
(2008) 09 AHC CK 0296
In the Allahabad High Court

Sheo Prasad Tripathi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 119 FLR 859 : (2008) 3 UPLBEC 2466

Hon'ble Judges : S.P. Mehrotra, J

Bench : Single Bench

Judgement

S.P. Mehrotra, J.—The present writ petition under Article 226 of the Constitution of India has been filed by the petitioner, inter-alia, praying for quashing the selection/placement of respondent No. 6 made by the U.P. Secondary Education Services Selection Board on the post of Lecturer in Hindi in Marwar Inter College, Gorakhpur, and further for directing the respondent to consider the promotion of the petitioner on the post of Lecturer in Hindi in the said Institution which would fall under 50% promotional quota.

2. A Counter Affidavit on behalf of respondent Nos. 1, 2 and 3 has been filed.

3. Copy of the Writ Petition was served on the learned Counsel for the respondent No. 5. However, no Counter Affidavit appears to have been filed on behalf of the said respondent.

4. The Office Report dated 24.3.2007 shows that the notices, sent by Registered Post to the respondents Nos. 4 and 6, have been served, and the Acknowledgement Cards have been received back. However no Counter Affidavit on behalf of respondent No. 4 or on behalf of respondent No. 6 appears to have been filed.

5. Case has been taken up in the revised cause-list today.

6. Sri R.C. Dwivedi learned Counsel for the petitioner and the learned Standing Counsel appearing for the respondent Nos. 1, 2 and 3, are present. However,

none is present on behalf of the respondent Nos. 4, 5 and 6.

7. A Supplementary Affidavit, sworn on 22.1.2007, has also been filed on behalf of the petitioner.

8. The case of the petitioner is that after the retirement of one Gulab Lal Srivastava, the petitioner is the senior-most teacher in L.T. Grade in the aforementioned Institution, namely, Marwar Inter College, Gorakhpur, and is eligible for the post of Lecturer in Hindi, and as such, the petitioner is entitled to be promoted on the post of Lecturer in Hindi in the said Institution as the said post was under the 50% promotional quota.

In paragraph 13 of the writ petition, it is stated as follows:

13. That it is relevant to point out that the post of Lecturer in Hindi in the college had never been advertised because the aforesaid vacancy is occurred on 30.6.2003 after retirement of Sri S.N. Pandey in view of that the question of the selection of Smt. Archana Pandey on the post of Lecturer in Hindi in the college does not arise. In fact Smt. Archana Pandey was appointed in other college when she failed to join in the said college then the District Inspector of Schools, Gorakhpur directed to join on the post of Lecturer in Hindi in the college which is within 50% quota.

9. Thus, according to the petitioner, the aforesaid post of Lecturer in Hindi in the Institution in question was never advertised, and in fact, Smt. Archana Pandey, respondent No. 6 was appointed in another college, and when she failed to join in the said college then the District Inspector of Schools, Gorakhpur directed her to join on the post of Lecturer in Hindi in the Institution in question which is within 50% promotional quota.

10. In the Counter Affidavit filed on behalf of the respondent Nos. 1, 2 and 3, it is, inter-alia, stated that the post of Lecturer in Hindi in the Institution in question fell vacant on 30.6.2003; and that proposal for promotion of Gulab Lal Srivastava, Assistant Teacher, against the said post was sent by the Management; and that as the reservation-quota in the Institution in question was not complete, the said Gulab Lal Srivastava could not be given promotion ; and that during the said period, the U.P. Secondary Education Services Selection Board sent panel to the candidates selected on the post of Lecturer in Hindi, and in compliance thereof, the Authorised Controller issued the appointment letter to the respondent No. 6 and permitted her to join.

11. As regards paragraph 13 of the writ petition, the Counter Affidavit in paragraph 12 merely states that the averments made in paragraph 13 of the Writ Petition are based on facts.

12. Thus, from the Counter Affidavit, it is, inter-alia, not clear as to whether the post of Lecturer in Hindi in the Institution in question falls within 50% promotional quota, as to whether any requisition/notification for filling the post of Lecturer in Hindi in the Institution in question by direct recruitment, was sent

by the Management of the Institution in question to the U.P. Secondary Education Services Selection Board through the District Inspector of Schools, as to whether any selection for the post of Lecturer in Hindi in the Institution in question was made by the U.P. Secondary Education Services Selection Board, as to whether the respondent No. 6 was selected on the post of Lecturer in Hindi in the Institution in question, as to whether the respondent No. 6 was in fact directed to join on the post of Lecturer in Hindi in the Institution in question.

13. In the absence of relevant material on record, it is difficult to come to definitive conclusions in regard to the various questions indicated above. Even otherwise, the said questions involve determination of questions of fact, and the same cannot appropriately be done in writ jurisdiction under Article 226 of the Constitution of India.

14. In view of the above, the writ petition is disposed of with the following directions:

1. The petitioner will make a detailed representation before the Joint Director of Education, 7th Region, Gorakhpur (respondent No. 2) alongwith a certified copy of this order within one month from today.
2. The Joint Director of Education, 7th Region, Gorakhpur (respondent No. 2) will decide the said representation by a reasoned order giving specific findings in regard to the various questions involved in the matter including those indicated above.
3. Before taking any decision, the respondent No. 2 will give opportunity of hearing to all the concerned parties including the petitioner, the respondent No. 3, the respondent No. 4 and the respondent No. 6.
4. The respondent No. 2 will decide the matter expeditiously, preferably within a period of three months from the date of filing of representation alongwith certified copy of this order by the petitioner before him.