

(2007) 01 AHC CK 0093
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 30460 and 41163 of 2005

Indu Prakash Varma and Anr.

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 04-01-2007

Acts Referred:

Citation : (2007) 01 AHC CK 0093

Hon'ble Judges : Sushil Harkauli, J and Pankaj Mithal, J

Final Decision : Allowed

Judgement

1. These two writ petitions are connected. They involve common question and are therefore being decided by this common order. Counteraffidavit has been filed by the State in Writ Petition No. 30460 of 2005. Rejoinder affidavit has also been filed in that writ petition.

2. In both the writ petitions, there are two private respondents. According to the office report given in both the writ petitions, the notices were issued by registered post to the private respondents and in case of 6th respondent neither acknowledgment has been received back whereas in case of 7th respondent neither acknowledgment nor undelivered cover has been received back. More than thirty days has elapsed since sending of the notice and therefore service on these two private respondents is presumed for both the writ petitions. No appearance has been put in by the said private respondents. The letter dated 322005 issued by the Principal Secretary, Government of U.P. to the Director Ayurvedic and Unani Services and to the Director Homeopathic Department indicates that it was proposed to fill up certain posts of Medical Officers on contract basis; and for filling up these posts one of the criteria was that the vacancies of the districts would be filled up by giving preference to the candidates belonging to that district, and if candidates of that district were not available only then the vacancy would be filled up by the candidates belonging to the adjoining districts.

3. The vacancies in question are of the District Banda. The private respondents

belong to the Districts Allahabad and Lucknow. The petitioner claims that he belongs to Banda district and therefore the petitioner's contention is that so long he was available, the vacancy should not have been filled up by private respondents belonging to other districts.

4. The counteraffidavit of the State does not say that the petitioner was not eligible or not qualified or not found fit for the post. The counteraffidavit in paragraph 15 states that the selection has to be done on merit and preference to candidates of the same district is to be given, as per directives of the State Government, only where merit of two candidates is equal. These instructions of the State Government which are referred to in the counteraffidavit but not enclosed and not even detailed by saying who and whom issued the instructions, run contrary to the basic Government Order dated 322005 which makes it clear that the vacancy can go to a person of adjoining district only if the candidates from the same district where vacancy is to be filled up are not available. This would indicate that the merit is to be examined inter se between the candidates belonging to the same district and only when such candidates of the same district are not available, candidates from other districts can be considered for appointment.

5. It has been mentioned in paragraph 14 of the writ petitions that the private respondents have been selected under the Scheduled Caste quota. According to the writ petitions, the petitioners in both cases also belong to the Scheduled Caste. Thus, the defence in paragraph 14 of the counteraffidavit become irrelevant.

6. Having regard to the above, the writ petition deserves to be allowed. The selection and the appointment of the candidates not belonging to Banda District becomes liable to be set aside.

7. In the circumstances, we allow both the writ petitions, quash the selection and appointment of respondents No. 6 and 7 and direct the respondents No. 1 and 2 to reexamine the matter, if the period of contractual appointment still available, at the earliest in accordance with the above observations.