

(2010) 07 AHC CK 0470

Allahabad High Court

Case No: C.M.W.P. No. 38368 of 2010

Kumari Sweta Garg

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** July 12, 2010**Acts Referred:**

- Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 - Rule 11(2), 11(3), 14, 2(1)

**Citation:** (2010) 6 AWC 5868**Hon'ble Judges:** Arun Tandon, J**Bench:** Single Bench**Final Decision:** Dismissed

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**Judgement**

Arun Tandon, J.

Heard counsel for the Petitioner and the standing counsel.

2. Petitioner before this Court seeks writ of mandamus commanding the Respondents to consider her claim for promotion on the post of Lecturer (English) in accordance with Rule 14 of the U.P. Secondary Education Services Selection Board Rules, 1998.

3. Brief facts on record are as follows:

Luxman Prasad Chaturvedi Arya Kanya Inter College is an aided and recognised institution under the provision of U.P. Intermediate Education Act, 1921, U.P. Act No. 24 of 1971 and U.P. Act No. 5 of 1982 are fully applicable to the teachers of the said Institution. The Petitioner was appointed as L.T. Grade Teacher in the said Institution on 15.12.2004 on the recommendation of the Selection Board. A vacancy on the post of Lecturer (English) is stated to have been caused due to transfer of one Smt. Mitika Sharma on 31.8.2009. It is against this vacancy that the Petitioner has set up a claim for promotion.

4. Promotion on the post of Lecturer of a recognised Intermediate College is regulated Under Rule 14 of the U.P. Secondary Education Services Selection Board Rules, 1998. Rule 14 are as follows:

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.

Notes-

(1) For the purposes 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 proforma 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 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 proforma given in appendix "F" to the such candidate.

5. It would be clear that only such teachers Working in L.T. Grade are entitled to be considered for promotion who have completed 5 years of regular service as such on the first day of the year of the recruitment.

6. The issue therefore that requires determination by this Court is as to what would be the 1st day of the year of recruitment with reference to the vacancy caused in the Institution on 31.8.2009.

7. Learned Counsel for the Petitioner contends that in view of Rule 2(1) of Rules 1998, the year of recruitment vis-a-vis vacancies which are to be notified to the Commission has necessarily to be the 1st July of the year in which the requisition is to be made of the vacancies existing or likely to be caused.

8. For any other vacancy caused in the midst of the academic session, the year of recruitment has to be the next academic year following the date of vacancy in the facts of the case July 2010 to 30th June, 2011 the Petitioner would complete 5 years continuous service on 1st day of the year of recruitment, i.e., 1.7.2010 and is within the zone of consideration.

9. According to the Petitioner, the phrase "first day of the year of recruitment" has been considered by the Division Bench of this Court in the case of [Subhash Prasad Vs. Regional Selection Committee, District Inspector of Schools, Committee of Management, Lok Manya Inter College and Sunil Kumar Mishra](#), and it has been held that the first day of year recruitment in respect of a vacancy caused on 1.7.1997 would be 1.7.1997.

10. He clarifies all that such vacancies caused in the previous year and likely to be caused in the current academic session have to be intimated by 15th of July and, therefore, he submits any vacancy caused during midst of the academic session (which was not known to be caused at the time of sending of the requisition Under Rule 11(2) of the 1998 Rules) has to be treated as a vacancy to be requisitioned in the next academic year and the relevant 1st day of the recruitment year would be 1st July of the academic year following the occurrence of vacancy.

11. The contention raised may not detain the Court for long inasmuch as vacancies caused during the academic sessions are dealt with Under Rule 11(3) of the 1998 Rules which reads as follows:

If, after the vacancies have been notified under Sub-rule (2), any vacancy in the post of a teacher occurs, the Management shall, within fifteen days of its occurrence, notify to the Inspector in accordance with the said Sub-rule and the Inspector shall within ten days of its receipt by him send it to the Board.

12. It is thus clear that the vacancies which are caused during mid academic session are required to be requisitioned by the Committee of Management to the D.I.O.S. in accordance with the said Sub-rule (3) within 15 days of the occurrence of the vacancy and within 10 days thereafter the D.I.O.S. has to forward the same to the Selection Board. The recruitment year would be the year in which the vacancy is requisitioned. The first day of the year of recruitment for such a required vacancy has to be the 1st of July in which the vacancy has been caused. The effect of Rule 11(3) of 1998 Rules was not a subject matter of consideration in the case of Subhash Prasad (supra).

13. This Court has no hesitation to hold that the first July, 2009 would be the first day of the year of recruitment in the facts of this case. It is on this day that the Petitioner must satisfy the requirement of teaching experience of five years as to L.T. Grade teacher on regular basis for being considered for promotion Under Rule 14 of 1998 Rules.

14. The Petitioner as admitted in paragraph 4 of writ petition that she was appointed as L.T. Grade Teacher on 15.12.2004 and, therefore, she would not complete 5 year of regular service as L.T. Grade Teacher on the first day of year of recruitment, i.e., on 1.7.2009.

15. This Court therefore cannot direct consideration of the case of the Petitioner for promotion.

16. This petition lacks of merit and is accordingly dismissed.