
(2012) 07 AHC CK 0214

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 32618 of 2008

Amit Tewari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-07-2012

Acts Referred:

Constitution of India, 1950 — Article 162, 166

Citation : (2013) 1 ADJ 769

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : A.D. Saunders, Rakesh Bagga, A. Kumar and P.K. Singh, for the Appellant; P.K. Singh, Santosh Kumar Chaubey and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

B. Amit Sthalekar, J.—The petitioners who are the Principal and Class IV employee have filed writ petition challenging the order dated 2.6.2008 whereby the approval granted by the District Inspector of Schools in the matter of appointment of petitioner No. 2 has been cancelled. Subsequently, the petitioner No. 1, namely the Principal, Babu Dashrath Singh Inter College, Aurangabad, Kanpur Dehat was deleted from the array of the petitioners and, therefore, this writ petition is now only on behalf of sole petitioner Amit Tewari. There is an institution by the name of Babu Dashrath Singh Inter College Aurangabad, Kanpur Dehat (the institution). The institution is governed by the provisions of U.P. Intermediate Education Act, 1921 and also receives grant in aid. There are nine sanctioned posts in class IV in the institution. A vacancy arose on the retirement of one Radhey Shyam Tripathi, (peon) on 31.12.2007. As per the scheme of reservation under the Uttar Pradesh Public Services (Reservation For Scheduled Casts, Scheduled Tribes and Other Backward Classes) Act, 1994 out of nine sanctioned posts in class IV five posts are of the General Category, two posts are reserved for Scheduled Casts and two posts for Other Backward Class. In order to fill up the vacancy which occurred on 31.12.2007, the Principal of the

institution sought approval from the District Inspector of Schools, Kanpur Dehat by his letter dated 16.1.2006. Thereafter, he sent reminder on 8.2.2008 and 10.4.2008. The District Inspector of Schools by his letter dated 16.4.2008 granted permission to the Principal to fill up one post arising on account of retirement of Sri Radhey Shyam Tripathi. The post was stated to have been duly advertised. Selection was held and the petitioner was found to be the best candidate among others and appointment letter was issued on 13.5.2008 appointing the petitioner. In pursuance thereof the petitioner is also stated to have joined on 20.5.2008. However, on 2.6.2008 the impugned order was passed by the District Inspector of Schools whereby the approval granted for holding the selection has been cancelled on the ground that while computing the vacancy and applying reservation, the post of sweeper shall not be added in the list of sanctioned posts.

2. I have heard Sri Arun Kumar, learned counsel appearing for the petitioner and learned Additional Chief Standing Counsel for the respondents.

The contention of the learned counsel for the petitioner is that the post of sweeper was one among the nine duly sanctioned posts and it belonged to class IV post, therefore, post of sweeper cannot be excluded and the approval granted by the District Inspector of Schools on 16.4.2008 was absolutely correct and it is in pursuance thereof that the selection was held.

3. Per contra learned Additional Chief Standing Counsel submitted that in terms of G.O. dated 5.6.1982, the post of sweeper had been excluded from class IV category for purposes of applying the principle of reservation. The G.O. dated 5.6.1982 has been filed as Annexure 2 to the counter-affidavit.

4. From a perusal of the alleged G.O. dated 5.6.1982 it is seen that the same refers to Government posts under the Government Corporation and cannot be said to be applicable to the posts in the educational institutions in the State of U.P. Besides the alleged G.O. also cannot be said to be Government notification, since requirements of Government notification are that it must be issued in pursuance of provisions of 162 and 166 of the Constitution of India. Article 162 reads as follows:

Article 162. Extent of executive power of State.--Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

Article 166 reads as follows:

Article 166. Conduct of business of the Government of a State: (1) All executive

action of the Government of a State shall be expressed to be taken in the name of the Governor.

2. Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

3. The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

A bare reading of Articles 162 and 166 demonstrates that all executive action of the Government shall be expressed in the name of Governor. The alleged G.O. dated 5.6.1982 does not show that it has been issued in the name of or with the sanction of the Governor, and, therefore, it does not have any statutory force.

5. Learned Additional Chief Standing Counsel points out that this letter is a clarification of demi official letter dated 18.12.1980 and, therefore, the letter dated 18.12.1980 also cannot be said to be a Government notification in terms of Article 162 and 166 of the Constitution of India, having any statutory force.

6. Reservation for the Scheduled Castes and Scheduled Tribes and Other Backward Class was introduced by the State Governments in the State services including educational institutions under the Uttar Pradesh Public Services (Reservation For Scheduled Casts, Scheduled Tribes and Other Backward Classes) Act, 1994. Thus, the legislative intent in the Act, 1994 cannot be sought to be whittled by any demi official letter or clarificatory letter. It is not in dispute between the parties that the post of sweeper is a full time post, which is an essential post in an educational institution and, therefore, exclusion of the post of sweeper from the strength of sanctioned class IV posts, for the purposes of applying reservation, is patently illegal, incomprehensible and runs contrary to the very intent and spirit of reservation contemplated under the Act, 1994.

Thus in view of the above facts and circumstances of the case, the impugned order dated 2.6.2008 cannot survive and is liable to be quashed.

Accordingly, the writ petition is allowed and impugned order dated 2.6.2008 is quashed. The selection process for appointment in class IV against which the petitioner was duly selected and appointed having already been approved by the District Inspector of Schools by his order dated 16.4.2008, the petitioner is entitled to all the benefits of the said post.