

(2008) 08 AHC CK 0342**Allahabad High Court****Case No:** None

Dheerendra Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Aug. 29, 2008**Acts Referred:**

- Uttar Pradesh Intermediate Education Act, 1921 - Regulation 2(III)

Citation: (2009) 1 AWC 730**Hon'ble Judges:** Sudhir Agarwal, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

Sudhir Agarwal, J.

With the consent of learned Counsel for the parties the writ petition has been heard and is being decided finally at this stage under the Rules of the Court since only legal issues have been raised by learned Counsel for the petitioner and, therefore, learned Counsel for the respondents did not propose to file any counter affidavit but have made their submissions orally.

2. Heard Sri Alok Dwivedi, learned Counsel for the petitioner, learned Standing Counsel for respondents No. 1, 2, 3 and 5 and Sri Awadhesh Kumar, learned Counsel appearing for respondent No. 4.

3. The grievance of the petitioner is that there is only one post of Class-III in the institution which is to be filled in by promotion under Chapter III Regulation 2 of the regulations framed under U.P. Intermediate Education Act, 1921 (hereinafter referred to as the "Act"). The petitioner being a Class IV employee at Serial No. 2 in the seniority list was eligible and entitled to be promoted on the said post since the person who was senior most in the institution is not qualified. He contended that the District Inspector-of Schools, Kanpur Nagar (in short the "DIOS") has erred in law by considering the suitability of the petitioner on the criteria of merit though under

the regulation it is seniority subject to rejection of unfit on which criteria the petitioner was entitled to be considered for promotion. The DIOs while considering the claim of petitioner and rejecting the same for promotion to a class III post has held that on the criteria of merit the petitioner do not justify his selection and, therefore, cannot be promoted.

4. It is not disputed that promotion of a class IV employee to class III post in a recognised secondary education institution is to be made in accordance with Regulation 2 Chapter III of the Regulations framed under the Act. Regulation 2 is quoted as under:

2. (1) For the purpose of appointments of clerks and Forth Class employees the minimum educational qualification would be the same as has been fixed from time to time for the equivalent employees of Government Higher Secondary Schools.

(2) Fifty per cent of the total number of sanctioned posts of head clerk and clerks shall be filled among the serving clerks and employees through promotion. If employees possesses prescribed eligibility and he has served continuously for 5 years on his substantive post and his service record is good, then promotion shall be made on the basis of seniority, subject to reject of the unfit.

If any employee is aggrieved by any decision or order of the management committee in this respect then he can made representation against it to the Inspector within two weeks from the date of such decision or order, Inspector on such representation can make such orders as he thinks fit Decision of the Inspector would be final and promptly executed by the management.

Note-In calculating fifty per cent of posts parts less than half would be left and half or more than half post would be deemed as one.

5. From a perusal of Regulation 2(2) of the Act it is evident that a class IV employee who possesses prescribed eligibility and has served continuously for 5 years on his substantive post and if his service record is good, then he shall be promoted on the criteria of seniority subject to reject of the unfit. The criteria "seniority subject to rejection of unfit" is admittedly different than the criteria of "merit". In a case where the promotion is to be made on the criteria seniority, subject to rejection of unfit individuals on the basis of their seniority are required to be considered without going into a comparative assessment of merit and if the senior most person fulfils the minimum required fitness or merit, he shall be selected without undergoing assessment of merit with others. This is how the Apex Court has also interpreted the criteria of seniority subject to rejection of unfit in [B.V. Sivaiah and Others etc. Vs. K. Addanki Babu and Others etc., Union of India and Others Vs. Lt. Gen. Rajendra Singh Kadyan and Another,](#) The Central Council for Research in [The Central Council for Research in Ayurveda and Siddha and Another Vs. Dr. K. Santhakumari, Diploma Engineers Sangh Vs. State of U.P. and Others,](#) The DIOs in the case in hand has considered the petitioner only on the criteria of "merit" and has totally ignored the

requisite factors which have to be taken on account for the purpose of promotion of a class IV employee to class III post as provided under Regulation 2 under Chapter III of the regulations framed under the Act, therefore, the impugned order cannot sustain.

6. In the result, the writ petition is allowed. The impugned order dated 10.06.2008 is hereby quashed. The matter is remanded to the respondent No. 3 to consider afresh in accordance with the observations made hereinabove and Regulation 2 Chapter III of the Regulations framed under U.P. Intermediate Education Act, 1921. No order as to costs.