

Court No. - 18

Case :- WRIT - A No. - 6246 of 2023

Petitioner :- Swatantra Kumar Shukla

Respondent :- State Of U.P. Thru. Secy. (Secondary Education) Deptt. Lko. And 5 Others

Counsel for Petitioner :- Om Prakash Mani Tripathi

Counsel for Respondent :- C.S.C., Prashant Kumar Singh, Raj Kr Singh Suryavanshi

Hon'ble Manish Mathur, J.

1. Heard Mr. O.P. Mani Tripathi, learned counsel for petitioner, learned State Counsel for opposite parties no.1, 3, 4 & 5, Mr. R. K. Singh Suryavanshi, learned counsel for opposite party no.2 and Mr. Prashant Kumar Singh, learned counsel for opposite party no.6.

2. Petition has been filed challenging proposal, if any, sent by Managing Committee of the Institution for recruitment on the post of Lecturer in the subject of Economics in the Swami Vivekanand Inter College, Gonda. Further prayer for quashing of letter of Managing Committee dated 28.07.2023 rejecting petitioner's claim for promotion has also been challenged with a direction being sought to the opposite parties for forwarding name of petitioner for consideration for promotion on the post of Lecturer in the Institution concerned in the subject of Economics.

3. It has been submitted that admittedly there are five posts of Lecturers in the Institution concerned in the subject of Hindi, Sociology, Civics, Sanskrit and Economics.

4. Learned counsel has drawn attention to Rule 10 of the U. P. Secondary Education Services Selection Board Rules, 1998 to submit that the source of recruitment as indicated in the aforesaid Rule specifically provides for promotion on the post of Lecturer by 50% through direct recruitment and the remaining 50% by promotion from among substantively appointed teachers of the trained graduate grade in which petitioner was appointed in the year 2015.

5. It is submitted that earlier the Management of Institution filed Writ Petition No. 879 (SS) of 2011 challenging orders dated 22.12.2010 and 07.02.2011 whereby they were directed to appoint a particular person on the post of Lecturer in Hindi under the reserved category of other backward classes. The aforesaid petition was disposed of vide judgment and order dated 02.05.2011 directing the opposite parties to fill up the

aforesaid posts by direct recruitment since no eligible person was available in the Institution under the promotional quota. The Services Selection Board was directed to sent the names of two candidates for the post of Lecturer in the subject of Civics and Sanskrit, one in the category of scheduled caste and other in general category. It is submitted that in pursuance of aforesaid directions, two names were proposed by the Selection Board but both names belonged to general category. However in pursuance of directions issued by the District Inspector of Schools, joining was granted to both the aforesaid persons leaving it open for recruitment on any subsequent vacancy under the reserved quota.

6. It is submitted that upon becoming eligible for promotion on the post of Lecturer in the subject of Economics, petitioner put forth his candidature which has been impliedly rejected by the Management vide impugned order dated 28.07.2023 on the ground that proposal for recruitment on the aforesaid post has already been sent to the Services Selection Board by direct recruitment under the reserved category.

7. It is submitted that such a requisition/ proposal is clearly against the provisions of Rule 10 of the aforesaid statutory Rules of 1998.

8. Learned counsel has also placed reliance on Full Bench judgment of this Court rendered in the case of ***Heera Lal versus State of U.P. & Ors. (2010) 3 UPLBEC 1761*** to submit that reservation cannot be granted on post reserved for promotion where such posts are minimum of five in number.

9. Learned counsel appearing for opposite parties have refuted submissions advanced by learned counsel for petitioner with the submission that it is in pursuance of directions issued by this Court dated 02.05.2011 that proposal was sent by the Management for recruitment on the post of Sanskrit and Civics. It is submitted that the aforesaid recruitment was sought to be made through direct recruitment since at that relevant time, there was no eligible person for promotion. It is submitted that in pursuance of requisition/proposal sent upon directions issued by this Court that names of two persons were forwarded by the Selection Board for appointment on the aforesaid posts. However both the persons whose name was recommended belonged to general category.

10. Learned counsel for Management placing reliance on counter affidavit filed submits that since names of two persons being forwarded belonged to general category, directions were sought from the District Inspector of Schools who vide order

dated 07.02.2011 directed the Manager to permit the joining of aforesaid two persons with a further direction that reservation may be fulfilled under the next available vacancy. It is therefore his submission that since in pursuance of such directions, the present vacancy has occurred in the subject of Economics, proposal was sent to the Board for filling up such vacancy in terms of directions issued by this Court and the District Inspector of Schools.

11. Learned counsel for opposite parties however admit that till date no names have been forwarded for recruitment on the post of Lecturer in the subject of Economics which still remain vacant.

12. Upon consideration of submissions advanced by learned counsel for parties and perusal of material available on record, it is evident that Rule 10 of the Rules of 1998 provides for procedure of recruitment and sources thereof. Rule 10(b) provides for recruitment of teachers in the Lecturer grade by direct recruitment to the extent of 50% of the posts with remaining 50% being required to be filled up from amongst substantively appointed teachers of the trained graduates grade. The provision is as follows:-

".....(b) Teachers of lecturer's grade (i) 50 per cent by direct recruitment; (ii) 50 per cent by promotion from amongst substantively appointed teachers of the trained graduates grade."

13. In view thereof, it is quite evident as admitted by the parties that there are five posts of Lecturers available and sanctioned in the Institution concerned.

14. With regard to recruitment in terms of relevant Rules and applicability of reservation on such posts, the Full Bench judgment of this Court in the case of **Heera Lal** (supra) has held as follows:

"32. There may be cases where there is a rule making provision for different sources of recruitment within the same cadre, then reservation has to be applied to the posts available for being filled up in accordance with the source of recruitment. This issue may arise in the context where a candidate is not available for filling up the post by way of promotion and the same has to be diverted to be filled up by direct recruitment. Such a situation will arrive in cases where the number of posts may be five or more so as to make the rule of reservation applicable. Taking for instance where there are say 8 posts in a cadre and the rule is, as presently involved, namely that 50% posts have to be filled up by way of promotion, in that event four posts have to be filled up by promotion and four by direct recruitment. The rule of reservation for appointment by way of promotion is available only to scheduled castes in the State of U.P. and no such rule is available for other backward categories. They are entitled to the benefit of reservation only in the process of direct recruitment. In the

example given above where four posts out of eight are to be filled up by direct recruitment one post will have to be given to the other backward category keeping in view the 27% mandate of reservation in favour of such category under the 1994 Act. Against four posts of promotion quota, reservation to a scheduled caste category cannot be granted as there has to be a minimum of five posts for applying the 21% reservation for promotion. In a given situation where no other candidate of any category is available for promotion against the four posts, then such a vacancy to be filled up by promotion may have to be carried over for direct recruitment. This would bring about a change of strength in the source of recruitment thus fluctuating the strength of the post available by direct recruitment. A scheduled caste candidate would therefore, get the benefit of reservation if the cadre strength is increased to five for direct recruitment, even though the same candidate would not get the benefit of reservation if the promotion quota of 50% is adhered to. It would be appropriate to point out that taking a case where there are five posts for being filled up by promotion and five by direct recruitment in the cadre then in such an event the rule of reservation to the extent of 21% in both the sources can be conveniently made applicable without disturbing the ratio in either of the sources."

15. Upon applicability of aforesaid judgment in the present facts and circumstances, it is thus evident that reservation cannot be granted unless the post reserved for promotion are more than five in number. The judgment however indicates that in a given situation where no other candidate is available for promotion then such vacancy can be filled up through direct recruitment, which however would bring about a change in the strength of source of recruitment due to which as a result of increased cadre strength, reservation would be applicable.

16. As a corollary therefore, it is quite evident that reservation would be inapplicable on posts reserved for promotion where such posts are not more than five in number.

17. Therefore it is quite evident that in the present case where there are only five sanctioned posts with only one vacancy remaining, the same is required to be filled up in accordance with Rule 10(b) of the Rules of 1998 as well as the judgment rendered in the case of **Heera Lal** (supra).

18. Since in the present case, the sanctioned strength in the post of Lecturers in the Institution is only five in number, out of which four have already been filled up through direct recruitment, remaining posts is definitely required to be filled up by means of promotion without adverting to any reservation.

19. It is a relevant fact that the situation would have been different in case the proposal for the aforesaid vacancy had been sent by the Management immediately after passing of judgment rendered by this Court on 02.05.2011 or even till when there was no candidate available for being considered for

promotion under the promotional quota. However a perusal of the counter affidavit filed by the Management makes it evident that proposal for the single remaining vacancy in the subject of Economics has been sent in the year 2022, when petitioner had already acquired eligibility for being considered for promotion on the aforesaid posts and therefore in such changed circumstances, it is the name of petitioner which should have been forwarded by the Management for purposes of recruitment on the post of Lecturer in the subject of Economics under the promotional quota.

20. In view of aforesaid facts and discussion made hereinabove, the proposal, if any, made by the Management by direct recruitment on the single vacancy of Lecturer in the subject of Economics is hereby quashed by issuance of a writ in the nature of certiorari. Rejection order dated 28.07.2023 passed by Management is also quashed by issuance of a writ in the nature of certiorari with a further writ in the nature of mandamus being issued to the Management (opposite party no.6) to forward the name of petitioner for purposes of recruitment under the promotional quota in the single vacancy of Lecturer in the subject of Economics, in case he is otherwise eligible.

21. Upon such proposal being made to the Selection Committee constituted under Section 12 of the Uttar Pradesh Secondary Education (Services Selection Board) Act 1982 within a period of two weeks, a decision thereupon shall be taken in accordance with law expeditiously, preferably within a period of two months from the date of receipt of proposal.

22. Consequences thereafter shall follow.

23. Resultantly, petition succeeds and is **allowed**. Parties to bear their own costs.

Order Date :- 31.7.2024

Subodh/-