
(2010) 08 AHC CK 0105

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13862 of 2004

Virendra Pal Singh

APPELLANT

Vs

Joint Director of Education and Others

RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 — Rule 14

Citation : (2011) 2 ADJ 542 : (2011) 2 AWC 1396

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Sahi, J.—Heard Sri Prakash Padia, learned Counsel for the Petitioner, learned Standing Counsel for Respondent Nos. 1, 2, 6 and 7 and Sri Shashi Kant Shukla for Respondent No. 5. Counter-Affidavits have been filed on behalf of Respondent Nos. 3 and 4 as well.

2. The dispute relates to the claim of promotion of the Petitioner on the post of Lecturer (History) in Dayanand Inter College, Amritpur, district - Farrukhabad, which is an institution governed by the provisions of U.P. Intermediate Education Act, 1921 and the U.P. Secondary Education Service Selection Board Act and the regulations framed thereunder.

3. The vacancy on the post of Lecturer in History came into existence on the retirement of the permanent incumbent on 30.6.1998. The Respondent No. 5 is admittedly senior to the Petitioner and one Shishu Pal Singh was also senior to the Petitioner and the Respondent No. 5. The Respondent No. 5 succeeded in completing his Post Graduation in the subject of History with the declaration of his result on 8.7.1998. The Respondent No. 5 was, therefore, admittedly not qualified on the first day of the year of recruitment upon the vacancy coming into existence. The relevant date, which is admitted between the parties, would be 1.7.1998.

4. The Management appears to have promoted Shishu Pal Singh whose promotion was never approved and he also retired.

5. The Respondent No. 5 claimed that he became qualified as on 1.7.1999 and since Shishu Pal Singh had retired, therefore, he ought to have been promoted.

6. The Respondent No. 5 had staked his claim before the District Inspector of Schools which was not being considered as a result whereof he filed Writ Petition No. 43080 of 1999 which was disposed of on 6.10.1999 to consider his claim. The matter was taken up by the District Inspector of Schools who vide order dated 19.8.2000 came to the conclusion that the Respondent No. 5 was not qualified as on the first date of the year of recruitment and hence his claim was, accordingly, rejected. The order, therefore, practically went in favour of the Petitioner and which was never challenged in any Court of law.

7. The said order of the District Inspector of Schools was not being implemented by the Committee of Management as a result whereof the Petitioner approached this Court by filing Writ Petition No. 28605 of 2001 in which orders were issued on 6.8.2001 commanding the Management to take a decision with regard to the claim of the Petitioner. The Manager, on his own, passed an order on 1.10.2001 rejecting the claim of the Petitioner. It is in these circumstances that the dispute came to be taken up further before the Joint Director of Education. The Petitioner filed another Writ Petition No. 21997 of 2002 which was disposed of with a direction to decide the claim of the Petitioner. Accordingly, the Joint Director of Education, being the Chairman of the Regional Level Committee, proceeded to pass the order dated 28.2.2004 and rejected the claim of the Petitioner and reversed the order of the District Inspector of Schools passed earlier accepting the claim of the Respondent No. 5. The Joint Director of Education recorded a finding that the date of occurrence of vacancy stands shifted to 1.7.1999 on account of the circumstances indicated therein namely that the claim of Shishu Pal Singh had not been recognized and then held that the Respondent No. 5 was qualified on the said date and, therefore, deserves to be promoted.

8. It is this order, which is under challenge together with the communication dated 8.3.2004.

9. Sri Prakash Padia, learned Counsel for the Petitioner, submits that the impugned order proceeds on an erroneous construction of the relevant rules inasmuch as once the claim of Shishu Pal Singh had not been accepted then the same vacancy which occurred on 30.6.1998 will continue. He submits that accordingly the date of occurrence of vacancy and the first day of the year of recruitment would not alter and the qualification has to be seen on 1.7.1998 and not on any date subsequent thereto.

10. On the strength of the aforesaid submissions, it is urged that the order deserves to be set aside and the Regional Level Committee be directed to reconsider the claim of the Petitioner in the light of the relevant rules.

11. Sri Shashi Kant Shukla, on the other hand, for the Respondent No. 5 contends that having passed the M.A. examination on 8.7.1998, the Respondent No. 5 being senior to the Petitioner was entitled to be considered more so when the claim of Shishu Pal Singh had not been accepted. It is submitted that in such circumstances, the priority has been rightly fixed by the Regional Level Committee in favour of the Respondent No. 5 treating the date of occurrence of vacancy as 1.7.1999. Learned Standing Counsel has also supported the impugned order and has urged that it does not require any interference.

12. Having heard learned Counsel for the parties, the Rules require the possession of the requisite qualification as on the first day of the year of recruitment. The relevant Rule is Rule 14 of the U.P. Secondary Education Service Selection Board Rules, 1998. There is no dispute that the vacancy occurred on 30.6.1998 and, therefore, the qualification had to be seen on 1.7.1998. The Committee of Management did proceed to make a promotion but it promoted Shishu Pal Singh and did not consider the claim either of the Petitioner or of the Respondent No. 5. The Respondent No. 5 subsequently staked his claim on the ground that he has acquired qualification on 8.7.1998. It appears that after Shishu Pal Singh retired, the Respondent No. 5 was supported by the Committee of Management. In the opinion of the Court, this could not have been done inasmuch as the vacancy which occurred on 30.6.1998 cannot be said to have been occupied lawfully by Shishu Pal Singh in the absence of any approval by the competent authority. It is the same vacancy which continued and, therefore, the date on which the qualification had to be considered according to Rule 14 aforesaid was 1.7.1998. The Joint Director of Education committed a manifest error by shifting the said date of consideration on the ground of the alleged action of the Committee of Management by promoting Shishu Pal Singh which was never approved by the competent authority. In such a situation, the impugned order is unsustainable.

13. So far as the claim of the Petitioner is concerned, the District Inspector of Schools had passed an order on 19.8.2000. The said order has not been appreciated in correct perspective by the Joint Director of Education while proceeding to pass the impugned order.

Accordingly, the writ petition is allowed and the orders dated 28.2.2004 and 8.3.2004 are set aside. The matter is remitted back to the Regional Level Committee to pass fresh orders after hearing both the parties in the light of the observations made herein above within 3 months from the date of production of a certified copy of this order before the concerned authority.