

(2010) 09 AHC CK 0328

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3810 of 2010

Surendra Kumar Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 24-09-2010

Acts Referred:

Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 — Rule 14
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 12

Citation : (2010) 09 AHC CK 0328

Hon'ble Judges : V.K.Shukla, J

Final Decision : Allowed

Judgement

V.K. Shukla, J.—Petitioner had approached this Court questioning the validity of the order of promotion dated 15.12.2009 passed by promotional Committee constituted under Section 12 of U.P. Act No. V of 1982, in favour of Jageshwar Singh.

2. Brief background of the case is that in the district of Fatehpur there is recognized institution namely Bahua Inter College Bahua. Said institution is duly covered by the provisions of U.P. Act No. II of 1921; U.P. Act No. 24 of 1971 and U.P. Act No. V of 1982 and the 1998 Rules framed thereunder. In the institution concerned petitioner was appointed on 27.10.1972 as C.T. Grade teacher. Similarly Jageshwar Singh respondent no. 7 was initially appointed in the said college on 08.07.1970 in J.T.C Grade and then he was promoted in C.T. grade on 08.07.1975. This is accepted position that petitioner is senior visaviz Jageshwar Singh. In the seniority list, copy of which has been appended at page 20 of the counter affidavit filed by Jageshwar Singh himself therein Surendra Kumar Singh, petitioner has been shown at serial no. 2 and respondent no. 7 Jageshwar Singh has been shown at serial no. 6. After declaration of C.T. Grade as dying cadre, L.T. status was accorded to petitioner prior in time visaviz Jageshwar Singh, respondent no. 7 and on this score inter se parties there is no dispute. This is accepted position that two post of Lecturer fell vacant. First post of Lecturer

which fell vacant was post of Lecturer in History on 30.06.2007 and second post of Lecturer which fell vacant was post of Lecturer in Sociology on 30.06.2008. Petitioner being eligible was entitled to be considered for the post of Lecturer in History but petitioner has refused to accept his promotion for being considered on the post of Lecturer in History and on 30.06.2008 when post of Lecturer in Sociology fell vacant petitioner has claimed that he should be accorded promotion on the post of Lecturer in Sociology. Qua the said post in question Managing Committee of the institution has passed resolution in favour of Jageshwar Singh by mentioning that said post should go to O.B.C. category candidate and the matter was referred to, thereafter to the Committee constituted under Section 12 of the Act for consideration of claim of Jageshwar Singh, respondent no. 7 and same has been accepted by the aforesaid Committee. At this juncture present writ petition in question has been filed.

3. Sri Jai Bahadur Singh, learned counsel for the petitioner contended with vehemence that in the present case Rule 14 of 1998 has been violated with impunity. Petitioner in spite of the fact that he was senior his claim has not been considered for being accorded promotion as Lecturer in Sociology and quite illegally said post in question has been reserved for OBC category candidate whereas in the matter of promotion there is no provision for reservation, as such writ petition deserves to be allowed.

4. Countering the said submission Sri Bholeshwar Gautam, Advocate representing Jageshwar Singh contended that petitioner has refused promotion on the post of Lecturer in History as such he could not stake his claim on the post of Lecturer in Sociology further action has been taken as per Government Order dated 25.06.2002, as such writ petition deserves to be dismissed.

5. Rule 14 of U.P. Secondary Education Services Selection Board Rules 1998 is being looked into.

Rule 14 of Rules 1998

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 training grade, if any, who possess the qualification 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.

Note: For the purposes of this subrule, regular service rendered in any other recognized institution shall be counted for eligibility unless interrupted by removal dismissal or reduction to a lower post.

(2) The criterion for promotion shall be seniority subject to the rejection of unfit.

(3) The Management shall prepare a list of teachers referred to in subrule (1), and forward it to the Inspector with a copy of seniority list, service records,

including the character rolls, and a statement in the pro forma given in AppendixA

(4) Within three weeks of the receipt of the list from the management under subrule (3), the Inspector shall verify the facts from the record of his office and forward the list to the Joint Director.

(5) The Joint Director shall consider the cases of the candidates on the basis of the records referred to in subrule (3) and may call for such additional information as it may consider necessary. The Joint Director shall place the records before the Selection Committee referred to in subsection (1) of Section 12 and after the Committee's recommendation, shall forward the panel of selected candidates within one month to the Inspector with a copy thereof to the Management.

(6) With ten days of the receipt of the panel from the Joint Director under subrule(5) the Inspector shall send the name of the selected candidates to the Management of the institution which has notified the vacancy and the Management shall accordingly on authorization under its resolution issue the appointment order in the proforma given in Appendix ""F" to such candidate.

6. On the parameter as set out factual position reflected in the present case is that petitioner is senior visaviz Jageshwar Singh and it appears that petitioner has refused to be considered for promotion for the post of Lecturer in History which had fallen vacant on 30.06.2007 and thereafter on 30.06.2008 post of Lecturer in Sociology has fallen vacant and said post also falls under 50% promotional quota and petitioner has staked his claim against the said post. Under U.P. Act No. V of 1982 and Rules 1998 there is no statutory prohibition that once incumbent has refused his claim for promotion then qua other vacancy which would occur in future said incumbent would be prohibited from staking his claim. Once there is no statutory prohibition after refusal to be considered for promotion to stake his claim for another post, then as per mandatory provision of Rule 14 of U.P. Secondary Education Services Selection Board Rules 1998, the Managing Committee was obliged to transmit record of each and every incumbent eligible on the first day of year of recruitment. Document which has been filed at page 12 of the counter affidavit clearly reflects that Managing Committee of the institution has not forwarded the claim of the petitioner for being considered for promotion on account of refusal for being considered for promotion on the post of Lecturer in History qua the post of Lecturer in Sociology and quite illegally by taking shelter of Government Order dated 25.06.2002 proceeded to mention that in case any post in question has fallen vacant of particular category then it would be filled from said category, ignoring the provision that in the matter of promotion there is no reservation provided for OBC category candidate and Government Order dated 25.06.2002 cannot go beyond the provision of U.P. Act No 4 of 1994. Once under the provision of U.P. Act No. 4 of 1994 there is no provision provided for OBC category candidate being accorded promotion then in the garb of Government Order dated 25.06.2002, promotional quota post could not have been reserved for OBC category candidate as has been done. Managing Committee of the institution has

no authority to pass any resolution rather under Rule 14 of the U.P. Secondary Education Services Selection Board Rules 1998, Managing Committee was obliged to transmit the entire papers of each and eligible candidates and thereafter their candidature has to be considered as per criteria provided by the Committee constituted in this regard.

7. Consequently, in the fact of the case once promotional exercise has not been undertaken in consonance with the provision of Rule 14 of 1998 Rules and petitioner's claim has not at all been considered for promotion and wrongly said post in question has been treated as reserved for OBC in the matter of promotion then promotional exercise so undertaken qua the post of Lecturer in Sociology cannot be approved of.

8. The action of Managing Committee is clearly motivated and District Inspector of Schools and Joint Director of Education have clearly failed to perform the duty cast upon them under Rule 14 of 1998 Rules, as records had never been examined and mechanical manner, whatever resolution was transmitted same had been approved of without their being independent application of mind.

9. Consequently, order dated 15.12.2009 passed by promotional Committee constituted under Section 12 of U.P. Act No. V of 1982 is hereby quashed and set aside. Matter is transmitted to the said Committee constituted under Section 12 of the Act to consider the claim of promotion of petitioner and all other eligible candidate also in term of the provision as contained under Rule 14 of 1998 Rules.

10. With the aforesaid observation and direction present writ petition is allowed.

No order as to cost.