
(2008) 08 AHC CK 0110
In the Allahabad High Court

Smt. Shail Kumari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-08-2008

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 35

Citation : (2008) 3 UPLBEC 2278

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—The petitioner was initially appointed as an Assistant Teacher in C.T. Grade in K.P. Girls Inter College, Allahabad on 19.10.1972 and, in the year 1980, the petitioner was promoted as an Assistant Teacher in L.T. Grade. The post of the Lecturer in Hindi was held in a permanent capacity by one Smt. Anandani Srivastava. She was promoted as an ad-hoc Principal on 17.1.1995 and functioned in that capacity till she retired on 30.6.2006. Consequently, upon the promotion of Smt. Anandani Srivastava as an ad-hoc Principal, a short term vacancy came into existence on the post of Lecturer in Hindi.

2. The petitioner, being the senior most Assistant Teacher in L.T. Grade and possessing the requisite qualifications for promotion as a lecturer in Hindi was accordingly promoted as an ad-hoc Lecturer on 17.1.1995. The papers were forwarded by the Committee of Management to the District Inspector of Schools, who by an order dated 27.9.2000 accorded approval to the ad-hoc promotion of the petitioner as a Lecturer in Hindi with effect from the date of the expiry of 60 days from the date of the occurrence of the vacancy. Pursuant to the aforesaid order of the Inspector dated 27.9.2000, the petitioner alleged that she was paid the regular salary of a lecturer w.e.f. 17.1.1996 and that the arrears were also paid to her.

3. On 30.6.2006, the post of Lecturer in Hindi became vacant in a substantive

capacity on account of the retirement of Anandani Srivastava. According to the petitioner, six posts were required to be filled up by way of promotion under the 509c quota for promotion. The petitioner, being the senior most Assistant Teacher in L.T. Grade and working as an ad-hoc Lecturer in Hindi since January 1995 made a representation for promotion on the said post. Since nothing was done, the petitioner filed writ petition No. 43839 of 2006 which was disposed of by a judgment dated 23.8.2006 which was subsequently modified by an order dated 11.9.2006 wherein, the Court directed the District Inspector of Schools to consider as to whether the vacancy was required to be filled up by way of promotion and, in the event, the post was required to be filled up by way of promotion, the Inspector was required to forward the names of all the eligible teachers working in L.T. Grade to the Regional Level Committee, for necessary approval.

4. The Court further directed the Committee to decide the matter, and in the interim period, the Court permitted the petitioner to function as an ad-hoc lecturer in Hindi. The Deputy Director of Education, by the impugned order, directed Smt. Saroj Bala, the respondent No. 6, to be appointed as a Lecturer in Hindi w.e.f. the date of the occurrence of the vacancy in the substantive capacity in Hindi. The petitioner, being aggrieved by the aforesaid decision, has filed the present writ petition.

5. Heard Sri Ashok Khare, the learned senior counsel assisted by the Sri Sunil Kumar Srivastava for the petitioner and Sri V.K. Singh, the learned Counsel for respondent No. 6 and the learned standing counsel for the remaining respondents.

6. Sri Ashok Khare, the learned senior counsel submitted that the respondent No. 6 has been promoted treating the post of Lecturer in Hindi as a vacancy reserved for the Scheduled Caste candidates which was not permissible in law. The learned Counsel submitted that the said post could not be reserved to be filled up by a Scheduled Caste candidate since it was an isolated post in which, the reservation policy could not apply.

7. The learned Counsel, in support of his submissions placed reliance on a decision of the Supreme Court in Chakradhar Paswan Vs. State of Bihar and Ors, and in Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association and Others, Further, Smt. Saroj Bala did not possess the requisite five years of length of service, after having acquired the requisite qualifications, as contemplated under Rule 14 of the U.P. Secondary Education Service Selection Board Rules, 1998 and therefore, could not be promoted.

8. In support of his submissions, the learned Counsel for the petitioner placed reliance upon a decision of this Court in Smt. Usha Goel v. State of U.P. and Ors. 2004(3) ESC 1887.

9. In Chakradhar Paswan Vs. State of Bihar and Ors, the question which fell for determination before the Supreme Court was whether three posts of Deputy

Directors carrying the same pay scale constitute one cadre or whether the three posts are isolated posts on which the reservation policy could not apply. The Supreme Court held that the three posts of Deputy Directors of Homoeopathy, Unani and Ayurvedic are distinguishable and separate as they pertain to different disciplines and each one was an isolated post by itself, even though the said posts were in the same cadre. The Supreme Court further held that there could be no grouping of isolated posts even if they carried the same pay scale. 10. The Supreme Court, therefore, found that the reservation policy would not apply to the said post. The aforesaid decision was again affirmed by the Supreme Court in *Post Graduate Institute of Medical Education & Research, Chandigarh v. Faculty Association and Ors.* 1998(4)SCC 1, wherein the Constitution Bench of the Supreme Court held as follows:

In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such a single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of the public. Such total exclusion of general members of the public and cent per cent reservation for the backward classes is not permissible under the constitutional framework, Until there is plurality of posts in a cadre, the question of reservation will not arise because any attempt of reservation by whatever means and even with device of rotation of roster in a single post cadre is bound to create 100% reservation of such post whenever such reservation is to be implemented. The device of rotation of roster in respect of a single post cadre will only mean that on some occasions there will be complete reservation and the appointment to such posts is kept out of bounds to the members of a large segment of the country who do not belong to any reserved class, but on some other occasions the post will be available for open competition when in fact, on all such occasions, a single post cadre should have been filled only by open competition amongst all segments of the society. The view taken in *Chakradhar* case is approved that there cannot be any reservation in a single post cadre.

11. In *State of U.P. and Ors. v. M.C. Chattopadhyaya and Ors.* 2004(12)SCC 333, the Supreme Court held as follows:

While, therefore, we are of the considered opinion that there can be a reservation in respect of post of Professor and the provisions of the Reservation act would apply, but the same cannot be applied taking all the Professors as a cadre and it has to be made subjectwise, as has been earlier construed and held by this Court. We are also of the opinion that there cannot be a reservation for an isolated post. We further observe that in deciding the question of reservation the appropriate authority must follow the roster as has been published in exercise of power u/s 3(5) of the Reservation Act and then the roster should be duly complied with in accordance with the principles enunciated by this Court in *Sabharwal* case.

12. In *Smt. Usha Goel v. State of U.P. and Ors.*, it was held that Rule 14 of the

U.P. Secondary Education Services Selection Board Rules 1998 had been incorporated to mean that a teacher would be qualified and would be eligible for the promotion, if the teacher had completed five years of continuous regular service with the said qualification. The learned Counsel submitted that the respondents had passed Intermediate in Sanskrit in the year 2002 and completed her graduation in the year 2005, and therefore, five years should be counted from the year 2005 onwards. Since the respondent did not possess the prescribed qualification as five years had not been completed, consequently the respondent No. 6 was not entitled to be promoted as a lecturer.

13. The learned Counsel for the respondents Sri G.K. Singh submitted that the judgment of the Court in Smt. Usha Goel (supra) is distinguishable and that the Court had wrongly interpreted the provision of the Rule 14 of the aforesaid Rules, 1998. The learned Counsel submitted that earlier Chapter II Regulation V of the Regulation framed under the Intermediate Education Act provided a provision for promotion of a teacher on the post of lecturer which was subsequently superceded by Rule 9 of the U.P. Secondary Education Service Commission Rules, 1983, which provided that a teacher working in L.T and C.T Grade and who possessed the minimum qualifications and had put in at least five years of continuous service as a teacher in a concerned subject on the date of the occurrence of the vacancy would be considered for promotion. The word, "concerned subject", was deleted in Rule 9 by an amendment dated 1.7.1983, as a result of which, five years of continuous service in the concerned subject was not required.

14. Subsequently, the aforesaid rules were superceded by Rule 14 of the U.P. Secondary Education Services Selection Boards, Rules, 1998 which reads as under:

14. Procedure for recruitment by promotion- (1) Where any vacancy is to be filled by promotion all teachers working in trained graduates grade or Certificate of Teaching grade, if any, who possess the qualifications, prescribed for the post and have completed five years continuous regular service as such on the first day of the year of recruitment shall be considered for promotion to the lecturers grade or the trained graduates grade, as the case may be, without their having applied for the same.

15. The learned Counsel submitted that as per Rule 14 of the Rules, 1998, the respondent No. 6 possessed requisite qualifications of being M.A in Hindi and a graduate in Sanskrit and had also completed five years of continuous regular service and was consequently entitled to be promoted under Rule 14 of the Rules. The five years of continuous service could not be linked with the qualification which the petitioner possessed subsequently, and therefore, to that extent the judgment in the case of Smt. Usha Goel (supra) was distinguishable and/or should be referred to a larger bench.

The learned Counsel further submitted that in so far as the reservation is

concerned, the post of lecturer is the cadre by itself and that the rules relating to reservation would apply to a cadre. Consequently, the post was required to be filled up from a reserved category candidate and, to that extent, the order does not suffer from any error of law and was liable to be affirmed.

16. Having considered the submissions of the learned Counsel for the parties, this Court is of the opinion that the writ petition is liable to be allowed on the short point itself, as stated hereinafter and it is not necessary to go into the question of reservation at this stage.

17. In *Smt. Usha Goel (supra)*, the Court interpreted the provision of Rule 14 of the Rules, 1991 as under:

The Rules of 1998 made in exercise of powers u/s 35 of U.P. Secondary Education Services Selection Board Act, 1982, replaced the Rules of 1995, and came into force on 8th August, 1998. The words "as such" in Rule 14, after the words five years continuous regular service, qualify both to the qualification prescribed for the post and five years" continuous regular service. The legislature has once again brought in the eligibility to only those persons who possessed qualification for the post and completed 5 years regular service with such qualifications. The words qualifications prescribed for the post and the five years" continuous regular service have been used in the same sentence, which is a compound (double) sentence, as a demonstrative pronoun. (Latin word demonstrate, to show clearly), and points to the person who possesses the qualification prescribed for the post.

18. The submission of the learned Counsel for the respondents that five years of continuous regular service cannot be equated with the qualification prescribed for the post is patently erroneous. The words five years of continuous regular service would qualify both to the qualification prescribed for the post as well as for five years of continuous regular service. Consequently, this Court is in complete agreement with the judgment in the case of *Smt. Usha Goel (supra)*.

19. In the present case, admittedly, the petitioner possessed the requisite qualification only in the year 2005. The impugned order granting promotion to respondent No. 6 was passed on 18.5.2007, on which date, the respondent did not have the requisite qualification. Consequently the respondent No. 6 was not entitled for promotion on the post of lecturer. In view of the aforesaid, it is not necessary for the Court to dwell on the question, as to whether, the post was an isolated post or not, and whether the reservation policy would apply to it or not.

20. In view of the aforesaid, the impugned order cannot be sustained and is quashed. The writ petition is allowed. The matter is remitted to the authority concerned to reconsider the petitioner's application for promotion as a lecturer. It would be open to the petitioner to place the relevant Jaws on the question of reservation before the authority concerned, in which case, the authority will consider and apply its mind and pass an order accordingly within three months from the date of the production of a certified copy of this order.