
(2003) 08 AHC CK 0063
In the Allahabad High Court
Case No : Special Appeal No. 337 (SB) of 2003

Mukesh Chandra Kushalia and Others	APPELLANT
Vs	
Jai Kirti Srivastava and Others	RESPONDENT

Date of Decision : 26-08-2003

Acts Referred:

Citation : (2004) 2 UPLBEC 1286 : (2004) 2 UPLBEC 1281

Hon'ble Judges : Pradeep Kant, J;M.A. Khan, J

Bench : Division Bench

Advocate : L.P. Misra and Rajiv Srivastava, for the Appellant; Upendra Misra, for the Respondent

Judgement

Pradeep Kant and M.A. Khan, JJ.—Heard the learned Counsel for the appellants Dr. L.P. Misra, Sri Rajiv Srivastava for the petitioners/respondents and Sri Upendra Misra for the respondent Jal Nigam.

2. Learned Counsel for the appellants Dr. L.P. Misra has submitted that the appellants had appeared in the selection in pursuance of the advertisement dated 28.2.2003 in respect of the vacancies of Junior Engineer as Scheduled Castes candidates and were finally selected. In pursuance of the said selection they were issued appointment orders and they were allowed to resume duties some time in June, 2003 but without impleading the appellants, the present petition has been filed in which an interim order was passed, the effect of which is cessation of the employment of the appellants and in pursuance of the said interim order, the U.P. Jal Nigam has passed an order dated 5.8.2003 that the persons, who have been issued appointment orders and have joined in pursuance of the order dated 26.6.2003 will not be allowed to work and they will not be paid salary and the candidates who have not joined will not be allowed to join. Further submission is that in view of the fact that backlog of the quota of Scheduled Castes was to be filled and the number of vacancies could increase and, therefore, the candidates more than the advertised vacancies, have been issued appointment orders against the Scheduled Castes category. He also says

that the reserved category posts were to be filled up first and, therefore, the appointment orders were issued only to the reserved category candidates. Learned Counsel for the Jal Nigam. Sri Upendra Misra stated that since the State Government had issued a Government Order dated 3.4.2003 that no General Category candidate be given appointment, unless the quota of Scheduled Castes is filled, and therefore, the result of the candidates of other categories including General Category candidates was not declared.

3. Learned Counsel for the appellants has also submitted that certain persons who were issued appointment orders later on in pursuance of the second list have been allowed to work.

4. The interim order has been passed mainly on the ground that the Government on the one hand has issued orders for not giving appointment to any of the candidates of General Category and on the other hand, the appointment orders have been issued much excess in number against the Scheduled Castes vacancies advertised. The vacancies of the Scheduled Castes, as shown in the advertisement, were 55 whereas appointment orders have been issued to 81 candidates. In the advertisement, 20 posts were shown for General Category, 55 against Scheduled Castes category, 12 for OBC and 4 for Scheduled Tribes but except for issuing appointment orders to the Scheduled Castes and 2 Scheduled Tribes candidates, no appointment orders have been issued to the candidates of any other category, rather it has been stated that their result has not been declared.

5. After hearing the parties Counsel, we find that so far issuance of appointment order with respect to the candidates against the number of vacancies advertise in the advertisement, namely, 55 for Scheduled Castes, 12 for OBC, 4 against Scheduled Tribes and 20 against the General Category, the appointment order could have been issued. Issuance of appointment orders beyond the vacancies advertised for Scheduled Castes category i.e. beyond 55, in number, prima facie does not appear to be correct. The question as to whether the said vacancies could be treated under the backlog of the quota of Scheduled Castes and such backlog quota could be filled without advertising the said vacancies or without there being any special drive and whether the mention in the brochure that vacancies could be decreased or increased could be taken to mean that the backlog of the quota could be filled in by offering all the vacancies adverted including that for the candidates of other categories, to the Scheduled Castes candidates notified in combined advertisement and whether there can be any appointment or recruitment beyond the quota prescribed, including the impact of the Government Order dated 3.4.2003 would require consideration of the Court at the time of hearing.

6. For the purpose of intern relief, we find that the appointment orders could have been issued strictly in order of merit in the selection held for 55 vacancies advertised against the Scheduled Castes category, 20 against General Category. 12 against OBC and 4 against Scheduled Tribes. In case the vacancy has been

advertise against any other category in the advertisement, the same was to be filled by the candidates of the said category to the extent of vacancies shown in the advertisement. Since by the interim order the entire selection has been stayed and not a single person has been allowed to continue, we propose to modify the order to the extent that the appointment order, if have not already been issued strictly in order of merit to the 55 candidates belonging to the Scheduled Castes category or to the candidates belonging to other categories shown in the advertisement, the same shall be issued strictly in accordance with merit, after declaring the result of such category of candidates also forthwith...If any such appointment orders have already been issued within the strength of vacancies given in the advertisement, fresh orders need not be issued. Beyond the vacancies as advertised in the advertisement, no appointment order shall be issued and in case any appointment order has been issued beyond the vacancy advertised in a particular category, and if any such candidate has been allowed to continue, he shall not be allowed to function till further orders of the Court. All such candidates who fall in merit, on declaration of the result, shall be issued the appointment orders, as indicated above and shall be allowed to continue till further orders of the Court. Scheduled Caste candidates who have already been issued appointment orders and fall strictly in merit within 55 vacancies advertised, shall also be allowed to continue till further order of the Court. The appointment orders so issued and joining of such candidates shall be subject to further orders passed in the writ petition. We modify the interim order accordingly.

7. The special appeal is disposed of in the manner indicated above.