

(1998) 09 AHC CK 0050
In the Allahabad High Court
Case No : C.M.W.P. No. 29846 of 1997

Akhila Nand Pandey

APPELLANT

Vs

State of U.P. and another

RESPONDENT

Date of Decision : 07-09-1998

Acts Referred:

Constitution of India, 1950 — Article 16(4)

Citation : (1998) 4 AWC 259 : (1998) AWC 259 : (1999) 2 UPLBEC 45

Hon'ble Judges : R.R.K. Trivedi, J;Dev Kant Trivedi, J

Bench : Division Bench

Advocate : A.P. Sahi and V.K. Singh, for the Appellant; S.C. and V.M. Sahi, for the Respondent

Judgement

R.R.K. Trivedi and Dev Kant Trivedi, JJ.—The petitioner has prayed for a writ of mandamus commanding the respondents to appoint him in the agricultural group services on the basis of the result of Combined State Services Examination of 1993 claiming to be in the category of dependants of freedom fighters entitled to reservation.

2. The petitioner, holding a doctorate in Agricultural Economics from Govind Ballabh Pant Agriculture University and Sciences, had appeared in the 1993 Examination of State Combined Services. He appeared in the interview on 16.5.1996 and was declared successful in the agricultural group under the Notification No.40/10/CI/95-96. dated 21.5.1996. He was placed at Sl. No. 20 in the list of successful candidates in the agricultural group. The petitioner had also claimed benefit of reservation being a dependant of freedom fighter which according to him, is 5% of the vacancies. According to the petitioner, the provisions of G. O. dated 30.12.1993 relating to reservation were not fully complied with by the respondents and they did not issue any appointment letter in favour of the petitioner. The representation was made by the petitioner on 26.8.1997. The petitioner was then informed by the inquiry officer of the Public Service Commission that the petitioner's name has not been forwarded by the U.

P. Public Service Commission to the State Government for appointment because his name was deleted from the result declared on 21.5.1996 and the name of one H. K. Ojha who was just after the petitioner, was also deleted and instead of the name of Sri Mahendra Pal Singh was recommended for appointment. According to the petitioner, the deletion of the name of the petitioner, is arbitrary and Illegal and the candidature of the petitioner as a dependant of freedom fighter ought to have been considered in the said quota. It is further alleged that though there were 26 vacancies notified, the results were declared only for 24 posts and that there are 2 posts still lying vacant and the petitioner having been a successful candidate in the general category and as also being entitled to the benefit of reservation for dependants of freedom fighters, should have been recommended for appointment particularly, when in the case of the other State Services including Administrative. Police or Accounts Services in the year 1993 on the basis of the State Combined Service Examination, no candidate of the category of dependant of freedom fighter has been given the benefit of reservation.

3. It has been admitted by the Public Service Commission in its counter-affidavit that the petitioner was declared successful in the agricultural group in the general category though he had applied for as a candidate of the dependant of freedom fighter category in the U. P. Combined State Pre-subordinate Service Main Examination. May, 1993. However, after declaration of final result on 21.5.1996 and before sending the recommendation to the Government, a controversy arose regarding allotment of candidates of reserved categories against the general vacancies and overall merit. A reference was made to the State Government who decided that reserved class candidates who got more marks, have to be allotted vacancies in the general category. In view of the said directions of the State Government, the petitioner and Himanshu Kumar Ojha being two last selected candidates of general category, were ousted from the select list and their results were cancelled. Since no one could be declared successful in the Scheduled Castes/Scheduled Tribes category. 3 vacancies of the said category were carried forward. It is also alleged that though the reservation for dependants of freedom fighters is two per cent, no vacancy was reserved for dependant of freedom fighters, physically handicapped and ex-army personnel in overall 206 vacancies because in the Combined Services Examination as the reservation is made postwise. It is admitted that the representation of the petitioner was rejected by the Public Service Commission.

4. No counter-affidavit seems to have been filed by the State Government.

5. In the rejoinder affidavit filed by the petitioner, it has been alleged that the reservation is provided for different categories by means of various enactments and Government Orders and the reservation for dependants of freedom fighters is provided for in Act No. IV of 1993 and that even in the advertisement for the Combined State/Upper Subordinate Services Examination, 1993, the U. P. Public Service Commission had specifically made a mention about the reservation to the

dependants of freedom fighters and requisite certificate with regard to the reservation to this category of candidates were called for by the Public Service Commission in the advertisement published in employment news/rojgar samachar dated May 1, 1993. It is further alleged that the advertisement for the Combined Services read with Act No. IV of 1993 clearly provides for reservation for dependants of freedom fighters. It is further alleged by the petitioner that the matter relating to adjusting the candidates in the reservation category on the basis of a decision dated 1.8.1996 is discriminatory and arbitrary and once the petitioner was finally declared selected by the Commission and the question of adjustment of backward class candidate in the general category was impermissible and similarly the carrying forward of the three posts for the Schedule Castes candidates due to non-availability of suitable candidates, is also discriminatory, is untenable and illegal and the modified result dated 18.8.1996 as declared by the Commission, is liable to be quashed.

6. It is further alleged that the respondents made the selection for 206 posts and, therefore, vacancies should have been reserved in view of the statutory provisions for the dependants of freedom fighters and that the Commission has been misleading the Court. It has also been alleged that even if the reservation for the candidates belonging to the category of dependants of freedom fighters as computed at the rate of 2% as provided for in Act No. IV of 1993 and as admitted by the U.P. Public Service Commission, four vacancies had to be reserved for the candidates of this category.

7. The Commission was required to produce the record pertaining to the dispute, forming the subject-matter of the writ petition. The U. P. Public Service Commission, however, submitted for our perusal only the application form of the petitioner and the concerned two result sheets. No other document and record was made available by the U. P. Public Service Commission inspite of a clear direction to them on May 12, 1998.

8. We have heard the learned counsel for the parties and have gone through the two result sheets.

9. The provisions of U. P. Act No. IV of 1993 as contained in Annexure-2 to the writ petition, provide for reservation to the dependants of freedom fighters. The reservation to this category to the extent of 2% of the post, is admitted to the U. P. Public Service Commission respondent in paragraph 5 of the counter-affidavit wherein, it has been specifically stated that according to the Notification No. 18.1.95-ka-2/95, issued by the State Government on 4th May, 1995, the reservations for dependants of freedom fighters, of physically handicapped and ex-army personnel are in the ratio of 2 : 2 :1 respectively.

10. It is, therefore, evident that the dependants of freedom fighters were entitled to reservation on the 2% posts for which the examination was conducted by the U. P. Public Service Commission. The advertisement was made for 200 posts and, it appears that ultimately, selection was made for 206 posts. Hence quota

available to the category of dependants of freedom fighters, comes to 4 in number. The reservation, therefore, should have been made on the 4 posts in the Combined State Services/Upper Subordinate Services. It was the duty of the Commission to enforce the Notification dated 4.5.1995 and, therefore, the Commission cannot take the shelter of an alleged default made by the State Government in not intimating the vacancies to the Commission required to be reserved for the dependants of freedom fighters. The Commission thus, appears to have failed to act in accordance with law inasmuch as it did not give the benefit of reservation to the dependants of freedom fighters on the pretext that the reservation was not made by the State Government.

11. The reservation, according to the Commission as mentioned in para 5 of the counter-affidavit, is to be made postwise. Even if the interpretation of the Commission is accepted as correct, there being 26 vacancies available for recruitment in the agricultural group services, one post on the basis of 2% reservation for freedom fighters should have been filled in from amongst the candidates of the category of the dependants of freedom fighters. Omission to provide reservation to the dependant of freedom fighters to one post in agricultural group services, thus, amounts to denial of opportunity to the candidates who are dependants of freedom fighters. Since the recruitment to the agricultural group services was for 26 vacancies 2% thereof comes to 0.52 which should have been treated as one as the fraction was more than half. It is really unfortunate that the Commission has sought to justify its Inaction by taking shelter to the Inaction on behalf of the State Government in making the postwise reservation. It was the duty of the Commission to have Inquired from the State Government as to why one post is not reserved for the dependants of freedom fighters when the number of vacancies sought to be filled in the year 1993 Examination was 26 in that group.

12. In view of the above fact, 4 posts were required to be reserved for the dependants of freedom fighters in the total vacancies for which the Commission had held the examination for the year, 1993 and at any rate, one post was required to be reserved in the agricultural group services by the Commission.

13. U. P. Public Service Commission, in the present case of agricultural group services, declared the result which was published in the newspaper on 22.5.1996 and the name of the petitioner was shown at serial No. 20. The original sheet of result dated 21.5.1996 also shows that the name of the petitioner was at Serial No. 20. Ordinarily, the petitioner would have got selected in the general category itself but for a decision taken by the Commission that one candidate belonging to the backward class who had obtained 792 marks in aggregate, was required to be taken as a general candidate as against the petitioner who had secured 790 marks in the aggregate. At this stage, we do not wish to enter into the controversy whether the Commission had any valid authority in law to change the result by shifting a backward class candidate to the general category. Suffice it to say that had the benefit of reservation been extended in terms of the U. P.

Act No. IV of 1993 and the G. O. dated 4.5.1995. the petitioner would have been declared selected candidate belonging to the category of dependants of freedom fighters. The deletion of the name of the petitioner thus, from the result sheet is apparently illegal.

14. It is worth noting that 3 of the vacancies in the agricultural group were carried forward for the next examination as suitable candidates in the Scheduled Castes category were not available. We have not been shown any record in this regard as to whether the carrying forward of the vacancies was necessary or justified particularly when the result had already been declared by the Commission for 24 posts.

15. As is admitted to the Public Service Commission that a controversy arose as to whether a candidate for reserved category who had qualified the examination, could have been considered for allotment as against the general vacancy in overall merit and a reference was made and it was decided on 1.8.1996 by the State Government that the Commission has to modify the result by placing the reserved category candidates having obtained higher marks, in the general category. Thus, during the continuance of the selection process, the rules of the selection were changed and the Commission modified the result by ousting the candidates selected in the general category and ousted them from the list of the selected candidates. The rules, thus, were changed to the detriment of the general category candidates after virtually closing of the selection process as in the present case, the result was ready on 21.5.1996, was published in the newspaper on 22.5.1996 and, thereafter, on the basis of a decision of the State Government dated 1.8.1996 on a reference made by the Commission, the result was modified to the detriment of the general candidates which, to say the least, is highly unfair on the part of the Commission.

16. In the present case, it is evident from the record produced by the petitioner as well as by the U. P. Public Service Commission and the advertisement as well as the provisions of U. P. Act No. IV of 1993, that the petitioner was entitled to get the benefit of reservation in the category of dependants of freedom fighters. Whether it is considered on the basis of overall number of 206 posts sought to be filled in the 1993 year examination, or even if the postwise reservation is being made, the number of agricultural group service sought to be filled is being 26. the petitioner was entitled to the benefit of reservation of the said category. The petitioner has wrongly been ousted from the list of the selected candidates and, therefore, the modified result so far as it relates to the petitioner, is Incorrect and the same has to be quashed.

17. On the basis of the material available on record, we find that the name of the petitioner was wrongly excluded by the U. P. Public Service Commission from the list of the selected candidates inasmuch as he was entitled to the benefit of reservation for the dependants of freedom fighters in the agricultural group services itself.

18. The petition is, therefore, liable to be allowed.

19. The petition is allowed. The Notification of the Commission No. 103/10/C-10/95-96, dated 18.8.1996, so far as it relates to the cancelling of the result of the petitioner from the result sheet of Agriculture Group Services whereby the name of the petitioner was deleted from the list of selected candidates, is hereby quashed. The U. P. Public Service Commission is commanded to give the benefit of reservation for dependant of freedom fighters to the petitioner and then, after showing him in the list of selected candidates, to make a recommendation within a period of 4 weeks to the State of U. P. respondent No. 1 for appointment in the U. p. Agricultural Group Services on the basis of the 1993 Examination of U. P. Combined State/Upper Subordinate Services Examination, 1993.

20. Let the writs of mandamus and certiorari be issued accordingly.