SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Brahma Singh Vs. District Inspector of Schools and ors.

Brahma Singh Vs. District Inspector of Schools and ors.

SooperKanoon Citation : sooperkanoon.com/488131

Court : Allahabad

Decided On : Jul-28-2009

Reported in : 2010(1)AWC338

Judge : Sudhir Agarwal, J.

Appellant : Brahma Singh

Respondent : District Inspector of Schools and ors.

Advocate for Pet/Ap. : Sri. K.S. Mishra

Disposition : Petition dismissed

Judgement :

Sudhir Agarwal, J.

1. Heard Sri K.S. Mishra, learned Counsel for the petitioner at great length and learned standing counsel representing respondents No. 1 and 2. Despite notice having been served upon respondent No. 3 neither he has filed any counter-affidavit nor any one has put in appearance on his behalf.

2. The short question up for consideration is whether the petitioner was eligible for promotion to the post of Lecturer against a vacancy occurred on 30.6.1991 in Hindu Anglo Vaidic Inter College, Saharanpur (hereinafter referred to as 'College'). The petitioner was appointed as Assistant Teacher (C.T. grade) in the College on

17.2.1981. Sri Mishra stated that in 1986, the cadre of C.T. Grade was declared a dying cadre and, therefore, he became Assistant Teacher in L.T. grade and continued as such. On account of one Sri Shyam Dayal Srivastava, Lecturer (Geography) on 30.6.1991 a substantive vacancy on the post of Lecturer fell vacant and he, being senior-most L.T. grade teacher, was entitled to be considered for promotion on that post, but the Management of the College informed the vacancy to the U.P. Secondary Education Service Selection Board (hereinafter referred to as 'Commission') so as to be filled in by direct recruitment and it is against this process of recruitment and the consequential advertisement made by the 'Commission for filling in the said vacancy, the present writ petition has been filed challenging the advertisement and the writ of prohibition restraining the respondents from making any ad hoc appointment in the College by direct recruitment and instead consider him for promotion and pay salary for the said post.

3. The learned standing counsel, however, contended that the petitioner, being not eligible for promotion to the post of Lecturer, the process of direct recruitment has validly been initiated by the respondents.

4. Having heard learned Counsel for the parties, it appears that it is the admitted case of the petitioner that he started functioning in L.T. grade from February, 1991. Para 2 of the writ petition states as under:

2. That the petitioner was appointed as a permanent Assistant Teacher in C.T. grade in the college on 17.2.1991. Thereafter, the petitioner has been granted L.T grade of pay scale on account of declaration of C.T. grade to a dying cadre. The petitioner is functioning in the L.T. Grade of pay scale from February, 1991.

5. Besides, Annexure-2 to the writ petition is representation sent by the petitioner himself wherein he has clearly stated that he was appointed as Assistant Teacher (C.T. grade) on 17.2.1981 and from 17.2.1991 he is working as permanently in L.T. grade. It is nowhere averred by the petitioner that he was ever promoted in L.T. grade prior to 17.2.1991. Annexure-6 to the writ petition which is a certificate issued by the Principal of the College also shows that the Principal has certified that the petitioner is working in L.T. grade from 17.2.1991. There is nothing on

record to show that the petitioner was ever appointed or promoted as Assistant Teacher (L.T. grade) prior to 17.2.1991. The contention of learned Counsel for petitioner, therefore, that he was promoted or appointed in L.T. grade in 1986 is not supported by any material on record and the same being question of fact, cannot be decided in favour of the petitioner unless an appointment/promotion letter is placed on record or there is any other materiel to show that he was promoted on the post of Assistant Teacher (L.T. grade) on a date earlier than 17,2.1991. Besides, alongwith the supplementary-affidavit, the petitioner has also filed a resolution of committee of management and on page 3 thereof, the committee of management has also said that the petitioner was working in L.T. grade from 17.2.1991. The vacancy of Lecturer having arisen on 30.6.1991, i.e., almost after three and half months from the date the petitioner was appointed in L.T. grade, ex facie he was ineligible for promotion to the post of Lecturer (Geography).

6. He has placed reliance on a Division Bench judgment of this Court in Charu Chandra Tiwari v. D.I.O.S., Deoria and Ors. 1990 (1) UPLBEC 160 : 1990 (1) AWC 310. Another is a single Judge judgment of this Court in Ram Swaroop v. State of U.P. and Ors. 1996 (3) ESC 155 : 1996 (3) AWC 2.250 (NOC). However, I do not find the said judgments supporting the petitioner in any manner. In Charu Chandra Tiwari (supra), this Court considered the effect of Section 18 of U.P. Secondary Education Service Selection Board Act, 1982 and the manner in which an ad hoc appointment awaiting regular selection from Commission could be made and for the period and duration for which such appointment could be made. In Ram Swaroop (supra) this Court considered Rule 9 of the U.P. Secondary Education Service Commission and Selection Board Act, 1982 qua Regulation 6, Chapter II of the Regulations framed under Intermediate Education Act, 1921 (hereinafter referred to as '1921 Act'). Regulation 6 provided eligibility for promotion to the post of L.T. grade and Lecturer and it says that the incumbent must have minimum of five years 'continuous substantive service'. On the contrary, Rule 9 of the rules provides eligibility as 'five years continuous service'. The word 'substantive' was not therein and in these circumstances, the Hon'ble single Judge held that in order to consider eligibility of a teacher for promotion, it is not the 'substantive service', but five years 'continuous service' which has to be

considered as is evident from Para 13 of the judgment where the Hon'ble single Judge says us under:

A perusal of the aforesaid Regulation 6 would show that five years continuous substantive service is the necessary condition for giving promotion from C.T. grade to L.T. grade or in the Lecturer's grade, whereas continuous substantive service has not been made a condition for promotion under Rules 9 and 9B. The requirement of continuous substantive service having not been incorporated in Rule 9 as it was therein Regulation 6 clearly indicates that the intention of the framer was not to retain five years continuous substantive service as a necessary condition for giving promotion to a teacher in the higher grade. Rule 9 only prescribes five years continuous service as a teacher on the date of occurrence of vacancy.

7. Thus, under Rule 9 it cannot be doubted that at least five years continuous service in the feeder cadre is necessary. I am not concerned in the case in hand whether the petitioner possess experiences as substantive teacher or not but the question is whether he has worked as Assistant Teacher (L.T. grade) for at least five years. As discussed above, the petitioner has not worked for five years in L.T. grade, therefore, he was not eligible for promotion to the post of Lecturer (Geography).

8. Learned Counsel for the petitioner further says that after the vacancy occurred, he was required to look after the duties as Lecturer and, therefore, from 1.7.1991, he is discharging the duties as Lecturer and hence entitled for promotion on regular basis and salary to the said post.

9. The submission is thoroughly misconceived inasmuch assuming that the petitioner was required to discharge duties of Lecturer, but the fact remains that there was nothing on record to show that he was never appointed or promoted to the post of Lecturer in 1991. A person claiming salary on a post must have to be appointed on the said post. Mere discharge of duties on a post or looking after the duties of a post is not equivalent or at par or can be a substitute of promotion or appointment on that post. This aspect has been considered by a Division Bench of this Court in Smt. Vijay Rani v. Regional Inspectress of Girls Schools, Region-1,

Meerut and Ors. 2007 (2) ESC 987 and it has been held that a person merely looking after the duties is not entitled to claim salary of the higher post. In the circumstances, no relief can be granted even on this aspect also.

10. In view of the above, the writ petition lacks merit and is, accordingly, dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com