

(2010) 08 AHC CK 0294

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 31116 of 1999 with 2792 of 1996, 35987, 36208 of 1999, 1050 of 2001

Jagdamba Singh and Others

APPELLANT

Vs

Vice Chancellor Univeristy Allahabad and Another

RESPONDENT

Date of Decision : 20-08-2010

Acts Referred:

Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 — Section 2(c)(iv)
Uttar Pradesh State Universities Act, 1973 — Section 2(19)

Citation : (2010) 08 AHC CK 0294

Hon'ble Judges : Ashok Bhushan, J; Arun Tandon, J and V.K. Dixit, J

Final Decision : Disposed Of

Judgement

Virendra Kumar Dixit, J.

Heard Sri R.N. Singh, Senior Advocate, appearing for the petitioners, Sri P.S. Baghel, Senior Advocate, for the University of Allahabad and Sri M.C. Chaturvedi, Chief Standing Counsel assisted by Sri Y.S. Bohra, Additional Chief Standing Counsel and Dr. Y.K. Srivastava, Standing Counsel for the Staterespondents.

This Full Bench has been constituted on a reference made by the Division Bench of this Court by its order dated 17th April, 2000 referring following two questions:

i) Whether the post of professor in the State Universities comes within the purview of "Services and Posts" as defined in section 2(c)(iv) of the U.P. Act No.4 of 1994?

ii) whether the Division Bench decision of the Court in Dr. Vipin Agrawal's case in so far as it excludes the post of professor in the State Universities from the purview of U.P. Act No.4 of 1994 lays down the correct law?

The learned counsel for the parties have submitted before this Bench that the questions, which have been referred to by the Division Bench, are fully covered by the Apex Court's judgment in the case of State of U.P. and others vs. M.C.

Chattopadhyaya and others reported in (2004)12 S.C.C. 333, decided on 27th February, 2002.

The two questions, which were referred to this Full Bench, as quoted above, were firstly as to whether the post of Professor in the State Universities comes within the purview of words "Services and Posts" as defined in Section 2(c)(iv) of the U.P. Act No.4 of 1994 and secondly as to whether the judgment in the case of Dr. Vipin Agrawal vs. University of Allahabad and others reported in 1997(3) E.S.C. 1710 (Alld) lays down the correct law.

The U.P. State Universities Act, 1973 defines the word "teacher" in Section 2(19) and Act No.4 of 1994 defines the words "public services and posts" in Section 2(c) (iv), which are to the following effect:

"2(19). "teacher" in relation to the provisions of this Act except Chapter XIA, means a person employed in a University or in an institute or in a constituent or affiliated or associated college of a University for imparting instructions or guiding or conducting research in any subject or course approved by that University and includes a Principal or Director;]"

2(c). "public services and posts" means the services and posts in connection with the affairs of the State and includes services and posts in

(i)

(ii)

(iii)

(iv). an educational institution owned and controlled by the State Government or which receives grants in aid from the State Government, including a university established by or under a Uttar Pradesh Act, except an institution established and administered by minorities referred to in Clause (1) of Article 30 of the Constitution."

Section 2(c)(iv) of the U.P. Act No.4 of 1994 covers an educational institution owned and controlled by the State Government or which receives grants in aid from the State Government including a university established by or under a Uttar Pradesh Act.

The writ petition giving rise to this reference pertains to the University of Allahabad which, at the relevant time, was being covered by U.P. State Universities Act, 1973. The definition of words "public services and posts" as contained in the U.P. Act No.4 of 1994 clearly embraces in itself ""a teacher". A professor appointed in the University is included in the definition of teacher as is clear from Section 2(19) of the U.P. State Universities Act, 1973, as quoted above. Thus the post of Professor is covered by definition of Section 2(c)(iv) of U.P. Act No.4 of 1994.

The Apex Court in the case of State of U.P. and others vs. M.C. Chattopadhyaya

(supra) had occasion to consider the said issue and following was laid down in paragraph 4 of the said judgment:

"4. A look at the provisions of Section 31(10), 31(3), 31(9) and 31AA would indicate that the Act provides for recruitment to the post of Professor directly and there is a provision for promotion only in personal cases depending upon the preconditions prescribed under Section 31AA. The statute of the University prescribes the procedure for direct recruitment as well as for personal promotion to the posts of Reader and Professor (see 10.02, 11.04, 11.12B). It thus appears that the statute conceives of posts of Professor belonging to a single cadre. Under the provisions of the Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward (Classes) Act, 1994, "public services and posts" have been defined in Section 2(c) and subclause (iv) thereof would bring within its sweep a university established by or under an Uttar Pradesh Act. Section 3 of the Reservation Act provides for reservation in all public services and posts. It also says that the percentage of vacancies to which recruitments are to be made in accordance with roster referred to in subsection (5) of Section 3 shall be reserved in favour of the persons belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes of citizens. Subsection (5) of Section 3 stipulates that the State Government shall, for applying the reservation under subsection (1), by a notified order, issue a roster which shall be continuously applied till it is exhausted. It would thus be apparent that the principle of reservation could be applied to a post of Professor in accordance with a roster that has been issued by the State Government."

In view of the law laid down by the Apex Court in the case of State of U.P. vs. M.C. Chattopadhyaya (supra), our answer to Question No.1 is that the post of Professor in the State Universities is included in the definition of "Services and Posts" under Section 2(c)(iv) of the U.P. Act No.4 of 1994.

Now comes the Question No.2 as to whether the judgment of the Division Bench of this Court in the case of Dr. Vipin Agrawal vs. University of Allahabad and others (supra) lays down correct law. The Division Bench of this Court in the case of Dr. Vipin Agrawal vs. University of Allahabad and others had, after considering the U.P. Act No.4 of 1994 relying on earlier judgment of the Division Bench of this Court in the case of Dr. Rama Niwas Pandey vs. State of U.P. and others reported in 1996(3) UPLBEC 1869 and referring to the Apex Court judgment in the case of State of U.P. and others vs. Dr. Dina Nath Shukla and another, reported in JT 1997(2) S.C., came to the conclusion that there is no scope of application of provisions of U.P. Act No.4 of 1994 on the post of Professor. Following was laid down in paragraph 30 of the judgment in the case of Dr. Vipin Agrawal vs. University of Allahabad and others (supra):

"30. It may again be mentioned that in the judgment of the Lucknow Bench in Dr. Rama Niwas Pandey's case, there is no mention of the decision of the Hon'ble Supreme Court in Dr. Anand Prakash Mishra and Dr. D.N. Shukla (both supra). The attention of the Court was drawn by the learned counsel for the

petitioners to yet another decision of the Lucknow Bench in Writ Petition No.1016 of 1994 dated 20.3.1997. In this decision the Division Bench has reiterated the earlier view in Dr. Rama Niwas Pandey's case , "it is hereby declared that the U.P. Public Services (Reservation of S.C., S.T. and O.B.C.) Act 1994 and the roster notified under Section 3(5) of the said Act would not apply to the universities governed by the U.P. State University's Act." It may be mentioned that even this decision dated 20.3.1997 does not refer to any of the three decisions of the Supreme Court noticed in the preceding paragraph. Learned counsel for the petitioner wanted that this Court should either follow the reasoning in the judgment dated 20.3.1997 and in Dr. Rama Niwas Pandey's case (supra), or refer the matter to Full Bench. As already adverted to above, the law laid down by the Supreme Court in the case of Dr. D.N. Shukla and Dr. Anand Prakash Misra leaves no scope for this Court to hold that the provisions of U.P. Act No.4 of 1994 will not be applicable for selection to the post of Readers and Lecturers in the State Universities. Likewise, for the aforesaid reasons, the provisions of U.P. Act No.4 of 1994 are not attracted to the posts of ""Professors" in the Universities administered through the State University's Act. To repeat, the law laid down by the Supreme Court of India is binding on all Courts, hence the field being occupied by the Supreme Court verdict, the submission that the matter may go to Full Bench is totally misplaced. In Dr. D.N. Shukla's case which was a matter relating to Readers and Lecturers, it has been held by the Supreme Court that the posts have to be re advertised by the University as Roster and Rotation were necessary. The provisions contained in U.P. Act No.4 of 1994 and the relevant Government order will thus apply for the posts of Readers and Lecturers subject to the roster and rotation as directed the Supreme Court."

The Apex Court in the case of State of Uttar Pradesh vs. Dr. Dina Nath Shukla and another (supra) had occasion to consider the provisions of U.P. Act No.4 of 1994 as well as the applicability of the U.P. Act No.4 of 1994 with regard to selection of teachers, lecturers, readers and professors in the University of Allahabad in context of advertisement issued by the University of Allahabad dated 30th January, 1995 by which applications were invited for the post of Professor, Reader and Lecturers. The said S.L.P. was filed before the Apex Court against the Division Bench judgment of this Court in which the Division Bench took the view that applicability of reservation has to be subjectwise. The Apex Court considered the issue and had laid down that the applicability of U.P. Act No.4 of 1994 in context of the University has to be subjectwise. Following was laid down in paragraph 14 of the said judgment:

"14. Thus, it could be seen that if the subjectwise recruitment is adopted in each service or post in each cadre in each faculty, discipline, speciality or superspeciality, it would not only be clear to the candidates who seek recruitment but also there would not be an overlapping in application of the rule of reservation to the service or posts as specified and made applicable by Section 3 of the Act. On the other hand, if the total posts are advertised without subjectwise specifications, in every faculty, discipline, speciality or

superspeciality, it would be difficult for the candidates to know as to which of the posts be available either to the general or reserved candidates or whether or not they fulfil or qualify the requirements so as to apply for a particular post and seek selection. As indicated earlier, if there is any single post of Professor, Reader or Lecturer in each faculty, discipline, speciality or superspeciality which cannot be reserved for reserved candidates, it should be clubbed roster applied and be made available for the reserved candidates in terms of Section 3(5) of the Act. Even if there exists any isolated post, rule of rotation by application of roster should be adopted for appointment. For achieving the said object, the ViceChancellor, who is responsible authority under Section 4 to enforce the Act, would ensure that single posts in each category are clubbed since admittedly all the posts in each of the categories of Professors, Readers or Lecturers carry the same scale of pay. Therefore, their fusion is constitutional and permissible. The ViceChancellor should apply the rule of rotation and the roster as envisaged under subsection (5) of Section 3. The advertisements are required to be issued so that the reserved and the general candidates would apply for consideration of their claims of recruitment in accordance therewith. This interpretation would subserve and elongate constitutional objective and public policy of socioeconomic justice serving adequacy of representation in a service or post, grade or cadre as mandated and envisaged in Articles 335 and 16(4) read with Articles 14 and 16(1), Preamble, Article 38 and Article 46 of the Constitution and all other cognate provisions.

The view taken by the Apex Court was that even if there exist any isolated post of Professor, rule of rotation by application of roster should be adopted for appointment. Thus the issue that against the post of Professor rules of reservation of U.P. Act No.4 of 1994 was settled by the Apex Court in the case of State of U.P. vs. Dr. Dina Nath Shukla and another itself. The judgment of this Court in Dr. Vipin Agrawal vs. University of Allahabad and others case came for consideration by the Apex Court in the case of State of U.P. vs. M.C. Chattopadhyaya (supra) and specifically the Apex Court laid down that the rules of reservation shall apply on the post of Professor. It was laid down in paragraph 6 of the said judgment:

"6. While, therefore, we are of the considered opinion that there can be a reservation in respect of post of Professor and the provisions of the Reservation Act would apply, but the same cannot be applied taking all the Professors as a cadre and it has to be made subjectwise., as has been earlier construed and held by this Court. We are also of the opinion that there cannot be a reservation for an isolated post. We further observe that in deciding the question of reservation the appropriate authority must follow the roster as has been published in exercise of power under Section 3(5) of the Reservation Act and then the roster should be duly complied with in accordance with the principles enunciated by this Court in Sabharwal case.

The judgment in Dr. Vipin Agrawal vs. University of Allahabad and others (supra)

insofar as it lays down that U.P. Act No.4 of 1994 shall not apply on the post of Professor, was not approved by the Apex Court. Thus the Division Bench judgment in Dr. Vipin Agrawal vs. University of Allahabad and others (supra) laying down that U.P. Act No.4 of 1994 does not apply on the post of Professor has been specifically overruled by the Apex Court in State of U.P. vs. M.C. Chattopadhyaya (supra).

In view of the above, we are of the considered opinion that both the questions are fully covered by the judgement of the Apex Court in State of U.P. vs. M.C. Chattopadhyaya (supra) and our answer to the questions are as follows:

i)the post of Professor in the State Universities comes within the purview of "Services and Posts" as defined in Section 2(c)(iv) of the U.P. Act No.4 of 1994.

ii)The Division Bench judgment of this Court in Dr. Vipin Agrawal vs. University of Allahabad and others (supra) laying down that the post of Professor is excluded in the State Universities from the purview of U.P. Act No.4 of 1994 does not lay down the correct law.

The reference is answered accordingly.

The Registry is directed to place the writ petitions before the appropriate Bench for their disposal.