

(1997) 07 AHC CK 0123

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1277 of 1988

Vijay Narain Shukla and Anr.

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 23-07-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Intermediate Education Act, 1921 — Chapter 2, 5, 6

Citation : (1997) 07 AHC CK 0123

Hon'ble Judges : D.K.Seth, J

Final Decision : Dismissed

Judgement

D.K. Seth, J.—The petitioners claims that they should have been promoted from C.T. Grade to L.T. Grade on account of their eligibility in the 40% quota for promotion as provided under Regulation 5(2)(a), Chapter II of the Regulation framed under the U.P. Intermediate Education Act. Instead the respondents by the impugned order dated 17985 confirmed and regularised the appointments of three teachers who were engaged in 1978 by way of regularisation. This order has been challenged in the writ petition. In the counteraffidavit it has been pointed out that on the date when the vacancy occurred the petitioners were not eligible for being promoted and therefore the promotion cannot be given.

2. I have heard learned Counsel for the petitioner and learned Standing Counsel.

3. By reason of the said provision 40% vacancy of the sanctioned posts in L.T. Grade is to be filled by promotion from amongst the teachers working in the C.T. Grade subject to availability and eligibility of such teachers for promotion. The said availability and eligibility is qualified by reason in Regulations 5 and 6 of ChapterII framed under U.P. Intermediate Education Act which provides as follows:

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

2. (a) Forty per cent 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 the C.T. grades respectively and promotions shall be made subject to availability and eligibility of such teachers for promotion.

(b) If more than forty per cent 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 forty per cent of the post under clause (a) fraction of less than one half shall be ignored while fraction of one half or more shall be reckoned as one.

Explanation.(1) The expression "sanctioned post" means any post not being a post created temporarily for a specified period, which is created by an order of the authority competent to create such post and includes a post on which appointment has been made with the approval of the Inspector.

(2) The post held by a teacher who, while working in an institution in a lower grade (was appointed) to a higher grade in that institution through direct recruitment shall not be deemed to have been filled by promotion.

(3) For purposes of this regulation, teachers duly appointed in any manner prior to the coming into force of the Intermediate Education (Amendment) Act, 1958 (U.P. Act No. XXXV of 1958) shall be deemed to have been appointed through direct recruitment.

6.(1) 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 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 the basis of service 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 seniormost amongst them in service in that grade.

(4) (a) The claim of any teacher who is eligible for promotion shall not be ignored merely because he has proceeded on long leave or is officiating or working temporarily on a post in the higher grade.

(b) In the case of a teacher who is under suspension, the claim for promotion shall not be ignored if he is reinstated prior to the selection for promotion.

(5) In respect of any teacher selected for appointment by promotion in accordance with these regulations, the Manager of the institution shall within a week from the date of resolution passed by the Committee of Management in regard to such appointment forward (the proposal for the concurrence of the Inspector together with) a copy of such resolution and a statement showing the following particulars:

(1) the total number of sanctioned posts in the grade in which promotion is to be made;

(ii) the number of posts to be reserved for promotion;

(iii) the number of posts already filled by promotion giving names of the incumbents;

(iv) the total number of vacancies which have occurred;

(v) the number of vacancies determined by the Committee of Management to be filled by

(a) promotion;

(b) direct recruitment;

(vi) the names of all eligible candidates for promotion, their qualifications and the length of their service from the date of their substantive appointment in the grade from which they are to be promoted; and

(vii) names of persons selected for promotion.

(2) Within three weeks from the date of receipt of the proposal under clause (5) the Inspector shall communicate his decision thereon to the Manager failing which the Inspector shall be deemed to have given his concurrence to the resolution passed by the Committee of Management.

(7) Where the Committee of Management feels aggrieved from the decision of the Inspector under clause (6), it may within two weeks from the date of communication of such decision to the Manager make a representation against it to the Regional Deputy Director of Education whose decision in the matter shall be final."

A plain reading of the said Regulation 6(1) indicates that a teacher having minimum qualification of five years continuous service in their credit on the date of occurrence of the vacancy shall be considered for promotion in terms of

Regulation 5 (2) (a) in the said 40% quota provided they possess prescribed minimum qualification for teaching the subject in which the teacher in L.T. grade is required. Unless the above test is satisfied the petitioner can not claim to have acquired any legal right in terms of Regulation 5(2)(a). The relevant date on which five years continuous service is to be counted is the date the vacancy has occurred. The learned Counsel for the petitioners" contended that the order having been passed in 1985 within which the petitioners had acquired their eligibility. The petitioners should have been considered and the vacancies should not have been filled up by direct recruitment.

4. Direct recruitment is permissible if 40% quota by reason of Clause (2) (b) and clause (1) of Regulation 5 of Chapter II is not available. By reason of clause (1) all vacancies are to be filled up by direct recruitment except as provided in clause (2). By reason of Clause (2) filling up vacancy by promotion is subject to availability and eligibility which indicates that if there is no teacher available or if the teachers available do not possess the eligibility in terms of Clause (1) of Regulation 5. The vacancy has to be filled up by recruitment. Therefore there is no infirmity in filling up the post by direct recruitment provided that there was no eligible teacher was available.

5. In the present case it is alleged that the petitioners were appointed as assistant teacher in C.T. grade w.e.f 8972 and 6173 with substantive capacity and were confirmed after expiry of probationary period. Such statement has been made in para 3 of the writ petition. In para 5 of the writ petition it has been pointed out that the vacancy was illegally advertised on 30677 in Northern India Patrika. A copy whereof is Annexure I to the writ petition. If the advertisement is issued on 30677 the vacancy must have occurred either on 30677 or prior thereto. Even if it is taken into consideration that the vacancy had occurred on 30677 even then none of the petitioners have in their credit continuous five years substantive service. Inasmuch as the petitioner No. 1 would be completed five years only on 8977 whereas the petitioner No. 2 would be completed the same period on 6178. Therefore, as disclosed the petitioners did not possess the primary qualifications namely five years continuous service on the date the vacancy was occurred. Therefore, they cannot claim promotion on the said vacancy in the 40% quota as claimed by them.

6. For all the reasons the writ petition fails and is accordingly dismissed. However there will be no order as to costs.