

(1996) 07 AHC CK 0020
In the Allahabad High Court
Case No : Writ Petition No. 806 of 1996 (S/S)

Syed Majid Ashraf Nadvi

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 03-07-1996

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Regulation 5, 5(1), 5(2), 6, 6(1)

Citation : (1996) 07 AHC CK 0020

Hon'ble Judges : A.N. Gupta, J

Bench : Single Bench

Advocate : Rakesh Srivastava, for the Appellant; M.A. Siddiqui, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Gupta, J.—Azimuddin Ashraf Islamia Inter College, Barabanki is a Government aided College. The Committee of Management and the Manager of which are Respondent Nos. 2 and 3 respectively to this petition. District Inspector of Schools is Respondent No. 1.

2. Syed Majid Ashraf Nadvi, the Petitioner was appointed on 23.8.73 as a teacher in the C.T. grade in the college and since then he has been working. At the time of his appointment, his academic qualifications were that he had passed out M. A. in Urdu from Nagpur University, B. Ed. from Marathwara University and Higher Diploma in Oriental Learning (Maulvi Fazil) from Nagpur University. After joining, he passed out M. A. in Persian from Nagpur University in the year 1974 and obtained Ph. D. in Urdu in the year 1980 from Lucknow University. On 18.2.89, a post of Lecturer in Urdu fell vacant in the College because Shri Jalil Yar Khan Warsi was promoted to the post of Principal of the College. At that time, i.e., on 18.2.89, there were 21 sanctioned posts in the Lecturer's grade in the College against which 11 directly recruited candidates were working. At the time when this petition was filed in February, 1996, 5 posts in the Lecturer's grade including that of a Lecturer in Urdu were vacant. Regulations have been framed regarding

appointment of teachers under U.P. Intermediate Education Act, 1921. Regulation 5 (1) provides that every vacancy in the post of teacher in a recognised institution shall except as provided in Clause (2) be filled by direct recruitment. Regulation 5 (2) provides that 50% of the total number of sanctioned posts in Lecturer's grade or in the L.T. grade shall be filled in by promotion from amongst the teachers working in the institution in the L.T. and C.T. grades respectively and promotion shall be made subject to availability and eligibility of such teachers for promotion. Regulations 5 (1) and 5 (2) read as under:

5(1) Every vacancy in the post of teacher in recognised institution shall except as otherwise provided in Clause (2) be filled by direct recruitment.

5(2)(a) Fifty percent of the total number of the sanctioned posts in lecturer's grade or in the L.T. grade (shall only be filled by promotion) from amongst the teachers working in the institution in the L.T. and C.T. grades respectively and promotions shall be made subject to the availability and eligibility of such teachers for promotion.

(b) If more than fifty percent of the total number of the sanctioned posts in the Lecturer's grade or as the case may be, in the L.T. grade have already been filled by promotion, the persons already promoted shall not be reverted.

(c) In computing fifty percent of the posts under Clause (a), fraction of less than one-half be ignored while fraction of one-half or more shall be reckoned as one.

3. A combined reading of Regulation 5 (1) and (2) shows that every vacancy has to be filled by direct recruitment In the lecturer's grade but 50% of the posts shall be filled by promotion from the L.T. grade teachers provided such teachers are available and eligible for promotion. Regulation 6 (1) provides that whenever any vacancy in the lecturer's grade falls vacant, and is to be filled in by promotion, all the teachers working in the L.T. grade who have "a minimum five years of 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". Regulation 6 reads as follows:

6 (1) Where any vacancy in the lecturer's grade in the L.T. grade as determined under Regulation 5, is to be filled by promotion, all teachers working in the L.T. or C.T. grade, as the case may be, having a minimum of live 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 qualifications for teaching the subject in which the teacher in the Lecturer's grade or in the L.T. grade is required.

Note.--For purposes of this clause, service, rendered by a teacher in the L.T. or the C.T. grade in any other recognised institution shall count for eligibility, unless

interrupted by removal, dismissal or reduction to a lower post.

(2) Selection for promotion to the next higher grade" shall be made on basis of serving--standing, achievements in service, academic qualifications and integrity.

(3) Subject to Clause (2) where more than one teacher in the L.T. grade are eligible for promotion to the post of Lecturer in any subject, preference shall be given to the teacher who is the senior-most amongst them in service in that grade.

4. Since against 21 sanctioned posts in the Lecturers" grade, 11 directly recruited candidates were already working, the remaining posts including two posts of lecturer in Urdu, were to be filled by promotion in accordance with the provisions of Regulations 5 and 6 quoted above.

5. The grievance of the Petitioner is that although he was fully eligible for promotion on the post of Lecturer in Urdu but his case was not being considered by the college authorities and, therefore, on 6.10.90, he made a representation to them which was followed by a reminder dated 27.2.91. The Committee of Management, instead of disposing of representation of the Petitioner, issued an advertisement on 25.3.93 in "Times of India" newspaper calling for applications for appointment on two posts of English Lecturers and one post of Urdu Lecturer and as such, management of the College was proceeding to make direct recruitment on the post of Lecturer in Urdu. When the Petitioner learnt about it, he made a representation dated 8.6.93 to the D.I.O.S. requesting him to direct the management to fill vacancy on the post of Lecturer in Urdu by promotion only. The same day, i.e., on 8.6.93, the D.I.O.S. wrote to the management of the College asking it to stop process of direct recruitment and to fill the post of lecturer in Urdu by promotion. In pursuance of the said directions of D.I.O.S., the process of direct recruitment in pursuance of said advertisement was stopped by the management but no promotions were made against the vacancies in Lecturer's grade. Subsequently, the Petitioner made several representations dated 13.7.93. 27.8.93. 22.6.94 and 26.6.95. The representations of the Petitioner were ultimately disposed of by the management vide its letter dated 13.2.96 rejecting the same on the ground that on the date, i.e., on 18.2.89 when vacancy of the post of lecturer in Urdu fell vacant, the Petitioner was not eligible for the promotion as he had not put in five years" service in the L.T. grade.

6. On 8.1.96, the management again issued an advertisement in "PIONEER" inviting applications for direct recruitment on several posts including on the post of lecturer in Urdu which gave rise to this petition. The Petitioner has prayed for a writ of certiorari for quashing the advertisement dated 8.1.96 on the ground that the post is to be filled in by promotion and not by direct recruitment. He has also prayed for a writ of mandamus directing the opposite parties not to make direct appointment on the post of lecturer in Urdu and to consider the case of Petitioner for promotion. It has also been prayed that the Petitioner be considered for promotion to the post of Lecturer in Urdu.

7. In the counter-affidavit, the management has admitted the factual aspect of the matter as narrated above. However, the contention of the management is that the Petitioner did not fall in the field of eligibility for being promoted to the post of lecturer in Urdu as the Petitioner had not put in 5 years" of service in the L.T. grade which is the minimum qualification prescribed under Regulation 6 because the post of lecturer in Urdu fell vacant on 18.2.89 and the Petitioner was promoted in the L.T. grade on 9.8.1985 and as such he had not put in five years" service in L.T. grade on the date of "occurrence of the vacancy". It has further been averred in the counter-affidavit that the Petitioner has been stalling appointment to the post of Lecturer in Urdu for several years due to which the students of college are suffering.

8. The only question for consideration in this petition is as to whether the Petitioner was eligible for being considered for promotion for the post of lecturer in Urdu. It is needless to repeat that according to Regulation 5, this Post of Lecturer in Urdu falls within the promotional quota provided the eligible candidates are available for promotion. Regulation 6 (1) clearly provides that whenever any vacancy in the Lecturer's grade is to be filled in by promotion in the L.T. grade, all the teachers working in the L.T. grade having put in minimum live years of continuous substantive service "on the date of occurrence of vacancy" shall be considered for promotion by the Committee of Management without their having to apply for the same." Thus, only those teachers working in the L.T. grade are eligible for being considered for promotion to the post of lecturer in Urdu, who have put in live years of continuous substantive service in the L.T. grade "on the date of occurrence of the vacancy". Admittedly, the Petitioner was promoted to the L.T. grade on 9.8.85 and the post of Lecturer in Urdu had fallen vacant on 18.2.89. It is, thus, clear that on 18.2.89 which is the "date of occurrence of the vacancy", the Petitioner had not put in minimum of live years of service in the L.T. grade and, therefore, he is not eligible for being considered for promotion. A Division Bench of this Court at Allahabad in the case of Committee of Management, Sri Param Hansh Intermediate College, Hanuman Nagar, Azamgarh v. Additional Director of Education, U.P. Allahabad and Ors. 1981 UPLBEC 50 , has held that for the purposes of computation of five years service, the relevant date is the date of occurrence of vacancy and not the date of filling up of such vacancy. This had been followed by another Division Bench in the case of Committee of Management v. Distt. Inspector of Schools, 1990 (1) UPLBEC 137 , in the case of Kavita Yadav v. Regional Inspectress of Girls Schools, Meerut and Ors. 1995 (13) LCD 263 and Narendra Singh Chauhan v. The Managing Committee of Inter College, Kanchausi Bazar, Etawah and Ors. 1996 (14) LCD 267. In view of these decisions and considering the language of the statute, namely, Regulation 6 (1), it has to be held that, five years of continuous service has to be in the L.T. grade "on the date of occurrence of vacancy" for being eligible for being considered for promotion in the Lecturer's grade.

9. It was urged by learned Counsel for the Petitioner that the advertisement for

the post of lecturer in Urdu for direct recruitment was issued for the first time on 25.5.93 and on that date, the Petitioner had acquired minimum five years of experience and, therefore, he has become eligible for being considered for promotion as he was promoted in the L.T. grade on 9.8.85. This argument has to be rejected in view of the statutory provision as contained in Regulation 6 (1) which provides that this minimum five years of experience should be as on the date of occurrence of vacancy. Since the vacancy in this case occurred on 18.2.89, the Petitioner had not completed minimum of five years" service in the L.T. grade on that date and, therefore, he is not eligible for being considered. On behalf of the Petitioner, reliance was placed on a decision of Supreme Court given in the case of Ram Sarup Vs. State of Haryana and Others, . In that case, the Petitioner was appointed/promoted to the post of Labour-cum-Conciliation Officer when he had not acquired minimum of five years" experience on the lower post which was the qualification for promotion. The Petitioner had completed nine years of service on the promoted post when the case came before Supreme Court. It was held in those circumstances by Hon"ble Supreme Court that although the appointment/promotions on the post of Labour-cum-Conciliation Officer was irregular but was not void and the employee must be deemed to have been validly appointed on completion of necessary period of experience. That was the case wherein the Petitioner had already been appointed to the promotional post and had actually worked for nine years. In our case, the Petitioner has not so far been promoted and he seeks promotion. Thus, in a way, this decision of Hon"ble Supreme Court goes against the Petitioner inasmuch as Hon"ble Supreme Court held in the said decision that appointment in any case was irregular because the candidate did not possess the minimum prescribed experience. This Court in writ jurisdiction would not pass an order for making an irregular promotion.

10. In the result, the writ petition fails and is hereby dismissed, with no order as to costs. The interim order is hereby discharged.