
(2001) 03 AHC CK 0103

In the Allahabad High Court

Case No : C.M.W.P. No"s. 26986, 37508, 30937 of 1998 and 37837 of 1999

Ghanshyam Upadhyay

APPELLANT

Vs

U.P. Public Service Commission, Allahabad and another

RESPONDENT

Date of Decision : 16-03-2001

Acts Referred:

Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 — Section 3(1), 3(2), 3(4), 3(6)

Citation : (2001) 2 AWC 1217 : (2001) AWC 1217 : (2001) 2 UPLBEC 1061

Hon'ble Judges : S.R. Singh, J;D.R. Chaudhary, J

Bench : Division Bench

Advocate : Ashok Bhushan and Yar Mohammad, for the Appellant; S.K. Singh and P. Singh, s, for the Respondent

Final Decision : Dismissed

Judgement

S. R. Singh and D. R. Chaudhary, JJ.—Common questions of law and facts inter-knit these petitions and the respective counsel having expressed themselves in concurrence to common disposal, it would be apt to dispose them of by a composite judgment.

2. The facts draped in brevity are that the U. P. Public Service Commission issued an advertisement-bearing No. A-1/E-1/1997-98 inviting applications upto 12.2.1997 in respect of 548 posts of Principals and Senior Lecturers for Government Intermediate Colleges and normal/training colleges besides 200 posts of Dy. Collector/Dy. S.P./other allied services for which Combined State/Upper Subordinate Services (Preliminary) Examinations, 1997, was held on 18.5.1997. It was, however, expressly provided in the advertisement that the number of the vacancies might increase or decrease. The petitioners applied for the posts of Principal (Hill Cadre) and appeared in the preliminary examination the result of which was pronounced on 3.7.1997. In all, 722 candidates including the petitioners herein romped home in the preliminary examination held for the posts of Principals and lecturers and accordingly, they went ahead with appearing

in the main examination. The result of the main examination was announced on 8.1.1998. The number of vacancies, as declared in the result, was, however, pruned to 443 as against 548 posts initially advertised. Though the petitioners were not amongst the candidates declared successful in main examination, they were provisionally allowed by the Court to be interviewed and on the basis of interim order passed by the Court, the final result of the selection was declared on 25.1.1998. The break-up of 443 posts was as under :

(a) Principal (Plain Cadre) -19 (b) Principal (Hill Cadre) -238 (c) Senior Lecturer (Plain Cadre) -162 (d) Senior Lecturer (Hill Cadre) -24 Total = 443

The figure of 238 posts of Principal belonging to Hill Cadre was admittedly inclusive of 111 posts belonging to reserved classes that were carried forward from the previous recruitment year, 1996 and accordingly, these vacancies were allocated to the respective reserved categories as per Section 3 (2) of the U. F. Act 4 of 1994. Allocation of posts to general candidates was made out of remaining 127 posts. The 238 posts of Principal belonging to Hill Cadre were allocated to various classes/categories as under ;

(a) General -69 (b) Scheduled Castes -70 (c) Scheduled Tribes -06 (d) O.B.C. -93 Total = 238

The figure of 238 was inclusive of 15 posts of physically handicapped, Dependents of Freedom Fighters and Defence Personnel adjusted horizontally in the respective class to which they belonged.

3. The petitioners in this fascicle of writ petitions have circumscribed their claims as against the posts of Principal ear-marked for Hill Cadre. The only grouch of the petitioner spelt out in these cases and as submitted by their learned counsel, is that the over-all reservation out-ran the limit of 50%. It has been submitted with vehemence by Sarvsri Ashok Dhusan, Ashok Khare and D. S. Singh that where due to unavailability of suitable candidates in any of the vacancies reserved under sub-section (1) of Section 3 of the U. P. Public Services (Reservation for S.C./S.T. and O.B.C.) Act, 1994, the posts remain unfilled, the same may be carried forward over to the next year commencing from 1st of July in which the recruitment is to be made "subject to the condition that in that year, total reservation of vacancies for all categories of persons mentioned in sub-section (1) would not exceed 50% of the total vacancies." (Credence has been placed upon sub-section (4) of Section 3 as also the law laid down by the Apex Court in Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., . It has been canvassed by the learned counsel that 111 unfilled vacancies of 1996 falling in the reserved categories could no doubt be clubbed with the vacancies of the recruitment year in question but while computing the quota of reservation for reserved categories of candidates, care should have been taken that the total reservation of vacancies for all categories of persons mentioned in sub-section (1) did not exceed 50% of the total vacancies. This principle, submit the counsel, has been infringed upon and it is owing to this reason that the petitioner could

not be selected.

4. Sri S. K. Singh learned counsel representing the Uttar Pradesh Public Services Commission has canvassed that the unfilled vacancies of 1996 belonging to reserved categories that were carried forward to the recruitment year in question, were apportioned to the respective reserved categories inasmuch as such vacancies were not liable to be thrown in the common pool of vacancies of recruitment year in question. It is further canvassed by Sri S. K. Singh that the rule that the reserved quota should be so computed as not to transcend the bounds of 50% of the total number of vacancies as propounded by the Apex Court in Indra Sawhney's case and as laid down by sub-section (4) of Section 3 of the U. P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, comes into play only if the vacancies remain unfilled due to non-availability of candidates "even after special recruitment referred to in sub-section (2)" which visualises that the unfilled vacancies of reserved categories are to be filled by special recruitment for "such number of times, not exceeding three, as may be considered necessary to fill such vacancies from amongst the person belonging to that category", II has been submitted by Sri S. K. Singh that the provisions contained in subsections (2) and (4) of Section 3 of the Act, will have to be construed harmoniously as otherwise the very purpose of the carry-forward rule embodied in sub-section (2) of Section 4 will be frustrated.

5. Having bestowed our most amicable considerations to the submissions made across the bar, we are of the firm view that 111 unfilled vacancies of 1996 belonging to the various reserved categories were rightly allocated to the respective reserved categories and the rule that reservation should not exceed 50% of the total number of vacancies has not been infringed upon. It is no body's case that the unfilled vacancies of 1996 belonging to the reserved categories were already carried forward for more than three times. The expression "even after special recruitment referred to in sub-section (2)" occurring in sub-section (4) of Section 3 of the Act is of pivotal significance. The said expression clearly connotes that it would apply to a situation where due to non-availability of suitable candidates, any of the vacancies reserved under sub-section (1) remains unfilled, "even after special recruitment referred to in sub-section (2)". The special recruitments, as visualised by subsection (2), may be held for "such number of times, not exceeding three, as may be considered necessary to fill such vacancy from amongst the persons belonging to that category." In the fact-situation of the case in hand, the provisions contained in sub-section (4) of Section 3 are not attracted. It comes into play only after exhaustion of the maximum permissible limit of special recruitments to which the unfilled vacancies of the reserved category can be carried over u/s 3 (2) of the Act. It is not disputed that out of 127 vacancies in the posts of Principal (Hill Cadre). 69 were allocated to general candidates whereas 50% of 127 posts comes to 63. The petitioners were although sub-joined in the list of general candidates selected for interview on the basis of marks obtained in the written

examination, but finally, after the interview, they could not secure enough marks to enable them to find a place in the merit-list amongst the general candidates. The selection and appointment of reserved category candidates against unreserved posts on the basis of merits have rightly not been challenged in view of the provisions contained in Section 3 (6) of the Act 4 of 1994 which provides that candidates selected on merits shall not be taken into reckoning against vacancies meant for respective reserved category. In such view of the matter, the petitions lack merit and are liable to be dismissed.

6. Before parting with the case, it may be observed that 164 vacancies falling in various reserved categories remained unfilled due to non-availability of suitable candidates. These vacancies were carried forward to the next recruitment year 1998 for which the selection process has already been completed with the declaration of result except in respect of 51 posts the result of which could not be declared due to interim order passed by this Court. The interim order is liable to be discharged for the reason aforestated.

7. In the result, the petitions fail and are dismissed without any order as to costs. Interim order is discharged.