

(2003) 08 AHC CK 0211
In the Allahabad High Court
Case No : C.M.W.P. No. 42079 of 2001

Neel Kamal Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-08-2003

Acts Referred:

Citation : (2003) 6 AWC 4654

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Dharmendra Kumar, for the Appellant; Krishna Kumar, B.L. Shukla, Anshu Chaudhary and S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. This writ petition arises out of an order dated 29.9.2001 passed by the Regional Higher Education Officer, Kanpur Nagar.

3. By the aforesaid impugned order the approval to the appointment of the Petitioner as Class IV employee (Book Lifter) in the Laxmi Yadunandan Degree College, Kayamganj, Farrukhabad has been refused.

4. The Laxmi Yadunandan Degree College, Kayamganj, Farrukhabad is a non-Government Aided Degree College, affiliated and is governed by First Statute of Kanpur University, U.P. State Universities Act, 1973 and the Government orders issued from time to time.

5. As per the first statute of University of Kanpur an appointment for the post of Class IV in a college, is to be made by the Principal of the College. After making selection, the Principal of the college is required to take approval of the selection so made from the Director of Higher Education or an officer authorised by him. After verifying and satisfying the facts that all the formalities of selection have been complied by the Principal in fair manner and rules relating to reservation

have been followed, order of approval or disapproval is communicated. The provisions of Statutes 21.02 and 21.03 are as follows:

21.02. (1) Subject to the provisions of these Statutes the appointment to the posts referred to in Statute 21.03 shall be made by the Management of the College and appointment to the posts of Class IV employees shall be made by the Principal.

(2) The appointment authority referred to in Clause (1) shall have the power to take disciplinary action and award punishment against the class of employee of which he is appointing authority.

(3) Every decision of the appointing authority referred to in Clause (2) shall, before it is communicated to the employee, be reported to the District Inspector of Schools and shall not take effect unless it has been approved by him in writing:

Provided that nothing in this clause shall apply to any termination of service on the expiry of the period for which the employee was appointed:

Provided further that nothing in this clause shall apply to an order of suspension pending inquiry, but any such order may be stayed, revoked or modified by the District Inspector of Schools.

(4) An appeal against the order referred to in Clauses (2) and (3) shall lie to the Regional Dy. Director of Education.

21.03. (1) Appointment to the post of Librarian, Deputy Librarian, Physical Education Instructor, Pharmacist, Routine Grade Clerk or any other post either in the pay scale of, or in pay scale higher than that of, Routine Clerk other than the posts mentioned in Clause (2) or Clause (3) shall be made by direct recruitment on the recommendation of Selection Committee in the manner provided in Clause (6) after advertisement of the vacancy in the newspaper:

Provided that the post of Librarian shall be filled by promotion from the post of Deputy Librarian if the incumbent of the latter post possesses the prescribed minimum qualifications for the post of Librarian ;

(2) Appointment to the post of Head Clerk-cum-Accountant, Head Clerk, office superintendent and bursar shall be made by promotion according to seniority subject to suitability and fitness from amongst the existing employees having required qualification and appointment to the posts of Head Clerk-cum-Accountant, Head Clerk, Officer superintendent and bursar may be made by direct recruitment on the basis of selection after advertisement of the vacancy in newspapers.

(3) Appointment of employees shall be subject to the approval of the Director of Education (Higher Education), or an officer authorised by him in this behalf. If the approving authority does not within two months from receiving the proposal intimate its disapproval or does not sent in respect of such proposal, any intimation. To the appointing authority the approving authority shall be deemed

to have approved the appointment.

(4) (a) The selection committee for appointment to the post of Librarian, Deputy Librarian or Physical Training Instructor, Deputy Librarian or Physical Training Instructor shall consists of:

(i) the head of the management or a member of the management nominated by him, who shall be the chairman ;

(ii) the Principal of the College ;

(iii) one officer to be nominated by the Director of Education (Higher Education).

(b) The selection committee for the appointment to the remaining posts referred to in Clause (1) or Clause (3) either by direct recruitment or by promotion shall consist of:"

6. A perusal of the statutes aforesaid, shows, that once selection process is completed and papers are sent for approval, it is for the Regional Higher Education Officer, Respondent No. 2 to pass appropriate order within two months time.

7. It is submitted by the Petitioner that though query was made on 24.5.2001 as has also been admitted by the authority, but the orders disapproving the appointment of the Petitioner were not passed within two months as required under Statute 21.07 of the Kanpur University and as such the impugned order dated 29.9.2001 is illegal and without jurisdiction.

8. The facts of the case in brief are that the post aforesaid occurred on account of promotion of one-class IV employees. On 17.1.2001 the sanction for filling up the post was granted by Respondent No. 2 and a list of eligible candidates was requisitioned from the Employment Exchange in pursuance thereof. Apart from above the post is also said to have been advertised in daily newspaper, i.e., Aaj so as to get the best candidate for the said post. The Petitioner was selected and his papers were sent by the Principal on 8.4.2001 for approval from Respondent No. 2.

9. Some objections were raised by the Respondent No. 2 that reservation of Scheduled Caste Quota was not filled. The objections were replied by the Principal by means of letter dated 13.8.2001. Respondent No. 2 vide letter dated 29.2.2001 disapproved the appointment of the Petitioner on the post of Class IV employee. He also referred to G.O. dated 5.6.1987 in which sweeper was shown as separate post to Class IV post. This G.O. appears to be applicable to corporation only and not to Degree College.

10. In the impugned order dated 29.9.2001 Respondent No. 2 also stated about Government Order dated 5.6.1982 in which sweeper is a Class IV employee. This appears from Government Order dated 14.3.1984 appended as Annexure-II to the writ petition, which shows that the post of Sweeper is included in the Class IV employee in a college.

11. As per notification dated 29.3.1994 for the purpose of appointment of Class III and IV posts, a roster list is also to be prepared by the office of the appointing authority and all the appointments are to be made in accordance with that roster system of poster.

12. A perusal of roster-dated 29.3.1994 (Annexure-12 to the writ petition) shows that serial No. 12 is a non-reserved point, which is to be filled up by the candidates of General Category. There are eleven posts of Class IV employees sanctioned in the college out of three post are for reserved categories and two for General Category and 50 per cent of the seats are to be filled up by the reserved category i.e., ST/SC/OBC etc. by the General Category candidates. In the supplementary-affidavit filed by the Petitioner it is averred that roster points available for General Category are 6, 8, 10, 12. Sri Shyam Lal, Class IV employee belongs to Scheduled Caste category while seven others belong to O.B.C. category. Sri Vivek Kumar and Anil Kumar are working in the General Category.

13. The attention of the Court is drawn to the Annexures-2 and 3 filed along with supplementary-affidavit perusal of which shows that one vacancy of Class IV was advertised in the year 1999 against which one O.B.C. candidate was appointed.

14. It is submitted that the Petitioner belonging to General Category has rightly been selected and appointed against the roster point number 12 under General Category.

15. The counsel for the Petitioner states that papers for the approval of the Petitioner for the appointment of the post of Class IV employee were sent without properly applying the reservation quota and roster system. It is submitted on behalf of the Respondent that a query was made by the Regional Higher Education Officer vide letter dated 24.5.2001 regarding approval of selection. The Principal vide letter dated 11.6.2001 sent reply, that no General candidate was available at that point of time. The reply was found satisfactory by Respondent No. 2 and again he made a query vide letter dated 1.8.2001 about the present position of reservation quota and roster system from the college. In response the college by letter dated 13.8.2001 stated that there were 11 class IV employees working in the college and their present position was as under:

A-General-06 B-O.B.C.-03 C-S.C.-03

16. These aforesaid posts do not include post of Sweeper, as it is not included in reservation and roster system. That on the basis of above statement, against the 12th post of Class IV, they implemented in accordance with reservation Act, 1994. But the College has proposed the appointment in the following order of reservation quota:

General-03 O.B.C.-07 S.C.-01 (+1 = 2) (Total 12 posts including the post of Sweeper)

17. It is further submitted that the post of sweeper is not included in reservation

and roster system. On the aforesaid basis it is submitted that the order passed by the Regional Higher Education Officer was fair and legal and there is no violation in denying the approval of the selection to the Petitioner as the 12th post in aforesaid circumstances was to be filled by a candidate of S.C. and the appointment of the Petitioner against the post of reserved category was not proper.

18. The qualification and conditions of services of non-teaching staff of the College of Kanpur University are contained in the first statute of the University.

19. Counter-affidavit has been filed by the Regional Higher Education Officer, Kanpur Nagar, in which it is averred that the State Government passed U.P. Act No. 4 of 1994 for the upliftment of financial and social condition of the weaker section of the society and also order dated 15.11.1994 has also been issued by the State Government, providing that all appointment in the Universities and Colleges, shall be made in accordance with the aforesaid U.P. Act No. 4 of 1994.

20. Thus, in the nutshell, the arguments of the Respondent are that the selection was not in contravention of the provisions of U.P. Act No. 4 of 1994 and notification dated 29.3.1994 as well as read with G.O. dated 15.11.1994.

21. As per the requirements of Section 21.03 of the first statutes of Kanpur University, prior approval is necessary before appointment by the authority and no illegality has been committed in denying the approval to the selection of the Petitioner. Further the rejection of the approval order has been issued after giving full and proper opportunity to the College authorities who were competent to challenge the order in question. The applicant is required to be appointed just again the same category and the case of the sweeper is of other than the S.C. category. After enforcement of the Act No. 4 of 1994, the G.O. has been superseded as these facts are taken cognizance by the Act itself, which is also in conformity to Schedule I annexed along with Act of 1994, which is for the backward class category.

22. From the record and the contention of parties it is apparent that 12 posts are required to be filled as per roster point No. 6. The averments made in paragraph 15 of the writ petition are uncontroverted. It is clear that the authority had not given any opportunity to the Petitioner. Making an enquiry from the University does not amount to giving an opportunity to the person who was being visited by civil consequences due to illegal termination of his service. By the impugned order dated 29.9.2001.

23. That the Respondent No. 2 without any basis raised objection and disapproved the selection of the Petitioner. The G.O. dated 5.6.1982 only states that list of Class IV employee of the Scheduled Caste will be divided into two parts firstly class IV employee in which the sweepers are not included and secondly class IV employee included in only sweepers list. Shyam Lal belonged to S.C. category, not counting the candidature of sweeper within the Scheduled Caste. At the same time another default is made, as sweeper has not been

shown in any other category. The counting of roster in this manner is faulty and deserves to be rejected.

24. In view of the aforesaid facts and position of law, the writ petition is allowed. The impugned order dated 29.9.2001 is quashed. Respondent No. 1 is directed to consider approving of the appointment of the Petitioner within a period of one month from the production of a certified copy of the order. No order as to costs.