

(2011) 11 AHC CK 0304
In the Allahabad High Court

Case No : Writ A. No. 31375 of 2003 and Writ A. No. 53564 of 2006

Pradeep Kumar Rai and Others

APPELLANT

Vs

State of U.P. And Others
Anil Kumar Mishra and Others
Vs State of U.P. And Others

RESPONDENT

Date of Decision : 25-11-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 — Section 3(2)

Citation : (2011) 11 AHC CK 0304

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon''ble Vikram Nath, J.—Writ Petition No. 31375 of 2003 has been filed with the following prayer:

(i) issue a writ, order or direction in the nature of Mandamus directing the Respondents to initiate selection process to fill-up the post of Pharmacist in pursuance of the Advertisement No. 18A-90/99 dated 2.10.2000 published in Vividh Rozgar Darshan, Luknow, within some specific period as soon as possible.

(ii) issue a writ, order or direction as this Hon''ble Court may deem fit and proper unde the circumstances of the facts of the case.

(iii)Award the cost of the petition to the petitioners.

2. In the said writ petition initially an order was passed on 28.07.2009 whereby this Court prima facie found a case for stay of entire selection but did not pass any interim order, however directed the learned Standing Counsel to obtain instructions with regard to the recruitment process initiated by advertisement dated 2.10.2000. The order dated 28.07.2003 is quoted below

It is contended that without completing the selection process for 500 vacant

posts of Pharmacist in Ayurvedic Medicine and 50 posts of Pharmacist in Unani (including reserved category), advertised on 2.10.2000, the department had advertised on 14.5.2003 inviting applications for 319 vacancies only of Scheduled Caste/Scheduled Tribes. It is further contended that filling of back log vacancies is not permissible u/s 3(2) of U.P. Public Service (Reservation for Scheduled Caste, Scheduled Tribes and other Back Castes) Act, 1994, unless they have been offered earlier and that inviting applications to till up only back log vacancies amounts to hundred per cent reservation of vacancies in the current recruitment year and violates petitioners' rights under Articles 14 and 16 of the Constitution of India. The action, it is alleged, causes reverse discrimination to the general category candidates.

Counsel for petitioners has relied upon a Division Bench decision of this Court in Dr. Shashi Kant Rai vs. State of U.P. and others in writ petition No. 30542 of 1996 dated 20.5.1998, in which in similar situation, this Court held that filling up of only back log vacancies, which were not advertised earlier, amounts to hundred per cent reservation and discriminates other candidates and violates equity. A Special Leave to Appeal No. 14567 of 1998 against the said judgment was dismissed by Supreme Court on 11.9.1998.

Prima facie, petitioners have made out a case for stay of entire selection. Let learned Standing Counsel seek instructions with regard to the recruitment process initiated by advertisement dated 2.10.2000.

Put up on Monday i.e. 4.8.2003.

3. Thereafter on 5.8.2003 the Court proceeded to pass an interim order staying the entire selection process in pursuance of the advertisement dated 14.05.2003 for filling up post of Pharmacist by way of special recruitment drive of so called vacancies of Scheduled Caste/Scheduled Tribe candidates. The said order dated 5.8.2003 is reproduced below:

In spite of time granted to learned Standing Counsel and accommodating him for today, no instructions are forthcoming.

Learned Standing Counsel is granted three weeks time to file counter affidavit. List on 9th September, 2003.

I am, prima facie, satisfied with the submission made by counsel for petitioner, which have been recorded in my order dated 28.7.2003 that the advertisement inviting applications only from Scheduled Caste/Scheduled Tribes candidates, leaving general posts, amount to hundred percent reservation in the recruitment year. Further I also find that the subject vacancies were never offered for recruitment in any of the previous years and thus these cannot be taken to be back log vacancies to be filled up by way of special recruitment drive u/s 3(2) of U.P. Public Service (Reservation for Scheduled Caste, Scheduled Tribes and Other Backward Castes) Act, 1994.

Until further orders, the entire selection process in pursuance of the

advertisement dated 14.05.03 for selection for the post of Pharmacists Ayurvedic /Pharmacists Unani by way of subject recruitment drive to fill up the so called back log vacancies for Scheduled Castes/Scheduled Tribes candidates, shall remain stayed.

4. According to the learned counsel for the petitioner despite the said interim injunction granted by this Court on 5.8.2003 the State respondents continued with the selection pursuance to the advertisement dated 14.05.03 and have since made the appointment also.

5. It has been stated that Writ Petition No. 1987 of 2006 was filed by some of the general category candidates seeking a writ of mandamus to complete the selection process of 2000. In the said writ petition this Court by order dated 12.1.2006 issued an interim mandamus or show cause with regard to completion of the selection process of 2000. The State has not filed any Counter affidavit nor completed the selection process but when the contempt application was filed the State cancelled the selection process of 2000 by means of orders dated 04.09.2006 and 05.09.2006. As such this petition also needs to be connected to the bunch of the present petitions.

6. The said orders dated 4.9.2006 and 5.9.2006 by which the State Government cancelled the selection which had taken place in the year 2000 pursuant to the advertisement dated 02.10.2000 in which the petitioners claimed to have appeared, and were pursuing for the selections being implemented were assailed by different set of petitioners before this Court.

7. Writ Petition No. 53564 of 2006 has been filed with the following prayer:

i). issue a writ, order or direction in the nature of certiorari for quashing the orders 4.9.2006 and 5.9.2006 passed by respondent No. 2 (Annexure No. 7 and 8 to the Writ Petition).

ii). issue a writ, order or direction in the nature of mandamus directing the respondent No. 2 to complete the selection process in pursuance of Advertisement dated 2.10.2000 on the post of Ayurvedic/Unani Pharmacist.

iii) issue a writ, order or direction in the nature of mandamus directing the respondent No. 3 to not to Advertise the post of Ayurvedic/Unani Pharmacist in pursuance of letter dated 5.9.2006 issued by respondent No. 2.

iv) issue a writ, order or direction which this Hon''ble Court may deem fit and proper under the facts and circumstances of the case.

v) award the cost of the petition in favour of petitioners.

8. By order dated 26.9.2006 this Court directed some of the respondents for filing counter affidavit and issued notice to the U.P. Subordinate Selection Commission and connected the matter to the Writ Petition No. 31375 of 2003.

9. Writ Petition No. 70061 of 2006 was filed by another set of the petitioners

claiming the same relief as claimed by the petitioners of the Writ Petition No. 53564 of 2006. In this case also this Court granted time to the State respondents to file Counter Affidavit and directed for connecting it to the aforesaid writ petition.

10. Writ Petition No. 6051 of 2007 was filed by another set of the petitioners for the same relief as claimed in Writ Petition No. 53564 of 2006. In this case also time was granted to the respondents to file Counter Affidavit.

11. Learned counsel for appearing for the petitioners have submitted that the petitioners who belonged to the general category have been deprived of their selection which had taken place in the year 2000 in order to extend undue benefit to the candidates of the reserved category. The respondent No. 3 proceeded with the selection in gross violation of the interim injunction granted by this Court on 5.8.2003. Further the selection of 2000 was cancelled for no valid reason apparently for political mileage and gains. According to the learned counsels the matter has been substantially delayed resulting into grave loss to the petitioners.

12. On the other hand Sri Suresh Singh, learned Additional Chief Standing Counsel appearing for the State respondents states that apart from these petitions there are other petitions which had been filed before the Lucknow Bench of this Court and in some cases some directions have been issued. He has prayed for time to collect all the material relating to this controversy and place it before the Court within a week.

13. Let this matter be listed on 8th December, 2011 along with Writ Petition No. 1987 of 2006 giving full particulars of the names of the parties and the counsels appearing therein. On the said date if a detailed affidavit as prayed for by the learned Additional Chief Standing Counsel is not filed, and that too of an officer not below the rank of Secretary, the Court will be compelled to summon the Principal Secretary of the concerned department.

14. A Copy of this order may be provided to Sri Suresh Singh, learned Addl. Chief Standing Counsel free of costs within 24 hours for necessary compliance.