
(1995) 05 AHC CK 0079

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 27956 of 1992

Bishwambhar Lal

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 18-05-1995

Acts Referred:

Constitution of India, 1950 — Article 15(3), 15(4)

Citation : (1995) 05 AHC CK 0079

Hon'ble Judges : M.Katju, J

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed for a mandamus directing the respondents not to interfere with the petitioner's working as Lecturer in Physics in Marwar Inter College, Pilkhua, Ghaziabad and pay him salary regularly. The post of Lecturer was advertised on 1371991 and the petitioner appeared before the selection committee and was given appointment letter on 1181991 vide Annexure3. However, although he joined on 1381991 and started working since then as lecturer but he is not getting salary.

2. In the counteraffidavit the stand taken is that the petitioner belongs to the backward caste but the post in question was reserved for a scheduled caste candidate and hence his appointment was not valid.

3. I have heard learned counsel for the parties and in my opinion this writ petition has to be allowed. It has been held by Division Bench of this Court in C. O. D. Chheoki Employees Cooperative Society Ltd. v. State of U. P., 1995 (1) UPLBEC 641 : 1995 LBESR 751 that the power of making reservation under Article 15(3) and (4) of the Constitution cannot be exercised by the government so as to make reservation in associations voluntarily formed by the people even if such associations are registered under the legislative enactment. Merely because the society is registered under the Act, it does not lose its character of being a voluntary private association.

4. The Marwar Inter College Pilkhua, district Ghaziabad is private college though recognised under the U. P. intermediate Education Act and aided by the Government. Hence the ratio of the aforesaid division bench decision will apply to the facts of the present case also and thus the action of the respondents is clearly arbitrary and illegal.

5. Apart from that I have serious doubts that there can be any reservation on caste basis on the post of Lecturer in Physics. In my opinion there cannot be blanket reservation on all posts irrespective of the nature of functions which have to be discharged on that post. Thus before, making any reservation the authorities must see the nature of functions which have to be discharged on the post and there cannot be a blanket reservation every where. For example, I have grave doubt whether reservation on caste basis can be made on the post of Pilot of an Aircraft, a Surgeon in a Hospital, or a teacher of Mathematics etc. However, I am not expressing any final opinion on this point as I have allowed the writ petition on the first point.

6. In the circumstances this writ petition is allowed. A mandamus is issued to the respondents to continue the petitioner in service and to pay his salary regularly as Lecturer in physics. The arrears of salary for the period for which the petitioner has worked will be paid within three months of production of certified copy of this judgment before the District Inspector of Schools, Ghaziabad.

7. The writ petition is allowed. No order as to costs.