
(2000) 08 AHC CK 0058

In the Allahabad High Court

Case No : Writ Petition No. 1821 of 2000 (M/S)

Anand Kumar Dubey

APPELLANT

Vs

State of U. P. and others

RESPONDENT

Date of Decision : 03-08-2000

Acts Referred:

Citation : (2001) 1 AWC 274

Hon'ble Judges : Naseemuddin, J

Bench : Single Bench

Advocate : Ratnesh Lal, for the Appellant; C. S. C., for the Respondent

Final Decision : Dismissed

Judgement

Naseemuddin, J.—Heard learned counsel for the petitioner and learned counsel for the opposite parties.

2. The only controversy in the present writ petition is whether the petitioner is entitled to the reservation of 2% quota in the admission to the course of M.B.A., the admission test of which was held by the Moti Lal Nehru Regional Engineering College, Allahabad (M.N.R.E.C. for brief) under the U. P. Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993 (hereinafter referred to as the Act for the sake of brevity).

3. Learned counsel for the petitioner has drawn the attention of the Court to Annexure-3 to the writ petition which is a letter addressed to all the departments of the State enclosing therewith the G.O. dated 10.5.1991 of Karmik Anubhag 2 bearing No. 18/1/95-Ka-2/95. By this G.O., the attention of the departments of the State was drawn to the provisions of sub-section (2) of Section 3 of the Act regarding ensuring compliance of the provisions of the Act with respect to giving effect to the quota according to the percentage. The case of the present petitioner comes within the category of dependents of the freedom fighters which was fixed as 2%. This G.O. simply asked the Departments to implement the provisions of the Act. While forwarding the letter with this G.O., the word

"services" was mentioned. Thereafter by inserting oblique, the word "admission, etc." was also written. It is this word "pravesh" or admission which has created controversy. In the G.O. dated 10.5.1995, there is no such word as services/admission. Since the G.O. has been issued under the provisions of the above Act. therefore, the Act has to be looked into. It may be mentioned here that by letter dated 24.7.2000, Annexure-5 to the writ petition, the institution M.N.R informed the petitioner as follows ;

"This Act is applicable only in respect of appointment in Public Services and posts in connection with affairs of the State and has nothing to do for grant of reservation in respect of admission in Management Courses. The State of U. P. has provided no reservation for freedom fighters in respect of admission for Management Courses and, as such, no person was granted reservation being a dependent of freedom fighter.

That as the State of U. P. has provided no reservation for dependant of freedom fighter in respect of admission in Management Courses and there is no quota reserved for them, as such you are not entitled for any reservation in the matter of admission to Management Course."

(1) So the controversy was two-fold. Firstly : that no reservation was provided by the state for freedom fighter in this Course and secondly, that the Act is not applicable to the admission in this educational institution and it applied only in public service. Sub-section (2) of Section 3 of the Act was omitted by U. P. Act No. 6 of 1997 with effect from 9.7.1997. Section 3 (1) of the Act is relevant Section 3 runs as follows :

"3. Reservation of vacancies in favour of physically handicapped etc.--(1) There shall be reserved at the stage of direct recruitment.

(i) in public services and post two per cent of vacancies for dependents of freedom fighters and one per cent of vacancies for ex servicemen ;

(ii) in such public services and posts as the State Government may, by notification, identify one per cent of vacancies each for the person suffering from--

(a) blindness or low vision;

(b) hearing impairment; and

(c) locomotor disability or cerebral palsy.

(2) Omitted.

(3) The person selected against the vacancies reserved under sub-section (1) shall be placed in the appropriate categories to which they belong. For example, if a selected person belongs to Scheduled Caste category he will be placed in that quota by making necessary adjustments, if he belongs to Scheduled Tribes Category, he will be placed in that quota by making necessary adjustments, if he

belongs to (Other Backward Classes of citizens) category, he will be placed in that quota by making necessary adjustments. Similarly if he belongs to open competition category, he will be placed in that category by making necessary adjustment.

(4) Omitted.

(5) Where, due to non-availability of suitable candidates any of the vacancies reserved under sub-section (1) remains unfilled it shall be carried over to the next recruitment."

A bare reading of the Section shows that the reservation has been provided under the Act at the stage of direct recruitment in public service and posts. The Section does not provide any reservation in admission in the educational institution and the other provisions of the Act also makes this thing quite clear. Explanation to sub-section (1) of Section 5 runs as follows :

For the purposes of this sub-section the selection process shall be deemed to have been initiated where, under the relevant service Rules, recruitment is to be made on the basis of--

(i) written test or interview only, the written test or the interview, as the case may be has started, or

(ii) both written test and interview, the written test has started.

Sub-section (2) of Section 5 lays down as follows ;

(2) The provisions of this Act shall not apply to the appointment to be made under the Uttar Pradesh Recruitment of Dependent of Government Servant Dying in Harness Rules. 1974.

Therefore, the other provisions also make it clear that the Act is intended only to provide reservation at the stage of direct recruitment in public services and test as the State Government may notify. This Act does not apply at all to the admission in the educational institution.

4. Learned counsel for the petitioner drew attention of the Court to the case of *Km. Priyanka Agrawal v. State of U. P. and others* 2000 18 LCD 516. In that case, the matter did not pertain to this Institution M.N.R. and it was a case of admission in the Medical College in M.B.B.S. course. In this case, this point was not decided that the Act applies to the admission in the educational institutions. In this judgment, this point was not at all decided. Section 3 (1) not at all was discussed in the relevant para. The letter of the law is quite clear and the law cited by the learned counsel for the petitioner does not throw any light on this controversy. Since the provisions of Section 3 and other provisions of the Act make it clear that the Act applies only to public services and posts, therefore, the impugned letter dated 24.7.2000 clearly gives the picture. The learned counsel referred to the order passed by this Court in another writ filed by the petitioner. *Anand Kumar Dubey v. State of U. P.* 1697 (M/S) of 2000, wherein it was

provided as follows ;

"Looking to the facts pleaded in the petition, it is appropriate to provide that in case the petitioner is entitled to a quota, as stated by him, then he should also be given a chance in the said counselling and with these observations, the writ petition is disposed of finally."

The order makes it clear that the petitioner was to be given chance in the counselling only when the petitioner was entitled to a quota. It has been found above that the petitioner is not entitled to a quota under the Act because the Act does not apply to admission in educational institutions and so also in the present M.B.A, course. The argument of the learned counsel for the opposite parties carries force that the Act does not apply to the present matter. Petitioner has, therefore, no case for admission on the basis of the provisions of the Act and no writ or direction can be issued. The order under challenge contained in Annexure-5 to the writ petition is perfectly in accordance with law. Writ petition has got no force and has to be dismissed. Writ petition is dismissed.