

Judgment Reserved
IN THE HIGH COURT OF UTTARANCHAL/UTTARAKHAND
AT NAINITAL

Writ Petition No. 1314 (S/S) of 2006

1. Thakur Singh Rawat
S/o Sri Guman Singh Rawat
R/o Village-Sukai, P.O. Dangarshun
District Pauri Garhwal.
2. Rewtanand Gaur
S/o Sri Shukh Dev Prasad Garu
R/o Village-Panchur, P.O. Endakhal
Mawalshun, District Pauri Garhwal.
3. Rakesh Chand Thapliyal
S/o Sri Kritram Thapliyal
R/o Village- Kher, P.O. Barshu
Mawalshun, District Pauri Garhwal.

.....Petitioners

Versus

1. State of Uttaranchal, through Secretary
Education, Uttaranchal, Civil Secertariat
Dehradun.
2. Director of Education, Uttaranchal Government
Dehradun.
3. District Education Officer, Pauri Garhwal.
4. Committee of Management, Inter Collage
Dodkhal, District Pauri Garhwal though
Its Manager.

.....Respondents.

Shri Ashish Joshi and Shri Paresh Tripathi, learned counsel for the petitioners.

Shri U.P.S. Negi, learned counsel for respondent No. 4.

Shri B.D. Upadyaya, learned counsel for the intervener.

Hon'ble Prafulla C. Pant, J

By means of this petition, moved under Article 226 of Constitution of India, the petitioner has sought writ in the nature of certiorari quashing the advertisement dated 09.09.2006, whereby respondent No. 4, has invited applications for recruitment of Lecturers. A mandamus has also been sought

commanding the respondents to consider the petitioners case for their appointment on the post of Lecturers within 50% quota, fixed for the promotees.

2. Heard learned counsel for the parties.

3. Brief facts of the case, as narrated in the writ petition are that petitioners were C.T. Grade Teachers and said grade has been declared a dying cadre. As such, the teachers in C.T. Grade were merged into the L.T. Grade, vide Government Order No. 793/XXIV/2005 dated 03.06.2005, whereby the condition of fulfilling ten years in C.T. Grade was relaxed to five years. The petitioners were appointed in C.T. Grade before 1992 and on completion of five years satisfactory service, they stood appointed in L.T. Grade w.e.f. 17.09.1997. Shri Thakur Singh Rawat-petitioner No. 1, alleges that he is fully qualified for being appointed as Lecturer of Economics in the institution known as Janta Inter Collage run by respondent No. 4, as he holds Masters Degree in Economics apart from holding Training Certificate for teaching. Similarly respondent No. 2 Rewatanand Gaur, hold Masters Degree in Hindi apart from holding Training Certificate for teaching. Petitioner No. 3 Rakesh Chand Thapliyal, holds Masters Degree in History apart from holding Training Certificate for teaching. Petitioners have alleged that they are the senior most teachers in the institution and are entitled to be appointed within the 50% quota, required to be filled under Regulation 5 of Regulations framed under

U.P. Intermediate Education Act, 1921. However, ignoring the claim of the petitioners, respondent No. 4, has advertised the post of Lecturers in an attempt to fill the same through the direct recruitment. Challenging the same to be arbitrary and illegal, the petitioners have filed this writ petition.

4. The writ petition was contested by the respondents. In the counter affidavit, filed on behalf of the respondent No. 4, it is stated that the Government Order of 2005, relied by the petitioners, has already been quashed vide order dated 24.08.2005, passed in writ petition No. 932 of 2005 (M/B) Uttar Madhyamik Shiksha Sangh Vs. State of Uttaranchal, as such, the petitioners have no right to be promoted in the light of the aforesaid Government Order. However, it is admitted that the petitioners stood merged in the L.T. Grade, as the C.T. Grade to which they belong has become a dying cadre. As far as the right of promotion within 50% quota under Regulation 5 of Regulations framed under U.P. Intermediate Education Act, 1921, is concerned, 50% quota is to be determined on the basis of sanctioned posts in the Lecturers Grade. The said regulation further requires that only after completion of five years substantive service in L.T. Grade, a teacher of such grade can be considered for promotion. Relating to the petitioners, it is stated in the counter affidavit of respondent No. 4 that the petitioners stood merged in L.T. Grade w.e.f. 17.09.2002 (not as alleged on 17.09.1997) and since none of the petitioners have completed five years

satisfactory service in L.T. Grade, as such, they cannot claim the promotion in the Lecturer's Grade. Defending the advertisement, it is stated that the writ petition is liable to be dismissed.

5. In the rejoinder affidavit, the petitioners have reiterated the contents of the writ petition. An intervention application is moved on behalf of Smt. Kanta Rawat, one of the selected candidates in the impugned recruitment process and she was also heard at the time of final hearing.

6. Before further discussions, it is pertinent to mention here the relevant provision of law applicable to the case. Regulation 5 (2) (a) of Chapter 2 of the Regulations framed under Section 16E, 16F of Intermediate Education act, 1921, reads as under:-

“Fifty per cent of total number of sanctioned posts in Lecturer's Grade or in the L.T. Grade shall only be filled by promotion from amongst the teachers working in the institution in the L.T. and C.T. Grades respectively and promotions shall be made subject to availability and eligibility of such teachers for promotion.”

The aforesaid regulation, makes it clear that the promotion is available to the L.T. Grade teachers in the Lecturer Grade only if the teachers are eligible for promotion. As to the eligibility, Regulation 6 of aforesaid Regulations, provides 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 or 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."

7. Now, it is to be examined whether the petitioners have completed five years continuous substantive service in L.T. Grade or not. According to the petitioners, they have completed five years service in L.T. Grade on 17.09.1997. However, Government Order No. बे0आ0 /2/1239/दस-6/बी089 dated 03.06.1989, requires ten years satisfactory service in C.T. Grade before one gets promotion in L.T. Grade, as the C.T. Grade, has been declared to be a dying cadre. Annexure-2 to the counter affidavit, filed on behalf of respondent No. 4, shows that the District Education Officer (respondent No. 3), passed order dated 31.03.2005, whereby petitioners are allowed L.T. Grade in pay scale of Rs. 5500-9000 w.e.f. 17.09.2002. it is admitted to the petitioners that they were duly appointed in C.T. Grade only on 17.02.1992. It is argued on behalf of the petitioners that required period of satisfactory service was reduced to five years from ten years vide Government Order dated 02.12.1989 and as such, the petitioners stood automatically merged in L.T. Grade w.e.f.

17.09.1997. In this connection, reliance is place on behalf of the petitioners in the judgment delivered by Allahabad High Court in Santosh Kumar Singh Vs. District Inspector of Schools, Meerut 1995 (3) E.S.C. 21. In said case learned Single Judge of Allahabad High Court, has interpreted the G.O. dated 03.06.1989 in the manner it is being argued on behalf of the petitioners. It is pertinent to mention here that vide G.O. No. U.O./15/7-97-3073/96 dated 18.12.1997, the requirement of satisfactory service period of ten years appears to have been restored. On behalf of the petitioners, it is argued that in Pooran Chandra Lohani Vs. The Management Committee, 2004 (2) U.D., 454, the learned Single Judge of this Court, has also followed the aforesaid case of law in Santosh Kumar Singh (Supra). But in the case of Pooran Chandra Lohani (Supra). There were only two questions examined in the light of provisions of U.P. Secondary Education Services Commission and Selection Boards Act, 1982. But now said Act stands repealed and for the purposes of its applicability in the State of Uttaranchal, as such aforesaid cases are of no help to the petitioners. In fact the petitioners have relied in the present writ petition only in the G.O. No. 793/ XXIV-2/2005 dated 03.06.2005, whereby the period of ten years is reduced to period of five years by the State of Uttaranchal but the said G.O. has been quashed by the Division Bench of this Court in writ petition No. 932 of 2005 (M/B) Uttaranchal Madhymik Shikshak Sangh Vs. State, decided on 01.12.2006.

8. For the reasons as discussed above, this Court finds no illegality in the impugned advertisement for district recruitment of the Lecturers. Therefore, the writ petition is liable to be dismissed. The same is dismissed. Interim order dated 16.10.2006, stands vacated.

Dt. 10.01.2007
Sweta

(Prafulla C. Pant, J.)