

(2011) 12 AHC CK 0372

In the Allahabad High Court

Case No : Service Bench No's. 1347 and 1614 of 2010

Dr. Rakesh Kumar Mishra and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Citation : (2012) 1 ADJ 545

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard learned counsel for parties and perused the pleadings of writ petitions.
2. This order shall also dispose of connected Writ Petition No. 1614 (S/B) of 2010 as both the writ petitions impugn the same cause of action, namely, the exercise of selection process completed pursuant to the advertisement dated 23.6.2010 (Annexure-2 to the writ petition).
3. Learned counsel for petitioners submitted that as per condition No. 1 of the advertisement, the candidates of the district concerned are to get priority/ precedence over other candidates in the selection, whereas in the instant case the local candidates have not been given any priority and instead the outsiders have been selected for appointment on the posts in question, namely, Ayush Medical Officer and Pharmacist.
4. Learned counsel also submitted that condition No. 1 should not be interpreted to read as preference, but it is to be read only as "priority" and, thus, a separate merit list should have been drawn for the local candidates at district level.
5. On the other hand, learned counsel for respondents submitted that in the selection process, merit is to be given preference and once the advertisement has been issued for the entire State, applicants from outside the district,

particularly from neighbouring districts cannot be prevented in any manner from applying and participating in the selection process.

Beside, learned State Counsel, Shri Sanjay Bhasin also submitted that the last selected candidate in the general category has obtained 53 marks, the O.B.C. Candidate has secured 50 marks, and the candidate selected for Pharmacist 44 marks, whereas all the petitioners have remained within 30 marks.

6. On due consideration of rival submissions, we do not find any force in the contentions of learned counsel for petitioners. Priority/precedence does not mean that merit should be given a complete go by, particularly in the selection process for appointment on the specialized and technical posts, like Medical Officers and Pharmacists. Thus the submission in regard to drawing of a separate select list for local candidates does not find favour with the Court.

7. The Hon"ble Apex Court in Civil Appeal Nos. 5757-5759 of 2002 (State of U.P. and Another v. Om Prakash and Others) has held that the word "preference" would mean that when the claims of all candidates who are eligible and who possess the requisite educational qualification prescribed in the advertisement are taken for consideration, and when one or more of them are found equally positioned, then only the additional qualification may be taken as a tilting factor, in favour of candidates visa-ids others in the merit list prepared by the Commission. But preference does not mean en bloc preference irrespective of inter se merit and suitability. This judgment has been considered by a Full Bench of this Court in" Daya Ram Singh Vs. State of U.P. and Others, , wherein it has been held as under:

The word Variyata" has been defined in the Oxford Hindi into English Dictionary, as priority or precedence. Besides from the two Government Circulars, which are referred to above and which were issued subsequently, i.e., one dated 21.11.2005 and the latter dated 24.4.2006, the intention has been further clarified. As we have noted, the Government Circular dated 21.11.2005, gives the clarification specifically stating that an Instructor/ Supervisor, who has worked in the non-formal education Scheme, if available and if having the other conditions of eligibility, and if falls in the prescribed category of reservation, will be appointed, even if he is having less number of marks. The Government Circular of 24.4.2006, clearly states that amongst the Instructors/ Supervisors, one who has put in longer years of service, will be preferred. In the earlier Government Circular dated 10.10.2005, those who had passed B.Ed./- L.T., were to be given the preference while stating that the work used was Adhimanyata (preference). That clause has been removed and the terms used in Clause No. 4, are Prathama Variyata, which will mean first priority" or "precedence". The provisions contained in this Clause, when read with the clarification dated 21.11.2005, clearly lead to the inference that the Instructors/ Supervisors, who have worked in the non-formal education Scheme ought to be preferred en bloc with priority over the others, if such persons are available.

8. Thus, priority or precedence would not mean a reservation for local candidates nor would it mean drawing of a separate merit list for them. It is only on the comparative assessment on merit of local candidates vis-a-vis outsiders that the local candidates if otherwise found eligible but left behind with narrow margin may get priority and sympathetic consideration in comparison with the outsiders. But in the instant case, the selected candidates secured 50 marks and above whereas the petitioners have obtained the marks only within the range of 30. Thus, in that case, they would not be entitled to get any priority over the outsiders.

9. Thus, we may hold that "priority", in the present context would mean precedence of the local candidates who are not left behind with a wide margin in the merit, but are positioned at a reasonable distance, in comparative assessment vis-a-vis the outsiders.

10. Thus, the writ petitions are dismissed.