
(2014) 02 AHC CK 0169

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 37811 and 39334 of 2013

Dr. Narendra Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 16(4), 335

Citation : (2014) 4 ADJ 356 : (2014) 5 AWC 5214 : (2014) 2 ESC 1229 : (2014) 3 UPLBEC 2190

Hon'ble Judges : Arvind Kumar Mishra-I, J; Arun Tandon, J

Bench : Division Bench

Advocate : Rajeev Misra, Anil Bhushan and Adarsh Bhushan, Advocate for the Appellant; Shailendra, Sanjai Kumar Singh and S.K. Singh, Advocate for the Respondent

Final Decision : Allowed

Judgement

1. These two writ petitions have been filed by the prospective candidates for the posts of Readers and Lecturers, subject-matter of the advertisement No. 1 of 2009 dated 25.7.2009 published by Dr. Bheem Rao Ambedkar University, Agra (hereinafter referred to as the Agra University). The petitions raise common question of law in the matter of reservation to be applied against posts of Readers and Lecturers. They have been clubbed together and are being decided by means of the common judgment. We have heard Sri Anil Bhushan, advocate on behalf of the petitioners, Sri C.B. Yadav, learned Additional Advocate General on behalf of the State of U.P., Sri S.K. Singh, learned counsel on behalf of the University and Sri Ashok Khare, learned Senior Counsel assisted by Sri Siddharth Khare, Advocate on behalf of the selected candidates who had filed an impleadment application which was granted under order dated 12.8.2013.

2. Before proceeding with the merits of the petitions, it is necessary to record the following facts:

In the present petitions, an order was passed by a division Bench of this Court on

13.9.2012 refusing to grant an interim order. Against the order dated 13.9.2012, special leave to appeal No. 28843 of 2012 was filed by the petitioners before the Apex Court which was dismissed with the observations that the High Court may expedite the disposal of the writ petition, any selection/appointment in the meantime pursuant to the advertisement impugned was to abide by the final result of the present writ petition. The order of the Apex Court reads as follows:

Taken on boards.

No ground is made out for our interference with the impugned order, whereby the High Court has declined to stay the selection process, stated to have already commenced pursuant to advertisement published on 14th July, 2012. Accordingly, the SLP is dismissed.

However, having regard to the nature of issue involved in the writ petition, we request the High Court to expedite the disposal of the main writ petition. We further clarify that selections/appointments, if any, in terms of the aforesaid advertisement shall abide by the final result in Civil Miscellaneous Writ Petition No. 39334 of 2012.

3. Another division Bench of this Court on 12.8.2013 decided to adjourn the hearing of the case for six months on the ground that against the reference order of the High Court made in the case of Dr. Archana Mishra and others v. State of U.P. and others, the Apex Court in special leave to appeal No. 952-956 of 2011 has been pleased to stay the reference order itself. The Division Bench thought it appropriate that the Court may await the decision of the Apex Court on the issue.

4. We may record that pendency of the matter before the larger Bench may not detain us from proceeding with the hearing of these writ petitions. We draw support from the latest judgment of the Apex Court in the case of P. Sudhakar Rao and Others Vs. U. Govinda Rao and Others, , wherein it has been held that pendency of similar matter before a larger Bench of the Apex Court would not preclude the Court from considering the matter on merits.

5. In view of the directions of the Apex Court dated 27.9.2012 referred above and the law as explained by the Apex Court in the case of P. Sudhakar Rao (supra) we deem it fit and proper to hear these writ petitions on merits.

6. Agra University Agra is a University established under the provisions of the U.P. State University Act 1973. Under the provisions of U.P. Act No. 4 of 1994, reservation has been made applicable in respect of teaching posts and other posts in the University's Agra University published the impugned advertisement No. 1 of 2012, inviting applications from prospective candidates for the posts of Professors, Readers and Lecturers subject-wise. The advertisement discloses the category to which the advertised vacancies belong.

7. The dispute in the present writ petitions is with regard to the reservation applied on the posts of Readers and Lecturers. There is no issue with regard to the posts of Professor in the present writ petitions. Therefore, at the very outset

we clarify that this judgment has nothing to do with the appointments which are to be made or may have been made in terms of the advertisement on the posts of Professors nor any appointments shall be effected in any manner because of this judgment.

8. The case of the petitioners is that reservation on the posts of Lecturers and Readers, under the advertisement has been applied treating the entire University as one unit. Having regard to the percentage of the reservation provided under the U.P. Act No. 4 of 1994 the Agra University has worked out the number of the posts to be reserved in various departments. This according to the petitioners is illegal inasmuch as a division Bench of this Court in the case of Dr. Dina Nath Shukla Vs. State of U.P. and Another , has clearly explained that reservation in the matter of the appointment of faculty members in the University has to be applied treating the department and subject as the unit and not the University as a whole as the unit. This judgment of the division Bench has been affirmed by the Apex Court in the case of State of Uttar Pradesh Vs. Dr. Dina Nath Shukla and another, . Similarly it is pointed out that in the case of Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others, , the Apex Court has explained that reservation on the faculty posts in the University has to be applied subject-wise department-wise. With reference to Para 8-9 of the judgment, learned counsel for the petitioners contends that there has been complete violation of the law as explained in the aforesaid judgments at the hands of the Agra University while applying reservation on the posts of Readers and Lecturers under the advertisement treating the University as the unit.

9. It is also contended by the learned counsel for the petitioners that Full Bench of this Court in the case of Heera Lal v. State of U.P. and others, 2010 (6) ADJ 1 (FB), after examining the judgments of the Apex Court applicable on the issue of reservation specifically with regard to single cadre post has held that no reservation can be applied in a cadre which comprises of less than 5 posts. This judgment of the Full Bench has been subjected to challenge before the Apex Court but no interim order has been granted. The petitioners, therefore, submits that so long as the Full Bench judgment holds the field, the Agra University cannot apply reservation on the posts of Readers and Lecturers in a particular department or in a particular subject unless there are at least five sanctioned posts in the department/subject.

10. Learned counsel for the petitioners explains that it has been held that the posts which are not interchangeable cannot be clubbed together nor can be part of the same cadre so as to apply reservation and that in respect of single cadre post, no reservation can be applied.

11. It is also contended by the learned counsel for the petitioners before this Court that the Government Order dated 1.8.2003 which is the sheet anchor of the University for reservation as applied itself is illegal being contrary to the judgments referred to above as it directs that reservation be applied in respect of cadre posts of Readers and Lecturers treating the University as the unit. It is

brought to our notice that Para 4 of the same Government Order which provides that roster shall be prepared in respect of cadre of Lecturers treating the University as the unit and similarly roster be prepared for the posts of Reader treating the same to be separate cadre and the University as unit has already been held to be illegal by the High Court in the case of Dr. Durga Prasad Yadav and others v. State of U.P. and others, passed in writ petition No. 53197 of 2006 decided on 24.7.2008. It is, therefore, the case of the petitioners that advertisement in the facts of the case is illegal. Any appointment made during the pendency of the present writ petition on the basis of the reservation so applied must fall.

12. Sri C.B. Yadav, learned Additional Advocate General on behalf of the State of U.P. while defending the Government Order dated 1.8.2003 submitted that u/s 2C(iv) of the Act, 1994 the University is included within the scope of Act 1994. Therefore, the University as a whole has to be taken as the unit for the purpose of application of reservation on the posts of Lecturer and Reader. The Government Order dated 1.8.2013 is in accordance thereto. He also explains that the Government has followed the law laid down by the Apex Court in the case of State of U.P. v. M.P. Chatoupadhyay, passed in Civil Appeal No. 39 of 1998 and has provided that so far the posts of Professors are concerned department/subject shall be treated to be the unit for the purpose of reservation but so far as the posts of Reader and Lecturer are concerned, the University has to be taken as the unit.

13. Sri C.B. Yadav, learned Additional Advocate General further explains that subsequent to the judgment in the case of Dr. Dina Nath Shukla and S.C. Verma referred to above a constitution Bench of the Apex Court in the case of M. Nagaraj and Others Vs. Union of India (UOI) and Others, , has explained in Para 82-83 and 92 to 96 that the entire cadre strength has to be taken into account for determination as to whether reservation up to the required limit has been reached and that if roster is prepared on the basis of cadre strength than that by itself would ensure that reservation would remain within ceiling limit of 50%. The constitution (Eighty-first Amendment) Act 2000 in fact is the legislative assent to the judgment of the Apex Court in the case of R.K. Sabharwal.

14. Sri C.B. Yadav, also refers to the judgment of the Apex Court in the case of State of U.P. and Others Vs. Sangam Nath Pandey and Others, , specifically Para 23 for the proposition that the entire cadre has to be treated as one unit which in the facts of the case would be the cadre of Readers and cadre of Lecturers for the University. Reference has also been made to the order passed in the case of Dr. Archana Mishra and Others Vs. State of U.P. and Others, , wherein the division Bench of this Court has expressed doubts in respect of the law laid down by the High Court in the case of Vishwajeet Singh as also by the Full Bench of this Court in the case of Heera Lal, in the matter of the application of reservation in degree college affiliated to various University.

15. It is also submitted that the Apex Court in the case of State of Karnataka and

Others Vs. K. Govindappa and Another, , has held that single post can also constitute cadre for the purpose of reservation and that cadre and post are different concept. The Apex Court has refused to interfere with the judgment of the Full Bench of Karnataka High Court which upheld reservation on a single cadre post.

16. It has been fairly stated by Sri C.B. Yadav that referring order of the High Court in the case of Dr. Archana Mishra itself has been stayed by the Apex Court and, therefore, the matter in that regard has not been examined by the larger Bench till date.

17. Sri Sanjay Kumar Singh, learned counsel for the Agra University stated that details of the number of posts created in the University in respect of cadre of Professors, Readers and Lecturers has been disclosed in Para 14 of the counter affidavit filed on behalf of the University. It is stated there are 64 posts of Lecturer in the University, 43 of them have been filled. 38 posts belong to general category, against which 21 persons have been appointed. 13 posts belong to Other Backward Class category, against which three persons have been appointed. 9 posts belong to Scheduled Caste category, against which 2 persons have been appointed. According to the University, there are 10 backlog posts of Other Backward Class category and 7 backlog posts of Scheduled Caste category. It has also been disclosed that there are 20 sanctioned posts of Reader in the University, two of which have been converted into that of Lecturer. 5 persons against remaining posts of Reader have been appointed, 4 of whom belong to general category and one person belonging to scheduled caste category has been appointed. It has also been stated that there is one backlog post of Other Backward Class category.

18. There is no issue qua posts of Professors, therefore, facts in that regard are not being referred.

19. It is stated that the University having regard to the cadre strength of Readers and Lecturers as detailed above has applied reservation treating the entire University to be the unit in accordance with provisions of Act No. 4 of 1994 i.e. 27% for O.B.C., 21% for S.C. and 1% for S.T. Roaster has been applied so as to limit the reservation to maximum of 50% of the total cadre strength. He further explains that under the advertisement 13 posts of Readers of different 10 departments have been advertised, 5 of which are meant for general category, 5 have been reserved for other backward category, 3 for scheduled caste category.

20. With regard to the posts of Lecturers, it is explained that 21 posts belonging to 13 different departments have been advertised, 3 of which are for open category, 10 posts have been reserved for other backward category and 8 posts for scheduled caste category. It has also been explained that under the advertisement, 1 post of Reader has been reserved for O.B.C. Category and 3 posts of Lecturers for O.B.C. category and 3 posts of lecturers for S.C. under backlog vacancies. The case of the University is that reservation on the posts of

Readers and Lecturers has been made applied in accordance with provisions of U.P. Act No. 4 of 1994 read with Government Order dated 1.8.2003 which provides that the University shall be treated to be the unit for application of the reservation on the posts of Readers and Lecturers. Other legal submissions on behalf of the State of U.P. as canvassed by Sri C.B. Yadav, learned Additional Advocate General have been adopted by the counsel for the Agra University.

21. Sri Ashok Khare, learned Senior Counsel for the selected candidates submits that there is no issue with regard to the selection and appointment of Professors in terms of the impugned advertisement and, therefore, appointment of Professors in terms thereof may not be interfered with in any manner in the present petitions. He further submits that the petitioners can question reservation applied qua the post of Readers and Lecturers of particular subjects qua which they possess the prescribed minimum qualification and not all the vacancies which have been advertised. They have no locus to challenge the advertisement in respect of posts for which they do not possess the essential minimum qualification. He would, therefore, submit that this Court while examining the grievance of the petitioners must confine the relief, if any, to be granted in respect of only those posts and subjects qua which the petitioners are qualified.

22. Sri S.K. Singh, learned counsel for the University informs the Court that one of the petitioners who claims to be applicant for the posts of Lecturers Lib. namely A.K. Sharma is not entitled to any relief as no post of Lecturers Lib. Science has been advertised.

23. We have heard learned counsel for the parties and examined records of the present writ petitions.

24. Issue with regard to the applicability of reservation in respect of the posts of teaching staff to be appointed in the University established under the State University Act 1973 has been subject-matter of consideration before the division Bench of this Court directly in the case of Dina Nath Shukla v. State of U.P. The High Court after noticing various provisions of the State Universities Act, the statute and ordinances applicable, specifically, held that posts of Professors, Readers and Lecturers in the University are created subject-wise and that appointments are also made subject-wise. A teacher of one department cannot be treated to be a teacher of other department. Posts of the teachers of University cannot be clubbed together category wise for applying reservation. It has been held that each department of teaching is a separate unit. Therefore, reservation has to be applied subject-wise. For the purpose, reference was made to the judgment of the Apex Court in the case of Dr. Suresh Chandra Verma (supra). It is worthwhile to reproduce Para 8 of the said judgment, which reads as follows:

Then the posts are created subject-wise and the appointment of the teachers are also made subject-wise and the teachers of one department cannot be treated as

teachers of the other department, all the posts of the teachers of the University cannot be clubbed together category-wise for applying the reservation. Each department of teaching is a separate unit. Therefore, reservation has to be applied subject-wise. This will ensure reservation in all categories to teachers in all subjects/departments. If the reservation is not applied subject-wise, it will result in violation of Article 16 of the Constitution. If all the Professors working in all the subjects in the University are treated as belonging to one unit, the result would be that in some subjects there will be no reservation while in others there might be hundred percent reservation. Uncertainty and serious consequences including the violation of Article 16 of the Constitution, as highlighted by the Supreme Court in *Dr. Suresh Chandra Verma v. Chancellor* (supra) are bound to occur. For the reasons given above the impugned order cannot be sustained.

25. The decision of division Bench of this Court was subject-matter of the consideration before the Apex Court in the case of *State of U.P. v. Dr. Dina Shukla* (supra). The Apex Court after taking note of the U.P. Act No. 4 of 1994 has specifically held that the word "post" used in the context has a relation to the faculty, discipline or the subject for which it is created. When, therefore, reservations are required to be made "in posts", the reservation has to be post-wise and subject-wise. In Para 13 of the judgment, it has been held as follows:

13. Thus, it could be seen that if the subject-wise recruitment is adopted in each service or post in each cadre in each faculty, discipline, speciality or super-speciality, it would not only be clear to the candidates who seek recruitment but also there would not be an overlapping in application of the rule of reservation to the service or post as specified and made applicable by Section 3 of the Act. On the other hand, if the total posts are advertised without subject-wise specifications, in every faculty, discipline, speciality or super speciality, it would be difficult for the candidates to know as to which of the posts be available either to the general or reserved candidates or whether or not they fulfill or qualify the requirements so as to apply for a particular post and seek selection. As indicated earlier, if there is any single post of Professor, Reader or Lecturer in each faculty, discipline, speciality or super-speciality which cannot be reserved for reserved candidates, it should be clubbed, roster applied and be made available for the reserved candidates in terms of Section 3(5) of the Act. Even if there exists any isolated post, rule of rotation by application of roster should be adopted for appointment. For achieving the said object, the Vice-Chancellor, who is the responsible authority u/s 4 to enforce the Act, would ensure that single posts in each category are clubbed since admittedly all the posts in each of the categories of Professors, Readers or Lecturers carry the same scale of pay. Therefore, their fusion is constitutional and permissible. The Vice-Chancellor should apply the rule of rotation and the roster as envisaged under sub-section (5) of Section 3. The advertisements are required to be issued so that the reserved and the general candidates would apply for consideration of their claims for recruitment in accordance therewith. This interpretation would subserve and elongate constitutional objective and public policy of socio-economic justice serving

adequacy of representation in a service or post, grade or cadre as mandated and envisaged in Articles 335 and 16(4) read with Articles 14 and 16(1), Preamble, Article 38 and Article 46 of the Constitution and all other cognate provisions.

26. This judgment has not been doubted in any subsequent judgment of the Apex Court so far as reservation on faculty posts of Lecturers, Readers and Professors in the University is concerned.

27. It may be clarified that the issue of reservation on single post and reservation being applied only when there are at least five posts in the unit, may not detain us any longer in view of the full Bench judgment of the High Court in the case of Heera Lal (supra).

28. So far as the judgment of the Apex Court in M. Nagraj (supra) is concerned, it does not deal with the issue of reservation to be applied in the matter of the appointment of teachers in the University where posts of Lecturers, Readers and Professors are created subject-wise and qua which reservation is required to be applied in terms of the judgment of the Apex Court subject-wise. Law laid down by the Apex Court in the case of M. Nagraj (supra) is distinguishable in the facts of the case and does not help the State or the University in any manner.

29. The Government Order dated 1.8.2003 has been brought on record as Annexure 2 to the counter affidavit filed on behalf of the University. It is worthwhile to reproduce Paras 2, 3 and 4 of the said Government Order:

30. From the simple reading of the aforesaid clauses, it is apparently clear that absolutely no reasons have been assigned in the said Government Order for talking a different view in the matter of posts of Lecturers, Readers vis-?-vis that of Professors.

31. The Apex Court has explained in the case of Dr. Dina Nath (supra) that posts of Professors, Readers and Lecturers are not interchangeable and they are created separately subject-wise, therefore, reservation cannot be applied treating the University to be the unit.

32. The division Bench of this Court in the case of Durga Prasad Yadav and others v. State of U.P., being writ petition No. 53197 of 2006 decided on 24.7.2008 while dealing with a similar situation had specifically held that the Government Order dated 1.8.2003 was in direct conflict with the High Court's judgment in the case of Dr. Dina Nath. A similar advertisement by Gorakhpur University applying reservation on the posts of Readers and Lecturers treating the University to be the unit was quashed with a direction to the University to re-advertise the vacancies in the light of law laid down by the Apex Court in the case of Dr. Mamta Verma and others v. State of U.P. and others. Relevant paragraph of the judgment reads as follows:

After hearing learned counsel for the petitioners and the learned counsel appearing for the State and the University, we find that Government Order dated 1st August, 2003 and consequent advertisement, in respect of post of Readers

and Lecturers is in direct conflict with the judgment in Dr. Dina Nath Shukla's case, which was departed only with regard to single post of Professor in M.C. Chattopadhyaya's case. The law with regard to applicability of reservation on the posts of Readers and Lecturers, except on single post of Professor, is still the same, as it was laid down in Dr. Dina Nath case, in that for applicability of the rules of reservation the advertisement inviting applications must specify the reversed vacancies, subject wise.

In the present case the advertisement though made subject wise, read alongwith stand taken in the counter-affidavit does not apply rules of reservation to the post, subject wise. The University has clubbed all the vacancies of Readers and Lecturers in a cadre in the University. The advertisement, therefore, cannot be sustained. Learned counsel for the petitioner then raised a difficulty regarding applicability of roster. The issue may not detain the Court as the judgment in Indra Sawhney Vs. Union of India (UOI) and Others, clearly gives method in which roster has to be applied. The judgment in Indira Sahni's case was further explained in R.K. Sabharwal and others Vs. State of Punjab and others, .

We have no hesitation in finding that the impugned advertisement dated 9th August, 2006 does not confirm the law laid down in Dr. Dina Nath Shukla and M.C. Chattopadhyaya's case. The writ petition Nos. 53197 of 2006 (Dr. Durga Prasad Yadav and Others v. State of U.P. and others) and 67912 of 2006 (Dhruv Kumar Tripathi v. State of U.P. and others) are allowed. The advertisement dated 9.8.2006 is quashed. With regard to Advertisement No. 1, which is part of the same advertisement dated 9.8.2006 it was contended that the advertised posts of Professors are single post. There is no specific reply give to this statement in the counter-affidavit of the University. We, therefore, do not express any opinion on this fact. In case the posts of Professor in Medieval History and Political Science have been shown to be reserved for Scheduled Castes, if these are single posts as alleged, according to M.C. Chattopadhyaya's case the rules of reservation were not applicable to it. Let the University advertise all the posts for appointments all over again in accordance with the law laid down by the Supreme Court. The Writ Petition No. 5625 of 2008 (Dr. Mamta Verma and others v. State of U.P. and others) is dismissed.

33. As on date the law declared by the Apex Court in the case of Dr. Dina Nath Shukla, M.C. Chattopadhyay (supra) and Mamta Verma holds the fields. So far as posts of Professors, Readers and Lecturers in the University are concerned, reservation has to be applied department-wise subject-wise. Therefore, the University cannot be treated to be the unit for the purpose of application of reservation.

34. We may also record that it has repeatedly been held by the Apex Court that a vacancy can be treated to be a backlog vacancy only if it had been advertised earlier and could not be filled for want of suitable candidate. The Apex Court in case of Sangam Nath Pandey (supra) has reiterated that only those vacancies can be declared as backlog vacancies within the reserved category which were

subject-matter of an earlier advertisement but remained unfilled because of non-availability of the suitable candidates within the reserved category after selection.

35. In Paras 38 to 44 of the petition, it is stated that vacancies which are said to be backlog under the advertisement impugned were subject of an earlier advertisement but the process of selection was dropped, therefore, these vacancies do not satisfy the requirement of law as declared by the Apex Court in the case of State of U.P. and others v. Sangam Nath Pandey and others (supra) for being treated as backlog vacancies.

36. Reply given to the said paragraphs in Para 15 of the counter-affidavit is vague and general. It is replied that vacancies were part of the advertisement dated 14.7.2012 and there is no need to issue any separate advertisement. The averments so made in the counter affidavit does not satisfy the tests as provided by the Apex Court in the case of State of U.P. and others v. Sangam Nath Pandey and others (supra) for being treated as backlog vacancies.

37. Having arrived at the said conclusion, we do agree with the contentions raised by Sri Ashok Khare, learned Senior counsel that selections and appointment on the posts qua which the petitioners are qualified and may have a right to be considered may be interfered with but other selections vis-?-vis there is no challenge before this Court by any qualified candidate may be left untouched as these writ petitions are not in the nature of public interest litigation.

38. Rights of the petitioners to be considered for the post has to be adjudged with reference to the qualification which they possess and those prescribed for the post subject-matter of the advertisement.

39. We, therefore, allow these writ petition with following directions:

(a) The advertisement published by the University dated 14.1.2012 for the posts of Readers and Lecturers in respect of the subjects qua which the petitioners before this Court in these writ petitions are found to be possessed of minimum essential qualification alone is quashed. Any appointment in pursuance of the said advertisement shall also fall automatically. The University shall advertise these vacancies afresh in the light of the law laid down by the Apex Court in the case of Dr. Dina Nath Shuka, M.C. Chattopadhyay and Mamta Verma.

(b) So far as the issue of the backlog vacancies is concerned, the University shall re-examine the matter and shall record as to whether the posts were subject-matter of earlier advertisement and the process had been completed but no candidate could be appointed against the advertised posts, keeping in mind the judgment of the Apex Court in the case of State of U.P. and others v. Sangam Nath Pandey (supra). The University shall pass a reasoned order within four weeks of the receipt of the certified copy of this order. All consequential action shall be taken accordingly.

Writ petitions are allowed. No order as to cost.