

(2009) 02 UK CK 0005
In the Uttarakhand High Court
Case No : Special Appeal No. 22 of 2009

State of Uttarakhand and Others	Vs	APPELLANT
Smt. Sushma Ghai and Another		RESPONDENT

Date of Decision : 25-02-2009

Acts Referred:

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 5, 6
Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 — Rule 14
Uttar Pradesh Secondary Education Services Commission Rules, 1995 — Rule 10C, 14

Citation : (2009) 1 UC 697

Hon'ble Judges : B.C.Kandpal, Acting C.J.;Brahma Singh Verma, J

Bench : Division Bench

Advocate : Subhash Upadhayay, Brief Holder for State, for the Appellant; K.N. Joshi, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Kandpal, A.C.J.

1. This special appeal has been preferred against the judgment and order dated 14-08-2008 passed by the learned Single Judge in Writ Petition No. 285 (S/S) of 2007, Smt. Sushma Ghai v. State of Uttarakhand and Ors.

2. Learned Counsel for the Appellants has invited our attention towards Clause - 1 of Regulation 6 of Regulations framed under the Uttar Pradesh Intermediate Education Act, 1921, which reads as follows:

Where any vacancy in the lecturer's grade or in the L.T. grade as determined under Regulation 5, is to be filled by promotion, all teachers working in the L.T. or the C. T. grade, as the case may be, having a minimum of five years continuous substantive service to their credit on the date of occurrence of the vacancy shall be considered for promotion by the Committee of Management without their having to apply for the same provided they possess the prescribed minimum qualification for teaching the subject in which the teacher in the

lecturer's grade or in the L. T. grade is required.

3. He has submitted that on the basis of the aforesaid clause, the Respondent - Smt. Sushma Ghai could be considered for promotion only when she would have possessed minimum of five years of continuous sustentative service to her credit in L.T. Grade on the date of occurrence of the vacancy i.e. 08-12-1992.

4. Learned Counsel for the Respondent has submitted that although on 08-12-1992, the Respondent was not possessing minimum five years of continuous service in L.T. Grade, but she completed the requisite period of continuous service to her credit in the year 1997, while the proposal for the promotion was made on 27-08-2003. Therefore, the year of recruitment and the date on which the recommendation is made for promotion would be relevant.

5. Learned Single Judge has considered the provision of Rule 14 (Clause -1) of the Uttar Pradesh Secondary Education Services Commission Rules, 1995 and Uttar Pradesh Secondary Education Services Selection Board Rules, 1998, which reads as follows:

Clause (1) of Rule 14 of the Uttar Pradesh Secondary Education Services Commission Rules, 1995:- Where any vacancy is to be filled by promotion all teachers working in trained graduates (L T.) grade or Certificate of Teaching (C.T.) grade, if any who possess the qualifications prescribed for the post and have completed five years continuous 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 (L.T.), grade, as the case may be, without their having applied for the same.

Clause (1) of Rule 14 of the Uttar Pradesh Secondary Education Services Selection Board Rules, 1998:- 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.

6. On the basis of the aforesaid two rules, learned Single Judge came to the conclusion that a person who has completed five years continuous regular service as such on the first day of the year of recruitment shall be considered for promotion to the lecturer grade or the trained graduates grade, as the case may be, without their having applied for the same.

7. We find ourselves in agreement with the findings recorded by the learned Single Judge that the post of Lecturer Zoology in the institution was created in the year 1992 and even after the lapse of 15 years i.e. 2008, the vacancy is still unfilled. Further, Rule 10-C (Proviso) of Uttar Pradesh Secondary Services Commission Rules, 1995 as amended in the year 1998 provides that direct

recruitment shall be made when no eligible candidate is available for promotion in the recruitment year.

8. The State did not care even to fill up the vacancy by direct recruitment for the last 15 years. Even in the year 2003, when the process started, the State Government could not fill up the vacancy by direct recruitment. Now, the Appellant cannot take the benefit of the inaction on the part of the Appellant itself.

9. We do not find any perversity in the impugned judgment passed by the learned Single Judge. The appeal lacks merit and is liable to be dismissed.

10. Accordingly, the special appeal is dismissed. No order as to costs.