

Court No. - 5**Reserved
A.F.R.****Case :-** WRIT - A No. - 7040 of 2024**Petitioner :-** Ajay Kumar Pandey**Respondent :-** State Of U.P. And 3 Others**Counsel for Petitioner :-** Awadhesh Kumar Malviya, Sr.
Advocate**Counsel for Respondent :-** C.S.C.**Hon'ble J.J. Munir,J.**

1. This writ petition is directed against the order dated 10.11.2023 passed by the Joint Director of Education, Varanasi Region, Varanasi and the order dated 13.12.2023 passed by the District Inspector of Schools, Ghazipur, both in effect communicating the resolution of the Regional Promotion Committee, Varanasi Region, Varanasi, rejecting the Management's proposal for the petitioner's promotion to the post of a Lecturer in Economics with the Navli Inter College, Navli, District Ghazipur.

2. The Navli Inter College, Navli, District Ghazipur (for short, 'the Institution') is a recognized and aided intermediate college. There is no issue about the sanctioned strength of teachers of various categories approved for the Institution. The petitioner was appointed as an Assistant Teacher (Art) on 09.11.2012 against a supernumerary post on compassionate grounds. He joined the Institution on 07.12.2012. The petitioner's case is that he has been continuously discharging his duties with the Institution as an Assistant Teacher (Art) to the satisfaction of the Institution. A post of Lecturer in Economics fell vacant due to the retirement of one Janardan Singh. Anil Kumar Vishwakarma was an Assistant Teacher (Art), who was promoted to the post of Lecturer in Economics that fell vacant on account of

Janardan Singh's retirement. This happened on 05.06.2020 with the District Inspector of Schools, Ghazipur (for short, 'the DIOS') granting his approval to Vishwakarma's promotion. Upon Vishwakarma's promotion, the post of Assistant Teacher (Art) fell vacant. The petitioner, who was functioning in the same position [Assistant Teacher (Art)] against a supernumerary post, was adjusted against the post vacated by Vishwakarma *vide* memo dated 16.06.2020 issued by the DIOS and addressed to the Manager/ Principal of the Institution with a copy marked to the petitioner. Vishwakarma was confirmed in his position as Lecturer (Economics) with the Institution by the Education Authorities, but transferred from the Institution to the Shiv Kumar Shastri Inter College, Jangipur on the same post. In consequence, the post of Lecturer (Economics) fell vacant.

3. The petitioner made an application to the Manager of the Institution on 10.07.2023, staking his claim for promotion to the post of a Lecturer in Economics as he had by that time rendered about ten and a half years' service as an Assistant Teacher (Art) and possessed the requisite educational qualifications for promotion to the post of a Lecturer (Economics). The petitioner holds a Masters' Degree in Economics and says that he is the senior most teacher. He, therefore, claimed his entitlement to be promoted to the post of a Lecturer, which under the 50% quota, fell to the share of posts earmarked for promotion. The petitioner's request was considered by the Committee of Management, who passed a proposal on 16.07.2023, directing that the petitioner's case be laid before the DIOS for his financial approval. It was resolved that after receipt of the DIOS's approval, a letter of appointment be issued in the petitioner's favour, appointing him the Lecturer (Economics) at the Institution. The Manager of the Institution

communicated the aforesaid decision to the DIOS *vide* his memo dated 01.08.2023.

4. The DIOS sought a clarification *vide* letter dated 12.09.2023 from the Management regarding two points about the petitioner's recommendation for promotion to the post of Lecturer (Economics). The first was provision of a photostat copy of the letter from the Government about the sanctioned strength of teachers for the Institution, and the other, about the fact why the petitioner had been recommended for promotion, when in the seniority list of Assistant Teachers, he was at serial No.6, whereas one Om Prakash, another Assistant Teacher with Postgraduate qualifications in Economics stood at Serial No.1. Both the points raised were clarified by the Manager of the Institution *vide* his memo dated 11.10.2023. The first was clarified by providing a photostat copy of the order indicating the approved strength of staff, including lecturers, assistant teachers etc. for the Institution. The other point about a senior assistant teacher being ignored was answered by the Manager, indicating that Om Prakash had forgone his right to promotion by a written waiver ever to be considered for promotion to the post of a Lecturer. A photostat copy of Om Prakash's letter was also annexed by the Manager along with his letter dated 11.10.2023.

5. Upon receipt of all these papers from the Management of the Institution, the same were forwarded for approval to the Joint Director of Education, Varanasi Region, Varanasi. The Joint Director of Education by his memo/ order dated 10.11.2023 communicated the resolve of the Regional Promotion Committee, Varanasi, rejecting the petitioner's claim on 03.11.2023 on ground that the petitioner was not a teacher in the Trained Grade. The petitioner's case for promotion to the

post of Lecturer (Economics) was declined on that ground alone. The DIOS communicated the decision of the Regional Promotion Committee *vide* his memo/ order dated 13.12.2023, addressed to the Management/ Principal of the Institution.

6. Aggrieved by the orders dated 10.11.2023 and 13.12.2023 passed by the Joint Director of Education and the DIOS, respectively, this writ petition has been instituted under Article 226 of the Constitution by the petitioner.

7. It must be mentioned here that what is really under challenge is the resolution of the Regional Promotion Committee, Varanasi dated 03.11.2023, by which the decision of moment to disapprove the petitioner's candidature was taken.

8. When this petition came up for admission on 13.05.2024, we passed the following order:

"The petitioner was appointed as an Art Teacher on compassionate ground in accordance with Regulations 101 to 106 of Chapter III of the Regulations framed under the U.P. Intermediate Education Act, 1921 on account of the death of his father, an L.T. Grade Teacher with the Navli Inter College, Navli, District Ghazipur. The petitioner was appointed on 07.12.2012. At the time of his appointment, he was placed on a supernumerary post, and later on, adjusted against the vacancy of an L.T. Grade Teacher that came into existence on account of the incumbent's promotion. Now, the petitioner's papers have been forwarded in due course for promotion to a lecturer's post, as permissible under the Regulations. By the order impugned dated 10.11.2023, the Regional Promotion Committee has remarked that the petitioner cannot be promoted to the post of a lecturer because he is not a teacher in the L.T. Grade.

It is submitted by Mr. Ashok Khare, learned Senior Advocate appearing on behalf of the petitioner that an Art Teacher is also an Assistant Teacher in L.T. Grade. There is no separate cadre of the Art Teachers nor the Art teachers are ex-cadre employees. The aforesaid remark in the order dated 10.11.2023 is, therefore, ill-founded.

Let the Joint Director of Education, Varanasi Region, Varanasi file his own affidavit, clearly indicating how the Regional Promotion Committee has found that an Art teacher in an Intermediate College is not an L.T. Grade teacher, and if he is not an L.T. Grade teacher, then, to what cadre he belongs.

The personal affidavit shall be filed within a week.

*Lay as **fresh** again on **22.5.2024**.*

*Let this order be communicated to the Joint Director of Education, Varanasi Region, Varanasi through the Civil Judge (Senior Division), Varanasi by the Registrar (Compliance) **within 24 hours**."*

9. Finding the personal affidavit filed by the Joint Director of Education not answering the two questions indicated in our order dated 13.05.2024, a further order was passed on 22.05.2024, which reads:

"A reply to the personal affidavit has been filed by the petitioner in Court today. It is taken on record. Let it be numbered by the office.

A personal affidavit has also been filed by the Joint Director of Education, Varanasi Region, Varanasi It is also taken on record. Let it be numbered by the office.

In the personal affidavit filed by the Joint Director of Education, Varanasi Region, Varanasi an unconvincing reply has been given to the two questions posed in our order dated 13.05.2024. If the petitioner does not hold a B.Ed degree and, therefore, not a Trained Graduate Teacher then to what cadre, other than an L.T. Grade teacher, does he belong, has not been specified.

This Court may remind that apart from a Lecturer and the Principal of an Intermediate College, the only other faculty member is an Assistant Teacher, L.T. Grade. It is only that for an Art Teacher, the training qualifications are different.

Bearing all these facts in mind, a further personal affidavit may be filed clarifying the position.

The Joint Director of Education, Varanasi Region, Varanasi will file his affidavit by 27.05.2024, without fail.

*Lay as **fresh** on **27.05.2024**.*

Let this order be communicated to the Joint Director of Education (Secondary), Varanasi Region, Varanasi through the Civil Judge

*(Senior Division), Varanasi by the Registrar (Compliance) **within 72 hours.***

10. The two personal affidavits filed by the Joint Director of Education dated 20.05.2024 and 27.05.2024 have been read as counter affidavits in the case. To the first of these, that is to say, the personal affidavit dated 20.05.2024, the petitioner has filed a rejoinder dated 22.05.2024.

11. The parties having exchanged affidavits, when the matter came up on 29.05.2024, it was admitted to hearing and heard on that day. Judgment was reserved.

12. Heard Mr. Ashok Khare, learned Senior Advocate assisted by Mr. A. K. Malviya, learned Counsel for the petitioner and Mr. S. K. Mishra, learned Standing Counsel appearing on behalf of respondent nos. 1 to 3.

13. The only point that arises for consideration in this matter is if the petitioner, an Assistant Teacher (Art) was eligible to be appointed a Lecturer in Economics. To be more precise, the controversy would be this and no more than that, that sans a Teachers Training Degree or Diploma, like the B.Ed., L.T., B.T., S.C. or M.Ed., could the petitioner be regarded as an Assistant Teacher in the Trained Graduate Grade, entitling him to promotion as a Lecturer in accordance with the provisions of Rule 14(1) of the Uttar Pradesh Secondary Education Services Selection Board Rules, 1998 (for short, 'the Rules of 1998').

14. A perusal of the impugned order passed by the Joint Director of Education, which virtually paraphrases the resolution of the Regional Promotion Committee dated 03.11.2023, shows that the Committee have found that the petitioner, an Assistant Teacher (Art), was not eligible to be promoted to the post of Lecturer in Economics with the Institution, because he was not

a teacher of the Trained Graduate Grade. In answer to our order dated 13.05.2024 in the first of his personal affidavits, the Joint Director of Education came up with an evasive and unconvincing reply to the question that we posed. It was required of the Joint Director of Education to clearly indicate how the Regional Promotion Committee found that an Art Teacher in an Intermediate College is not an L.T. Grade Teacher, and if not an L.T. Grade Teacher, to what cadre he belongs. Upon a reiteration of our direction to answer the question posed in our order dated 13.05.2024, a further personal affidavit dated 27.05.2024 was filed by the Regional Director of Education. The stand taken in the personal affidavit dated 27.05.2024 is that the petitioner is working as an Assistant Teacher (Art). He does not hold the Degree of B.Ed./L.T. As such, he cannot be termed a Trained Grade Teacher. He is a teacher working in the Graduate Grade Scale, that is, the pay scale of Rs.9300-34,800/- with a Grade Pay of Rs.4600/-, which is equivalent to the Trained Graduate Grade Teacher (L.T. Grade Teacher).

15. Under Rule 14(1) of the Rules of 1998, the post of a Lecturer is to be filled up by way of promotion from amongst teachers working in the Trained Graduate Grade or Certificate of Teaching Grade. Since the petitioner is neither a Trained Graduate Grade Teacher nor a C.T. Grade, he is not eligible for promotion as a Lecturer. There is then a reference to the qualifications of a Drawing and Commercial Art Teacher for High School (Classes 9-10) with the minimum qualifications being quoted *in extenso*, drawing upon Appendix A to the Uttar Pradesh Intermediate Education Act, 1921 (for short, 'the Act of 1921'). The aforesaid Appendix draws its force from Regulation 1 of Chapter 2 of the Regulations framed under the Act of 1921.

The various alternative qualifications for Drawing and Commercial Art Teachers are mentioned and then it is said that there is no sanctioned post of a Lecturer (Art). It is then said that *vide* Government Order dated 25.10.2000, it has been provided that where the post of a Lecturer (Art) is not sanctioned and students are being taught Arts by Teachers, such Teachers would be promoted in the Lecturers Grade after 10 years of teaching. There is then a very detailed reference to the provisions of the Government Order dated 25.10.2000 issued by the Government of U.P. in the Department of Secondary Education.

16. It is pleaded that according to the aforesaid Government Order, those teachers, who have been teaching subjects, like Arts, Physical Education, Craft, Language to Intermediate Classes in aided Secondary Institutions, which hold recognition for teaching Intermediate Classes in these subjects, and such teachers are drawing the Lecturers' Pay Scale, they shall be given the nomenclature of a Lecturer. It is pointed out that *vide* paragraph No.2 of the Government Order dated 25.10.2000, it is provided that those teachers, who draw the Lecturers' Pay Scale, but do not possess requisite qualifications for being appointed to the Lecturers' Cadre, shall work as Graduate Grade Teachers and after their retirement, the post shall be merged in the Lecturers' Grade. On the foot of this order, the submission of the learned Standing Counsel is that the petitioner, if he were teaching the subject of Arts to students of Classes 11-12, that is to say, if the Institution had been recognized to teach Arts to the Intermediate level and the petitioner paid the Lecturers' Pay Scale, he could be given the nomenclature of a Lecturer, provided he possessed the requisite qualification for being appointed to the Lecturers'

Cadre in the subject of Art. If the petitioner did not possess that qualification and still taught the subject to Classes 11-12, he would be regarded as a Graduate Grade Teacher, though remunerated in the Pay Scale of a Lecturer and upon his retirement, the post vacated would be merged in the Lecturer's Grade.

17. Mr. Ashok Khare, learned Senior Advocate, on the other hand, submits that this is not a case where the petitioner is claiming the Lecturer's Grade on account of teaching Art to Classes 11-12 in an institution, which is recognized for teaching the subject of Art at the Intermediate Level. It is a case where the petitioner says that he is an L.T. Grade Teacher, like any other, and entitled to promotion to the Lecturer's Cadre to teach a subject, wherein he holds the necessary qualification, entitling him to be appointed a Lecturer.

18. There are only two classes of teachers in an aided intermediate institution, teaching classes up to Class 12, besides the Principal. They are the Trained Graduate or L.T. Grade Teachers and Lecturers. The C.T. Grade Teachers are no longer there and that cadre stands abolished long back. There is nothing to suggest, upon a reading of Regulation 1 of Chapter 2 of the Regulations framed under the Act of 1921 read with Appendix A, that apart from the L.T. Grade Teachers and Lecturers, as they are popularly called, teachers, who teach Art, form a third cadre, which the Joint Director of Education has chosen to describe as the 'Graduate Grade Teachers'. It is acknowledged by the Joint Director of Education that the petitioner receives the same Pay Scale and Grade Pay as a Trained Graduate Grade Teacher or an L.T. Grade Teacher. The dichotomy between a Trained Graduate Grade Teacher or L.T. Grade Teacher on one hand, and Assistant Teacher Graduate

Grade on the other, has no basis to it in the Regulations framed under the Act of 1921, particularly Regulation 1 of Chapter 2 of the Regulations read with Appendix A. No other statutory basis with reference to any other provision of the law has been brought to the Court's notice to justify this artificial classification between teachers, teaching classes in an intermediate college up to Class 10. In fact, a careful perusal of Appendix A would show that the two classes of teachers, teaching in an institution, are not formally called there as Teachers L.T. Grade and Lecturers. They are described as teachers teaching a particular subject for High School (Classes 9-10) and for Intermediate (Classes 11-12). This is the only two class of teachers mentioned in Appendix A to the Act of 1921. The qualifications for an Economics Teacher, teaching Classes 11-12, are specified under serial No.6 of the Schedule, part of Appendix A to the Act of 1921. The Schedule with the relevant column heading relating to a Teacher in Economics for Classes 11-12 at an Intermediate Institution reads:

S. No.	Name of the post	Educational Training Experience	Age	Desirable qualification
1	2	3	4	5
'6.	Economics teacher for (Classes 11-12)	(1) M.A. (Economics) or (2) M. Com. and B.A. with Economics or (3) B.A. (Hons) in Economics with three years Course		Trained Trained Trained
	For High School (Classes 9-10)	(1) B.Sc. (Agri) with Economics as optional subject or (2) B. Com or (3) B.A. with Economics		Trained Trained Trained

19. Similarly, following the same table with the same five columns at serial No.10, which relates to Drawing and commercial art teacher for Intermediate (Classes 11-12) and for High School (Classes 9-10) reads:

S. No.	Name of the post	Educational Training Experience	Age	Desirable qualification
1	2	3	4	5
'10.	Drawing and commercial art teacher for Intermediate (Classes 11-12)	(1) Art Master Training Certificate (Formerly known as Drawing Teacher's Training Certificate) of Government Art and Craft College, Lucknow with Intermediate examination or (2) Intermediate with technical art and any one of the following examinations (a) B.A. with drawing or painting (b) Fine Art Diploma of Kala Bhavan, Shanti Niketan or (c) Final Drawing Teachership Examination of Calcutta or (d) Teacher's Senior Certificate Examination of Mayo School of Arts of Lahore.		
<i>Note.</i> – Under-above mentioned clause (2) passing of Intermediate is not compulsory for all. But if there is no proof of taking technical art in that examination then in its place any proof of knowledge of technical art of that standard is accepted. Teacher of girls schools shall be exempted from the knowledge of technical art.				
	For High School (Classes 9-10)	(1) Art Master's Training Certificate (formerly known as Teacher's Training Certificate) of Government Art and Craft College, Lucknow or (2) Intermediate examination of U.P. Madhayamik Shiksha Parishad with technical art or (3) High School examination with technical art and anyone of the following qualifications – or (a) B.A. with drawing or painting or (b) Fine Arts Diploma of Kala Bhavan of Shanti Niketan or (c) Certificate of Government Drawing and Handicraft Centre, Allahabad or (d) Final Drawing Teachership Examination of Calcutta or (e) Teacher's Senior Certificate Examination of Mayo Schools of Arts of Lahore or		

		(f) Intermediate Grade Drawing Examination of Bombay or (g) Third Grade Arts School Examination of Bombay.		
<i>Note.</i>– (1) Under-above mentioned clause (2) passing of Intermediate examination is not compulsory for all. But if there is no proof of having taken technical art in that examination then in its place any proof of knowledge of technical art of that standard can be accepted. Teacher of girls schools are exempted from the qualification of technical art. (2) Under-above mentioned clause (3) passing of High School examination is compulsory for all. But if there is no proof of having taken technical art in that examination then in its place proof of knowledge of technical art of that standard can be accepted. Teacher of girls schools shall be exempted from the qualification of technical art.				

20. Now, the Government Order dated 25.10.2000, on which the Joint Director of Education has placed reliance, reads in the relevant part thus:

"विषय :- अशासकीय सहायता प्राप्त माध्यमिक विद्यालयों के कला, व्यायाम, भाषा, शिल्प आदि विषयों के अध्यापकों को प्रवक्ता पद की निर्धारित अर्हता रहने पर "प्रवक्ता पद नाम" दिये जाने के सम्बन्ध में।

महादेय,

उपर्युक्त विषयक निदेशालय के पत्रांक : संख्या - (1) / शि0/8744/2000-2001, दिनांक 4 सितम्बर, 2000 के सन्दर्भ में मुझे यह कहने का निदेश हुआ है कि अशासकीय सहायता प्राप्त ऐसे माध्यमिक विद्यालयों (इण्टर कालेजों), जो कला, व्यायाम, भाषा, शिल्प आदि विषयों से इण्टर स्तर तक मान्यता प्राप्त है, में कार्यरत उक्त विषयों के ऐसे अध्यापकों, जो निरन्तर 10 वर्ष से इण्टर में पढ़ा रहे हैं तथा प्रवक्ता वेतनमान प्राप्त कर रहे हैं, को निम्न शर्तों एवं प्रतिबन्धों के अधीन "प्रवक्ता" पद नाम दिये जाने की श्री राज्यपाल सहर्ष स्वीकृति प्रदान करते हैं।

(1) जिन अशासकीय सहायता प्राप्त माध्यमिक विद्यालयों (इण्टर कालेजों) में कला, व्यायाम, भाषा, शिल्प, संगीत आदि विषयों में प्रवक्ता के पद सृजित नहीं हैं, उनमें प्रवक्ता वेतनमान में कार्य करने वाले अध्यापकों को स्नातक श्रेणी के मूल पद को समाप्त करते हुए प्रवक्ता पद में उच्चीकृत किया जायेगा तथा प्रवक्ता वैतनमान प्राप्त अध्यापकों को यदि वे प्रवक्ता पद हेतु निर्धारित अर्हता रखते हों, उपर्युक्तानुसार उच्चीकृत पदों के सापेक्ष नियुक्त कर दिया जायेगा।

(2) प्रवक्ता वेतनमान प्राप्त ऐसे अध्यापक जो प्रवक्ता पद हेतु निर्धारित अर्हता नहीं रखते हैं, वे पूर्ववत् स्नातक वेतनक्रम की भांति शिक्षा प्रदान करते रहेंगे तथा उनकी सेवानिवृत्ति के उपरान्त स्नातक श्रेणी का पद उसी तिथि से समाप्त होकर प्रवक्ता पद में परिवर्तित हो जायेगा।

(3) उपर्युक्त प्रस्तर-1 एवं 2 में वर्णित सुविधा केवल उन्हीं अशासकीय सहायता प्राप्त माध्यमिक विद्यालयों के अध्यापकों को प्राप्त होगी, जिन्हें सम्बन्धित विषय में इण्टर स्तर की मान्यता प्राप्त हो।

(4) सम्बन्धित अध्यापक को शासनादेश संख्या : 1121/15-8-90/3087/89, दिनांक : 28 फरवरी, 1990 के प्रस्तर-3 के अधीन सम्बन्धित व्यवसाय की अर्हता के साथ स्नाताकोत्तर उपाधि की अर्हता रखना आवश्यक है।

(5) यह सुविधा केवल उन्हीं अध्यापकों को अनुमन्य होगी, जो सम्बन्धित विषयों में कक्षा-11 एवं कक्षा 12 को पढ़ाते हुये 10 वर्ष की निरन्तर संतोषजनक सेवा पूरी करते हुए प्रवक्ता का वेतनमान 1600-2660 (पुराना) वैयक्तिक रूप से प्राप्त कर चुके हो।

(6) उक्त विषयों के केवल उन्हीं अध्यापकों को प्रवक्ता पद नाम अनुमन्य होगा, जो इस आदेश के जारी होने की तिथि तक निर्धारित अर्हता पूरी कर चुके हों।"

21. It brooks little doubt that the Government Order dated 25.10.2000 is not at all attracted to the issue or the question that arises in the present case. The Government Order dated 25.10.2000 is attracted to a case where an Art Teacher, or to be precise, a Drawing and Commercial Art Teacher, appointed to teach High School (Classes 9-10), is employed in an institution, which is recognized to teach the subject of Art up to the Intermediate Level. In an institution, such as that, an L.T. Grade Teacher (Art) continuously teaching Classes 11-12 for ten years, would be entitled to be designated as a Lecturer (Art), subject to the following conditions, amongst others:

If the aided Intermediate Institution does not have the post of a Lecturer (Art) sanctioned for it, but there is an L.T. Grade Teacher in the said Institution, who fulfills the above detailed conditions, it would lead to his post of L.T. Grade (Art) being abolished and upgraded to that of a Lecturer (Art), with the incumbent being appointed to the upgraded post, provided he possesses the necessary qualification to be appointed a Lecturer (Art) or a Teacher eligible to teach Classes 11 and 12.

22. In the event a Teacher, who has taught for ten years Classes 11-12 in an institution, fulfilling all other conditions as described, but does not possess the essential qualifications for appointment as a Lecturer (Art) or Teacher for Classes 11-12, he would continue in the L.T. Grade and carry on teaching the

Intermediate Classes, drawing the Lecturer's Pay Scale, but upon the retirement of such an incumbent, his L.T. Grade Post would come to an end and stand converted to that of a Lecturer (Art).

23. Now, to rely upon the aforesaid Government Order to hold the petitioner disentitled to a promotion to the post of a Lecturer (Economics) is an approach that betrays utter misconception, besides being manifestly illegal. This is not a case where the petitioner seeks upgradation of his post to that of a Lecturer (Art) in the institution, where he is teaching and his own promotion thereagainst. The details of the posts sanctioned for the Institution, a position, which is admitted, shows that there are only six posts of Lecturers sanctioned, which are in the Subjects of Hindi, Sanskrit, History, Economics, Civics and English; none in Art. It is also not the case of either party that the Institution is recognized to teach Art to the Intermediate Section (Classes 11-12). There is, thus, no possibility of the petitioner seeking an upgradation of his L.T. Grade post to that of a Lecturer in Art with the same Institution. The Government Order dated 25.10.2000 relied upon by the Joint Director of Education, and for that matter, by the Regional Promotion Committee, to found or justify their decision, is a stand that is utterly misconceived.

24. We have already indicated that there is absolutely no basis or justification to hold what the respondents want this Court to accept that the post of a Drawing and Commercial Art Teacher in a High School is not the post of an L.T. Grade or Trained Graduate Teacher, but a different class or cadre. It is quite another matter that Art being a different kind of subject, training that may be required for teaching other disciplines up to the High School Classes, may not be one of the requirements

for an Assistant Teacher L.T. Grade, teaching Art up to Classes 9-10. That, however, would not make him any less an Assistant Teacher L.T. Grade or a Trained Graduate Teacher, or a Teacher entitled to teach Classes 9-10. The only other cadre of teachers are those entitled to teach Classes 11-12, popularly called Lecturers. The petitioner, therefore, is clearly an Assistant Teacher L.T. Grade in the subject of Art. Now, if he is an L.T. Grade Teacher in the Institution, he is entitled to stake his claim for promotion against the 50% quota, earmarked for promotion to the post of Lecturers from amongst L.T. Grade Teachers. The post to which the petitioner has laid his claim is clearly earmarked for the promotion quota. The earlier incumbent, Anil Kumar Vishwakarma was also promoted to the post before he was transferred. It is not the respondents' case that in between, the cadre of Lecturers has undergone a change of complexion about the quota of direct appointees and promotees, so as to take away the post of Lecturer in Economics out of the promotion pool.

25. The sole question that now stays relevant is if the petitioner is eligible to be appointed a Lecturer, going by qualifications for the post of a Lecturer in Economics to be appointed by way of promotion. Regulation 6 of Chapter 2 of the Regulations framed under the Act of 1921 earlier governed promotion to the post of a Lecturer in intermediate college. But, upon enforcement of the Uttar Pradesh Secondary Education Service Selection Boards Act, 1982 (for short, 'the Act of 1982'), promotion to the post of a Lecture in an intermediate college came to be governed by Rule 9 of the Uttar Pradesh Secondary Education Services Commission Rules, 1983 (for short, 'the Rules of 1983') framed under the Act of 1982. Rule 9(1) of the Rules of 1983, enforced w.e.f. 10.01.1983, provide:

"9. Procedure for appointment by promotion.- (1) Where any vacancy is to be filled by promotion, all teachers working in L.T. or C.T. grade, who possess the minimum qualifications and have put in at least 5 years continuous service as teacher in the concerned subject on the date of occurrence of vacancy shall be considered for promotion without their having applied for the same."

26. Rule 9(1) of the Rules of 1983 was soon amended *vide* Notification No. Ma-1461/XV-7-2(15)-81-U.P.A.-5-82 dated 01.07.1983. The amended Rule 9(1) of the Rules of 1983 read:

"9. Procedure for appointment by promotion.- (1) Where any vacancy is to be filled by promotion, all teachers working in L.T. or C.T. grade, who possess the minimum qualifications and have put in at least 5 years continuous service as teacher on the date of occurrence of vacancy shall be considered for promotion to the Lecturer or L.T. grade, as the case may be, without their having applied for the same.

Note. - For the purpose of this sub-rule, service rendered in any other recognised institution shall count for eligibility, unless interrupted by removal, dismissal or rendered to a lower post."

27. The Rules of 1983 were replaced by the Uttar Pradesh Secondary Education Service Selection Board Rules, 1995 (for short, 'the Rules of 1995') w.e.f. 08.05.1995. Here, the relevant procedure for promotion to the Lecturer's Grade or the L.T. Grade was provided by Rule 14 of the Rules of 1995, which read:

"14. Procedure for recruitment by promotion.- (1) Where any vacancy is to be filled by promotion all teachers working in trained graduates (L.T.) grade or Certificate of Teaching (C.T.) grade, if any, who possess the qualifications prescribed for the post and have completed five years continuous 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 (L.T.) 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 sub-rule (3), and forward it to the Commission through 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 Commission.

(5) The Commission 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 Commission shall forward the panel of selected candidates within the one month to the Inspector with a copy thereof to the Deputy Director.

(6) Within ten days of the receipt of the panel from the Commission under sub-rule (5), the Inspector shall send the name of the selected candidate to the management of the institution which has notified the vacancy and the management shall accordingly on authorisation under its resolution issue the appointment in the pro forma given in Appendix 'E' to such candidate."

28. The Rules of 1995 were then replaced by the Rules of 1998, where the subject of promotion to the Lecturer's Grade or the L.T. Grade was encapsuled in Rule 14. Rule 14 of the Rules of 1998 reads:

"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.

Notes.—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 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."

(emphasis by Court)

29. It appears that the words 'as such' employed in Rule 14(1) of the Rules of 1998 gave rise to conflict of judicial opinion on the point if this expression postulated that a teacher in order to be eligible for promotion under Rule 14 should have five years teaching experience, subsequent to acquisition of the

essential qualifications prescribed for the post, to which he seeks promotion, or the expression 'as such' qualified the words 'five years continuous regular service' as an L.T. Grade teacher alone, but not the 'qualifications prescribed for the post'.

30. In Smt. Usha Goel v. State of U.P. and others, 2004 SCC OnLine All 372, the view taken was that the words 'as such' in Rule 14 qualified both 'the qualifications prescribed' and 'five years continuous regular service' in the feeding cadre. It was held in **Smt. Usha Goel (supra)**:

"8. The Rules of 1998 made in exercise of powers under Section 35 of U.P. Secondary Education Services Selection Board Act, 1982, replaced the Rules of 1995, and came into force on 8th August, 1998. The words 'as such' in Rule 14, after the words 'five years' continuous regular service, qualify both to the qualification prescribed for the post and 'five years' continuous regular service. The legislature has once again brought in the eligibility to only those persons who possessed qualification for the post and completed 5 years' regular service with such qualifications. The words qualifications prescribed for the post and 'five years' continuous regular service have been used in the same sentence, which is a compound (double) sentence, as a demonstrative pronoun, (Latin word demonstrare, to show clearly), and points to the person who possesses the qualification prescribed for the post."

31. The principle in Smt. Usha Goel was followed by the learned Single Judge in **Shail Kumari v. State of U.P., 2008 ALJ 205**, where it was remarked:

"13. The submission of the learned Counsel for the respondents that five years of continuous regular service cannot be equated with the qualification prescribed for the post is patently erroneous. The words five years of continuous regular service would qualify both to the qualification prescribed for the post as well as for five years of continuous regular service. Consequently, this Court is in complete agreement with the judgment in the case of Smt. Usha Goel (supra)."

32. The question again came up for consideration before a learned Single Judge of this Court in **Ram Prakash Sharma v. Joint Director of Education, Agra Region, Agra, 2010(2) ADJ 243**. The learned Judge in **Ram Prakash Sharma** (*supra*) doubted the correctness of the view expressed in **Smt. Usha Goel** and **Shail Kumari** (*supra*) for reasons expressed, which may not be of much relevance now. The learned Judge in **Ram Prakash Sharma**, doubting the correctness of **Smt. Usha Goel** and **Shail Kumari**, referred the following questions for consideration by a larger Bench:

"(a) Whether the law laid down in the case of Usha Goel (*supra*) as followed in the case of Shail Kumari (*supra*) providing that for a teacher to be eligible for promotion under Rule 14 of 1998 Rules, he must have 5 years teaching experience subsequent to his having acquired the essential qualifications prescribed qua the post on which he is to be promoted is the correct law.

(b) Whether the word 'as such' used in Rule 14 of the 1998 Rules refer to the post on which the promotion is to be made from the post in the lower cadre and the qualifications prescribed thereto only and does not require teaching experience of 5 years subsequent to the acquisition of such minimum qualification qua the promotional post."

33. The reference came up before a Full Bench of this Court in **Siddharth Shanker Mishra v. State of U.P. and others, 2023 (6) ADJ 308 (FB)**. Their Lordships of the Full Bench, in answering the questions referred to them by the learned Single Judge in **Ram Prakash Sharma**, held:

"36. The twin requirements for promotion under Rule 14 is possessing of qualification for the promoted post and five years continuous regular service in the feeding cadre i.e. trained graduates grade for promotion to lecturers grade and certificate of teaching grade for promotion to trained graduates grade. It is only by interpreting words 'as such', occurring in the Rule 14, that the Single Judge in Smt. Usha Goel

(supra) held that the rule requires five years continuous regular working with qualification for the promoted post.

37. Rule 14 governs promotion to the lecturers grade as also trained graduates grade. The rule making authority in order to specify promotional criteria for two distinct posts in the same rule has used the expression 'as such' apparently with an intent to specify five years continuous regular service either in C.T. Grade or L.T. Grade, as the case may be, with the qualification for the promotional post.

38. The appointment in certificate of teachers grade is otherwise not specific to any subject. The qualification required for the post was intermediate alongwith specified training qualification. Similarly, for trained graduates grade also the sanction of post by the State/ educational authorities is not with reference to any particular subject. It is left to the discretion of management of institution to determine the subject for which teacher is required in the trained graduates grade. Rule 10 & 11 of the Rules of 1998 also indicate that determination of vacancy and the consequential recruitment is not subject specific in the trained graduates grade, rather, it is with reference to specified groups.

39. In the scheme for promotion under the Rules of 1998 no useful purpose would thus be served in insisting upon the requirement of possessing five years continuous regular service after obtaining qualification of the promoted post when the post in the feeding cadre is not subject specific and it would be permissible for a teacher in one subject to be promoted in another subject if he possesses qualification for the promoted post and has completed five years continuous regular service. This is particularly so as the creation of post in C.T. and L.T. Grade are not subject specific and are at best group specific at the L.T. Grade level. It is only at the lecturers grade level that qualification is subject specific.

40. In the absence of posts in the institution at the L.T. Grade and C.T. Grade not being subject

specific, it would not make any sense to insist upon the requirement of five year continuous regular working with qualification as the eligibility for promotion while interpreting the term 'as such'.

41. The qualification for promotion otherwise remains unchanged and the only difference made on account of interpretation of term 'as such' is the need to have five year continuous regular working with qualification for the promotional post or not.

42. Since the creation of post in the certificate of teachers grade as also trained graduates grade is not with reference to any subject, it would be anomalous to insist upon the requirement of five years teaching experience in the concerned subject in the feeding cadre. It appears that this was the reason why the rule making authority deliberately omitted the requirement of five years continuous regular service in the concerned subject for promotion.

43. Learned Single Judge in Smt. Usha Goel (supra) apparently overlooked the scheme for promotion contained in the Rules of 1998 while observing that the rule making authority virtually re-introduced the concept of five years continuous regular service with qualification by inserting words 'as such' and thereby re-introduced the requirement of five years continuous regular service in the concerned subject wherein promotion is sought.

44. A Division Bench of this Court in Rajendra Kumar v. District Inspector of Schools, Ghaziabad and others, 2016(1) ADJ 58, has taken a similar view in para 15 and 16 of the judgement, which are reproduced hereinafter :

"15. It is no doubt true that Regulation 6 contained in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 did provide that a teacher to be promoted should have experience of teaching in the concerned subject and the Full Bench in Basanti Gaur and the Division Bench in Laxmi Narain Yadav also observed that a teacher having experience of teaching in the concerned

subject should be recruited but in the present case we required to interpret Rule 14 (1) of the 1998 Rules. As noted above, Rule 9 (1) of the 1983 Rules initially provided that a teacher should have the requisite experience in the subject concerned but on 1 July 1983 an amendment was in the 1983 Rules and the requirement of having five years experience in the concerned subject was omitted. This deliberate omission, in our opinion, cannot be ignored while interpreting Rule 14 (1) of the 1998 Rules. This apart, as noticed above, such a requirement of having five years teaching experience in the concerned subject was not contained in successor 1995 Rules. The contention of the learned counsel for the appellant that this omission was caused because of the declaration of law by the Full Bench in Basanti Gaur cannot be accepted.

16. There is, therefore, no manner of doubt that the requirement of having five years teaching experience in the concerned subject was deliberately omitted and it would not be appropriate for the Court to give any meaning to Rule 14 (1) of the 1998 Rules in the manner suggested by the learned counsel for the appellant. This is what has also been observed by the Full Bench of this Court in Raeesul Hasan."

45. The words 'as such' qualifies the qualification prescribed for the promoted post as well as continuous regular service either on the post of trained graduates grade or certificate of teaching grade, as the case may be. To read the requirement of qualification for the promoted post alongwith five years continuous regular service in the feeding cadre is neither the intent of Rule 14 nor can it otherwise be culled out from the scheme of the Act of 1982 and the rules framed thereunder.

46. Rule making authority while requiring all teachers working in the trained graduates grade or certificate of teaching grade, who possess qualification for the post, to be considered for promotion without their even applying for it, has made it explicit that consideration has to be in

widest possible terms for eligible candidates and a narrower construction, not specifically warranted in the rule has to be avoided. In our view, limiting promotion only for those who have five year continuous regular working in the feeding cadre with qualification would not be in the spirit of the Rules of 1995 and 1998.

47. In that view of the matter and for the deliberations and discussions held hereinabove, we hold that the law laid down by this Court in the case of Smt. Usha Goel (supra) as followed in Shail Kumari (supra) holding that a teacher to be eligible for promotion must have five years teaching experience with qualification for the promoted post does not lay down good law.

48. We endorse the view taken by learned Single Judge in Ram Prakash Sharma's case (supra) and hold that the words 'as such' used in Rule 14 of the Rules of 1998 refers to the post on which promotion is to be made i.e. L.T. Grade or lecturers grade and the qualification prescribed for it and does not require teaching experience of five years with qualification for the promotional post."

34. Now, the petitioner, who is the holder of a Postgraduate in Economics and has put in continuous regular service as an Assistant Teacher L.T. Grade for a period for more than five years, would be eligible for promotion to the post of Lecturer in Economics. It must be remarked that we have noticed this position of the law about the eligibility of an L.T. Grade Teacher for promotion to the post of a Lecturer in order to obviate any further controversy, that may again be brought up by the respondents. The question, that is principally involved in this petition, is the one that we have set out in paragraph No.13 of the judgment and answered in the petitioner's favour.

35. No other point was pressed.

36. In the result, this petition succeeds and is **allowed**. The impugned orders dated 10.11.2023 and 13.12.2023 passed by

the Joint Director of Education, Varanasi Region, Varanasi and the DIOS, respectively, as also the resolution of the Regional Promotion Committee dated 03.11.2023, are hereby **quashed**. A *mandamus* is issued to the Joint Director of Education, Varanasi Region, Varanasi to place the petitioner's matter for approval before the Regional Promotion Committee afresh, who will pass orders in accordance with the guidance in this judgment within a month of receipt of this judgment by the Regional Director of Education, Varanasi Region, Varanasi.

37. Costs easy.

Order Date :- 28.11.2024
Anoop

(J.J. Munir)
Judge