
(2009) 11 UK CK 0046
In the Uttarakhand High Court
Case No : Writ Petition No. 1163 of 2008

Smt. Rashmi Negi

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 30-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 — Rule 16, 18, 19(3),
21, 22

Citation : (2010) 1 UC 110

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : S.K. Posti, for the Appellant; N.P. San, Paresh Tripathi for Respondents No. 1 to 3 and Subhash Upadhyay, for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—By means of this writ petition, moved under Article 226 of Constitution of India, the Petitioner has sought writ in the nature of mandamus directing the Respondent No. 2 - District Education Officer, Pauri Garhwal to promote the Petitioner, in place of Respondent No. 4. A further mandamus has been sought directing Respondent No. 2 to comply the order of Director of Education, Uttarakhand and that of Additional Director of Education, Pauri Garhwal. Also, a writ in the nature of certiorari has been sought quashing the order dated 20-10-2008, whereby Respondent No. 4-Naseem Ahmad, has been promoted to the post of Head Master.

2. Heard Learned Counsel for the parties and perused the affidavits, counter affidavits and rejoinder affidavits on record.

3. Brief facts of the case are that the Petitioner-Rashmi Negi was initially appointed on 29-08-1970, as Assistant Teacher in Girls Junior Basic School, Sukhro. In the year 1973, she was transferred to Junior High School, Nagar Kshetra Kotdwar (District Pauri Garhwal). In the year 1995, she was appointed

as Assistant Teacher in Senior Basic School, Nagar Kshetra Kotdwar, District Pauri Garhwal, vide letter dated 16-08-1995 (copy annexure-1 to the writ petition). On 08-07-2008, one Jagdish Prashad Kukreti, retired from the post of Head Master from Boys Junior High School, Kotdwar. On 01-07-2008, the Petitioner made a representation to Director of Education to promote her on said post on the ground that she is senior most Assistant Teacher at Kotdwar. However, the District Education Officer (Respondent No. 2) inspite of the representation of the Petitioner, promoted Shri Naseem Ahmad (Respondent No. 4) as Head Master in the Government Boys Junior High School, Kotdwar, vide order dated 20/21-10-2008 (copy of which is annexure-3 to the writ petition). Petitioner's name figures at serial No. 359, whereas name of Respondent No. 4-Shri Naseem Ahmed figures at serial No. 3560 in the joint seniority list. On the representation of the Petitioner, the Director of Education, vide his letter dated 05-08-2008, informed the District Education Officer that there are no separate cadres of boys and girls and promotion should be made in accordance with the seniority, subject to the rejection of unfit. Copy of said order is annexed as annexure-7 to the writ petition. It is pleaded that, Respondent No. 2 did not pay any heed to said letter also, hence this writ petition, challenging the order of promotion of Respondent No. 4, and also for seeking direction to promote the Petitioner.

4. Counter affidavit has been filed on behalf of Respondents No. 2 and 3, in which it has been stated that Petitioner's appointment in August 1995 on the post of Assistant Teacher in Senior Basic School (Junior High School) Nagar Kshetra Kotdwar, was purely temporary in nature and subject to the condition that her seniority in the joint seniority list would remain as it was earlier. As such, the Petitioner's seniority remained as an Assistant Teacher in the Primary School and not as Assistant Teacher of Junior High School. The defence of Respondent No. 2 and 3 is that the Petitioner cannot claim seniority with the teachers of Junior High School. It is stated that Respondent No. 4-Naseem Ahmed was directly appointed as Assistant Teacher in Junior High School, vide order dated 30-10-1995 (copy of which is annexure C.A. 1 to the counter affidavit of the answering Respondent). It is also stated that his services were confirmed vide order dated 22-05-2003, w.e.f. November 1995, as is apparent from annexure-C.A. 2 to the counter affidavit. In the counter affidavit of Respondents No. 2 and 3, it is further stated that Petitioner is wrongly claiming her seniority over Respondent No. 4. As to the directions, issued by Director of Education, it is stated that a detailed report was submitted by Respondent No. 2, a copy of which is C.A. 3 to the counter affidavit.

5. In the counter affidavit of Respondent No. 4, the same facts, as stated in the counter affidavit of Respondents No. 2 and 3, are reiterated. It has been further stated that as per provisions contained in U.P. Basic Education (Teachers) Service Rules, 1981, two sources of recruitment are provided in Rule 5 of said Rules. Assistant Teacher in Junior Basic School, may be promoted and appointed as Assistant Teacher in Senior Basic School. Also, post of Assistant Teacher in Senior Basic School can be filled by direct recruitment. The Petitioner's appointment in

the Senior Basic School was purely temporary in nature and without undergoing any selection process, required under the Rules. As against this, direct appointment of Respondent No. 4 was through selection process, as per the rules. It is further stated in the counter affidavit of Respondent No. 4 that one SahnazBebi, whose name figures at serial No. 3518, is already working as Head Mistress in the same school in which the Petitioner is working as Assistant Teacher. Copy of the earlier order dated 14-05-2008, relating to Sahnaz Bebi is annexed as C.A. 4 to the counter affidavit of Respondent No. 4. This according to Respondent No. 4, goes to show that the seniority list, relied by the Petitioner is not the actual seniority list. It is also stated by Respondent No. 4 that only the teachers working in boys schools, are promoted as Head Master in the boys schools, and the girls teachers, working in girls schools are promoted as Head Mistress in girls schools. In case of one Ranjit Lai, who was promoted as Head Master in a girls school, but the mistake was immediately rectified by the authorities concerned. It is further stated by the answering Respondent that for claiming seniority, under Rule 22 of UP. Basic Education (Teachers) Service Rules, 1981, appointment must be shown substantive in nature. It is further stated that the Petitioner was never appointed as Assistant Teacher in Senior Basic School in substantive capacity.

6. In the rejoinder affidavits, filed on behalf of the Petitioner, facts pleaded in the writ petition are reiterated. However, a document has been annexed to one of the rejoinder affidavits, showing that the Petitioner has been granted selection grade after completion of 10 years of satisfactory service, as Assistant Teacher in senior basic school.

7. The dispute between the parties relates purely to their inter-se seniority. Before further discussions, this Court thinks it just and proper to quote the relevant rule applicable to the case. Rule 22 of UP. Basic Education (Teachers) Rules, 1981, reads as under:

22. Seniority- (1) The seniority of a teacher in a cadre shall be determined by the date of his appointment in a substantive capacity.

Provided that, if two or more persons are appointed on the same date their seniority shall be determined in which their names appear in the list referred to in Rule 17 or 17-A or 18, as the case may be.

(2) The seniority of a teacher who has been transferred from one local area to another in accordance with the provisions of Rule 21 shall be placed at the bottom of the list of teachers of the corresponding class or category pertaining to the local area to which he has been transferred, as on the date of orders for transfer are passed, such a person shall not be entitled to any compensation.

8. Above Sub-rule (1) of Rule 22 clearly provides that seniority of a teacher in a cadre shall be determined by the date of his appointment in a substantive capacity. The appointment letter of the Petitioner, which is filed with the writ petition as annexure-1 by which the Petitioner was appointed as Assistant

Teacher in Senior Basic School, reads as under:

9. The above letter, shows that the appointment letter of the Petitioner itself was purely temporary and her seniority was to remain the same, as it existed in the previous list. As such, it cannot be said that the above appointment, makes the Petitioner entitled to the seniority with the teachers of the Senior Basic Schools. Admittedly, the Petitioner was originally appointed as Assistant Teacher in Junior Basic School. She had a right to be promoted as Assistant Teacher in senior basic school under Rule 5 of the UP. Basic Education (Teachers) Service Rules, 1981. But the procedure for promotion is provided in Rule 18 of said Rules. Rule 18 of aforesaid Rules, reads as under:

18. Procedure for recruitment by promotion-

(1) Recruitment by promotion to the posts referred to in Clause (b) of Rule 5 shall be made on the basis of seniority subject to rejection of unfit through the Selection Committee constituted under Rule 16.

(2) The appointing authority shall prepare an eligibility list of candidates in order of seniority and place it before the Selection Committee alongwith their character rolls and such other records pertaining to them as may be considered proper.

(3) The Selection Committee shall consider the cases of the candidates on the basis of the records referred to in Sub-rule (2).

(4) The Selection Committee shall prepare a list of selected candidates in order of seniority as disclosed from the eligibility list referred to in Sub-rule (2) and forward the same to the appointing authority

Above Rule, clearly shows that before an Assistant Teacher of Junior Basic School is promoted as Assistant Teacher in a Senior Basic School, a Selection Committee, is required to be constituted and eligible candidates are required to be considered by such committee. An appointment letter, quoted above, does not show that any selection committee was constituted or if the Petitioner was considered for promotion by such committee. Therefore, it cannot be said that the appointment of the Petitioner was substantive in capacity. That being so, she cannot claim seniority, as pleaded by her. It is pertinent to mention here that Sub-rule (3) of Rule 19 of aforesaid Rules, clearly provides that no appointment shall be made except on the recommendation of the Selection Committee.

10. A part from this, annexure-CA 4 to the counter affidavit, filed on behalf of Respondent No. 4, shows that Sahnaz Bebi, who was also shown much below in the list, annexed by the Petitioner as annexure-4 to the writ petition had also been promoted as Head Mistress in May 2008, and as such it can be said that the Petitioner has not pleaded any grievance against the other persons. This indicates that seniority list, relied by the Petitioner might not be the correct seniority list of the Assistant Teachers of Senior Basic Schools of District Pauri Garhwal. Learned Counsel for the Petitioner argued that Director of Education, vide his letter dated 05-08-2008 (copy annexure-7 to the writ petition) and

Additional Director, Pauri Garhwal, vide his letter dated 03-11 -2008 (copy annexure-6 to the writ petition), have directed the District Education Officer to treat the girls teachers and boys teachers, in one cadre, and still the Respondent No. 2 has not paid any heed to their directions. In reply to this, Learned Standing Counsel submitted that since the Petitioner's appointment was not in accordance with Rules, she was not promoted on the basis of the recommendations of any of the Selection Committee, as such, she cannot claim seniority over the Petitioner. In this connection, attention of this Court is drawn to annexure-3 to the counter affidavit, filed on behalf of Respondents No. 2 and 3.

11. Having considered submissions of Learned Counsel for the parties, and after going through the papers on record, this Court finds that though the Petitioner is working as Assistant Teacher in Senior Girls School for long time and has also got selection grade, but for the purposes of her seniority under Rule 22, as she was not promoted in accordance with Rule 18 of the aforesaid Rules, she is not entitled to the seniority, claimed by her. That being so, the writ petition is liable to be dismissed.

12. Accordingly, the writ petition is dismissed.