

Court No. - 39

Case :- SPECIAL APPEAL No. - 260 of 2020

Appellant :- Smt. Archana Malik, Lecturer Sri Ram Prasad Singh, Balika Intermediate College

Respondent :- State Of U.P. Through Secretary Secondary Education, Government Of U.P. And 3 Others

Counsel for Appellant :- Shiv Bahadur Singh

Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Rajendra Kumar-IV, J.

1. Heard Sri Shiv Bahadur Singh, learned counsel for the petitioner-appellant and Sri Piyush Srivastava, learned Standing Counsel for the State-respondents.
2. Present intra-court appeal has been filed against the order of the learned single judge dated 19.10.2019 passed in Writ-A No.16405 of 2019, (Smt. Archana Malik versus State of U.P. and 3 others). For ready reference that order reads as below:-

"Heard Smt. Chandra Kala Chaturvedi, learned counsel for the petitioner and learned Standing Counsel for State-Respondents No. 1,2 and 4.

The petitioner is claiming promotion on the post of Lecturer in subject Economics in an aided Intermediate College.

She submits that there is only one sanctioned post of Lecturer in subject Economics. The said post fell vacant in 2014 and one Kusum Lata was accorded approval for promotion, but in 2018 the said approval was withdrawn. In the meantime, the petitioner acquired qualification of M.A. (Economics) in 2015 and now she submits that since Kusum Lata's promotion has been cancelled, she being senior most qualified person, her claim be considered.

It is to be noted that the D.I.O.S. has rejected the claim of the petitioner on the ground that in the year 2014 the petitioner did not possess the requisite qualification. Admittedly, the petitioner obtained qualification in 2015. As such, for the said post, in 2014 the petitioner was not eligible.

There is no merit in the writ petition and is dismissed."

3. Having heard learned counsel for the parties and perused the records, we find it is an undisputed fact on record that the petitioner first acquired the qualification to be considered for appointment on the post of Principal, in the year 2015. As against that, it is also an admitted fact that that post was first notified as vacant in the year 2014 when the petitioner appellant was not eligible. At the relevant time one Smt. Kusum Lata Kumari had been recommended for that appointment. However that recommendation remained pending till 2019 when undisputedly the same was turned down.

4. The petitioner having gained eligibility, in the meanwhile, claims a right to be appointed against that post.

5. While it has been submitted, the vacancy was notified in the year 2018, no documentary or other evidence exist on record to substantiate that claim. It is a well settled principle, no vacancy may be filled up unless it is first notified.

6. In absence of date of notification disclosed by the petitioner appellant to be of the date later than the date when the petitioner appellant may have acquired the essential qualification and there being no dispute to the cut-off date etc. with respect to the fresh notification, we find that the learned single judge has not committed any error of law or fact in declining the claim of the petitioner.

7. The decision of five judges full bench of this Court in ***Smt. Sadhna versus State of U.P. and another, [(2017 (6) ADJ 418 (FB)]*** is of no avail. The issue involved in the present case was not an issue in the full bench decision. The answer given by the full bench to five questions posed before it, is therefore of no avail.

8. Appeal lacks merit and is accordingly **dismissed**.

Order Date :- 13.10.2023

I.A.Siddiqui

(Rajendra Kumar-IV,J.) (S. D. Singh,J.)