
(2009) 08 AHC CK 0322
In the Allahabad High Court
Case No : Writ Petition No. 4770 (S/S) of 2007

Hanuman Prasad Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Citation : (2010) 4 AWC 3486

Hon'ble Judges : Shabihul Hasnain, J

Bench : Single Bench

Judgement

Shabihul Hasnain, J.—Heard Sri Ramesh Pandey, learned Counsel for the petitioner. Counter and rejoinder-affidavits have already been exchanged in this petition.

2. The case of the petitioner is that he is working on the post of Assistant Teacher L.T. grade w.e.f. 28.11.1993. Before that he was a C.T. grade Assistant Teacher who joined the college on 28.11.1988. Due to the death of a teacher namely Kishan Dutt on 5.1.2003 post of Lecturer in Education felt vacant. Since the petitioner was qualified he was given the job of teaching the intermediate classes of education in the college and since then he is continuing as such. On 18.7.2004, the committee of management of the college passed a resolution to promote the petitioner on the post of Lecturer (Education) as the said post was to be filled up by promotion from amongst L.T. grade teachers and made a proposal for the same. On 24.7.2004, the Principal forwarded it to the District Inspector of Schools who in turn after inspecting the records recommended for approval of the Joint Director, Education. On 3.11.2004, Joint Director of Education instead of approving the resolution directed to fill up the post by a scheduled caste teacher although no scheduled caste teacher was available in L.T. grade in the college. He refused to grant approval for the promotion to the petitioner. The order was communicated to the District Inspector of Schools on 1.12.2004.

3. The petitioner filed Writ Petition No. 7808 (S/S) of 2004 challenging the order

dated 3.11.2004 and 1.12.2004, passed by opposite party Nos. 3 and 4. An interim order was passed by this Hon''ble Court directing the opposite parties to decide the representation of the petitioner for payment of salary for the post of Lecturer (Education). In pursuance of the interim order dated 5.4.2005 the application of the petitioner has been rejected by the opposite party No. 3 on 27.10.2006. The petitioner has challenged this rejection order through this writ petition which has been impugned as Annexure-1 to this writ petition. Counter and rejoinder-affidavits have been exchanged. In the counter-affidavit the opposite parties have taken the stand that the post falling vacant is that of a reserved category, hence it cannot be filled up by any other candidate except a scheduled caste. The argument is that even if the post falls under the promotional quota it shall be filled up by direct recruitment of a scheduled caste candidate if no scheduled caste candidate is available in the college for promotion. The question to be decided in this case is that the petitioner who has all the requisite qualifications for being appointed as Lecturer in Education should or should not be promoted on the vacancy which was created by the death of a scheduled caste teacher while the post is under promotional quota.

4. The learned standing counsel has placed reliance on the cases decided by the Division Bench of this Court in Special Appeal No. 1094 of 2005, Suneeta Bhagat v. State of U.P. and Ors. 2005 (2) UPLBEC 1713 : 2005 (6) AWC 5860 . In this case their Lordships of the Division Bench have decided that the post of promotional quota cannot be allowed to be filled up by a direct recruit, reference was also made to the case of V.B. Badami and Others Vs. State of Mysore and Others, . It was held by Hon''ble Supreme Court that as long as promotional quota exists neither promotees can be allotted to any of the substantive vacancies of the quota of direct recruits nor direct recruits can be allowed to promotional vacancies. A case of this Court decided on 7.9.2006, Arjun Pandey v. State of U.P. and Ors. 2006 (4) ESC 2920 (All) : 2006 (7) AWC 6661, has decided that if on the date of vacancy there is no other candidate eligible in the reserved category then the post can be filled up by a general category candidate on a promotional post.

5. Since there are no other factual disputes regarding eligibility etc. and the sole ground for rejecting the case of the petitioner is that the post which fell vacant was that of a reserved category candidate and since the petitioner is a general category candidate, hence the seat of promotional quota will be transferred and filled up by the direct recruit of a reserved category candidate. This question has been amply settled by the aforesaid Judgments. The learned standing counsel on the last several occasions sought time from the Court to bring a case law of the Hon''ble Supreme Court in which the Judgment of Suneeta Bhagat has been reversed but after several opportunities he has not been able to produce the Judgment before this Court.

6. Under the circumstances the law laid down by the Division Bench of this Court in Suneeta Bhagat holds good. Accordingly the petition is allowed. The impugned

order dated 27.10.2006, as contained in Annexure-1 to the writ petition, passed by Joint Director of Education, Faizabad Mandal. Faizabad is hereby quashed. The opposite parties are directed to consider the case of the petitioner for being promoted on the post of Lecturer (Education) and pay him the salary regularly forthwith. No orders as to costs.