
(1999) 05 AHC CK 0014

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 36146 of 1998

Kuldeep Chand Kapoor

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-05-1999

Acts Referred:

Citation : (1999) 2 UPLBEC 1437

Hon'ble Judges : M. Katju, J; Krishna Kumar, J

Bench : Division Bench

Advocate : R.G. Padia and Prakash Padia, for the Appellant;

Final Decision : Allowed

Judgement

M. Katju and Krishna Kumar, JJ.—Heard Sri R.G. Padia, learned Counsel for the petitioner and Sri P.R. Maurya, learned Counsel for the respondent No. 4 and learned Standing Counsel for the respondent Nos. 1 to 3.

2. The petitioner has challenged the impugned order dated 26-6-1998 (Annexure 6 to this writ petition) by which the respondent No. 4 has been promoted as Head of the Department of Composing in Northern Regional Institute of Printing Technology, Allahabad.

3. The petitioner was appointed as Lecturer in Graphic Design on 19-7-1972 whereas the respondent No. 4 was appointed as lecturer in Photo engraving on 7-8-1982 i.e. he is more than 10 years junior to the petitioner.

4. The relevant rule for appointment to the post of Head of the Department of Composing in Northern Regional Institute of Printing Technology, Allahabad is given in Annexure 3 to this writ petition. The criteria for promotion is given in the U.P. Technical Education Gazetted Officers Service Rules, 1990 and in the Appendix I to the said Rules. The criteria for promotion as Head of the Department of Composing in the institution is "100% by promotion through Departmental Selection Committee on the basis of seniority subject to rejection

of the unfit from amongst substantively appointed officers of the subject in category XI who have put in at least 5 years service in the scale of Rs. 2200-4000 on higher scale, if any". According to the aforesaid criteria the petitioner was entitled to be promoted as Head of the Department of Composing and not respondent No. 4 who is more than 10 years junior to the petitioner. There was no allegation that the petitioner is unfit for promotion. Instead the case of the respondent No. 4 is that the post is reserved for a scheduled caste candidate.

5. Learned Counsel for the respondent No. 4 relying on the Government Order dated 10-10-1994 claimed that respondent No. 4 being a Scheduled Caste candidate was entitled to the benefit of reservation.

6. We do not agree with the submission of the learned Counsel for the respondents. It is settled law that a Government Order can not override the statutory rules vide Union of India (UOI) and Others Vs. Arun Kumar Roy, (Para 16). Since the U.p. Technical Education Gazetted Officers Service Rules has not provided for reservation on the post of Head of Department hence the Government Order dated 10-10-1994 can not give any benefit to the respondent No. 4 as it cannot override the statutory rules.

7. Moreover, it has been held by the Hon'ble Supreme Court in Post Graduate Institute of Medical Education and Research, Chandigarh v. Faculty Association and other 1998(3) SCC 223 that there can be no reservation on a single post.

8. Learned Counsel for the respondent No. 4 submitted that there are two Heads of the Department in the Department in question. We can not agree with this submission. In a department there can be only one Head and not two.

9. In view of both the above reasons, the writ petition is allowed, the impugned order dated 26-6-1998 is quashed and the respondents are directed to treat the petitioner as Head of the Department of Composing in the department in question in the institution.

10. With this observation writ petition is allowed.