

(2010) 08 AHC CK 0078
In the Allahabad High Court
Case No : C.M.W.P. No. 10974 of 2009

Dr. Sadhana Shukla and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Citation : (2010) 08 AHC CK 0078

Hon'ble Judges : Sunil Ambwani, J; Dilip Gupta, J

Bench : Division Bench

Advocate : R.K. Ojha and V.K. Pandey, for the Appellant; M.A. Qadeer and Pushpendra Singh, C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani and Dilip Gupta, JJ.—Heard Sri R .K. Ojha, learned Counsel for the Petitioners assisted by Sri Vinod Kumar Pandey. Learned standing counsel appears for the State-Respondents. Sri M. A. Qadeer appears for U.P. Public Service Commission at Allahabad.

2. The Petitioners appeared in the selections for appointment to the posts of Principal in Government Intermediate Colleges in Uttar Pradesh pursuant to the advertisement issued by the U.P. Public Service Commission (hereinafter referred to as the "Commission"), for the years 1996, 1997 and 1999.

3. The selection was challenged in the Court in a writ petition both on the ground that some of the persons were deprived from participating in the examination and that there were vacancies which have not been filled-up. The matter travelled upto the Supreme Court. A series of orders were passed in which the Supreme Court gave directions to examine the claims once again after giving opportunity to the candidates to establish that they were eligible for appointment on the basis of the documents which they had filed at the time of interviews, and which were verified by educational authorities.

4. In this writ petition, it is alleged that the Petitioners were selected and

empanelled in the merit list of general candidates for the vacancies of the year 1997. They have relied upon a judgment and order dated 24th July, 2008 passed by the Supreme Court in Contempt Petition (C) No. 91 of 2006 with Contempt Petition (C) No. 162 of 2007 in Civil Appeal No. 1124 of 2000 in which the Supreme Court had examined the complaint that the Commission had not recommended the candidature of the Petitioners, even after their selection and availability of vacancies. The State Government and the Commission filed affidavits giving details of number of vacancies which have been quoted in the chart in a tabular form in the judgment. The Supreme Court accepted the stand of the Respondents as given in the letter dated 19th September, 2003 of the State Government that there are 97 vacancies available till 30.6.2003, the details of which are given in the judgment. It was, thereafter, observed that regarding the appointments which were made by the State Government in pursuance to the recommendations of the Commission, the remaining 97 vacancies including 50 posts of Principal of Government Intermediate Colleges (Boys and Girls), and 47 posts of Senior Lecturers in Education and Training Institutes, have remained vacant. It was observed that the State Government and the Commission had not disobeyed the order dated 28.8.2003 of the Supreme Court by which it was directed that the State Government will appoint 52 persons strictly on the basis of the merit list which was tendered before the Court and regarding the remaining 45 posts, it would be open to the State Government to appoint 45 persons on purely ad hoc basis on the basis of merit list tendered by the Commission. The appointments made, would be subject to the result of the petitions before the High Court which may be filed by 45 aggrieved persons whose applications were rejected by the Commission.

5. The Supreme Court had further observed in its order dated 28.8.2003 as follows:

It is further made clear that appointment to these 97 posts would be after earmarking the reserved categories and thereafter on the basis of merit list prepared by the U.P. Public Service Commission for the year 1996 examination. If other vacancies still remain, appointments would be after taking into consideration merit list of 1997 examination and thereafter 1999 examination result.

Contempt petitions and I.As. are disposed of accordingly. It is made clear that no further contempt petitions or I.As. should be entertained by the Registry on this subject.

6. Learned Counsel for the Petitioners submits that the Petitioners have been selected and empanelled in the selections for the year 1997 and that in spite of the fact that there are still a number of vacancies existing for the recruitment years after 1999, their legitimate claims are not being accepted. They have relied upon the operative portion of the order of the Supreme Court dated 24th July, 2008 in which the Supreme Court made it clear that the contesting Respondents are not precluded from considering the legitimate claims of the Petitioners as

well as the applicants who have filed interlocutory applications before this Court, if they are otherwise eligible in accordance with law. In the end the Supreme Court observed that as no substantive relief, as prayed for by the applicants in their applications, can be granted to them in the contempt proceedings, the applications shall stand disposed of.

7. Sri R.K. Ojha submits that the observations of the Supreme Court have given a ray of hope to the Petitioners who were higher in merit and empanelled for the vacancies of the year 1997. They would be placed below their juniors if they are not selected and appointed and that in the peculiar facts and circumstances of the case in which the litigation was drawn upto the year 2003, this Court may consider their appointments against the vacancies for the years after 1999.

8. The orders passed by the Supreme Court by which the proceedings were finally concluded on 24th July, 2008, would go to show that the Supreme Court had directed that only 97 vacancies would be filled-up after earmarking the reserved vacancies on the basis of the merit list prepared by the Commission for the year 1996 examination. If other vacancies still remain, appointments would be made after taking into consideration the merit list of the 1997 examination and thereafter 1999 examination result.

9. In the counter affidavit, the State Government has made it clear that after recommendation of 52 candidates on 1.10.2003 and recommendations of the remaining 45 candidates in terms of the directions of the Supreme Court sent to the Government vide letter dated 6.6.2009, no further vacancies are left to be filled-up.

10. The Supreme Court had rejected the claim of the Petitioners for filling-up additional 338 vacancies for general category as the directions were confined only for filling-up the advertised vacancies subject to selection. After the matter has been closed by the Supreme Court and the directions have been carried out, nothing further remains to be decided by this Court, with regard to the filling-up of the vacancies by the same merit list.

11. Sri Ojha submits that a number of petitions are being filed in this Court with regard to the eligibility of the candidates whereas there are no vacancies to be filled-up.

12. We are not impressed with the submission. We have been asked by the Supreme Court to hear and decide the writ petitions filed by those candidates who were found ineligible by the Commission, in accordance with the directions of the Supreme Court. If they are found eligible, the question of availability of vacancies and appointment has to be decided by the Commission and the State Government in accordance with the directions of the Supreme Court.

The writ petition is, accordingly, dismissed.