
(2011) 02 AHC CK 0116
In the Allahabad High Court
Case No : Writ A No. 6807 of 2011

Dr. Kuldeep Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 — Section 3(2)

Citation : (2011) 02 AHC CK 0116

Hon'ble Judges : Sunil Ambwani, J; Jayashree Tiwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani and Jayashree Tiwari, JJ.—We have heard Shri Saurabh Basu, learned Counsel for the Petitioner. Learned Standing Counsel appears for the State Respondents. Shri H.N. Singh appears for the UP Higher Education Service Commission.

2. The Petitioner appeared in the selections for the posts of Lecturer in Degree Colleges advertised by the U.P. Higher Education Service Commission vide Advertisement No. 37. The selections were challenged in Writ Petition No. 48149 of 2003 Dr. Vishwajeet Singh and Ors. v. State of UP and Ors. Writ Petition No. 48149 of 2003 and other connected Writ Petitions. By the judgment dated 20.4.2009 a Division Bench of this Court directed the U.P. Higher Education Service Commission to declare the result of 371 posts; the selections, so far as 467 posts is concerned, was set aside on the ground that the selections were to be college-wise and subject-wise and not subject-wise only.

3. The State and U.P. Higher Education Service Commission have challenged the judgment in Supreme Court. In Special Leave to Appeal notices have been issued. The Apex Court has not passed any interim orders. Subsequently Advertisement No. 42 was also subject matter of challenge in Dr. Archana Misra v. State of UP Writ Petition No. 51212 of 2010, and in which by order dated

23.12.2010, the questions, (1) as to what is meaning of unfilled vacancies in Section 3 (2) of U.P. Public Service Reservation for Scheduled Caste, Scheduled Tribe and Other Backward Classes Act, 1994; (2) whether the selections have to be made on the vacancies college-wise, and subject-wise or only subject-wise, and (3) whether there should be at least five vacancies in a College in a subject to apply rules of reservation, were referred to the Larger Bench. The judgment in Smt. Archana Misra's case was also challenged and has been stayed by the Supreme Court.

4. Learned Standing Counsel and Shri H.N. Singh appearing for the Commission state that in Vishwajeet Singh decided on 20.4.2009 this Court has already issued directions to declare the result of 371 vacancies for which the selections were held.

5. The Petitioner is only speculating that he may have been selected and placed in the 371 vacancies of Advertisement No. 37 of which the result has been directed to be declared. Learned Counsel for Petitioner submits that this Court may stay the selection in pursuance to Advertisement No. 44 and 45, as in case the result has been declared, the Petitioner, if he is selected in pursuance to Advertisement No. 37 dated 9.7.2003, will become junior to the appointees of the selections by Advertisement Nos. 42, 44 and 45.

6. The Petitioner's prayers are highly speculative in nature. The result of 371 vacancies, directed to be declared by the Court in Dr. Vishwajeet Singh's case, has not been declared so far. The judgment is still subject matter of challenge in Supreme Court, and in any case there is already a mandamus given by the Court in Dr. Vishwajeet Singh's case against which there is no interim order passed by the Supreme Court.

7. So far as Petitioner's claim for staying selection in pursuance to Advertisement Nos. 44 and 45 is concerned, the Petitioner does not have any right to make such a prayer. Since the result has not been declared, the Petitioner cannot say that he has been selected in pursuance to Advertisement No. 37, to acquire a cause of action, which is also presumptive in nature, to stay selections in pursuance to Advertisement Nos. 44 and 45.

8. The Court does not issue a writ of mandamus where the matter has already been adjudicated and a mandamus has been issued by the Court. A writ of mandamus is not to be enforced by another writ of mandamus. A writ of mandamus is execution in itself for which the Petitioner has remedies to seek enforcement in accordance with the law.

9. The writ petition is dismissed.