

(2003) 01 AHC CK 0122
In the Allahabad High Court
Case No : C.M.W.P. No. 39375 of 2002

Diploma Engineers Association and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 10-01-2003

Acts Referred:

Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 — Section 3

Citation : (2003) 1 AWC 541

Hon'ble Judges : Yatindra Singh, J; M. Katju, J

Bench : Division Bench

Advocate : Ashok Khare and Aditya Kumar Singh, for the Appellant; R.G. Padia, P. Padia, R.P.N.L. Srivastava and S.K. Mishra, S.C., for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J. 1. This writ petition has been filed with a prayer for a certiorari to quash the impugned advertisements dated 21.8.2002, 24.8.2002 and 28.8.2002 (Annexures-6, 7 and 8 to the writ petition) and all the proceedings pursuant thereto. It has also been prayed that respondents be directed to re-advertise the vacancies in the respondent No. 2 Corporation after correctly applying the reservation percentage prescribed under the U. P. Public Services (Reservation in favour of the Scheduled Caste, Scheduled Tribe and Other Backward Classes) Act, 1994, (hereinafter referred to as the 1994 Act) in accordance with hundred point roster after taking into account the reservation qua the cadre strength with regard to individual posts and only thereafter to make any direct recruitment.

2. We have heard Sri Ashok Khare, learned counsel for the petitioner and Dr. R.G. Padia, learned counsel for the respondents.

3. The respondent No. 2 the U. P. State Industrial Development Corporation Ltd. is a Government company and the petitioners are an Association and a Union of its employees. The petitioner No. 1 is an Association of Employees of the respondent No. 2 company holding Groups A, B and C posts, and the petitioner

No. 2 is a registered Employees Union of the respondent company comprising as its members employees working in Group C and D posts.

4. The posts in the respondent Corporation have to be sanctioned by the State Government. In paragraph 10 of the petition, it is stated that by Government order dated 11.1.2002 (Annexure-4 to the petition) the State Government sanctioned 79 Group A posts, 81 Group B posts, 444 Group C posts, and 197 Group D posts. As stated in paragraphs 13 and 16 of the petition, some of the posts are single posts, e.g., General Manager (Project/Finance), General Manager (Development), etc. The reservation policy under the 1994 Act is applicable to the U. P. S.I.D.C. 21% reservation are for Scheduled Caste, 2% for Scheduled Tribes and 27% for Other Backward Class. By the impugned advertisement, all the posts sought to be filled up are in the reserved categories.

5. With regard to recruitment and appointment to the aforesaid posts, the Corporation has framed the U. P. State Industrial Development Corporation Employees Service Rules. The relevant extract of Chapter III of the Service Rules has been annexed as Annexure-1 to the writ petition.

6. In this writ petition, the petitioners are aggrieved by the impugned advertisement for filling up the reserved vacancies.

7. The short submission of Sri Ashok Khare, learned counsel for the petitioners is that instead of making reservation post-wise, the respondents have applied reservation and worked out backlog vacancies after clubbing together all the posts in Group A, and a similar exercise has been adopted with regard to Group B posts as stated in paragraphs 36 and 37 of the writ petition. In this connection, the communication of the Secretary of the Corporation along with the details of the vacancies as on 30.6.2002 has been annexed as Annexure-16 to the writ petition. A perusal of the Chart enclosed to the said communication shows that for computing posts falling under the reserved category the computation has been effected on the basis of the total strength of sanctioned posts under Group A, Group B, Group C and Group D posts instead of considering the individual posts in Group A/Group B/Group C/Group D.

8. It is submitted in paragraph 40 of the writ petition that the proper implementation of reservation in favour of Scheduled Caste/Scheduled Tribe/Other Backward Class is to apply the reservation percentage with a reference to different categories of posts falling in Group A/Group B instead of clubbing together all Group A posts or all Group B posts. In paragraph 41 of the writ petition, it is submitted that Group A comprises of several categories of posts carrying different pay scales and different qualifications for such posts. It is submitted that there exists no justification whatsoever for clubbing all such posts together for purposes of applying the reservation quota. Similar is the position also with regard to Group B posts, which also comprises of several categories of posts having different pay scales and carrying different qualifications for the posts. The posts mentioned in the advertisement carry different pay scales as

also separate qualifications. Thus, a perusal of Annexure-2 to the writ petition shows that there are various Group A posts, e.g., Managing Director, Joint Managing Director, General Manager, Administrative Officer, Legal Advisor, etc. These posts carried different pay scales and different duties and qualifications.

9. In paragraphs 50 to 56 of the petition, the petitioner has given in the different paragraphs the details about the different posts in Group A or Group B. For example in paragraph 51 of the writ petition, it is mentioned that the advertisement in question advertises one post of Senior Manager (Audit) as a vacancy reserved for Scheduled Caste candidates. The petitioners' objection is that since there is only one sanctioned post of Senior Manager (Audit) and the said post being a single isolated post the vacancy cannot be filled up by a candidate from the reserved category in view of the Supreme Court decision in *Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association and Others*, .

10. Similarly, it is stated in paragraph 52 of the writ petition that there are eight sanctioned posts of Manager (Project). Out of the aforesaid eight posts, two posts already stand filled up by direct recruitment of Scheduled Caste candidates, namely, Satish Kumar and Santosh Kumar. However, by the impugned advertisement, three posts of Manager (Project) have been advertised for Scheduled Caste candidates. Thus, out of the total cadre strength of eight posts, a total number of five posts would stand reserved in favour of Scheduled Caste candidates which is clearly illegal, since the percentage of reservation available in favour of Scheduled Caste candidates is only 21%. Various other examples have been given in the writ petition but it is not necessary to deal with them.

11. In the counter-affidavit, the respondents have not disputed the averments made in paragraphs 36 to 56 of the writ petition. The justification given by the respondents is that Group A is by itself a cadre and hence reservation has to be made in this Group. We do not agree. Group A is a broad category which contains within itself several posts, and in our opinion, reservation have to be made in respect of each such posts falling under Group A, and not by lumping all the posts coming under the broad heading of Group A. Respondents should have isolated each category falling under Group A (or Group B) and should have applied the reservation formulae accordingly.

12. In *Chakradhar Paswan Vs. State of Bihar and Ors*, and *R.K. Sabharwal and others Vs. State of Punjab and others*, , reservations have been applied vis-a-vis the posts, and both the aforesaid decisions have been approved in *Post Graduate Institute of Medical Education and Research v. Faculty Association* (supra). These decisions clearly demonstrate that the percentage of reservation is applicable with regard to the individual posts alone. In our opinion, the respondents have illegally clubbed together the various posts falling under the general category of Group A (or Group B as the case may be) although these posts are very different carrying different responsibilities and pay scales.

13. Learned counsel for the respondents has submitted that Group A is a single cadre, and so are Group B, C and D. We do not agree. In Chakradhar Paswan's case (supra), the word "cadre" has been explained (in paragraph 8 of the said decision). It was held by the Supreme Court in that decision that though Director and Deputy Director belong to one service they do not belong to one cadre, as they have different duties and pay scales. This decision was affirmed in the Constitution Bench decision in P. G. Institute of Medical Education (supra). As regards the decision of a two-Judge Bench of the Supreme Court in State of Uttar Pradesh Vs. Dr. Dina Nath Shukla and another, , which has been relied on by learned counsel for the respondent, we are of the opinion that the said decision does not lay down good law in view of the subsequent Constitution Bench decision of the Supreme Court in P. G. Institute of Medical Education (supra) which has affirmed Chakradhar Paswan's case. It seems that the decision in Chakradhar Paswan's case (supra) was not brought to the notice of the Bench, which decided Dina Nath Shukla's case (supra).

14. For the reasons given above, the writ petition is allowed.

15. The impugned advertisements dated 21.8.2002, 24.8.2002 and 28.8.2002, are quashed. The respondents are directed to re-advertise the vacancies in the light of the observations made above after complying with the reservation percentage with regard to individual posts within Group A or Group B and not by clubbing together all the posts coming under the general category of Group A or Group B posts.