

(2010) 08 AHC CK 0025
In the Allahabad High Court
Case No : Writ A. No. 51212 of 2010

Dr. Archana Mishra and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:

Uttar Pradesh Higher Education Services Commission Act, 1980 — Section 13

Citation : (2010) 08 AHC CK 0025

Hon'ble Judges : Sheo Kumar Singh, J;Devendra Kumar Arora, J

Bench : Division Bench

Judgement

1. Pursuant to the orders of this Court dated 25.08.2010, the concerned Joint Director of Higher Education and the Officiating Secretary, U.P. Higher Education Services Commission are present in the Court.
2. For the purposes of making submission, certain factual issues are to be noticed first before mentioning other facts.
3. It has been admitted that vacancies so advertised are not college wise/subject wise rather after getting requisition of the vacancies from all the Colleges, they have been clubbed by forming one unit, they have been advertised.
4. It has been further admitted that after the selection at the time of placement, provisions as contained in Section 13 U.P. Higher Education Services Commission Act, 1980 is to be followed and if that is to be strictly taken care, advertisement by getting vacancies of particular College/subject sorted out, the placement of the candidates by following the principle of reservation may not be in a position of being placed, as placement is to be made strictly in accordance with the merit and in the light of the option given in the application form.
5. Argument of Sri Baghel, learned senior counsel in this petition and Sri Mishra and Sri Arti Raje, learned Counsel who also appears in the earlier petition are present is that apart from other decided cases on the point since long, recently Division Bench of our own Court given in the case of Dr. Vishwajeet Singh

reported in 2009(2) ESC 1387(All) has clearly laid down that advertisement has to be subject wise/college wise and it is in that light after ascertainment of the vacancies principle of reservation if that may be applicable/available is to be applied.

6. Sri Baghel further points out that the Division Bench judgment has been further approved by the Full Bench of this Court in the case of Hira Lal reported in 2010(3) ESC 2091.

7. Submission is that so far as judgment of this Court in the case of Dr. Vishwajeet Singh (supra) is concerned, although SLP was filed before the Apex Court in the year 2009 itself and now on 6.8.2010, leave has been granted and hearing has been expedited but no interim order either at the first stage or at while grating leave has been granted.

8. Submission is that it may not be proper to argue that no stay of the order was prayed.

9. Be as it may, while entertaining the matter and granting leave, no stay was given by the Apex Court.

10. By the Division Bench judgment of this Court given in the case of Dr. Vishwajeet Singh(supra), the advertisement No. 36 and 37 by which, advertisement of the post of Lecturers were advertised although for general category on clubbing to be formed one unit was finally quashed.

11. Submission is that so far as present advertisement is concerned, irrespective of the vacancies which are said to be back log vacancies, various factors are to be placed by the respondent that whether those vacancies was ever advertised and otherwise also, apart from other aspect various aspects as noted above, i.e. the availability of particular number of post in the subject in a college for making selection is to be noted and has to be found out/observed before applying principle of reservation.

12. Sri Baghel lastly placed before this Court the observation made by Full Bench of this Court in the case of Hira Lal (supra) as is contained in para/34 of the aforesaid judgment.

13. It is ruled in the aforesaid Full Bench decision that for applying reservation of vacancies, in accordance with U.P. Act No. 4 of 1994, number of posts in the cadre if is less than five, then that may not apply and at the same time, in the second part of the aforesaid paragraph, the judgment given in the case of Dr. Vishwajeet Singh(supra) has been approved.

14. Be as it may, as pursuant to the orders of this Court dated 17.03.2010 passed in writ petition No. 19712 of 2010, respondents claim that the selection process for 21District is complete and now the only placement is to be done and accordingly, placement process is also be finalised by getting themselves executed at the level of the Management.

15. After hearing aforesaid and on a notice of these facts, we are of the view that henceforth, all the respondents are to stay their hands in respect to the progress pursuant to the advertisement No. 42 and placement, if any has taken place, that will not be given effect without taking leave of this Court.

16. As requested by all, let the matter be posted in the week commencing 13.09.2010 along with similar matters and also the writ petitions No. 19712 of 2010 and writ petition No. 50170 of 2010.

17. In the meantime, this Court directs that both sides are to complete their pleadings so that looking into the urgency and involvement of large number of candidates, both sides, matter may be finally decided.