

Court No. - 35

Case :- WRIT - A No. - 14630 of 2023

Petitioner :- Rakesh Ranjan Sinha

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Vashishtha Tiwari

Counsel for Respondent :- CSC, Sandeep Kumar, Sudhir Dixit

Hon'ble Vikas Budhwar, J.

1. Heard Sri Vashishtha Tiwari, learned counsel for the writ petitioner, Sri Shailendra Singh, learned Standing Counsel, who appears for the respondent no. 1 to 5 and Sri G.K. Singh, learned Senior Counsel assisted by Sri Sandeep Kumar, learned counsel who appears for the sixth respondent.

2. Learned counsel for the rival parties have made statement at bar that the pleadings are complete and they do not propose to file any further affidavits, thus, with their consent the writ petition is being decided at the fresh stage.

3. The case of the writ petitioner is that the sixth respondent, Shri Gandhi Inter College, Chhata, Mathura is an institution recognised under the provisions of the U.P. Intermediate Education Act, 1921, the provisions of U.P. Act No.5 of 1982 and 24 of 1971 stands applicable.

4. As per the writ petitioner there are five sanctioned post of Lecturers and the same are being manned by five Lecturers. The writ petitioner claims to have been selected and appointed in the sixth respondent institution on 5.10.2005 and he was accorded joining on 27.10.2005 as Assistant Teacher L.T. Grade. A vacancy on the post of Lecturer (Geography) is stated

to have occurred on 30.6.1998 pursuant to the retirement of one Sri Virendra Singh Tomar, who was working as a Lecturer (Geography). A resolution is also stated to have been passed by the sixth respondent institution on 30.4.2016 resolving to promote the writ petitioner as a Lecturer(Geography). The writ petitioner further claims to be armed with the academic qualification of B.A., B.Ed., from Maghaddh University (Bihar) and completed M.A. (Geography) from Distance Education from Karnataka State Open University Mukthagangotri, Mysuru. An order is stated to have been passed by the Regional Level Committee approving the promotion of the writ petitioner as Lecturer (Geography) on 25.6.2016 followed by a consequential order of District Inspector of Schools, Mathura dated 20.7.2016. However, according to the writ petitioner now order impugned has been passed by the Regional Level Committee through its Chairman, Regional Joint Director of Education Secondary, Agra Region, Agra, third respondent on 24.7.2023 whereby the order earlier passed by the said Committee on 25.6.2016 has been put to naught on the premise that the writ petitioner is not eligible and qualified for the said post.

5. Questioning the order dated 24.7.2023 passed by the Regional Level Committee through its Chairman, Regional Joint Director of Education Secondary, Agra Region, Agra the writ petitioner has filed the present writ petition.

6. This Court entertained the writ petition while passing the following order on 22.9.2023:-

“The contention of the learned counsel for the writ petitioner is that the order dated 27.04.2023 passed by the third respondent, Regional Level Committee canceling the promotion of the writ petitioner on the post of Lecturer is per se illegal as according to the writ petitioner there are eventually three grounds which have been taken the first being that the substantive post of Lecturer

(Geography) fell vacant on 30.06.1998 as whereas the writ petitioner was granted promotion on the post of Lecturer on 27.10.2005, secondly, the writ petitioner had obtained the Degree of M.A. without seeking permission of the respondents and thirdly, the Degree of M.A. (Geography) from Karnataka State Open University which is not recognized.

Sri Tiwari, learned counsel who appears for the writ petitioner submits that so far as the first ground is concerned, the same could not have been pressed particularly in view of the recent decision of this Court in Siddharth Shankar Mishra Vs. State of U.P. 2023 (6) ADJ 308 (Full Bench), so far as the second ground is concerned he submits that there is already a judgment in the case of Dr. Vibha Pandey Vs. Ashok Kumar Srivastava reported in 2004 (4) ESC 2492 and so far as the third ground is concerned he submits that the degree in question is a recognized one, however, certain inputs was pressed into service to negate the claim of the writ petitioner which was not confronted to the writ petitioner. The instructions have been forwarded to the Court under the signature of District Inspector of Schools, Mathura dated 22.08.2023 which is taken on record and marked as Appendix 'A'.

Since a writ of certiorari is being sought and the parties are represented before the Court itself, thus, let the respondents file their response.

Notice on behalf of respondents No. 1 to 5 has been accepted by Sri Saurabh , learned Standing Counsel and on behalf of sixth respondent by Sri Sandeep Kumar, they pray and they are granted 10 days' time to file their response.

The response shall be filed by 13.10.2023, rejoinder affidavit by 17.10.2023.

Put up this case on 19.10.2023 as fresh."

7. A counter affidavit has been filed on behalf of the respondent no. 1 to 5 sworn by District Inspector of Schools, Mathura dated 6.11.2023 followed by another counter affidavit by the sixth respondent institution dated 5.11.2023 to which rejoinder affidavits have been filed.

8. Learned counsel for the writ petitioner while assailing the order dated 24.7.2023 passed by the third respondent, Chairman, Regional Joint Director of Education Secondary, Agra Region, Agra has sought to contend that the order impugned cannot be sustained for even a single movement particularly in view of the fact that it is only the Director of Education (Secondary) U.P. at Prayagraj who could have passed

order as the said power vest with him under Section 16-E (10) of the U.P. Intermediate Education Act, 1921. He further submits that principally there are three grounds taken in the order impugned firstly, that the post of Lecturer (Geography) fell vacant on 30.6.1998 pursuant to the retirement of one Sri Virendra Singh Tomar and on that date the writ petitioner was not even born as an Assistant Teacher to be promoted as a Lecturer (Geography), secondly, the qualification of M.A. (Geography) which he claims to have obtained from Distance Education from Karnataka State Open University Mukthagangotri, Mysuru was not a recognised, degree and thirdly, the fact that the writ petitioner could not have obtained two degrees at the same point of time simultaneously. He submits that all the three grounds are totally unsustainable and cannot be made the basis for negating his claims.

9. Elaborating the said submissions, learned counsel for the writ petitioner submits that on 30.6.1998 when the vacancy occurred on the post in question was not notified or requisitioned particularly in view of the fact that there happens to be a certificate issued on 30.4.2016 that the post of Lecturer (Geography) was neither requisitioned nor any intimation was made to the Selection Board for making appointment by direct recruitment. He further submits that once the post in question was not notified by the management of the institution in question and none of the candidates had come forward that they have been deprived of being considered for promotion then the writ petitioner is entitled to be treated to be a validly promoted Lecturer(Geography).

10. Further submission on behalf of writ petitioner is that a conscious decision has been taken by the Regional Level Committee on 25.6.2016 pursuant to the resolution of the

Committee of Management and a consequential order was passed on 20.7.2016 by the District Inspector of Schools, Mathura and the writ petitioner joined the post in question thus after a period of approximately six years it is not open for the respondents to have denuded the writ petitioner of the said benefits one there is no allegation of fraud, concealment or misrepresentation.

11. He is sought to rely upon a decision in the case of **Dr. Vibha Pandey vs. Ashok Kumar Srivastava** reported in **2004 (4) ADJ 2492** while con-tendering that the degree obtained either without permission or simultaneously for the same period cannot be ignored. The submission of the learned counsel for the writ petitioner is that the order impugned be set aside and the writ petitioner be allowed to function on the post in question.

12. Countering the said submission, Sri G.K. Singh learned Senior Counsel who appears for the sixth respondent submits that the writ petitioner is not entitled to any relief and the order impugned is liable to be affirmed particularly in view of the fact that admittedly the post in question fell vacant on 30.6.1998 consequent to retirement of Sri Virendra Singh Tomar as Lecturer (Geography). On that date the writ petitioner was not even born as he was issued appointment order on 5.10.2005 and he was joined the post on 27.10.2005 as Assistant Teacher L.T. Grade. He further submits that that in view of Regulation 6 Chapter II of the U.P. Intermediate Education Act, 1921 where a vacancy in the Lecturer Grade or L.T. Grade as determined under Regulation 5 is to be filled by promotion all teachers working in L.T. or C.T. Grade as the case may be having a minimum of five years continuous substantive service to their credit on the date of occurrence of vacancy shall be considered

for promotion. He further submits that Rule 14 of the 1998 Rules also postulates the same. He thus submits on the date of the occurrence of the vacancy the writ petitioner was not even born less to say about eligibility thus he is not entitled to the benefits. He seeks to rely upon the Full Bench Judgement of this Court in the case of **Smt. Sadhana vs. State of U.P. and others 2017 (6) ADJ 418, Service Single No.18977 of 2017, Sunil Kumar Verma vs. State of U.P. & others decided on 19.9.2017, Service Single No.20041 of 2016, Tribuvan Nath vs. State of U.P. & others decided on 8.1.2020.**

13. It is also submitted on behalf of sixth respondent that the contention raised by the writ petitioner that the vacancy in question was not notified is preposterous particularly in view of the fact that the said vacancy stood notified as he seeks to rely upon annexure-1 at page 10 reference whereof has been made in para-6 of the counter affidavit of the District Inspector of Schools, Mathura according to which a requisition was sent on 8.12.1998. by the Committee of Management of the institution in question to the District Inspector of Schools, Mathura for being forwarded to the Board in view of the provisions contained under U.P. Act No.5 of 1982. He submits that in furtherance of the requisition submitted by the Committee of Management to the District Inspector of Schools, Mathura and to the Board selections were conducted and one Sri Om Pal Singh was selected and he was accorded joining on the post of Lecturer (Geography) on 3.1.2017.

14. Learned Senior Counsel for the respondent no.6 has also invited the attention of the Court towards the document filed by the writ petitioner himself according to which the writ petitioner though claims to have pursued Master of Arts in Geography from Distance Education from Karnataka State

Open University Mukthagangotri, Mysuru and while further inviting attention towards annexure-4 at page 27 it is being sought to be demonstrated that the first year of M.A. Degree Examination was October/November, 2012 and the statement of marks for Masters of Arts in Geography second year examination was February, 2014 and the date of issuance of said mark sheet was 26.4.2014 and while further inviting attention towards annexure-6 at page 35 of the paper book it is being further argued that pursuant to the request made by the Principal of the institution in question to the Karnataka State Open University Mukthagangotri, Mysuru on 2.6.2022 the Deputy Registrar (Evaluation) of Karnataka State Open University Mukthagangotri, Mysuru had informed the Principal of Institution in question that in view of the Directions of U.G.C. dated 18.8.2021 it was directed not to issue any degree for the years for which either the University was not recognised or territorial jurisdiction and the same is not complied and violation is noticed, punitive action shall be initiated against the University. While further relying upon annexure 6-A at page 37 of the paper book, information accorded to the sixth respondent institution under Right To Information Act, 2005 by the Deputy Registrar (Evaluation) of the said University dated 31.3.2023, it is argued that with respect to the question posed whether the said degree was recognised for the session 2011-2017 and the mark sheet claimed to be possessed by the writ petitioner of the year 2014 is valid answer has been given “No, It is not recognised. Cannot be attested for the reasons as there is no recognition.” Learned counsel for the sixth respondent has also invited attention towards page 41 of the paper book being a notification dated 28.9.2021 of the Registrar of the University wherein in

second paragraph it has been stated that Open Distance Programme of the University are recognised upto 2012-13 by erstwhile Distance Education Council I.G.N.O.U., the University is not recognised from 2013 to 2014 to 2017-18. Thus it is being sought to be demonstrated by learned Senior Counsel for sixth respondent that merely on the basis of certain communication which is appended as annexure-10 at page 52/53 the writ petitioner can not claim to have possessed a valid M.A. Degree.

15. Additionally, it is being argued on behalf of sixth respondent that the writ petitioner is not entitled to any relief particularly when on the face of the facts no case is made out on equity as he even on the date of the occurrence of vacancy was not eligible and qualified as rather he was not born in the cadre.

16. Sri Shailendra Singh, learned Standing Counsel who appears for the State Official respondents submits that by no stretch of imagination the writ petitioner would have been promoted on the post of Lecturer (Geography) particularly when the University from where the writ petitioner claims to have obtained M.A. Degree is not recognised, the writ petitioner was not born when the vacancy had arisen and there happens to be a requisition notifying the vacancy and selected candidate has already joined the post in question and further it is not the case wherein the matter ought to have been referred to the Director of Education under Section 16-E (10) of the U.P. Intermediate Education Act.

17. I have learned counsel for the parties and perused the record.

18. Before delving into the tenability of the argument of the learned counsel for the parties it will be apposite to extract the

relevant provisions which would govern the controversy in question.

19. Regulation-6 of Chapter-II of the Regulations framed under the U.P. Intermediate Education Act, 1921 stated as under:-

“6(1) Where any vacancy in the lecturer's grade or in the L.T. Grade as determined under Regulation 5, is to be filled by promotion, all teachers working in the L.T. or the C.T. Grade, as the case may be, having a minimum of five years continuous substantive service to their credit on the date of occurrence of the vacancy shall be considered for promotion by the Committee of Management without their having to apply for the same provided they possess the prescribed minimum qualifications for teaching the subject in which the teacher in the lecturer's grade or in the L.T. Grade is required.

The aforesaid Regulation clearly indicates that teacher is entitled for the promotion, provided he has a minimum of five years of continuous substantive service on the date of the occurrence of the vacancy. Section 32 of the Act, 1982 provides that the provisions of the Intermediate Education Act, 1921 and the Regulations made thereunder in so far as they are not inconsistent with the provisions of this Act of 1982 or the Rules or Regulations made thereunder was continue to be in force for the purpose of selection, appointment, promotion, dismissal, removal, termination or reduction in the rank of a teacher.”

20. The procedure has been prescribed under Rule 14 of the U.P. Secondary Education Services Selection Board Rules, 1998 which is quoted hereunder:-

"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 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 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 proforma given in Appendix 'A'.

(4) With 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 authorization under its resolution issue the appointment order in the proforma given in Appendix 'F' to such candidate."

21. Undisputedly, the vacancy on the post of Lecturer (Geography) fell vacant on 30.6.1998 owing to retirement of Sri Virendra Singh Tomar. It is not in dispute that the writ petitioner was selected on the post of Assistant Teacher L.T. Grade and an appointment order was issued on 5.10.2005 and he assumed the charge on 27.10.2005.

22. In view of Regulation 6(1) of Chapter-II of the U.P. Intermediate Education Act, 1921 read with Rule 14 of the U.P. Secondary Education Services Selection Board Rules, 1998 where a vacancy is to be filled by promotion of all teachers working in Trained Graduate Grade or Certificate of Teaching Grade, if any, those who possess the qualification prescribed for the post and have completed five years of continuous regular service as such on the day of the year of recruitment shall be considered for promotion to the Lecturer Grade or the Trained Graduate Grade as the case may be without there having applied for the same.

23. It is not in dispute that on 30.6.1998 the date when the vacancy on the post of Lecturer (Geography) fell vacant the

petitioner did not possess either qualification or eligibility as rather to the contrary he was born in the cadre of Assistant Lecturers.

24. Thus, there was no occasion to have promoted the writ petitioner as Lecturer (Geography). So far as the issue of sending of requisition notifying the vacancy of Lecturer (Geography) is concerned it has come on record from the counter affidavit filed by the District Inspector of Schools, Mathura that on 8.12.1998 the requisition was sent by the Committee of Management of the institution in question to the District Inspector of Schools, Mathura and the same came to be forwarded to the Board in view of the provisions contained under Section 5 of the U.P Act No.1982.

25. Apart from the same there is nothing on record to substantiate the fact that the requisition dated 8.12.1998 was either cancelled or withdrawn. One Sri Om Pal Singh was regularly selected by the Board and he was recommendation for appointment on the post of Lecturer(Geography) in the institution in question and ultimately he joined the said post on 3.1.2017 then the writ petitioner cannot resist the joining of Sri Om Pal Singh.

26. The issue regarding eligibility on the date of occurrence of vacancy/year of recruitment stands crystallised in the Larger Bench judgement of this Court **Smt. Sadhana (Supra)**, **Sunil Kumar Verma (Supra)** and **Tribuvan Nath (Supra)** thus, the writ petitioner was not eligible or qualified for being accorded promotion on the post of Lecturer (Geography) since he did not possess five years of continuous teaching experience.

27. In So far as the issue relatable to possession of a valid M.A. Degree is concerned, it has come on record on the basis of

the communications of the Karnataka State Open University Mukthagangotri, Mysuru that the institution was not recognised authorising into issue the said degree.

28. On a pointed query being raised to the learned counsel for the writ petitioner as to whether he can point out any document showing the fact that he possessed any recognised degree or not, he could place anything on record. Though the writ petitioner claims that he had been accorded permission to pursue the M.A. Degree from the said University under the orders of the Committee of Management/Employer thus the judgement in the case of **Dr. Vibha Pandey (supra)** would come to his rescue but the Court is not addressing the said issue particularly in view of the fact that the writ petitioner did not possess eligibility, five years of teaching experience on the date of the occurrence of the vacancy.

29. Now, comes the another plank of argument of the learned counsel for the writ petitioner that the Regional Level Committee had no power to either review/cancel/revoke its earlier order dated 25.6.2016 according approval to the promotion of the writ petitioner from the post of Assistant Teacher L.T. Grade to Lecturer (Geography), the said argument though appears to be attractive at the first blush but it may not detain this Court particularly when an error which was committed by the Regional Level Committee is being sought to be rectified by virtue of passing the impugned order which is within the four corners of law. The said issue is also not res integra as a coordinate Bench of this Court in the case of **Sunil Kumar Verma (Supra)** in para 27 has observed as under:-

“27. Learned counsel for the petitioner has also contended that it is the Director alone, who had jurisdiction to set aside the order of approval, and that the Regional Level Committee could not have reviewed its decision. The argument in that regard is noticed to be

rejected for more than one reason. First and foremost, it is to be noticed that Regional Level Committee has merely corrected its stand to bring it in conformity with the provisions of law. Its earlier decision not to accord approval being in consonance with the law declared by larger Bench in Sadhna (Supra) has been restored. It is also relevant to note that the promotion of petitioner had already been challenged by respondent no. 6, by way of representation, and the Regional Level Committee had otherwise taken note of it, and all parties were put to notice in that regard. The subsequent order is otherwise in conformity with the position of law, as is interpreted by the larger Bench. The issue as to whether only the Director could pass such an order under Section 16 (E) 10, need not detain this Court any further, inasmuch as any interference with the decision of the Regional Level Committee, under challenge, would revive the approval granted to the petitioner's promotion on 30th December, 2016, based upon the judgement in Raeesul Hasan (Supra). Law is settled that this Court would not interfere with an order, which would revive an illegality. Such being the situation, I am of the opinion that approval to petitioner's promotion has rightly been withdrawn by the Regional Level Committee, in the facts and circumstances of the present case.”

30. In the said case also the question regarding the possession of jurisdiction by the Director of the Secondary Education to adjudicate the said dispute was considered and it was held that the Regional Level Committee was empowered in such cases to have passed corrective orders rectifying the earlier mistake which has occurred.

31. The argument of the learned counsel for the writ petitioner that the matter ought to have been forwarded to the Director of Secondary Education under Section 16-E (10) of the U.P. Intermediate Education Act, 1921 could have been entertained once the claim of the writ petitioner was being denied on the ground that the question of eligibility relatable to a valid degree was under question but in the present case since the writ petitioner even otherwise was not eligible on the date of the occurrence of the vacancy, lacking five years of teaching experience thus the present case is not required to be

transmitted to the Director of Secondary Education, under Section 16-E(10) of the U.P. Intermediate Education Act, 1921.

32. As regards the contention of the learned counsel for the writ petitioner is that for approximately six years the writ petitioner is working on post of Lecturer (Geography) thus it would be not justified to dislodge him from the said post in question is concerned, the same will not in any manner whatsoever improve the case of the writ petitioner particularly when the writ petitioner lacked the necessary eligibility on the date of the occurrence of the vacancy. It has also come on record that in the institution in question that in Class-11 and 12 there are about 20-25 students who are being imparted education as Lecturer (Geography), thus in the wake of the said fact even otherwise there is no occasion to continue the writ petitioner as a Lecturer (Geography).

33. For the aforesaid reasons, this Court of the opinion that the writ petitioner is not entitled to any relief.

34. Accordingly, the writ petition is **dismissed**.

Order Date :-13.12.2023

piyush