

Smt. Naseem Bano vs State Of U.P. And Others on 13 August, 1993

Equivalent citations: AIR1993SC2592, JT1993(4)SC553, (1994)ILLJ84SC, 1993(3)SCALE431, 1993SUPP(4)SCC46, 1993(3)SLJ89(SC), (1994)2UPLBEC1172, AIR 1993 SUPREME COURT 2592, 1993 AIR SCW 3280, 1993 (4) SCC(SUPP) 46, 1994 (2) UPLBEC 1172, 1993 SCC (SUPP) 4 46, 1993 (2) UJ (SC) 665, (1993) 3 SERVLJ 89, (1993) 4 JT 553 (SC), (1993) 4 SERVLR 803, (1994) 1 LABLJ 84, (1993) 2 LAB LN 501, (1994) 1 MAHLR 217, (1993) 4 SCT 208, (1994) 2 UPLBEC 1172, (1993) 22 ALL LR 307, (1994) 26 ATC 123, (1993) 2 CURLR 750

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Bench: S.C. Agrawal, R.M. Sahai

ORDER

S.C Agrawal, J.

1. This appeal is directed against the judgment dated May 7, 1984 of the High Court of Judicature at Allahabad in Civil Miscellaneous Writ Petition No. 9686 of 1979 relating to appointment on the post of L.T. Grade teacher in Home Science for high school classes in Mahila Seva Sadan Inter College, Allahabad, hereinafter referred to as 'the college', governed by the U.P. Intermediate Education Act, 1921, hereinafter referred to as 'the Act' and the regulations framed thereunder, hereinafter referred to as 'the Regulations'.

2. The appellant obtained T.C. Diploma (Teacher's certificate) in home science from the College of Home Science, Allahabad in 1966. She was appointed as a C.T. Grade teacher in Home Science in the College in 1966. While thus employed she obtained the B.A. degree with Urdu, Education and Sociology from the Kanpur University in December, 1974. Two posts of L.T. grade teacher out of which one was in Home Science, were sanctioned for the high school section of the College on August 29, 1977 by the Director of Education, Allahabad. The case of the appellant is that the said post of L.T. grade teacher in Home Science should have been filled by promotion and if so filled, she would have been appointed in the said post, but instead of being filled by promotion, the said post was filled by direct recruitment and for that purpose, an advertisement was published on October 21, 1977 inviting applications from candidates who were trained graduates in Home Science. As the appellant was not a trained graduate in Home Science on that date she did not apply though she

obtained the B.A. degree in Home Science from Kanpur University on November 2, 1977. Shrimati Suman Srivastava, respondent No. 6 was ultimately selected and appointed on the said post by order dated October 17, 1979. Feeling aggrieved by the said appointment of respondent No. 6, the appellant filed the writ petition giving rise to this appeal, in the Allahabad High Court. The said writ petition has been dismissed by the Division Bench of the High Court by judgment dated May 7, 1984. The High Court has held that the appellant could not be appointed on the post of L.T. Grade teacher by promotion for the reason that on the relevant date she was not eligible for promotion to the post since she did not possess the minimum qualifications prescribed therefor and further that upto 40% of the total number of posts in the college could be filled up by promotion and that the appellant had failed to establish that 40% of the appointments made in the college in the L.T. Grade were not made by promotions but by direct recruitment. The appellant has assailed both the grounds on which the High Court has decided against her.

3. At the relevant time, teachers in high school classes were placed in two grades, (i) C.T. grade having the scale of Rs. 250-425 and (ii) L.T. grade having the scale of Rs. 300-550. With regard to appointment on a post in L.T. grade provision was made in Clause (1) of Regulation 5 that every vacancy in the post of teacher in a recognised institution shall except as otherwise provided in Clause (2) be filled by direct recruitment. In Sub-clause (a) of Clause (2) of Regulation 5 it was provided: (2)(a) Forty percent of the total number of the 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 the C.T. grades respectively and promotions shall be made subject to availability and eligibility of such teachers for promotion.

4. Clause (1) of Regulation 6 prescribed 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 of 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.

5. The minimum qualifications for principals, headmistresses, teachers in recognised higher secondary schools were prescribed in Appendix 'A' to the Regulations. Appendix 'A', as amended by notification dated December 9, 1976, prescribed the following minimum qualification for Home Science teachers for high school (classes IX and X)-

(1) Trained Graduate in Home Science or Home Economics or Domestic Science or Home Arts; or (2) T.C. of the College of Home Science, Allahabad; or (3) Three years' Diploma Course between the years 1950-54 of Government College of Home Science, Allahabad; or (4) Diploma of Lady Irwin College, Delhi.

6. It appears that the Government of U.P. had issued notification No. 5583/XV-8-3100-1973 dated October 3, 1974 whereby the pay scales of teachers of Government aided private Higher Secondary institutions teaching Home Science and other specified subjects were revised on the basis of the recommendation of the Pay Commission so as to accord parity in scales of pay of the teachers of Government and non-government aided Higher Secondary institutions of the State teaching those subjects. As a result the higher scale of L.T. grade for teachers was created. In paragraph 3 of the said notification it was stated-

Subsequent to the date of issue of this G.O. all new appointments shall be made only in the scales of pay as mentioned in column 6 of the annexure in accordance with the qualifications mentioned in column 4 on conditions laid down in column 7 of the annexure.

7. In column 4 of the annexure to the said notification the following qualifications are mentioned for high School classes.

(1) Trained Graduate with Home Science or Home Arts or 3 Yrs. Diploma of lady
Irwin College, Delhi.

8. The High Court has found that the appellant was not eligible for promotion to L.T. grade on August 29, 1977 when the post of L.T. grade teacher in Home Science was created for the reason that the appellant was not a trained graduate on the relevant date as required under notification dated October 3, 1974. In view of the High Court, by holding the qualifications mentioned in Appendix 'A' or the Regulations, a person could claim appointment only in the C.T. grade. We find it difficult to subscribe to this view. Promotion from CT Grade to LT grade is governed by Clause (1) of Regulation 6 which postulates: (i) having a minimum five year's continuous substantive service on the date of occurrence of the vacancy; and (ii) possessing the prescribed minimum qualifications for teaching the subject in which the teacher in the lecturer grade or in the LT grade is required. The prescribed minimum qualifications referred to in Clause (1) of Regulation 6 are the minimum qualifications which are prescribed in the Regulations for appointment as teacher to teach the concerned subject which would mean the minimum qualification as laid down in the Appendix to the Regulations. Clause (1) of Regulation 6 cannot be construed as referring to the notification dated October 3, 1974 because the notification, is only an executive order and the qualifications prescribed therein cannot override the qualifications prescribed in the Regulations which are statutory in character. The notification can, therefore, have no application to promotion to L.T. Grade dealt with in Regulation 6(1) and must be confined in its application to appointment by direct recruitment only.

9. It is not disputed that the appellant possessed the minimum qualifications for teaching the subject of Home Science as contained in the Appendix to the regulations because she held teacher's certificate of the College of Home Science, Allahabad. She also had more than five years' continuous substantive service as CT Grade teacher on the date of the occurrence of vacancy, i.e., August 29, 1977. The High Court, was, therefore, not right in holding that on the relevant date, the appellant did not possess the requisite qualifications and was not eligible for promotion to the post of L.T. Grade teacher.

10. The other ground that has been given by the High Court for holding that the appellant was not entitled to be promoted as L.T. grade teacher was that the appellant had failed to establish that the number of L.T. grade teachers who had been appointed by promotion at the relevant date was not more than 40% of the posts and, in view of Regulation 5(2)(a) of the Regulations appointment to the post in question should have been made by the promotion. In this regard, may be stated that in paragraphs 20 to 22 of the writ petition filed by the appellant in the High Court, she had specifically pleaded that in the College, there are 12 sanctioned posts in the L.T. grade out of which 10 posts had already been filled and two posts were still vacant and that out of 10 posts which were filled in L.T. grade, only one post had been filled by promotion and the rest 9 posts had been filled by direct recruitment. The appellant had also referred to the letter of the Deputy Director of Education (Secondary) dated November 14, 1977 whereby it was clarified that Regulation 5(2) was to the effect that the teachers who have been appointed in the L.T. grade or in lecturer grade and who were already working in an institution should not be considered as promotees, but they shall be considered as direct appointees. In the affidavit of Govind Ram Malviya filed on behalf of respondents Nos. 1 to 4 in reply to the writ petition, the following reply was given to the averments made in paragraphs 20 to 22 of the writ petition :

21. That with regard to the contents of paragraphs 20, 21 and 22 of the writ petition, it is stated that since the petitioner was not qualified to be promoted in L.T. grade, as has already been shown in the foregoing paragraphs, the petitioner can possibly have no grievance for she was not qualified either to be appointed or promoted in L.T. Grade.

11. The aforesaid reply would show that on behalf of respondents Nos. 1 to 4, it was not disputed that 40% posts which have to be filled up by promotion had not been filled up and the denial of promotion to the appellant was justified on the sole ground that she was not qualified to be promoted to L.T. grade. This shows that in the pleadings before the High Court, there was no contents on the question that the post of L.T. grade which was sanctioned on August 29, 1977 was required to be filled up by promotion for the reason that 40% posts had not been so filled. Even though there was no contest on this question the High Court has gone into it and has held that the appellant has failed to establish her case that at the time of the appointment of respondent No. 6 by direct recruitment 40% of the total number of posts in the college were not filled up by promotion as prescribed by Regulation 5(2)(a) of the Regulations. Since no dispute was raised on behalf of respondents Nos. 1 to 4 in their reply to the averments made by the appellant in the writ petition that 40% of the total number of posts had not been filled by promotion inasmuch as the said averments had not been controverted the High Court should have proceeded on the basis that the said averments had been admitted by respondents.

12. In order to establish that 40% of the posts of L.T. Grade teachers in the College had not been filled up by promotion the appellant has stated that the total number of sanctioned posts of teachers in L.T. Grade was 12 and 40% of these posts would be 4 posts. According to the appellant 10 posts had been filled up and 2 posts were vacant at the relevant date. The appellant gave particulars of the 10 teachers working in the L.T. Grade to show that at the time of their appointment as L.T. Grade teacher 3 teachers only were having the requisite experience of 5 years service in the lower grade

and that the other 7 teachers had less than 5 years service in the lower grade and, therefore, their appointment on the L.T. Grade could not be by way of promotion and could only be by way of direct recruitment. The said plea of the appellant was rejected by the High Court for the reason that the possibility of the appointments being made contrary to the provisions of Regulation 6(1) cannot be ruled out. We are unable to endorse this view of the High Court. The appointment of a teacher to the L.T. Grade is governed by statutory Regulations and is an official act and a presumption of regularity attaches to the official acts. It cannot be postulated that the appointment of teachers who did not have the requisite experience on the lower grade was made by way of promotion in disregard of Regulation 6(1) and not by way of direct recruitment in consonance with the Regulations. In the instant case the said presumption, instead of being rebutted, is strengthened by the affidavit filed on behalf of Respondents Nos. 1 to 4 in the High Court wherein the averments contained in paragraphs 20, 21 and 22 of the writ petition that 40% of posts had not been filled up by promotion, were not controverted. In these circumstances the appointments of 7 teachers who did not have the required experience in the lower grade must be treated to have been made by direct recruitment and only 3 out of 10 posts were held by teachers who had been promoted. In other words, on the relevant date 40% of posts of L.T. Grade in the College were not filled up by promotion. The High Court was, therefore, not right in holding that the appellant had failed to establish her case that 40% of the posts of L.T. grade teacher in the College had not been filled up by promotion on the relevant date.

13. Since we have already held that the appellant possessed the minimum qualifications prescribed for the post of L.T. grade teacher on the relevant date, it follows that the appellant was wrongly denied promotion to the post of L.T. grade teacher when one post became available on August 29, 1977 and it was filled in by appointment of respondent No. 6 by direct recruitment. Respondent No. 6 was appointed on the post of L.T. grade teacher on October 17, 1979 and she has been holding the post since then. Keeping in view the facts and circumstances, we are of the opinion that the ends of justice could be met if, without upsetting the appointment of Respondent No. 6 on the post of L.T. Grade teacher, the appellant is treated to have been promoted to the post of L.T. Grade teacher with effect from the date when respondent No. 6 was appointed on the said post and the appellant is given the consequential benefits accruing to her as a result of such promotion.

14. The appeal is accordingly allowed. The judgment and order of the High Court dated May 7, 1984 is set aside and it is directed that the appellant be treated to have been promoted to the post of L.T. grade teacher in Home Science with effect from the date respondent No. 6 was appointed on the said post. The appellant would be entitled to the consequential benefits accruing to her as a result of such promotion. This would, however, not upset the appointment of respondent No. 6 on the post of L.T. grade teacher and, if considered necessary, a supernumerary post may be created for that purpose. No orders as to costs.