

(1989) 05 AHC CK 0043
In the Allahabad High Court
Case No : Writ Petition No. 1867 of 1987

Sheo Shanker Lal

APPELLANT

Vs

The Chairman, U.P. Secondary Education Service Commission
and Others

RESPONDENT

Date of Decision : 16-05-1989

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16(E), 16(F), 16(FF)
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 13
Uttar Pradesh Secondary Education Services Commission Rules, 1983 — Rule 8(3),
8(4), 9, 9(1), 9(3)

Citation : (1990) 1 AWC 110

Hon'ble Judges : U.C. Srivastava, J; S.H.A. Raza, J

Bench : Division Bench

Advocate : P.K. Khare, for the Appellant; A.N. Trivedi and S.N. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

S.H.A. Raza, J.—The Petitioner, who is a Teacher, by means of this writ petition has prayed for the issue of a writ. in the nature of certiorari for quashing the promotion of V.D. Misra opposite party No. 3 on the post of Lecturer in Hindi subject, P.B. Inter College and Ajit Sarvjanik High School, Pratapgarh as well as for the issue of a writ in the nature of mandamus commanding Respondent No. 2 (Managing Committee of the said Institution) to promote the Petitioner as Lecturer in Hindi subject, in the said school, mainly on the ground that the opposite party No. 3 was not at all the Teacher of Hindi subject and was not entitled to be promoted as Lecturer in Hindi subject, and as the Petitioner had already completed more than five years experience in L.T. grade in teaching Hindi subject, hence he was entitled to be promoted as Lecturer in Hindi subject out of 40 per cent quota of the posts protected under the Regulation for promotion. A counter-affidavit on behalf of opposite party No. 3 and opposite

party No. 1 (Chairman, U.P. Secondary Education Services Commission and others) has been filed in which it was asserted that as per para. 1 of Chapter II of the Regulations framed u/s 16(E) 16(F) and 16(FF) of the U.P. Intermediate Education Act, 1921 the minimum qualifications for appointment of Teachers in any recognised institution have been prescribed in Appendix A. The allegations of the Petitioner that only such senior most teacher, who taught Hindi in L.T. Grade, could be considered for promotion to the post of Lecturer (Hindi) is wrong. There is no such provision in the Rules or Regulations framed for promotion from L.T. Grade to Lecturer. That only when a teacher had teaching experience of a particular subject, in L.T. Grade, he would be promoted. The allegations of the Petitioner that he was the senior most Teacher in L.T. Grade was also incorrect. According to the Seniority List received from the Committee of Management, Sri V.D. Misra was senior most and the Petitioner Sheo Shauker Lal was at the second position. Sri B.P. Misra is post-graduate in Hindi and had served for more than five years in L.T. Grade on the date of vacancy, which occurred on 16-7-87, due to death of Sri Iadra Kumar Singh, Lecturer (Hindi). The opposite party No. 3 in his affidavit has stated that he had completed M.A. in Hindi in the year 1959 and is fully qualified to assume the post of Lecturer in Hindi. The Petitioner joined L.T. Grade in 1969 and opposite party No. 3 joined in the L.T. Grade in the same institution in 1955. He being the senior most Teacher in the institution having full qualifications for promotion as Lecturer in Hindi was rightly promoted. It is wholly irrelevant that the Petitioner has been teaching Hindi in L.T. Grade for the purposes of the promotion in the Lecturer grade. The relevant question is the seniority and the qualification for promotion in Lecturer grade in Hindi. L.T. grade teacher teaches at least three subjects and promotion or appointment in L.T. Grade is never made subject wise. As opposite party No. 3 has the qualification to teach Hindi in L.T. grade he was rightly selected by the Commission.

2. The Petitioner in support of his case has relied upon a Full Bench decision of this Court reported in 1988 UP LB EC 730 1987 Education Cases 33 in which the plea of an experienced teacher in a particular subject or appointment in the event of any vacancy was upheld. In view of the aforesaid decision the Petitioner submitted that Respondent No. 3, who did not possess any experience in teaching Hindi, cannot claim the advantage of promotion in place of the applicant who possessed an experience of more than five years in teaching Hindi subject in the said institution. The Full Bench decision in the aforesaid writ petition related to a case of 1979 when the U.P. Secondary Service Commission Rules were not in force. After enforcement of these rules the provisions contained in U.P. Secondary Education Act became inoperative so far as the same is inconsistent with the provisions of U.P. Secondary Education Service Commission Act as mentioned in Section 13 of the said Act. Rule 9 of U.P. Secondary Education Service Commission Rules, 1983 reads as under:

9. Procedure for appointment by promotion. Where any vacancy is to be filled by promotion, all teachers working in L.T. or C.T. grade, who possess the minimum qualifications and have put in at least 5 years continuous service as teacher in

the concerned subject on the date of occurrence of vacancy shall be considered for promotion without their having applied for the same.

Note- For the purpose of this Sub-Rule, service rendered in any other recognised institution shall count for eligibility unless interrupted by removal, dismissal or reduction to a lower post.

(2) The criterion for promotion shall be seniority subject to the rejection or unfit.

(3) The Management shall prepare a list of teachers, referred to in Sub-rule (1) and forward it to the Commission through the Inspector with a copy of Seniority list, service records (including the character rolls) and a statement in the proforma given in Appendix "A".

(4) Within three weeks of the receipt of the list from the Management under Sub-rule (3), the Inspector shall verify the fact and forward the list to the Commission.

(5) The Commission shall, after calling for such additional information as it was considered necessary intimate the name of selected candidate or candidate's of the Inspector with a copy to the Manager of the institution.

(6) Within 10 days of the receipt of the intimation from the commission under Sub-rule (5), the Inspector shall send the name of the selected candidate(s) to the Manager of the concerned institution and the provisions of Sub-rules (3) and (4) of Rule 8 shall mutatis mutandis apply.

3. This rule was further amended in the year 1986-87 which reads as under:

9. Procedure for appointment by promotion (1) Where any vacancy is to be filled by promotion, all teachers working in L.T. or C.T. grade, who possess the minimum qualifications and have put in at least 5 years continuous service as teacher on the date of occurrence of vacancy shall be considered for promotion to the Lecturer or L.T. grade, as the case may be, without their having applied for the same.

Note- For the purpose of this sub-rule, service rendered in any other recognised institution shall count for eligibility, unless interrupted by removal, dismissal or reduction to a lower post.

(2) The criterion for promotion shall be seniority subject to the rejection or unfit.

(3) The Management shall prepare a list of teachers, referred to in Sub-rule (1), and forward it to the Commissioner through the Inspector with a copy of seniority list, service records (including the character rolls) and a statement in the proforma given in Appendix "A".

(4) Within three weeks of the receipt of the list from the Management under Sub-rule (3), the Inspector shall verify the facts and forward the list to the Commission.

(5) The Commission shall, after calling for such additional information as it may consider necessary, intimate the name of selected candidate or candidates to the Inspector with a copy to the Manager of the institutions.

(6) Within 10 days of the receipt of the intimation from the commission under Sub-rule (5) the Inspector shall send the name of the selected candidate(s) to the Manager of the concerned institution and the provisions of Sub-rules (3) and (4) of Rule 8 shall mutatis mutandis apply.

4. Even in 1983 Rules it was mentioned that vacancy is to be filled by promotion of Teachers working in L.T. or C.T. grade, who possess the minimum qualifications and have put in at least five years continuous service as Teacher on the date of occurrence of vacancy shall be considered for promotion without having applied for the same. But the amended rule provides that where any vacancy is to be filled by promotion all Teachers working in L.T. or C.T. grade should possess the minimum qualifications and have put in at least five years continuous service as Teacher on the date of occurrence of the vacancy shall be considered for promotion to the Lecturer or L.T. grade as the case may be, without their having applied for the same. Sub-rule (2) of the earlier rule, as well as the present rules are similar which provides that the criterion for promotion shall be seniority subject to the rejection of unfit. A perusal of the earlier rule as well as the amended rule indicates that while in the earlier rule it was a condition precedent that at least five years continuous service as Teacher in the concerned subject was necessary, but the Amended Rule 9 provides five years continuous service as Teacher on the date of the occurrence of the vacancy. The omission or deletion of the words "in the concerned subject" in the said rule indicate the intention of the rule making power that a Teacher who fulfills the minimum qualifications and have put in at least five years continuous service as Teacher on the date of the occurrence of the vacancy and his senior will be entitled for promotion even if he has not put in at least five years continuous service as a Teacher in the concerned subject. We cannot substitute or import any other meaning which the rule making power intended to import. When the rule making authority itself has deleted the words "in the concerned subject" we cannot import a meaning different to the meaning of the rule making power. Certainly the omission of the words "in the concerned subject" is deliberate and hence a Teacher who possesses the minimum qualification and has (put) in at least five years continuous service as a Teacher on, the date of occurrence of vacancy and is senior most according to the seniority list subject to the rejection of unfit, is entitled to be appointed as Lecturer. Admittedly the Petitioner possesses Master's Degree in Hindi literature and has put in more than five years continuous service as a Teacher on the date of occurrence of the vacancy and is the senior most, hence he is entitled for the promotion even if he has not taught Hindi as a subject in the school. No other mistake apparent on the face of the record or error of law has been pointed out.

5. Hence the writ petition deserves to be dismissed.

6. The writ petition is dismissed. There shall be no order as to costs.