
(2006) 02 AHC CK 0086
In the Allahabad High Court
Case No : Special Appeal No. 560 of 2004

Smt. Achla Gupta

APPELLANT

Vs

Smt. Manju Saxena

RESPONDENT

Date of Decision : 17-02-2006

Acts Referred:

Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 — Rule 14, 14(2)

Citation : (2006) 3 AWC 2317 : (2006) 3 UPLBEC 2553

Hon'ble Judges : Vikram Nath, J; S. Rafat Alam, J

Bench : Division Bench

Advocate : Ashok Khare and Anita Tripathi, for the Appellant; Anil Bhushan, P.N. Saxena, Shashi Ranjan and S.N. Singh and S.C., for the Respondent

Judgement

Vikram Nath, J.—This Intra court appeal has been preferred against the judgment and order dated 23.3.2004 of the learned Single Judge in Writ Petition No. 24974 of 2002 whereby the writ petition was allowed and the order of the Regional Director of Education, Agra dated 11.6.2002 granting approval to the promotion of the appellant on the post of Lecturer (History) and at the same time rejecting the claim of the respondent No. 1 for the same post.

2. There is an institution by the name of Jay Harris Girls Inter College, Agra which is on the grant-in-aid list of the State Government and is governed by the provision of the U.P. Intermediate Education Act, 1921, the Rules and Regulations framed therein, as also the provision of U.P. Secondary Education Service Selection Board Act, 1982 and also the Rules framed thereunder. The appellant was appointed as L.T. Grade teacher in the institution on 18.11.1976 and since then she is continuing in the institution. The appellant is a trained graduate in Home Science and was teaching Home Science in the institution upto the High School classes. Pursuant to a Government Order dated 28.2.1990 which provided that where L.T. Grade teachers in particular subjects like Wood Craft, Art, Drawing and Home Science etc., have successfully completed 10 years of

satisfactory service in L.T. Grade, were to be given the lecturer's grade (pay-scale), the appellant was given the lecturer's grade w.e.f. 1.7.1990. Thereafter, she started taking Intermediate classes in the subject of Home Science.

3. In continuation of Government Order dated 28.2.1990, State Government issued another order dated 25.10.2000 which provided that teachers who were teaching Intermediate classes for the last 10 years and were getting the scale/grade of lecturer, would be given the designation of lecturer also, provided they possess a post graduate degree in addition to the eligibility for appointment as Lecturer. The claim of the appellant for the lecturer's designation under the aforesaid Government Order dated 25.10.2000 was not accepted by the Assistant Director of Education vide order dated 15.2.2001 on the ground that the appellant did not have post graduate degree in the subject of Home Science, but possessed post graduate degree in the subject of History and was, therefore, eligible to be considered only for promotion as Lecturer in History.

4. The respondent was initially appointed in J.T.C. Grade in 1975, thereafter she was promoted to the L.T. Grade w.e.f. 23.9.1986. Thus, the appellant is about 10 years senior to the respondent from the date of their respective appointments in the L.T. Grade.

5. Upon retirement of one Mrs. Geeta Banerji, a post of Lecturer (History) became substantively vacant in the institution w.e.f. 1.7.2000. For the post of Lecturer (History), the minimum qualification is post graduate degree in History. The appellant acquired the post graduate degree in History in the year 1998, whereas the respondent had obtained the post graduate degree in History in the year 1977. Rule 14 of the U.P. Secondary Education Service Selection Board Rules, 1998 provides the procedure for promotion to the post of Lecturer. According to the said Rules, a teacher in the trained graduate grade possessing the required qualifications and having completed 5 years continuous service on the first date of the year of recruitment, would be eligible for the promotion to the Lecturer's grade. Sub-Rule (2) of Rule 14 aforesaid provides that the criteria of promotion shall be seniority subject to rejection of unfit. Considering the above provisions, the Committee of Management passed a resolution to promote the appellant on the post of Lecturer (History) and forwarded the papers to the District Inspector of Schools, who forwarded the same to the Regional Director of Education. In the meantime, objections were raised by the respondent and she filed Writ Petition No. 18684 of 2002 before this Court which was disposed of on 6.5.2002 with the direction to the Regional Joint Director of Education, Agra to consider and decide her grievance after hearing both the parties by a reasoned order. The Regional Joint Director vide order dated 11.6.2002 held that the appellant was entitled for promotion to the post of Lecturer (History) being senior to the respondent. Pursuant to the said decision, the District Inspector of Schools directed the Management of the Institution to issue necessary orders for promotion of the appellant, whereupon the Management vide letter dated 1.7.2004 promoted the appellant to the post of Lecturer (History). The appellant

is continuing on the said post. It is this decision of the Joint Director of Education dated 11.6.2002 which became subject matter of consideration in Writ Petition No. 24974 of 2002 filed by the respondent.

6. The learned Single Judge vide judgment dated 23.3.2004 allowed the writ petition on the ground that the appellant having acquired the post graduate degree in History in the year 1998 and, therefore, did not complete 5 years of teaching in L.T. Grade after the acquisition of the said degree. She was, therefore, not eligible for promotion to the post of Lecturer (History) whereas the respondent having acquired the post graduate degree in History in the year 1977 and having completed more than 5 years continuous teaching in L.T. Grade after the post graduate degree, alone was eligible for promotion. The learned Single Judge further directed the respondents to consider the case of the respondent (petitioner therein) for- promotion to the post of Lecturer (History). The learned Single Judge, however, observed that the case of the appellant (respondent No. 4 therein) may be considered for giving lecturer's designation pursuant to the Government Order dated 25.10.2000, for which she was otherwise eligible and qualified to be appointed as Lecturer (Home Science). Aggrieved by the said judgement, this special appeal has been preferred,

7. We have heard Shri Ashok Khare, learned senior counsel assisted by Smt. Anita Tripathi, Advocate for the appellant, Shri P.N. Saxena, learned senior counsel assisted by Shri Anil Bhusan, Advocate for the respondent No. 1 and the learned Standing Counsel for the State respondents and have perused the record. Learned counsel for the appellant has assailed the judgement of the learned Single Judge on several grounds. But, without going into the these questions, this special appeal can be disposed of on the basis of the finding recorded by the learned Single Judge with regard to the applicability of the Government Order dated 25.10.2000 in favour of the appellant and also the facts averred in the counter affidavit of the respondent No. 1 and the documents filed therein/which are being discussed here in after.

8. The respondent No. 1 in her counter affidavit has specifically alleged in paragraph 6 and 24 that the appellant is possessed of the required qualifications for being appointed as Lecturer (Home Science). Further in view of the facts contained in the letter dated 21.9.2001 (Annexure CA1), the District Inspector of Schools has held that the appellant is eligible for being given the post and designation of Lecturer (Home Science). Therefore, there is no dispute with regard to the fact that appellant possess the qualification for being appointed as Lecturer in Home Science. It is also not in dispute that on account of such eligibility, the appellant was getting the pay scale of the. Lecturer pursuant to the Government order dated 28th February, 1990. The claim of the appellant for being given the benefit under the Government order dated 25.10.2000 was declined by the Assistant Director vide letter dated 15th February, 2001 on the ground that she did not possess post graduate degree in Home Science but in History and, therefore, in the event of any vacancy of Lecturer in History, the

appellant, according to her seniority, could be considered for promotion on the said post.

9. We have examined the Government order dated 25.10.2000 filed as Annexure No. 1 to the affidavit of the appellant filed in support of the stay application. According to the said Government order, it is dear from perusal of paragraph 1 thereof that where the post of Lecturers in such specified subjects (which included Home Science as per the Government Order dated 28.02.1990) a teacher must possess the requisite qualification for being appointed as Lecturer provided she has completed 10 years of continuous service while teaching in Class 11 and 12 and had been getting the Lecturer's pay scale for such period. These facts are apparent from a bare reading of Clause 1, 2 and 5 of the said Government order dated 25.10.2000. The claim of the appellant was declined only on the ground of the condition mentioned in Clause 4 of the said Government order. The said Clause 4 contemplates that in addition to the qualification for appointment as Lecturer in the concerned subject the teacher has also to obtain a post graduate degree. In the present case, the qualification for Lecturer (Home Science) has been filed as Annexure No. CA-3 with the counter affidavit of respondent No. 1 in which the petitioner is covered under the 2nd para, i.e., being trained graduate in Home Science or Home Economics or Domestic Science or Home Art. The appellant having the requisite qualifications for being appointed as Lecturer (Home Science) had subsequently obtained a Masters Degree in History in the year 1998. The Assistant Director in his letter dated 15* February, 2001 filed as part of Annexure No. 2 to the affidavit of the appellant apparently did not consider the fact that the appellant was already possessed of the qualifications for being appointed as a Lecturer and, therefore, the Masters Degree could be in any subject and not necessarily in the concerned subject otherwise the language of Clause 4 should have been specific in that regard, What is specifically required in the Clause 4 is the eligibility of Lecturer in the concerned subject and in addition a Masters Degree. In this view of the matter, we are of the view that the appellant was entitled to the benefit of the post/designation of Lecturer under the Government order dated 25.10.2000 and if that is the case in that event, there would be no lis left between the appellant and the respondent No. 1. The claim for promotion to the post of Lecturer (History) had admittedly arisen only upon retirement of Smt. Geeta Banerjee on 30.6.2000 and not before that. The Management and District Inspector of Schools had decided to promote the appellant on the post of Lecturer (History). The claim of the respondent No. 1 for being promoted as Lecturer could arise only after the judgement of the learned Single Judge and, therefore, if the appellant gets the post/designation of Lecturer w.e.f. 15.10.2000 under the G.O. Of even date, she would be senior to respondent No. 1 and there could not be any dispute with regard to seniority also. The appellant is admittedly getting the salary of Lecturer from 1990. Thus, there would be no financial liability saddled on the State Government if she is given the benefit with effect from the date of the Government Order.

10. It would further be noticed that even the learned Single Judge in his judgment dated 23.3.2004 had held that the appellant was entitled for the post of Lecturer in Home Science, the relevant portion of the judgment reads as follows:

The respondent No. 4 shall be considered for promotion as Lecturer in pursuance of the Government order dated 25.10.2000, for which she has completed 10 years of service and is also otherwise eligible and qualified for the post of Lecturer in Home Science.

11. Thus, without going into the other questions which have been raised in this appeal, we dispose of this appeal modifying the judgment of the learned Single Judge to the extent that the respondent will pass appropriate orders with regard to award of post/designation of Lecturer to the appellant with effect from the date of the Government Order. The direction of the learned Single Judge for considering the case of the respondent No. 1 for promotion to the post of Lecturer (History) shall remain as it is.

12. The Special Appeal is disposed of as above.