
(2004) 07 AHC CK 0059
In the Allahabad High Court
Case No : C.M.W.P. No. 6073 of 2004

Smt. Savita Gupta

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-07-2004

Acts Referred:

Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 — Rule 11, 12
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 10

Citation : (2004) 4 AWC 3119 : (2004) 3 UPLBEC 2739

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Ashok Khare and V.K. Singh, for the Appellant; Siddhartha Verma, S.K. Verma, R.P. Dubey and R.S. Parihar and S.K. Srivastava, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Sri Ashok Khare, senior advocate assisted by Sri V. K. Singh for petitioner and Sri S. K. Verma for respondent No. 7. Sri R. S. Parihar learned standing counsel appears for rest of the respondents.

2. The Raghunath Girls Inter College, Meerut is a recognised and aided Intermediate College, and is governed by the provisions of U. P. Intermediate Education Act, 1921, U. P. Secondary Education and Selection Boards Act No. 5 of 1982 and U. P. Act No. 24 of 1971. The petitioner applied and was selected in April, 2004, for ad hoc appointment against a vacant post of assistant teacher in L.T. grade. The appointment letter was issued on 24.4.1993. The petitioner Joined on 27.4.1993 and is serving since thereafter in Trained Teacher"s grade. She claims to be regularised u/s 33C of U. P. Act No. 5 of 1982, as amended on 30.4.1998 providing for regularisation of ad hoc teachers appointed prior to 6.8.1993. The Joint Director of Education, Meerut Region, Meerut, vide his order dated 26.6.2000 conveyed the decision of Selection Committee to regularise

petitioner's appointment in L.T. grade.

3. Km. Sushma Batra, a permanent Lecturer in English in the institution retired on 30.6.2001, causing a substantive vacancy on the post of Lecturer in English. It is contended that the vacancy fell in 50% quota for promotion. The petitioner is M.A. in Arts and M.A. in English, and is qualified for appointment. The Committee of Management in its meeting dated 14.6.2003 resolved to promote the petitioner as Lecturer in English in promotion quota, and that since after 1.7.2003, the petitioner is teaching English as a subject to Classes XI and XII. The U. P. Secondary Education Services Selection Board, Allahabad (In short the Board) issued an order dated 7.1.2004 recommending that Smt. Geeta, respondent No. 7, be appointed as Lecturer in English. The District Inspector of Schools by his order dated 27.1.2004 directed the management to grant appointment to Smt. Geeta, and that on 6.2.2003 the inspector returned the papers relating to promotion of the petitioner with his findings that she is ineligible as she does not have five years regular service to her credit for promotion.

4. Sri Ashok Khare, senior counsel, submits that the post of Lecturer in English was never advertised. The respondent No. 7, was selected for some other institution and has been sent to Raghunath Girls College, Meerut, by way of adjustment. Sri S. K. Verma, senior counsel, appearing for respondent No. 7 submits that advertisement is made by the Board subjectwise, and that respondent No. 7 was selected for the post of Lecturer in English. Her appointment by way of direct recruitment has not been challenged by the petitioner.

5. In Kamlesh Kumar Sharma Vs. Yogesh Kumar Gupta and others, . the Supreme Court considered the scope of the provisions of U. P. Act No. 5 of 1982 and held that the filling up the vacancies under Sub-section (4) of Section 13, on the vacancy already advertised arises only in case the person does not join or on account of the death or resignation, or transfer after joining became invalid for such unforeseen circumstances. In other words, all such circumstances have to be within the vacancies already advertised and not beyond it. The list prepared under sub-section (2) of Section 13 shall be valid till the receipt of new list from the Commission. The Division Bench in its judgment in Dr. Yogesh Kumar Gupta v. State of U. P. 1995 (2) ESC 393, against which the Supreme Court decided the civil appeal held that if the Director and Commission work with the normal time schedule, there would not arise any occasion for the management to make any ad hoc appointment. Where the candidate does not join, the management will intimate the Director and the Director will intimate a fresh name from the list sent by the Commission u/s 13 (1). This contingency must happen within the academic year because the time limit for asking the candidate to join is only one month as provided in sub-section (1) of Section 14.

6. In the present case, the College had sent requisition for the post of Lecturer, in English. In the counter-affidavit of Sri Awadhesh Narain Sharma, Secretary of

the Board, it is stated that the requisition was received from the concerned Committee of Management through the District Inspector of Schools dated 10.9.2001. It is incorrect to state that the vacancy was covered by 50% quotas in promotion. The advertisement made by the Board clubbed all the vacancies and after selection a list was prepared showing the list of institutions which notified the vacancies to the Board, and required the candidate to give, if he so desires, the choice of not more than five such institutions in order of preference. Since the requisition regarding the post of Lecturer in English of Raghunath Girls Inter College, Meerut was already notified, the post was very much available and the same was disclosed to the candidates who appeared in the interview on 25.1.2003 against advertisement No. 2 of 2001, and a letter dated 27.1.2004 was sent by the District Inspector of Schools, to the college. The Secretary, Secondary Education, State of U. P. sent a letter dated 12.3.2001 directing the Board to the effect that in case where the selected candidates have not joined for any reason, they should be adjusted in other Institution and for this purpose a committee makes adjustment of the selected candidates who have not joined. The Government Order dated 12.3.2001 has been annexed as Annexure-C.A. 2 to the counter-affidavit.

7. The petitioner's services have been regularised with effect from 26.6.2000. The vacancy of Lecturer in English arose on 30.6.2001 which was notified to the District Inspector of Schools, and thereafter to the Board. In para 11 of the counter-affidavit of the Secretary of the Board it is stated that the respondent No. 7, during the course of interview by the Board had given the choice of Raghunath Girls Inter College, Meerut. The respondent No. 7 was initially recommended for appointment as Lecturer in English in Ismail Girls Inter College, Meerut. There was no vacant post available there as some Lecturer was appointed on transfer before recommendation of selection committee reached. The respondent No. 7 was thereafter given appointment in Bhatiya Girls Inter College, Meerut. She joined on 26.9.2003. The Accounts Officer of the office of the District Inspector of Schools-11, Meerut reported that she was wrongly appointed as there was no vacant post. Thereafter on 7.1.2004 the respondent No. 7 was recommended by the Board for appointment in the Raghunath Girls Inter College, Meerut,

8. After making requisition of the post to the Board, a Committee of Management had no authority to pass resolution to promote any person on the same post. This not only defeats the right of the candidates who are selected but also gives rise to conflicting claims and causes confusions. The Scheme of the U. P. Act No. 5 of 1982 and the U. P. Secondary Education Services Commission Selection Board Rules of 1998, do not provide to fill the vacancy treating it to be in promotion quota, after a requisition has been made by the Board.

9. In the counter-affidavit of Sri Awadhesh Narain Sharma. Secretary of the Board, it is admitted that the post was not advertised. The question to be considered in this "case is, whether a candidate selected for appointment by the

Secondary Education Services Selection Board, can opt and can be given appointment on the post which has been requisitioned but has not been advertised. Section 10 of the Act provides for selection by direct recruitment for which the procedure has to be prescribed under subsection (2) by the Rules. The U. P. Secondary Education Services Selection Board Rules, 1998 provides for such procedure. Rule 12 gives the procedure for direct recruitment. Sub-rule (8) of Rule 12 provides that after selection. Including Interviews, the-Board shall prepare a panel of those found most suitable for appointment in order of merit as disclosed by the marks obtained by them. Whereas the panel for the post of Principal or Head Master is to be prepared institutionwise, after giving due regard to the preference given by the candidate, if any, for appointment in a particular institution, the post of the Lecturer and trained graduate grade shall be prepared subjectwise and groupwise respectively. Sub-rule (10) provides that where a selected candidate cannot be allocated any of the institution of his preference on the ground that the candidates placed higher on the panel have already allocated such institution, and there remains no vacancy in them, the Board may allocate any institution to him as it may deem fit and sub-rule (11) provides that the Board shall then forward the panel prepared under sub-rule (8) along with the name of the institution allocated to selected candidates in accordance with sub-rule (10) to the inspector with a copy thereof to the Joint Director and also notify them on its notice board.

10. Rule 11 of the Rules of 1998 provides for determination and notification of vacancies. The management shall determine the number of vacancies in accordance with sub-section (1) of Section 10 and notify the vacancies through inspector to the Board. The statement of vacancies shall include those vacancies which are likely to arise due to retirement on the last day of the year of recruitment (30th June after the vacancy has arisen). The Board is required to fill up these vacancies by direct recruitment, after the advertisement of the vacancies under Rule 12 (1). There appears to be no bar under the Act and the Rules to provide for the requisitioned vacancies to be filled up, from amongst the selected candidates of previous recruitment who could not get appointment for any reason whatsoever. Where the available selected candidates could not get appointment, on account of any reason, they can be considered for the vacancies which have been requisitioned and have not been advertised till then. The object and purpose of the Secondary Education Services Selection Board is to provide a fair selection procedure by an impartial Selection Board, to avoid discrimination, favouritism and maintenance of standard of teaching. The object and purpose of the Act and the Rules shall not be defeated where the person duly selected is offered appointment on a vacancy requisitioned by the Committee of Management. This arrangement will also prevent any ad hoc appointment to be made on the post awaiting selection, which sometimes, takes a long time.

11. The Kamlesh Kumar Sharma's case (supra) deals with the provisions of U. P. Higher Education Services Commission Act, 1980. Although there appears to be some similarity in the schemes of these two Acts. a close reading of the

provisions shows that whereas the list in case of U. P. Act 2 of 1994 is valid for a period of one year and continues for a limited purpose. Rule 12 (8) of the Rules of 1998, does not prescribe any time period for the validity of the list. The list of selected candidates holds good until the selected candidates are allocated any of the institution of his preference. There is no such restriction under the Rules of 1998 made under the Act No, 5 of 1982 nor do I find the inference of any such power under Rule 12 to keep the requisitioned vacancy on the post to a person in the select list in the subject, available to fill up the post. The selection in the case of Lecturer and trained graduate grade is not institutionwise. Under sub-rule (8) of Rule 12, the list has to be prepared subjectwise respectively. It is not correct to state that in such case a right of any candidate for promotion will be affected inasmuch as no such right has been given to any teacher in the institution, to be considered for the subject post. Unlike the post of Principal or the Head Master for which under Rule 11, the two seniormost teachers in the institution are considered along with other candidates.

12. For the aforesaid reasons, I find that even if, the vacancy was not advertised, since it was requisitioned by the Committee of Management, it could be included in the choice given to the selected candidates, available on the list and that the recommendations and appointments of such a candidate on the vacant post will not come in conflict with a right of any other person. It will rather serve the object and purpose of the Act.

13. Further in the present case, I find that the petitioner was regularised on 26.6.2000 and that the vacancy has arisen on the post of Lecturer in English in the institution on 30.6.2001 and was filled up on the recommendation for appointment of respondent No. 7 on 7.1.2004. The petitioner did not have five years continuous regular service and was, therefore, not eligible to be considered for this post. The State respondents, therefore, did not commit any illegality in recommending appointment of respondent No. 7 on the post.

14. The writ petition is consequently dismissed with no order as to costs.