

(2011) 07 AHC CK 0344

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 35379 of 2011

Kuldeep and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-07-2011

Acts Referred:

Citation : (2011) 9 ADJ 685

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : B.S. Pandey, for the Appellant;

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri B.S. Pandey, learned counsel for the petitioners and learned Standing Counsel for the respondents. Learned Standing Counsel states that he does not propose to file counter-affidavit and the writ petition may be heard and decided at this stage on the basis of material available on record.

2. The writ petition is directed against the advertisement dated 13.6.2011 published in a daily news paper "Hindustan" on 16.6.2011 inviting applications for the post of "Prerak".

3. Learned counsel for the petitioners contended that initially in 2001 a Scheme titled "Satat Shiksha Yojana" was launched whereunder Nodal Prerak, Prerak and Sahayak Prerak were to be appointed. The scheme sought to be executed vide circular dated 7.11.2001 issued by respondent No. 2.

4. The petitioners pursuant to the aforesaid scheme were appointed as Nodal Prerak, Prerak and Sahayak Prerak in October, 2006 and were paid honourarium @ Rs. 1200/-, 700/- and 500/- respectively. The aforesaid scheme came to an end in March 2009. The petitioner's work also ceased. Later on a new scheme namely "Sakshar Bharat Mission 2012" was introduced vide Government Order dated 27.4.2010 whereunder Two Preraks in each Village Panchayat of the

District were to be appointed on payment of honourarium of Rs. 2000/- per month.

5. The petitioners made representation on 1.6.2010 praying for their appointment and absorption in view of the fact that they had earlier worked. They approached this Court in Writ Petition No. 37684 of 2010 which was finally disposed of on 2.7.2010 directing authorities concerned to dispose of their representation within two weeks. The operative part of the judgment reads as under:

Having heard learned counsel for the parties and having examined the records, I am of the considered opinion that the grievances of the writ petitioners qua absorption under a different Scheme or for weightage being provided under new Scheme, can be more appropriately examined by the Secretary Basic Education U.P. Government (respondent No. 1) at the first instance.

Accordingly the present writ petition is disposed of with liberty to the petitioners to make a representation ventilating all their grievances before respondent No. 1, within two weeks from today, alongwith a certified copy of this order. On such a representation being made the respondent No. 1 shall call for the records and shall pass a reasoned speaking order preferably within six weeks, thereafter.

6. Pursuant thereto the representation of petitioners was decided by Secretary, Basic Education, U.P. by order dated 2.2.2011 whereunder he quoted the following decision of the Government:

7. Initially the advertisement dated 24.2.2011 containing the aforesaid decision of the State Government was published. However, the petitioners challenged the said advertisement in Writ Petition No. 15469 of 2011 wherein on 14.3.2011 the respondents were directed to file counter-affidavit within six weeks and selection/appointment, if any, were made subject to the result of the writ petition.

8. The District Public Education Committee, Basti by order dated 25.4.2011 cancelled the aforesaid advertisement and selection until further orders. Now they have published impugned advertisement dated 24.2.2011 which is almost similar to the earlier advertisement dated 24.2.2011 and also provides reservation to women of categories like OBC, SC/ST, General etc.

9. Learned counsel for the petitioners contended that reservation for OBC is 27%, for SC 21%, for ST 2% and for women 50% is prescribed. This makes all the vacancies reserved which is illegal and arbitrary. He further submitted, if we consider in the context of the category to which village Pradhan belong, it appears that 33% belong to the categories OBC, SC, ST and adding thereto 50% reservation it comes to 83% against 2094 vacancies which is illegal and arbitrary.

10. The submissions is thoroughly misconceived. The reservation for women or that be so for physically handicapped person, ex-service man, dependents of freedom fighter etc. cannot be clubbed with the reservation provided for SC, ST and OBC. There are two types of reservation; horizontal and vertical. Both are

different in nature. Two types of reservation are not to be clubbed or added to each other. The reservation applicable to the categories like SC, ST and OBC run vertical and is called "Vertical Reservation", In order to judge whether reservation is 50% or not, only "Vertical Reservation" would qualify to be clubbed together and not which run "Horizontal". The reservation meant for women, dependents of freedom fighter, ex-service men, physically handicapped persons etc. is normally known as "Horizontal Reservation". It apply across the list, to all the categories namely General, SC, ST and OBC, as the case may be.

11. The concept of vertical and horizontal reservations have been explained by the Courts time and again, in *Indra Sawhney Vs. Union of India (UOI) and Others*, , the Apex Court, while referring aforesaid two types of reservation, said:

812 We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture: all reservations are not of the same nature. There are two types of reservation, which may, for the sake of convenience, be referred to as "vertical reservations" and "horizontal reservations". The reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes (under Article 16(4)) may be called vertical reservations, whereas reservations in favour of physically handicapped (under clause (1) of Article 16) can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations-what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains-and should remain-the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.

12. This has been reiterated in para 83 of the judgment in *Jitendra Kumar Singh and Another Vs. State of U.P. and Others*, .

83. We have also considered the submissions made by the learned counsel. It is accepted by all the learned counsel for the parties that these vacancies had to be filled by applying the principle of horizontal reservation. This was also accepted by the learned Single Judge as well as by the Division Bench. This is in consonance with the law laid down by this Court in *Indra Sawhney case* (SCC pp. 735, para 812).

13. Considering the above two decisions, this Court in Writ Petition No. 33433 of 2006 "*Rajeev Kumar and others v. State of U.P. and others*" has said as under:

The manner of applying horizontal reservation is that the vacancies reserved in

this categories have to be filled in separately by the candidates belong to this category. However, the candidates shall always belong to any of the three categories namely general, SC, ST or OBC. After selection of candidates against vacancies attracting horizontal reservation, they shall be placed in their respective vertical category like, General, OBC, SC, ST. Thereafter against remaining vacancies of vertical reservation, the matter shall follow. The mere fact that one is one of the four categories mentioned in 1993 Act, it would not mean that he has to compete with candidates who belong to one of these later categories i.e. vertical categories. For example, a SC candidate would compete against the vacancies reserved for scheduled Caste as also unreserved vacancy but for him the vacancies reserved for persons i.e. dependents of Freedom Fighters and EX-servicemen are not open for competition. However, a Scheduled Caste candidate who also happens to be Physically Handicapped or Dependents of Freedom Fighter or an Ex-servicemen, besides the fact that he would be eligible and entitled to be considered against vacancies reserved for SC and other vacancies, would also compete against vacancies reserved for Physically Handicapped person, Ex-servicemen or the Dependent of Freedom Fighter as the case may be.

In reservation under 1993 Act, all Physically Handicapped etc. if belong to vertical reserved category like SC, ST and OBC, they would take away vacancies to the extent they are selected. If above three categories of persons under 1993 Act are required to compete with other candidates like general, OBC, standing counsel and ST, it would nullify the very reservation made under 1993 Act.

This Court is of the view that the respondents ought to have been more careful in understanding this concept and must have gone through the judgements given by Apex Court in this regard in Indra Sahni (supra) and the recent one Jitendra Kumar Singh (Supra).

14. In view of the above discussion and exposition of law it is evident that reservation for women cannot be clubbed with the vertical reservation like SC, ST and OBC and, therefore, the contention of the petitioners that reservation exceed 50% limit is clearly baseless and unfounded. Learned counsel for the petitioners, at this stage, submitted that they are entitled for absorption but when specifically enquired, could not place any provision or otherwise right or any authority of law entitling them to claim absorption merely for the reason that they have worked for certain period during the subsistence of earlier/another scheme. In the result, I do not find any merit in this petition. Dismissed.