
(2012) 01 AHC CK 0059
In the Allahabad High Court
Case No : Writ A No. 12131 of 1998

Smt. Amita Srivastava

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 7(2)

Citation : (2012) 5 ADJ 650

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Krishna Murari, J.—Heard Learned Counsel for the petitioner and the learned Standing Counsel for the State-respondents.

2. Pleadings have been exchanged between the parties and with the consent of the Learned Counsel for the parties, the writ petition is being finally disposed of.

3. The petitioner has approached this Court claiming a writ of mandamus directing the respondents to grant her automatic promotion in C. T. Grade after having worked and completed five years satisfactory service in BTC grade from the date of her initial appointment and to pay salary with all consequential benefits. A further prayer has been made for a writ of mandamus to direct the respondents to give L. T. grade from 1.12.1995 after having completed ten years satisfactory service by adding five years of CT grade with all consequential benefits.

4. The facts as they emerge from the pleadings are that Mahila Gram Inter College, Allahabad is a recognized and aided institution running from Class-I to Class-XII. The primary section has been running with the institution as attached primary section. The petitioner was appointed on 21.7.1985. After the primary section was taken on grant-in-aid, an order was passed by the District Inspector of Girls School dated 15.9.1986 approving the appointment of the petitioner

placing in the pay scale of Rs. 365-555 with effect from 1.12.1985. Thus, the petitioner would be deemed to have been appointed in BTC grade with effect from 1.12.1985 and is receiving salary from the State fund. The grievance of the petitioner is that she is still working in BTC grade in the institution and is entitled for CT grade under regulation 7(2) of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 after completion of five years' service in BTC grade. The petitioner's case is that she is qualified to be given CT grade since she is trained graduate from the date of her first appointment in BTC grade. The petitioner made various representations and claimed grant of CT grade which was not accepted hence she has approached this Court.

5. It is contended by the Learned Counsel for the petitioner that respondents-authorities have wrongly ignored the claim of the petitioner though her qualification is M. A., L. T. and she is also teaching up to Class-X. Reliance in support of the contention has been placed on the Division Bench judgment of this Court in the case of Smt. Samantika Chatterjee Vs. Regional Inspectress of Girls School, Allahabad and others, (1990) 1 UPLBEC 239). Learned counsel for the petitioner further states that she is also entitled for grant of L. T. grade after completion of 10 years' satisfactory service which will include five years as C. T. grade.

6. A counter affidavit has been filed on behalf of the State-respondents in which it has been stated that since the Regulation 7 (2) of Chapter II has been deleted and CT grade has been declared as dying cadre vide Government Order dated 11.8.1989, the claim of the petitioner is not liable to be accepted.

8. The question which arises for consideration is whether the petitioner is entitled to the benefit of Regulation 7 (2) of Chapter-II framed under the U.P. Intermediate Education Act, 1921 for suo moto promotion in C. T. grade after completion of five years' satisfactory service and thereafter in L. T. Grade after completing ten years' satisfactory service. The question whether the teachers teaching in Primary section up to Class-V are entitled for the benefit of Regulation 7(2) of Chapter-II was under consideration of the Division Bench in the case of Smt. Samantika Chatterjee (supra).

9. After considering all the provisions, it was observed in paragraph 12 of the said judgment as under :

12. It is an admitted position that Classes I to V are comprised in the primary section. Classes VI, VII and VIII and Classes VI in particular, can by no stretch of imagination be considered to be an integral part of a recognized Higher Secondary School or Intermediate College, if the reasoning given by the Supreme Court in Prem Lata Misra Vs. H. L. Dutt and others, ILR (1) All. 1974 page 220 and by this Court in Mahanand Singh and others Vs. State of U.P. and others, 1978 ALJ 1042, is applied, it is not the case of the respondents nor can it be, that the students of Classes VI, VII and VIII of the Indian Girls Inter College, Allahabad appear in any examination conducted by the Boz Board. It is conceded

that for the students of the said classes an internal examination is held by the institution concerned. Therefore, for the purposes of automatic promotion to the C. T. grade teachers who are assigned the task of teaching Class V and teachers who are assigned the task of teaching classes VI, VII and VIII stand on the same footing. There is no rational basis for segregating teachers who are employed for teaching the students of Classes I to V and the teachers who are assigned the task of teaching classes VI, VII and VIII. The classification, therefore, is on the face of it arbitrary. The decision, clarification of the State Government is, therefore, liable to be struck down on this score too.

Last but not the least, Regulation 7 (2) may now be read :

Where in an institution any teacher working in the J. T. C./B. T. C. grade has passed intermediate or an equivalent examination or is a trained graduate and has completed five years service in that grade he shall be promoted in the C. T. grade by the Committee of Management and information of such promotion shall be immediately conveyed to the Inspector.

It will be remembered that Regulation 7(2) forms part of Chapter II, which was substituted under the Government Notification dated 7th July, 1976. It may also be noted that the source of the Regulation contained in Chapter II is Section 21 (1) of the U.P. Act 26 of 1975 and this provision has already been quoted above. It opens with a non-obstacle clause-notwithstanding. The plain meaning of the provisions of Section 21 (1) of the U.P. Act 26 of 1975 is that in spite of the provisions of the Act, the State Government is empowered to make Regulations with respect to matters contained in Chapter II. It, therefore, follows that the State Government is empowered to frame regulation in spite of the definition of "Recognized"" as contained in Section 2 of the Act. It is also apparent that the "Institution" in the Regulation under reference has to be assigned the meaning as to that expression in Section 2 (b) of the Act as substituted by Section 2 of the U.P. Act 26 of 1975. We have already extracted the definition above. In the context and setting of Regulation 7 (2), there can be no difficulty in taking the view that a teacher working in J. T. C./B. T. C. grade and assigned the task of taking the primary classes attached to a recognised Intermediate College of Higher Secondary School or High School would be considered to be working in the part of the institution, "as the case may be". That apart, the workings of Regulation 7 (2) are wide enough to include all the teachers working in the J. T. C./B.T.C. grade in an institution irrespective of the class assigned to them. It makes no difference whether a teacher is allowed to teach students of Class V or of Classes VI, VII or VIII. The Regulation does not draw any such distinction. Therefore in any view of the matter, there can be no difficulty in taking the view that the clarification/decision of the State Government as contained in the communication of the Director dated 4th October, 1974, became repugnant to the provisions as contained in Regulation 7 (2). The two cannot co-exist. Consequently, it must be held that the offending portion of the clarification/decision, which affects the petitioner, became ineffective upon the enforcement

of Regulation 7 (2).

10. In Smt. Samantika Chatterjee's case (supra), the petitioners of the said writ petition were teaching only primary classes of Girls Intermediate College. Their claim for suo moto promotion in C. T. grade in accordance with the Regulation 7 (2) was rejected against which the writ petition was filed and was allowed. The Division Bench judgment in the case of Smt. Samantika Chatterjee (supra) fully supports the claim of the petitioner.

11. The second question as to whether after deletion of Regulation 7 (2), the petitioner would be entitled to any benefit or not has also been the subject matter of adjudication by this Court in the case of Smt. Aruna Ghosh Vs. State of U.P. and others, [1995 (3) ESC 92 (All) wherein it has been held as under :

4. The fact that the aforesaid provision was deleted by means of notification No. 4168/15-7-10 (160)-1991 T. C., Lucknow dated 19.8.1992 would not affect the right already acquired by petitioner. The Government Order dated 19.8.1992 omitting Regulation 7 (2), cannot be given retrospective effect so as to effect right already acquired by the petitioner under the said provision as it stood before its omission with effect from 19.8.1992. The stand taken in the counter affidavit that the petitioner was not entitled to C. T. grade merely because of the omission of Regulation 7 (2), in view of the notification dated 19.8.1992, cannot therefore, be countenanced.

12. In view of the law laid down in the case of Smt. Aruna Ghosh, it is clear that by deletion of Regulation 7 (2) or by declaring C. T. Grade as dying cadre rights already accrued to a teacher will not be destroyed and the claim of such teachers has to be given effect to.

13. Admittedly, the petitioner was paid salary of B. T. C. grade with effect from 1.12.1985 and the same would be the date for counting the period of five years for being promoted in C. T. Grade.

14. In view of the above, the petitioner is entitled for the benefit of C. T. Grade with effect from 1.12.1990.

15. In so far as the claim of the petitioner that she is entitled for L. T. Grade after completion of ten years" satisfactory service adding five years of C. T. Grade in the case of Smt. Aruna Ghosh (supra) with regard to the claim of L. T. Grade following direction has been issued

8. In view of the above discussion, I am of the considered view that the petitioner is entitled to be given C. T. Grade with effect from 19.2.1986 and his claim for L. T. Grade requires to be considered at the level of the District Inspector of Schools in accordance with law and in the light of the observation made in the body of the judgment.

9. In the result the petition succeeds and is allowed. The respondents are directed to re-fix the salary of the petitioner in C. T. Grade with effect from

19.2.1986 and pay to him the arrears of salary and other emoluments accordingly. The District Inspector of Schools, shall examine the petitioner's claim for L. T. Grade in accordance with law and in the light of the observation made in the body of this judgment, if possible, within three months from the date of receipt of the certified copy of this order.

16. In view of the above facts and circumstances, the respondents are directed to fix the petitioner's salary in C. T. Grade with effect from 1.12.1990 and to pay her arrears of salary accordingly. With regard to the claim of the petitioner for grant of L. T. Grade, the same may be considered by the Regional Deputy Director of Education (Madhyamik), Allahabad, who will examine the petitioner's claim for L. T. Grade in accordance with law and pass a reasoned order.

17. With the aforesaid directions, the writ petition stands allowed.