.....
3. Where the post for which selection to be made is of Lecturer or Trained Graduate grade:
 - (i) Total number of sanctioned posts.....
 - (ii) Number of posts already filled by-
 - (a) direct recruitment
 - (b) promotion.

4. Number of posts, if any, reserved for-

(a) Scheduled Caste

(b) Scheduled Tribe

(c) Backward Class

5. Names of all candidates eligible for promotion, their qualification and length of service from date of regular appointment in the grade from which promotion is to be made.

6. Any other information, that the Board may desire to have certified that the above information is correctly recorded and verified from the relevant documents.

? This information shall be given in case of promotion and required under Sub-rule (3) of Rule 14.

Manager

Verified and forwarded to the Secretary, Uttar Pradesh Secondary Education Services Selection Board, Allahabad (in case of appointment by direct recruitment) and to Joint Director in case of appointment by promotion.

District Inspector of Schools

11. It is the submission of the learned Counsel for the Petitioner that under Clause 3-A of Appendix "A" of the 1983 Rules the names of the two senior most teachers possessing the requisite qualifications for the post of the Principal in order of seniority and copies of the service records (including character rolls) had to be sent with the requisition but Appendix "A" to the 1998 Rules is silent on this issue. He, therefore, submits that when the said Appendix "A" to the 1998 Rules does not require the names of the two senior most teachers in the Institution to be mentioned and nor does it require the copies of the service records (including character rolls) to be sent with the requisition, as was the position under Appendix "A" to the 1983 Rules, it should be presumed that the Board should call for interview under the 1998 Rules the two senior most teachers working in the Institution at the time of interview. It is, therefore, the submission of learned Counsel for the Petitioners that the Board committed an illegality in not calling the Petitioners for interview.

12. The submission of the learned Counsel for the Petitioner is required to be examined in the light of the 1983 Rules as also the 1998 Rules.

13. Under Rule 4(1) of the 1983 Rules, the Management had to determine and intimate the Commission, in the proforma given in Index "A", the number of vacancies existing or likely to fall vacant during the year of recruitment. With regard to the post of Head of the Institution, the Management was also required to forward the names of two senior most teachers, copies of their service records (including character rolls) and such other records or particulars the Commission required from time to time. Under Rule 6 of the 1983 Rules, the Commission was

also required to call for interview the two senior most teachers of the Institution, whose names were forwarded by the Management under Rule 4(1). Thus, independent of what was contained in Appendix "A", the Management, under Rule 4(1) of the 1983 Rules, was required to intimate to the Commission the number of vacancies existing or likely to fall vacant during the year of recruitment and with regard to the Head of the Institution, the Management was also required to forward the names of two senior most teachers, copies of the service records and such other records or particulars as the Commission required from time to time. The Commission had to also call for interview the two senior most teachers of the Institution whose names were forwarded by the Management under Rule 4(1). Appendix "A" only provided the proforma in which such information was to be given.

14. In *NandKishore Prasad v. U.P. Secondary Education Services Commission, Allahabad and others*, (1990) 1 UPLBEC 539, a Division Bench of this Court considered whether the teachers who were not the senior-most teachers in the Institution when the requisition was sent by the Management, could claim a right to ask the Management to send their names if they became senior most teachers when the interview was to be held. This submission was repelled by the Court and after referring to Rule 4(1) of the 1983 Rules, the Court observed:

Rule 4(ii) of the U.P. Secondary Education Services Commission Rules, 1983 provides that in regard to the post of head of an institution, the Management shall also forward the names of two senior-most teachers copies of their service records and such other record or particulars as the Commission may require from time to time for consideration by the Commission when the question of appointment of the Principal of the Institution is to be considered by the Commission.

5. Sub-rule (ii) of Rule 4, quoted above, in our opinion, clearly intends that on the date when the vacancy arose, on that date, the management is called upon to find out who are the two senior-most teachers whose names are to be forwarded to the Commission hence the date when the vacancy arose would be the relevant date for the purposes of Rule 4(ii). Merely because of a subsequent event, if another teacher becomes the senior-most teacher in the college, he does not have a right to ask the manager to send his name also. If the interpretation is not taken then the result will be the process of selection by the Commission will never be completed as the name of the senior most teachers would on changing and the process of forwarding names will also continue. This does not take away the right of the said teacher to be considered for the post of Principal of the Institution if he has applied for the same. In the circumstances so far as this petition is concerned, we do not find any merit in the same. The petition is accordingly dismissed.

15. The 1998 Rules do not alter the aforesaid position. Under Rule 10 (a) of the 1998 Rules, the post of Principal of an Intermediate College is to be filled up by direct recruitment and for the purpose of direct recruitment to the post of

teacher, which includes the Principal, the Management has to notify the vacancy through the Inspector to the Board in the proforma given in Appendix "A" by 15th July of the year of recruitment. Such statement is to be sent by the inspector to the Board by 31st July with a copy to the Joint Director of Education. Rule 11 (2)(b) of the 1998 Rules provides that with regard to the post of Principal or the Headmaster, the Management shall also forward the names of two senior most teachers alongwith the copies of the service records (including character rolls) and such other records or particulars as the Board may require from time to time. Rule 12(6) of the 1998 Rules makes the position more clear. It provides that in respect of the post of Principal or the Head-master of an Institution, the Board shall also, in addition, call for interview the two senior most teachers of the Institution whose names are forwarded by the Management through the Inspector under Rule 11(2)(b) of the Rules. It is, therefore, clear that such information required under Rule 11(2)(b) of the 1998 Rules is to be sent with the requisition by 15th July of the year of recruitment.

16. What needs to be noticed is that the Division Bench of this Court in Nand Kishore Prasad (supra) had examined a similar controversy in the context of Rule 4(1) of the 1983 Rules and the Division Bench decision is not based on what is contained in Appendix "A" of the 1983 Rules but on the provisions of the aforesaid Rule 4(1). Rules 11(2)(b) and Rule 12(6) of the 1998 Rules make it abundantly clear that the names and records of two senior-most teachers of the Institution is required to be sent with the requisition and these two teachers whose names have been forwarded by the Board under Rule 11 (2)(b) have to be called for interview. Thus, if these two senior-most teachers are not to be called for interview, if they have attained the age of superannuation in the meantime, the next two senior most teachers cannot claim that they should be called for interview merely because Appendix "A" to the 1998 Rules, which is merely a proforma, does not contain a Column similar to Column No. 3A of the 1983 Rules.

17. It is on an interpretation of the aforesaid provisions of the 1998 Rules that in Bhola Nath Singh v. State of U.P. and others, 2010 (2) ESC 1555, the Court, relying upon the Division Bench judgment of this Court in Nand Kishore Prasad (supra) held that only the two senior most teachers whose names are sent with the requisition can be called for interview.

18. It is, however, pointed out by the learned Counsel for the Petitioner that Special Appeal No. 258 of 2010 was filed by Bhola Nath Singh against the aforesaid judgment in which the judgment was set aside and the matter was remitted for a fresh decision. The said judgment is as follows:

It has been contended before us by Mr. Radha Kant Ojha, learned Counsel appearing for the Appellant that by introduction of new Appendix "A" under Rules 11 (2) and (14) (3) in the U.P. Secondary Education Services Selection Board Rules, 1998, the date of requisition, which was prevailing in the Appendix "A" under Rules 4 and 9 of the earlier Rules being U.P. Secondary Education Services Commission Board Rules, 1983, cannot be the cut of date for the purpose of

selection of the candidates.

Mr. A.K. Yadav, learned Counsel appearing for the Respondents has submitted that the date of advertisement is the appropriate cut of date. Joining the issue, Mr. Ojha has contended before us that not the date of advertisement but, the date of interview will be the cut of date, thereby one aspect is very clear that both the contesting parties before us are not on the issue that the date of requisition will be the appropriate cut of date. Having so, whether the date of advertisement or the date of interview will be the cut of date is required to be considered and decided by the learned Single Judge once again and hence, we set aside the order of the learned Single Judge dated 28.1.2010 and remand the matter to the learned Single Judge to decide the same as early as possible preferably within a period of one month from the date of communication of this order. For the purpose of expeditious disposal, the Respondents herein can file the counter-affidavit within a period of two weeks. Rejoinder-affidavit, if any, will be filed within one week thereafter.

The special appeal is accordingly disposed of, however, without passing any order as to costs.

19. As noticed hereinabove, Appendix "A" to the 1998 Rules does not make any change in the situation as from a reading of Rules 11 (2)(a) and (b) and Rule 12(6) of the 1998 Rules, it is clear that the Management has to forward the names of two senior-most teachers with the requisition with copies of service record (including character rolls) or such records or particulars as the Board may require from time to time.

20. A learned Judge of this Court in Writ Petition No. 67834 of 2009 (Rajjo Babu Kushwaha v. State of U.P. and others) decided on 14th December, 2009 also observed:

Sri Irshad Ali, learned Counsel for the Petitioner, contends that the Petitioner as on the date of consideration by the U.P. Secondary Education Service Selection Board is the senior most teacher is available in the institution inasmuch as the other 2 teachers Ram Avtar Tripathi and Sri Shri Krishna Shukla were continuing under the benefit of regulation 21 of Chapter III of the U.P. Intermediate Education Act. In short, the submission is precisely that in the event the process of selection is delayed and the senior most teacher retired then to fall in time like the Petitioner should be called for interview.

The aforesaid contention would amount to modifying the terms of the Rules itself which does not make any such provision inasmuch as in the instant case it is undisputed that the date of advertisement is 6.9.2008. On the said date, 2 senior-most teachers were admittedly Ram Avtar Tripathi and Sri Shri Krishna Shukla and the Petitioner did not fall within that category. The Petitioner, therefore, now cannot be permitted to subsequently raise his claim merely because the interviews were delayed and are now be held in the year 2009. The disqualification of Ram Avtar Tripathi and Sri Shri Krishna Shukla does not

automatically get converted into the benefit of the Petitioner as the rule does not permit to do so.

The writ petition lacks merit and is, accordingly, dismissed.

21. Thus, for all the reasons stated above, the contentions advanced by the learned Counsel for the Petitioners cannot be accepted. There is, therefore, no merit in this petition. It is, accordingly, dismissed.