
(2010) 03 AHC CK 0118
In the Allahabad High Court

Phool Chand Tiwari and Ramdhani

APPELLANT

Vs

Joint Director of Education and Others and Director of
Education (Secondary) and Others

RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:

Citation : (2010) 4 AWC 4187 : (2010) 125 FLR 827 : (2010) 2 UPLBEC 1043

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Tandon, J.—These two writ petitions pertain to the same post of clerk in Mathura Inter College Naharpur, Azamgarh. Facts in short giving rise to the present writ petition are as follows:

Mathura Inter College Naharpur, Azamgarh is an institution aided and recognized under the provisions of the Intermediate Education Act. There are three sanctioned post of Class-III in the institution. At the relevant point of time three persons were working against the sanctioned posts, namely Mohd. Iqbal, Balbir Singh Yadav and Ramdev Bind. First two candidates were appointed by direct recruitment, while Sri Ramdev Bind was appointed by way of promotion. Sri Balbir Singh Yadav retired on 30.09.2000. The vacancy so caused fell within the 50% quota reserved for promotion in view of Regulation 2 of Chapter-III of the Regulations framed under the Intermediate Education Act read with note appended thereto. There was no candidate belonging to scheduled caste working on Class-III post.

2. Ram Dhani (petitioner in Writ Petition No. 13104 of 2003), who claims to be a member of scheduled caste, therefore, made an application requesting the management of the institution to fill the vacancy from a scheduled caste candidate and since no person belonging to scheduled caste was working in the institution on Class-IV post eligible for such promotion, it was further prayed that

the post be filled by direct recruitment. Since this application of the Ram Dhani was not being considered and the committee was not advertising the vacancy for direct recruitment within the reserved category, Sri Ram Dhani filed Writ Petition No. 11629 of 2001. The writ petition was decided under the judgment dated 29th March, 2001 and the District Inspector of Schools was directed to consider the grievance of Sri Ram Dhani.

3. In the meantime it appears that the Committee of Management passed a resolution on 16th October, 2001 recommending the promotion of Sri Phool Chand Tiwari (petitioner in Writ Petition No. 36379 of 2003) who was working as a Class-IV employee in the institution and was possessed of all the essential qualifications for such promotion. The District Inspector of Schools by means of the order dated 08th May, 2002 approved the promotion of Sri Phool Chand Tiwari.

4. This, according to Ram Dhani, was illegal for two reasons (a) because of non-consideration of his grievance as per the direction of this Court dated 29th March, 2001, referred to above and (b) because of non-consideration of issue that the vacancy fell within the quota reserved for scheduled caste. Sri Ram Dhani therefore approached the Joint Director of Education. The Joint Director of Education by means of order dated 29.07.2003 directed the District Inspector of Schools to cancel the approval granted to the promotion of Sri Phool Chand Tiwari, in the background that the vacancy was within the quota for scheduled caste and that a public complaint has been made by Sri Ram Dhani. This order of the Joint Director of Education dated 29th July, 2003 has been challenged by Sri Phool Chand Tiwari by means of Writ Petition No. 36379 of 2003.

5. The District Inspector of Schools forwarded a letter dated 01st July, 2003 to the Joint Director of Education informing him that there are only three Class-III post sanctioned in the institution and therefore no quota of scheduled caste is to be provided for having regard to 21% reservation provided for the purpose. This letter of the District Inspector of Schools has been challenged by Sri Ram Dhani by means of Writ Petition No. 13104 of 2003.

6. I have heard learned Counsel for the parties and have gone through the records of the writ petition.

7. Two issues arise for consideration in these writ petitions (a) whether the vacancy caused due to retirement of Balbir Singh Yadav on 30.09.2000 falls within 50% quota for promotion and (b) whether the vacancy has to be reserved for scheduled caste category candidate and if so its effect.

8. So far as the first issued is concerned, this Court may only refer to the provisions of Regulation 2 of Chapter-III of the Regulations framed under the Intermediate Education Act read along with the note appended thereto. The note specifically provides that while calculating 50% of quota for promotion, half and more than half shall be treated to be one. Since in the facts of the case there are three sanctioned post and the promotion quota provided is 50% of the cadre

post, it would logically follow that one and half posts would be the promotion quota. Since half is to be read as one, it would therefore result in two posts being within the promotion quota.

9. The issue in that regard has been settled under the Division Bench judgment of this Court in the case of *Jai Bahgwan Singh v. District Inspector of Schools and Ors.* 2006 (4) ALJ 438. The issue No. 1 is therefore answered accordingly.

10. So far as the issue No. 2 is concerned, it is an admitted position that there are only three sanctioned posts of Clerk in the institution. The reservation provided for scheduled caste category, as admitted to the parties, is 21%.

11. A Division Bench of this Court in the case of *Dr. Vishwajeet Singh and Ors. v. State of U.P. and Ors.* 2009 (3) ESC 1652, in paragraph 87 and 88 it has held that for reservation being applied in favour of scheduled caste category candidate there should be at least 5 posts in a cadre. The Division Bench has placed reliance upon the Constitution Bench judgment of the Hon'ble Supreme Court in the case of *R.K. Sabharwal and others Vs. State of Punjab and others*,

12. In view of the said Division Bench judgment of this Court in the case of *Vishwajeet Singh* (to which I was party), there is no other option but to hold that since there are only three posts in Class-III cadre in the institution, no post can be reserved for scheduled caste category candidate. Consequently, *Sri Ram Dhani* can have no claim in respect of said post on account of reservation.

13. Since the vacancy is within 50% quota for promotion and there is a candidate available for such promotion in the category of Class-IV employee, namely *Sri Phool Chand Tiwari*, this Court holds that the promotion granted in his favour, as approved by the District Inspector of Schools under order dated 06th June, 2002, is strictly in accordance with law.

14. Counsel for the petitioner-Ram Dhani, however, brought to the notice of this Court another Division Bench judgment of this Court in the case of *Mahendra Kumar Gaur v. District Inspector of Schools* (2009) 4 UPLBEC 3066, wherein it has been held that in the institution if there are only three posts and no person of scheduled caste has been appointed, the vacancy caused shall stand reserved for scheduled caste as per the roster and shall be filled by such reserve category of the candidate only.

15. The Division Bench in its judgment in the case of *Mahendra Kumar Gaur* (supra) has not noticed the earlier Division Bench judgment of this Court in the case of *Dr. Vishwajeet Singh* (supra) and therefore there is absolutely no conflicting opinion qua the law viz-a-viz the applicability of reservation to the cadre which does not have minimum 5 posts. This Court finds that the judgment in the case of *Mahendra Kumar Gaur* (supra) is clearly distinguishable.

16. The writ petition filed by *Sri Phool Chand Tiwari* (i.e. Writ Petition No. 36379 of 2003) is allowed and it is held that his promotion is strictly in accordance with law. The authorities shall take appropriate action accordingly. Order dated

29.07.2003 is hereby quashed. The writ petition filed by Sri Ram Dhani (i.e. wpon 13104 of 2003) is dismissed.