

Bhola Nath Singh Vs State of U.P. and others

Court: Allahabad High Court

Date of Decision: Jan. 28, 2010

Acts Referred: Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 "Rule 11

Citation: (2010) 125 FLR 463

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Advocate: R.K. Ojha, for the Appellant;

Final Decision: Dismissed

Judgement

Sudhir Agarwal, J.

With the consent of the learned Counsel for the parties-Sri R.K. Ojha for the petitioner, learned Standing Counsel for

respondent No. 1 and Sri A.K. Yadav on behalf of respondent No. 2, this matter is being formally disposed of at this stage itself under the Rules

of the Court, since a pure question of law has been raised.

2. The post of principal of Gopal Vidyalaya Inter College, Koraon, Allahabad, was requisitioned to the commission under Rule 11 of the U.P.

Secondary Education Service Selection Board Rules, 1998 (for short, 1998 Rules) pursuant thereto an advertisement was published in 2008. At

the time when the requisition was made and also when advertisement was published, Sri Shatru Badhan Singh was at Sl. No. 1 being the senior-

most teacher, Sri Gunraj Singh was at Sl. No. 2 and the petitioner was at Sl. No. 3.

3. The selection process for the said post of principal took place in January, 2010 and call letters for interview were issued on 16.12.2009. In the

meantime, Sri Shatru Badhan Singh retired, his date of birth being 1.10.1947, after attaining the age of superannuation, i.e., 62 years, but he

continued to serve the institution till the end of the session, i.e., 30th June, 2010, in view of Regulation 21 of Chapter III of the Regulations framed

under U.P. Intermediate Education Act, 1921.

Learned Counsel for the petitioner submits that since the interview are going to be held in January, 2010, and Sri Shatru Badhan Singh has already

retired, he (the petitioner) has become the second senior-most teacher in the institution and therefore, he should be called for interview. His

submission is that two senior-most teachers in the institution for the purpose of selection on the post of principal should be seen on the date when

the interview is going to be held and not at an earlier point of time. He places reliance on Rule 12(6) of 1998 of the Rules.

4. He submits that the proviso to sub-rule (6) to Rule 12 mandates that two senior-most teachers in the institution are to be called for interview and

therefore, the crucial date for determining who are the two senior-most teachers is the date on which the interview letters are issued or when the

interview is to be held.

5. However, I find no force in the submission.

6. The procedure for making recruitment for the post of principal or headmaster is contained in Rules 11 and 12. However, for our purpose Rules

11(1), 2(a), (b) and 12(6) are relevant and reproduced below:.

11. Determination and notification of vacancies.--(1) For the purposes of direct recruitment to the post of teacher, the management shall determine

the number of vacancies in accordance with sub-section (1) of section 10 and notify the vacancies through the inspector, to the Board in the

manner hereinafter provided.

(2)(a) The statement of vacancies for each category of posts to be filled in by direct recruitment including the vacancies that are likely to arise due

to retirement on the last day of the year of recruitment, shall be sent in quadruplicate, in the proforma given in Appendix "A" by the management to

the inspector by July 15 of the year of recruitment and the inspector shall, after verification from the record of his office, prepare consolidated

statement of vacancies of the district subject-wise in respect of the vacancies of lecturer grade, and groupwise in respect of vacancies of trained

graduates grade. The consolidated statement so prepared shall, along with the copies of statement received from the management be sent by the

inspector to the Board by July 31 with a copy thereof to the Joint Director:

Provided that if the State Government is satisfied that it is expedient so to do it may, by order in writing, fix other dates for notification of vacancies

to the Board in respect of any particular year of recruitment:

Provided further that in respect of the vacancies existing on the date of the commencement of these rules as well as the vacancies that are likely to

arise on June 30, 1998, the management shall, unless some other dates are fixed under the preceding proviso, send the statement of vacancies by

July 20, 1998 to the Inspector and the inspector shall send the consolidated statement in accordance with this sub-rule to the Board by July 25,

1998.

Explanation.--For the purposes of this sub-rule the word "groupwise" in respect of the trained graduates grade means in accordance with

following; groups, namely:

(a)Language This group consists of the subjects of Hindi, Sanskrit, Urdu, Persian and Arabic.

(b)Science This group consists of the subjects of science and mathematics;

(c)Art and craft

(d)Music

(e)Agriculture

(f) Home Science

(g)Physical Education

(h)General This group consists of the subjects not covered in any of the foregoing groups.

(b) With regard to the post of Principal or Headmaster, the management shall also forward the names of two senior-most teachers, along with

copies of their service records (including character rolls) and such other records or particulars as the Board may require, from time to time.

Explanation.--For the purpose of this sub-rule ""senior-most teacher"" means the senior-most teachers in the post of the highest grade in the

institution, irrespective of total service put in the institution.

12.Procedure for direct recruitment.--

(1).....

(6) The Board, having regard to the need for securing due representation of the candidates belonging to the scheduled castes/scheduled tribes and

other backward classes of citizens in respect of the post of teacher in lecturers and trained graduates grade, call for interview such candidates who

have secured the maximum marks under sub-clause (4) above/and for the post of Principal/Headmaster, call for interview such candidates who

have secured maximum marks under sub-clause (5) above in such manner that the number of candidates shall not be less than three and not more

than five times of the number of vacancies: Provided that in respect of the post of the Principal or Headmaster of an institution the Board shall also

in addition call for interview two senior-most teachers of the institution whose names are forwarded by the management through inspector under

Clause (b), sub-rule (2) of Rule 11.

7. From a perusal of Rule 11 (2) (a) it is evident that as and when a vacancy occurs or is likely to occur a requisition for making recruitment to the

said vacancy shall be sent by the management in proforma Appendix-A by July 15 of the year of recruitment. After verification of the record by his

office, the inspector shall prepare a consolidated list of vacancies of the district subject-wise and shall sent it to the commission. Sub-rule (b) of

Rule 11 (2) further makes it obligatory for the management to send names of two senior-most teachers along with copy of their service record to

the commission. The management shall also place such other record as the Board may require from time to time. Sub-rule (4) of Rule 11 further

directs that in any year of recruitment the Inspector shall on the basis of his office record declare the vacancy and notify the same to the Board if

the management fails to notify vacancy by the date specified in sub-rule (2) of Rule 11. The scheme of the rule makes it very clear that the

recruitment has to be made with reference to the year of recruitment in which the vacancy has occurred and the requisition needs to be sent to the

Board. The obligation upon the management to send names of the two senior-most teachers conferred by Rule 11 (e), (b) shows that the said

names have to be sent along with the requisition to be sent under Rule 11 (2) (a), meaning thereby that the names of senior-most-teachers would

not vary from time to time since the names are to be sent along with the requisition with reference to the direct recruitment for the post of

headmaster or principal and only these names are to be considered by the Board. Rule 12 (6) makes it clear that only those teachers whose names

have already been received by the Board, i.e., of the two senior-most teachers, shall be issued interview letters. Proviso to Rule 12 (6) refers to

the date when names of such teachers have been forwarded under Rule 11 (2)(b).

8. Learned Counsel for the petitioner submits that in case there is a delay in selection and in the meantime the senior-most teacher retires, the very

purpose of sending names would becomes meaningless as none would be available for consideration for the post of principal or headmaster. If the

contention of the learned Counsel is accepted, then with the passage of time and delay, if any, names of the senior-most teachers would go on

varying and there shall be no certainty about the names of the two senior-most teachers to be considered. However, a perusal of Rules 11 (2) (b)

and 12 (6) collectively makes the contention of the learned Counsel untenable. The post of principal or headmaster is to be filled in by direct

recruitment, so as right has been conferred upon two senior-most teachers with reference to date of vacancy to have an opportunity to be

considered for the highest post in their institution, i.e., Principal or the headmaster. It is not a case of promotion so as to vary from time to time.

9. A pari materia provision contained in Rule 4(1) (ii) of the U.P. Secondary Services Commission Rules, 1983, came up for consideration before

a Division Bench of this Court in NandKishore Prasad v. U.P. Secondary Education Services Commission, Allahabad and others, (1990) 1

UPLBEC 539 and this Court in paragraphs 4 and 3 of the judgment held as under:

4. Rule 4(ii) of the U.P. Secondary Education Services Commission Rules, 1983 provides that in regard to the post of head of an institution, the

management shall also forward the names of two senior-most teachers copies of their service records and such other record or particulars as the

commission may require from time to time for consideration by the commission when the question of appointment of the Principal of the institution

is to be considered by the commission.

5. Sub-rule (ii) of Rule 4, quoted above, in our opinion, clearly intends that on the date when the vacancy arose, on that date, the management is

called upon to find out who are the two senior-most teachers whose names are to be forwarded to the commission hence the date when the

vacancy arose would be the relevant date for the purposes of Rule 4(ii). Merely because of a subsequent event, if another teacher becomes the

senior-most teacher in the college, he does not have a right to ask the manage to send his name also. If the interpretation is not taken then the result

will be the process of selection by the commission will never be completed as the name of the senior-most teachers would on changing and the

process of forwarding names will also continue. This does not take away the right of the said teacher to be considered for the post of Principal of

the institution if he has applied for the same. In the circumstances so far as this petition is concerned, we do not find any merit in the same. The

petition is accordingly dismissed.

10. Since Rule 11. (2) of 1988 Rules is worded similarly, what has been interpreted by the Division Bench in Nand Kishore Prasad's case

(supra), in my view, it would apply to the interpretation of Rule 11(2) (b) of 1988 Rules and is consistent to the view I have taken and I stand

fortified from the aforesaid Division Bench judgment. Learned Counsel for the petitioner could not place anything before to persuade me to take a

different view.

11. In view of the aforesaid discussion, I have no hesitation in holding that if by the time the selection is made one or both the senior-most teachers

retire, then the consideration of the next one or two senior-most teachers would be contrary to the scheme of the Rules. Only such teachers are to

be considered whose names are sent along with requisition under Rule 1(a).

12. I, therefore, find no merit in the writ petition. Dismissed.