

Court No. - 38

Case :- WRIT - A No. - 64605 of 2010

Petitioner :- Nem Singh

Respondent :- State of U.P. and Others

Counsel for Petitioner :- M.K. Kushwaha, Mahima Kushwaha

Counsel for Respondent :- C.S.C.

Hon'ble Donadi Ramesh, J.

1. The present writ petition is filed questioning the order dated 16.09.2010 passed by the second- respondent with a consequential prayer to consider the case of the petitioner for promotion from the date of actual promotion affected by the Committee of Management in the month of June, 2003. Initially the petitioner was appointed in the fourth- respondent's College as B.T.C. Grade Teacher in the year 23.07.1974, and he was promoted to the post of C.T. Grade on 14.02.1999 on the post of Lecturer in Sanskrit, which fell vacant on retirement of one Shri Bhagwati Prasad Gaur on 30.06.2003.

2. Consequent upon request made by the petitioner the fourth-respondent vide its minutes dated 27.07.2003 has sent the proposals affecting the promotion of the petitioner to the post of Lecturer (Sanskrit). Further, based on the above minutes the Committee has recommended/ sent the proposals to the District Inspector of Schools vide its letter dated 10.09.2003. Considering the said proposals the third- respondent i.e. the District Inspector of Schools, Aligarh has taken an objection vide its letter dated 26.09.2003 stating that the said vacant post is meant for reserved category.

3. The fourth- respondent Committee of Management has replied the said letter dated 26.09.2003, stating that there is no eligible/ qualified Teacher working in reserved category, to consider their case for the post of Lecturer (Sanskrit). Satisfying the said reply the third- respondent has forwarded the proposals to the second- respondent vide his letter dated 17.05.2005. Despite the recommendation made by the third-respondent the second- respondent has rejected the claim of the fourth-respondent without looking into the records only on the ground that the petitioner is not entitled to be promoted to a post which is meant for reserved category.

4. Assailing the said order, the petitioner has approached this Court by way of Writ Petition No.7591 of 2006. Considering

the facts and record of the writ petition, this Court has passed an interim order on 08.02.2006, which reads as follows:-

"The Regional Level Committee has proceeded to consider the claim of promotion of the petitioner and has arrived at the conclusion that the said post has to be filled up from amongst the reserved category candidates of general category cannot be granted promotion.

From the facts on record it is evident that there is no schedule caste or any reserved category candidates available for being promoted as lecturer in Sanskrit in the institution from amongst the teachers who are presently working in the institution in the L.T. Grade. In the absence of any such reserve category candidates available in the feeder cadre of the reserved category it could not be said that the post cannot be filled by general category candidates in view of the law laid down by this Court in the case of Smt. Sunita Bhagat 2005 ALJ 3828.

Since prima facie the dispute is squarely covered by the aforesaid division bench judgment. The operation of the order dated 24.12.2006 shall remain stayed and the post in question shall not be filled up except with the leave of the Court."

5. On the next date of listing, this Court has passed the following Order on 03.07.2009:-

"Since the institution must have been reopened after summer vacations, it would be appropriate that the necessary orders of promotion be passed within fifteen days from the date of presentation of a certified copy of this order before the respondents.

This Court is passing this order, as the earlier detailed reasoned order passed by the Court on 08.02.2006, that is, more than two years ago, is still in vogue."

6. Based on the above directions, the respondents have implemented and released the salaries to the petitioner as he is working on a promotional post. Finally, the said writ petition was disposed of by this Court vide order dated 02.09.2009. Operative portion, reads as follows:-

"13. In view of the above exposition of law the clubbing of vacancies which were to be filled in by promotion alongwith those which were to be filled in by direct recruitment was impermissible in law and the impugned order having been passed ignoring this aspect of the matter is wholly illegal.

14. Now so far as the second question is concerned, the matter is squarely covered by the Division Bench decision of this Court in Smt. Sunita Bhagat (supra), where after referring to 1998 Rules which are pari materia to 1995 Rules, this Court held, that when suitable and eligible general category candidate is available for promotion the vacancy cannot be requisitioned to the Commission for making direct recruitment.

15. In the result, the writ petition is allowed. The impugned order dated 24.12.2005 is hereby quashed. The respondents are directed to pass

appropriate order in the matter of promotion to the post in question in the light of discussion made above, expeditiously preferably within a period of two months from the date of production of a certified copy of this order. However, it is made clear that this Court has not considered the question of eligibility and suitability of the petitioner for promotion to the post of Lecturer in accordance with the rules and while considering the matter of promotion in the light of the directions as above, the competent authority shall also consider the eligibility and suitability of the petitioner for the post in question by application of mind independently without being prejudiced by any observation made in this judgment on the above aspect of the matter and in accordance with law. In case, the petitioner is found suitable and eligible for promotion, he shall be entitled for all consequential benefits in accordance with law. No costs."

7. After going through the above orders of this Court, the second-respondent has considered the issue once again and passed the order dated 29.09.2008, restricting the promotion from the date of joining consequent to the approval order. Aggrieved by the said order the petitioner has moved a representation before the second- respondent requesting to consider his case for promotion on the post of Lecturer (Sanskrit) from the date of initial appointment i.e. from the date of proposal sent by the fourth-respondent. But without considering the claim of the petitioner in terms of the order passed by this Court in Writ Petition No.7591 of 2006 dated 02.09.2009 has rejected claim made by the petitioner once again vide impugned order dated 16.09.2010 reiterating the stand that there is no post available for the general category, accordingly, they have rightly rejected the claim of the petitioner. But after intervention of this Court in the above referred judgment the respondents have approved the appointment vide order dated 29.09.2008, accordingly, he is entitled for promotion from the date of approval/ joining on the said post.

8. Learned counsel appearing for the petitioner has contended that the fourth-respondent has rightly considered the case of the petitioner and sent the proposals for promotion of the petitioner in the month of June, 2003 for the post of Lecturer (Sanskrit). The Management has also submitted its reply to the query raised by the third-respondent vide its letter dated 12.01.2004 and the respondents instead of considering the case have delayed for almost five years without any lack on part of the petitioner or on fourth-respondent. Hence, particularly relying on the Rules 14 of the U.P. Secondary Education (Services Selection Boards) Act, 1998, which reads as follows:-

"- (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 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 die 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."

9. As per the above said Rules there is a procedure which mandates the authorities to consider the proposals sent by the Management within a particular period i.e. within three weeks from the date of receipt and after that the obligation is imposed on the second-respondent to call for the report and to pass appropriate order within a period of ten days. But in the instant case as the third-respondent took two years to sent the proposals to the second-respondent and thereafter, the second-respondent has passed the order after three years. Hence, the delay and laches is on the part of the respondents.

10. Learned counsel further relied on orders passed by this Court in Writ Petition No.53978 of 2009 (Narendra Singh Solanki Vs. State of U.P. and Others) as this Court has considered the interpretation of Rule 14 of the U.P. Secondary Education (Services Selection Boards) Act, 1998 and has passed the following order dated 24.10.2009:-

"In the instant case, Rule 14 of the 1995 Rules which has been considered

and dealt with in the decision of Santosh Kumar Dubey (supra) clearly indicates that the Committee is to propose and the District Inspector of Schools has to intimate after receipt of the proposal within three weeks and the said intimation has to be processed at the level of Regional level Committee within one month upon receipt of the same. The decision has to be sent to the District Inspector of Schools within two weeks where after the committee of management has to proceed to act upon such communication. According to Appendix E/F where the provision is made for issuance of letter of appointment, the management is to issue appointment letter within 10 days of the receipt of such communication. The aforesaid exercise therefore in law has to be reasonably completed within the aforesaid period which does not travel beyond three months. In the present case the matter has been processed for years together and no default exists or has been pointed out on the part of the petitioner. In this view of the matter and keeping in view the ratio of the decision in the case of Santosh Kumar Dubey (supra) it would be appropriate that the matter relating to the benefits accruing to the petitioner is to be re-examined by the competent authority namely the respondent No.3 in the light of the observations made herein above.

Accordingly this writ petition is disposed of with a direction to the respondent no.3 to consider the claim of the petitioner in the light of the law laid down in the case of Santosh Kumar Dubey (supra) and the observations made herein above and pass an appropriate order after giving opportunity of hearing to the respondent No.4 and calling for comments from the District Inspector of Schools within three months from the date of production of a certified copy of this order before him."

11. Learned counsel for the petitioner has further submitted that the said principle was followed by this Court in various judgments. Accordingly, the petitioner is entitled for promotion from the date of occurrence of the vacancy or from the date of proposals sent by the Management. In fact, learned counsel for the petitioner has also relied on assertions made in paragraph 31 of the writ petition wherein it has been categorically stated that from the affected date of promotion he is working and taking classes as Lecturer (Sanskrit). The said facts were not considered by the respondents while rejecting the claim in the impugned order dated 16.09.2010.

12. In reply to the above said contentions, the learned Standing Counsel appearing on behalf of the State has vehemently opposed the claim made by the petitioner. In fact the petitioner is not entitled for promotion to the post of Lecturer (Sanskrit) in the fourth- respondent's Institution, as the said post is meant for reserved category. But deviating the same the Management has considered the case of the petitioner and sent proposals for affecting promotion to the post of Lecturer (Sanskrit). As the said proposal is contrary to the Rules, the second-respondent initially rejected his claim but only after direction issued by this Court in Writ Petition No.7591 of 2006, his case was considered and order was passed.

13. Learned Standing Counsel further submitted that as per the Section 12 of the U.P. Secondary Education (Services Selection Boards) Act, 1998, the petitioner is entitled for promotion only from the date of joining after approval by the competent authority. Admittedly, in this case, the petitioner got promoted through an order dated 29.09.2008 and subsequently, he joined on the promotional post on 05.02.2009, that being the position the petitioner is not entitled for promotion prior to his joining. Hence, the rejection order passed by the respondents on 16.09.2010 are in conformity with the Rules, accordingly learned Standing Counsel requested to dismiss the present writ petition.

14. Considering the submissions made by both the counsels and also on perusal of the record, as there are no factual disputes with regard to eligibility of the petitioner, though the respondent have taken objection only with regard to entitlement of the petitioner to promote as Lecturer (Sanskrit), which is meant for reserved category.

15. In fact while admitting the matter this Court has passed an interim directions on 08.02.2006 and further on the next date of listing it clearly indicated that the respondent should pass appropriate orders within a limited period. The said writ petition was allowed with all consequential benefits vide order dated 02.09.2009, and the said orders became final and no special appeal has been filed against the said orders. As this Court from the date of initial filing till the disposal considered all aspects and held in favour of the petitioner by holding that petitioner is entitled for all consequential benefits.

16. In the said circumstances, as contended by petitioner, he is entitled for all consequential benefits that means that he is entitled for promotion from the date of initial joining pursuant to the proposals sent by the fourth-respondent.

17. No doubt this Court has also considered the identical issue in Writ Petition No.53978 of 2009 (Narendra Singh Solanki Vs. State of U.P. and Others) and held that as per Rule 14 of the U.P. Secondary Education (Services Selection Boards), 1998, the obligation is on the part of the respondents to consider the proposals sent by the Management within a stipulated period. If the authorities have not followed the said obligation the respondents cannot deny the claims made by the affected parties.

18. Considering the said observations made by this Court in Writ Petition No.53978 of 2009 (Narendra Singh Solanki Vs. State of U.P. and Others), the impugned order dated 16.09.2010

is set aside, remanding the matter to the respondents to consider the claim of the petitioner i.e., the initial date of promotion order i.e. from 10.09.2003 and accordingly, the order may be passed within a period of two months by releasing all consequential benefits.

19. With the observations made above, the present writ petition is **allowed**.

Order Date :- 19.5.2025

AdityaG

(Donadi Ramesh,J.)