

(2010) 05 AHC CK 0341

Allahabad High Court

Case No: C.M.W.P. No. 27782 of 2009

Kumari Deoki Verma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: May 14, 2010

Acts Referred:

- Uttar Pradesh Intermediate Education Regulations, 1921 - Regulation 1, 7A
- Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 - Rule 10, 14, 5
- Uttar Pradesh Secondary Education Services Commission Rules, 1983 - Rule 9

Citation: (2011) 4 AWC 3720

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Advocate: Anil Bhushan, for the Appellant; P.K. Sharma, A.K. Sharma, K.P. Shukla, A.H. Sharma, C.S.Cs., for the Respondent

Final Decision: Dismissed

Judgement

Sudhir Agarwal, J.

With the consent of Learned Counsels for the parties appearing before this Court, this matter has been heard and is being decided finally under the Rules of the Court at this stage.

2. Heard Sri Anil Bhushan for the Petitioner, learned standing counsel and Sri K.P. Shukla for Respondents No. 1 to 3 and 5 respectively. Respondent No. 5, represented by Sri K.P. Shukla, has filed counter-affidavit to which rejoinder-affidavit has also been filed. The Respondent No. 4 was issued notices, sent through registered post on 6.6.2009 but none has appeared on its behalf. Learned standing counsel submitted since only question of law with regard to interpretation of the provision pertaining to academic qualification is involved, he does not propose to file any counter-affidavit and will make his submissions orally.

3. The Petitioner is aggrieved by order dated 20.5.2009 (Annexure 6 to the writ petition) passed by Regional Joint Director of Education, Agra (hereinafter referred to as "J.D.E.") disapproving promotion of the Petitioner to the post of Assistant Teacher L.T. Grade and revoking approval order of District Inspector of Schools, Agra (hereinafter referred to as "D.I.O.S.") granting approval to the Petitioner's promotion and simultaneously approving promotion of Respondent No. 5 on the aforesaid post.

4. The short controversy, which involves purely a legal issue is whether for promotion to the post of Assistant Teacher (L.T. Grade) one must possess the requisite qualification in the subject concerned or not. In other words, for promotion under 25% quota meant for the Assistant Teacher of the Primary Section, under Rule 10 (c) (ty of U.P. Secondary Education Services Selection Board Rules, 1998 (hereinafter referred to as "1998 Rules")), whether "educational qualification" must have any bearing with the subject concerned where the post of Assistant Teacher (L.T. Grade) is created without reference to any particular subject.

5. The facts in brief are as under:

6. Swamibagh Uchchttar Madhyamik Vidyalaya, Agra, (hereinafter referred to as "the College") is a secondary institution governed by the provisions of U.P. Intermediate Education Act, 1921 (hereinafter referred to as "1921 Act") and for the purpose of payment of salary of its staff, it is governed by the provisions of U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 (hereinafter referred to as "1971 Act"). The College constitute attached Primary Section as well as High School.

7. The Petitioner was appointed as Assistant Teacher in Primary Section on 1st July, 1989 possessing educational qualification of M.A. (Economics) and B. Ed, while the Respondent No. 5 was appointed as Assistant Teacher in Primary Section on 23rd August, 1993 and she also possesses the educational qualification of M.A. and B. Ed. The Petitioner in B.A. had her subjects; General Hindi, Hindi Literature, Economics and Education while the subjects of the Respondent No. 5 in B.A. were General Hindi, English Literature, Music and Sanskrit.

8. Admittedly, on the post of Assistant Teacher, the Petitioner is senior to the Respondent No. 5. Regulation 7A was inserted In Chapter II of the Regulations on 26th February, 2003 providing for promotion of teachers working in Primary Section to L.T. Grade. A similar amendment was made by inserting Rule 10 (c) in 1998 Rules providing that 25% posts shall be filled in by promotion from amongst those trained graduate teachers of attached primary section who have completed five years of satisfactory service.

9. It is said that one post of L.T. Grade teacher fell vacant after the aforesaid amendment and the Petitioner being senior most Assistant Teacher in Primary section was entitled to be considered for promotion. The Committee of

Management passed resolution on 15th November, 2008 for promotion of Petitioner to the said post. It was also approved by the D.I.O.S. vide letter dated 2nd January, 2009 pursuant where to the Petitioner joined on the promoted post on 15th January, 2009.

10. It appears that the Respondent No. 5, claimed that the post of Assistant Teacher (L.T. Grade) was meant for English subject and the Petitioner lacking minimum qualification for promotion could not have been promoted on the said post. She filed Writ Petition No. 1503 of 2009 challenging the said promotion. This Court relegated her to approach the J.D.E. who was required to decide the matter on representation made by the Respondent No. 5 after giving opportunity of hearing to all concerned parties. It is pursuant to the said direction, on the representation of the Respondent No. 5, the J.D.E. has passed the impugned order dated 20th May, 2009 holding the Petitioner unqualified for promotion to the post of Assistant Teacher (L.T. Grade) and therefore, revoking order of D.I.O.S-granting approval to Petitioner's promotion. The J.D.E. has also directed for promotion of Respondent No. 5 to the said post.

11. Sri Anil Bhushan, Learned Counsel for the Petitioner contended that from a bare reading of Rule 14 of 1998 Rules, it is evident that for promotion to the post of Assistant Teacher (L.T. Grade), there is no requirement of possessing qualification in the concerned subject since the post of Assistant Teacher (L.T. Grade) was not created subject-wise. He also placed reliance in support of the aforesaid submission to a Division Bench judgment of this Court in [Chandra Pratap Singh Vs. Madhav Sharan Tripathi and Others](#), .

12. Sri K.P. Shukla, advocate, appearing on behalf of the contesting Respondent No. 5 referred to his counter-affidavit and said that the post of Assistant Teacher (L.T. Grade) (English) was sanctioned by the State Government in the College in 1969 when recognition was granted by the Board of High School and Intermediate to the College for High School classes. The letter of recognition shows that the category for recognition was Arts wherein the compulsory subjects were Hindi, Mathematics and optional subjects were History, Geography, Civics, Economics, English, Sanskrit and Arts.

13. One post of Assistant Teacher fell vacant on 13th January, 2008 due to death of Sri Ram Bharose Kadam, Assistant Teacher (Commerce) and three on 30th June, 2008 due to retirement of Sri Padam Singh, Assistant Teacher (English), Sri Sabad Prakash Kulshreshtha, Assistant Teacher (Science/Math) and Sri Pratap Singh Pachauri, Assistant Teacher (Arts).

14. Sri Shukla submits that since promotion was made in the vacancy caused due to the retirement of Sri Padam Singh, Assistant Teacher (L.T. Grade) (English) and therefore, it could have been filled in only by promoting a teacher who is well qualified to teach English subject in High School classes. Only Respondent No. 5 was

qualified for the said post and therefore, against the promotion of Petitioner she filed Writ Petition No. 1503 of 2009 challenging promotion order dated 2nd January, 2009 of Km. Deoki Verma (Petitioner in the present case). The above writ petition was disposed of on 4th February, 2009 relegating Dr. (Smt.) Suman Birla (Respondent No. 5 in the present case) to approach J.D.E. for redressal of her grievance and he was required to decide the matter within a period of four months. It is submitted that the qualification of the Petitioner are not in accordance with the statute and, therefore, the J.D.E. has rightly passed the impugned order and it warrants no interference.

15. I have heard Learned Counsels for the parties and perused the record.

16. The only question up for consideration is "whether the promotion of Petitioner on the post of Assistant Teacher (L.T. Grade) was validly made", or, "whether it has rightly been set aside by J.D.E. by means of the impugned order". The entire controversy revolves around the question as to whether the Petitioner is duly qualified for promotion on the post of Assistant Teacher (L.T. Grade) or not. In other words, the real question is whether for promotion to the post of Assistant Teacher (L.T. Grade), the academic qualification require that the incumbent must possess qualification in the subject concerned or not.

17. It would be appropriate to reproduce Rule 14 of 1998 Rules as under:

14. Procedure for recruitment by promotion.--(1) Where any vacancy is to be filled by promotion all teachers working in trained graduates grade or Certificate of Teaching grade, if any, who possess the qualifications 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 purpose of this sub-rule, regular service rendered in any other recognised 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 Sub-rule (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 Appendix "A".

(4) Within three weeks of the receipt of the list from the Management under Sub-rule (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 Sub-rule (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 Sub-section (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) Within ten days of the receipt of the panel from the Joint Director under Sub-rule (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 authorisation under its resolution issue the appointment order in the pro forma given In Appendix "F" to such candidate.

18. A bare perusal of aforesaid Rule shows that in order to seek promotion, one must possess (i) the qualification prescribed for the post; (ii) five years continuous regular service completed on the first day of the year of recruitment. The qualification prescribed for the post is governed by Rule 5 of 1998 Rules, which reads as under:

5. Academic qualifications.-- A candidate for appointment to a post of teacher must possess qualifications specified in Regulation 1 of Chapter II of the Regulations made under the Intermediate Education Act, 1921.

19. It takes us to Regulation-1 of Chapter II of the Regulations made under 1921 Act which reads as under:

1. The minimum qualifications for appointment as Head of Institution and Teachers in any recognised institution whether by direct recruitment or otherwise, shall be as given in Appendix A.

20. Regulation I of Chapter II of the Regulations refers to the qualification as given in Appendix A and the Appendix A shows that the qualifications prescribed therein for the teachers of Intermediate classes and High School are with reference to the particular subject. The entire Appendix-A nowhere provides in a general way that a teacher possessing a graduate degree or equivalent diploma etc. would be eligible for appointment to the post of Assistant Teacher (L.T. Grade) irrespective of the subject. On the contrary, the qualifications prescribed for in Appendix A Assistant Teacher (L.T. Grade) for High School, i.e., class 9 and 10 are with reference to different subjects.

21. It is true that nothing has been placed on record to show that the post of Assistant Teacher (L.T. Grade) was created in the college with reference to any particular subject but Annexure-C.A.-I to the counter-affidavit of Respondent No. 5 shows that the Board of High School and Intermediate granted recognition to the College with reference to different subjects wherein two subjects are compulsory namely Hindi and Mathematics and rest are optional, i.e.. History, Geography, Civics, Economics, English, Sanskrit and Arts. The number of posts of Assistant Teachers L.T. Grade sanctioned in the College if are taken in the light of the subjects for which

recognition has been granted by the Board, it would mean that for every individual subject, an Assistant Teacher possessing requisite qualification in Appendix-A can only be appointed and not otherwise. He is not required to have worked as an Assistant Teacher in concerned subject so far as experience is concerned but at least what is required under the aforesaid rules and Regulations quoted above that he must possess educational qualification prescribed for the post with reference to "relevant subject". For example if a teacher in science is to be appointed in L.T. Grade, he must possess educational qualification of B. Sc. with Physics and Chemistry, as provided at item 33, Appendix A, Chapter II of the Regulations framed under 1921 Act though at the time of making selection for promotion, he might not have been working as Science teacher or in past even if had not worked as such. The educational qualification prescribed in Appendix A is with reference to the subject concerned and therefore, it cannot be said that even if one does not possess educational qualification prescribed under Appendix A for the concerned subject yet he/she can be considered for promotion to the post of Assistant Teacher (L.T. Grade) irrespective of the subject for which the appointment is required to be made.

22. Here it is not in dispute that the post in question fell vacant due to retirement of one Padam Singh, who was working as Assistant Teacher (L.T. Grade) in English. The promotion was to be considered in the vacancy caused due to his retirement. The Petitioner, admittedly, did not possess the requisite educational qualification under Appendix A for appointment as an Assistant Teacher (L.T. Grade) in English as in B.A., she did not have the subject of English and her subjects were General Hindi, Hindi Literature, Economics and Education, as mentioned in the impugned order by J.D.E. and is not disputed by the Petitioner.

23. In Chandra Pratap Singh (supra) while construing Rule 9 of U.P. Secondary Education Services Commission Rules, 1983, as amended, the observation of the Court is that the requirement of service as a teacher in the concerned subject being not provided in the rule as it was available w.e.f. 1st July, 1983 it was not necessary that one must be serving as a teacher in the concerned subject. The dispute arisen in that case was different. The decision does not lay down a general law that the minimum, qualification in the concerned subject as per Appendix-A Chapter II of the Regulations under 1921 Act stands obliterated. That was not the dispute before the Court. Para 3 of the judgment shows that the educational qualification of Respondent No. 1, Madhav Sharan Tripathi in that case who to be promoted as a Drawing teacher was not in dispute but the question raised therein was whether having never worked in C.T. Grade as Drawing teacher he can be appointed. In other words the submission was that his experience of service as teacher for five years was not in the subject of "Drawing" which was insisted by the Petitioner in that case. This argument was negated. This Court nowhere says that the minimum educational qualification, which was prescribed in Appendix A with reference to subjects, is also not available since that was not an issue involved in that case. Therefore, this judgment lends no support to the Petitioner.

24. On the contrary. Rule 5 of 1998 Rules makes it very clear that the educational qualification under 1998 Rules means the qualifications prescribed in Regulation 1 Chapter II of the Regulations, which in turn refers to Appendix A. Reading Rule 14 insofar as it requires qualification prescribed for the post alongwith Rule 5 of 1998 Rules as well as Regulation 1 Chapter II and Appendix A of the Regulations, I have no manner of doubt that the educational qualifications are with reference to concerned subjects and therefore, the contention that the qualification with reference to subject is not required to be possessed by a teacher who is senior most for promotion to the post of Assistant Teacher (L.T. Grade) cannot be accepted.

25. The subject in which the incumbent was imparting education on whose retirement the post of Assistant Teacher (L.T. Grade) has fallen vacant in the College, the senior most Assistant Teacher working in Primary Section does not possess the qualifications as prescribed in Appendix A is admitted. The submission that yet she/he can be promoted is wholly incorrect, has no substance and has to be rejected.

26. If the contention of the Petitioner is accepted, it will cause not only a total chaos and disarray in the educational institution and in particular in the High School classes but also would be contrary to the interest of the students community at large. Advancement of carrier prospects of teachers is not the basic object of an educational institution but the foundation and basic objective is to impart education to the children in different disciplines for their betterment. Appointment and engagement of teaching and non teaching staff is a method of achieving the said objective. The livelihood earned by such staff engaged, their career advancement etc. are all incidental. Such incidental consideration cannot out way the basic objective. It would be a mockery of the system if the contention of the Petitioner is accepted, which may result in a given case where in the primary sections irrespective of any subject consideration some teachers are imparting education possessing only graduation, and though in the High School the institution is recognised only for science subject but though they have no educational qualification in Science, still may press for their promotion obviously such teachers cannot take science classes. If a teacher possessing no knowledge of science, had never studied the same up to graduate level, insist upon to be promoted as Assistant Teacher (L.T. Grade) in a vacancy caused due to retirement of a science teacher and there is nobody else to impart teaching in science in the institution, it would mean that a C.T. Grade teacher having no knowledge of science subjects having not studied the same upto graduate level, which is the minimum requirement of a teacher to become eligible to impart education to class 9 and 10, yet can be promoted merely to take into consideration his/her promotional aspect viz. the career advancement of the teacher concerned completely ignoring the requirement of the institution, Le., a science teacher.

27. A Full Bench of this Court in [Smt. Basanti Gaur Vs. Regional Inspectress of Girls' Schools, VII Region, Gorakhpur and Others](#), while considering the word academic qualification in paras 7 and 9 observed as under:

7. (iv) "Academic qualification": Let us first examine the meaning of the word "Academic". In Black's Law Dictionary (Fifth Edition) page 11 it is as follows:

Pertaining to college, university or preparatory school.

In the same dictionary at page 1116 the meaning of the word Qualification" has been given thus:

The possession by an individual of qualities, properties, or circumstances, natural or adventitious, which are inherently or legally necessary to render him eligible to fill an office or to perform a public duty or function.

In Mozley and Witeley's Law Dictionary also, the term "Qualification" has been described as:

That which makes a person eligible to do certain act or to hold office.

9. The term "academic qualification" is not to be restricted just to degrees or diplomas possessed by a teacher. There is no discernible compulsion either in the language or context of the Statute to ascribe such a narrower meaning to the term. The Rule making authority was not unaware of this. In Appendix A to the Regulations framed under the Intermediate Education Act lays down the minimum qualifications for various categories of teachers including Headmasters and Principals. Teaching experience has also been prescribed therein for Principals of Intermediate Colleges as one of the minimum qualifications. While diplomas or degrees in the subject are undoubtedly academic qualifications, they are not exhaustive of the qualifications pertaining to academic posts. The fact that a teacher has done some research in the subject or contributed articles on the subject in recognised journals or had teaching experience in the subject over a period are equally academic qualifications relevant in the context.

28. The Full Bench further in para 11 of the judgment observed as under:

It must not be forgotten that the appointments of teachers, lecturers or professors in the educational institutions are primarily for the benefits of students.

29. In my view the above observations are attracted with full force in this case.

30. I do not insist upon that the one must have worked as a teacher in the concerned subject or must have experience in the concerned subjects but simultaneously I am clearly of the view that for promotion under Rule 14 of 1998 Rules, one must possess the prescribed qualification and this takes us to the educational qualifications which are prescribed in Appendix A Chapter II of the Regulations under 1921 Act which are with reference to different subjects. The

Petitioner admittedly does not fulfil the academic, qualification as she did not have subject of English in B.A. Therefore, in my view, it cannot be said that the J.D.E. has erred in law in holding that the Petitioner ineligible for promotion the post of Assistant Teacher (L.T. Grade) which fell vacant due to retirement of Padam Singh, who was working as Assistant Teacher (L.T. Grade) in English.

31. In the result I find no error apparent on the face of the record in the impugned order warranting interference. The writ petition lacks merit.

32. Dismissed.

33. No order as to costs.