

Bechan Prasad and another Vs State of U.P.and others

Court: Allahabad High Court

Date of Decision: Dec. 4, 2008

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

Final Decision: Allowed

Judgement

V.K.Shukla, J.

Bechan Prasad and Shohrat Prasad have approached this Court questioning the validity of the decision dated 06.11.2008 passed by Selection

Committee constituted under Section 12 of U.P. Act No. V of 1982 according promotion to Ganesh Dutt Tripath, respondent no. 6 on the post of

Lecturer in Sanskrit and proceeding to mention that posts of Lecturer in Sociology and Hindi have been referred to Director of

Education(Secondary) for being adjusted from amongst subject specialist.

In the District of Gorakhpur there is recognized institution known as J.P. Inter College, Capierganj. Said institution is duly recognized institution and

is governed by the provisions as contained under U.P. Act No. II of 1921. Said institution is in grantinaid list of the State Government and the

provisions of U.P. Act No. 24 of 1971 are fully applicable to the said institution. Selection and appointment including promotion is to be made

strictly as per provision as contained under U.P. Act No. V of 1982 and Rules framed thereunder known as U.P. Secondary Education Services

Selection Board Rules 1998. In the said institution post of Lecturer in Sanskrit had fallen vacant on 30.06.2002; post of Lecturer in Sociology fell

vacant on 30.06.2003 and post of Lecturer in Hindi fell vacant on 30.06.2007. Qua all these three vacant post of Lecturers petitioners Bechan

Prasad and Shohrat Prasad and respondent no. 6 Ganesh Dutt Tripathi have been claiming promotion. Civil Misc. Writ Petition No. 8932 of 2008

has been filed by Bechan Prasad and Civil Misc. Writ Petition No. 9693 of 2008 has been filed by Shohrat Prasad and this Court on 19.02.2008

asked the Selection Committee constituted under Section 12 of U.P. Act No. V of 1982 for taking decision in the matter and pursuant thereto

decision has been taken. At this juncture present writ petition has been filed.

Sri Ashok Khare, Senior Advocate, assisted by Sri Sunil Kumar Srivastava, Advocate contended with vehemence that in the present case

Selection Committee constituted under Section 12 of U.P. Act No. V of 1982 has clearly misdirected itself as at no point of time any endeavour

whatsoever has been made by the aforesaid Section Committee to see as to whether in particular year of recruitment post in question was fell 50%

quota of promotion and same was liable to be filled by way of promotion and in mechanical manner promotion has been accorded to Ganesh Dutt

Tripathi, respondent no. 6 whereas under said relevant year promotion quota already stood exhausted and further at no point of time any

endeavour has been made to see that two posts which has been referred to Director of Education (Secondary) were falling within 50%

promotional quota or not, as such order impugned is liable to be quashed.

Learned Standing counsel on the other hand contended that rightful view has been taken in the matter.

Sri Sameer Sharma, Advocate as well as Sri A. P. Tiwari, Advocate have entered appearance on behalf Ganesh Dutt Tripathi, respondent no. 6

and Sri A.P. Tiwari, Advocate has conceded to this position that at no point of time any such exercise has been undertaken and requested that

matter be remitted back for being decided afresh as per respective year of recruitment qua candidates who are eligible in the said year of

recruitment, on first day of year of recruitment and requisite exercise be undertaken

At this juncture Rules 10 & 14 of U.P. Secondary Education Services Selection Board Rules 1998 Rules are being extracted below:

Rule 10 & 14 of Rules 1998

10. Sources of recruitment. Recruitment to the various categories of teachers shall be made from the following sources:

(a) Principal of an Intermediate By direct recruitment College or Head Master of a High School

(b) Teachers of Lecturer's grade (i) 50 per cent direct recruitment

(ii) 50 per cent by promotion from amongst substantively appointed

teachers of the trained graduates grade.

(c) Teachers of trained (i) 50 per cent direct recruitment graduates grade (ii) 50 per cent by promotion from amongst substantively appointed

teachers of Certificate of Teaching grade Provided that if in any year of recruitment suitable eligible candidates are not available for recruitment by

promotion, the posts may be filled by direct recruitment :

Provided further that if in calculating respective percentage of posts under this rule, there comes a fraction then the fraction of the posts to be filled

by direct recruitment shall be ignored and the fraction of the posts to be filled by promotion shall be increased to make it one post.

14. Procedure for recruitment by promotion: (1) Where any vacancy is to be filled by promotion all teaches 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.

On the parameters as set out in particular year of recruitment if post in question is falling under 50% promotional quota then qua the said post

promotional exercise has to be undertaken. In the present case order dated 06.11.2008 nowhere reflects that Selection Committee constituted

under Section 12 of U.P. Act No. V of 1982 has ever tried to find out as to whether in relevant year of recruitment posts of Lecturer in Sanskrit,

Sociology or Hindi were fell within promotional quota of posts or not. In the present case requisite exercise has not at all been undertaken, and it

appears that Selection Committee was labouring totally under misconception as resolution passed by Committee of Management has been

accepted in mechanical manner whereas in the matter of promotion it is duty of Managing Committee of the institution to recommend names of

each and every eligible candidates for consideration of their claim even without having applied for and said exercise is referable to year of

recruitment. Once no exercise whatsoever has been undertaken in reference to the promotional quota of the said relevant year of recruitment year,

order dated 06.11.2008 cannot be sustained and is liable to be quashed.

Consequently, order dated 06.11.2008 passed by Regional Joint Director of Education 7th Region Gorakhpur is hereby quashed and set aside.

Matter is remitted back to the Committee constituted under Section 12 of U.P. Act No. V of 1982 to reconsider the matter in context of

promotional quota qua relevant year of recruitment and said Committee shall also see as to whether any roster has been prepared in the institution

qua the post of Lecturer in question, in reference of promotion and direct recruitment, as or not and in mechanical manner post cannot be reserved

in favour of particular category of candidate, unless and until said posts fall on fixed point. Let all these matter be reexamined afresh within next

three months from the date of presentation of certified copy of this order.

With the above direction present writ petition is allowed.

No order as to cost.