
(2013) 07 AHC CK 0161
In the Allahabad High Court
Case No : Special Appeal No.268 of 2013

Raj Veer Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Sainik School (Teaching and Allied Staff) Service Rules, 1978 — Rule 4, 6

Citation : (2013) 07 AHC CK 0161

Hon'ble Judges : Uma Nath Singh, J and Mahendra Dayal, J

Final Decision : Dismissed

Judgement

Mahendra Dayal, J.

We have heard Dr. L. P. Mishra, learned counsel for the petitioner, learned State Counsel and Shri Lalit Shukla, learned counsel appearing on behalf of the opposite parties no.2, 4 and 5.

Feeling aggrieved with the order dated 3.5.2013, passed by the learned Single Judge of this Court in Writ Petition No.2275 (SS) of 2013, the appellantpetitioner has filed the special appeal under Chapter VIII of Rule 5 of the Allahabad High Court Rules.

From the pleadings of the special appeal, it appears that in pursuance of the advertisement dated 27.6.2010 for making appointment on the post of English Master in U.P. Sainik School Sarojini Nagar, Lucknow (for short the School), the appellantpetitioner who was M.A. in English in First Division, applied for the said post and was also found suitable and consequently by order dated 2.7.2010 he was appointed as English Master on temporary basis. The appointment was extended from time to time and lastly it was extended on 25.3.2013 whereby the term of the appellantpetitioner was extended upto 11.5.2013. After March, 2013, the services of the petitioner were not extended on the ground that there were several complaints against him and his working was also not satisfactory.

Thereupon the school proceeded to make fresh appointment and advertised the post in question indicating that the said post was reserved for S.C. Category. The appellantpetitioner who was working on contractual basis and whose appointment also was not extended, challenged the aforesaid advertisement by means of aforesaid writ petition no.2275 (SS) of 2013.

The learned Single Judge dismissed the writ petition by means of the impugned order observing that since the petitioner was not qualified for the post under advertisement, hence, he had no locus to challenge the said advertisement.

Learned counsel for the appellantpetitioner submits that there are total 21 posts in the school and OBC category and SC category are already represented, hence, no further selection can be made from the SC category. He has submitted that out of 21 posts only 2 posts belonging to SC category could be filled and 2 persons belonging to SC category are already working, one in English subject and the other in Hindi subject. Even, if the entire cadre of 21 lecturers is taken into consideration, the reservation is completed.

He further submits that English subject should be taken as a cadre and as against four existing posts of English Master, no reservation is permissible as laid down by Hon"ble the Supreme Court in a decision reported in (2009) 1 SCC page 1 State of Karnataka and others vs. K. Govindapa and another in which the Apex Court has held that where there is a single post, the same can constitute a cadre by itself for the reasons that the post is not interchangeable and, as such, the reservation cannot be applied to a single isolated post and it would amount to 100% reservation which is prohibited under Article 16 of the Constitution of India.

The submission on behalf of the appellantpetitioner is that although he is not qualified for the post advertised but in case the advertisement is quashed, he would be qualified as and when the next selection is made.

On the other hand, Shr Lalit Shukla, Advocate appearing on behalf of the school has submitted that apart from the fact that the appellantpetitioner is not qualified for the post advertised, his working was also not found satisfactory. There were various complaints against him and therefore it was decided that after the end of the session, fresh appointment be made on the post on which the appellantpetitioner was working. Pursuant to this decision, an advertisement was made and the post on which the appellantpetitioner was working, was reserved for SC category.

He further submits that the reservation in the teaching and other staff of the school is governed by U.P. Sainik School (Teaching and Allied Staff) Service Rules, 1978 (for short the Rules) and Rule 6 of the aforesaid rules provides that the reservation would be in consonance with the reservation rules applicable to the State Government Employees. Rule 4 of the aforesaid Rules provides that the strength of each category of post shall be such as may be determined by the Board from time to time.

The Appendix annexed with the rules indicates that there were four cadres in the school one cadre is that of Principal, second cadre is that of Head Master, third cadre is that of Registrar and fourth cadre is that of Master.

The learned counsel submits that the cadre of Master has been defined altogether differently and therefore all 21 vacancies are to be taken into consideration for the purpose of applying the reservation rules. The reservation cannot be made subject wise. The entire cadre of Masters is to be represented as a whole.

Learned counsel for the opposite parties has relied upon a case reported in (1993) 4 SCC 120 R. K. Jain v. Union of India and others. In this case, the Hon"ble Apex Court has held that unless the writ is not in the nature of quo warranto, it is only the aggrieved person who can assail the legality of the offending action. Since, the appellantpetitioner is not qualified for the post advertised, and is not aggrieved, therefore, he has no locus to challenge the impugned advertisement.

Having heard learned counsel for the parties and going through the pleadings, it is not disputed that the appellantpetitioner was appointed as English Master on a temporary basis and his appointment was extended from time to time meaning thereby that the petitioner was allowed to work only till the regularly selected candidate is made available for the post. It is also not in dispute that the advertisement in question which was challenged by the petitioner, was only for the candidates of SC category. The appellantpetitioner, therefore, was not qualified to apply for the said post as he did not belong to the SC category. The main ground of challenge of the appellantpetitioner is that in the case of State of Karnataka and others (supra) referred to above, it has been clearly laid down by Hon"ble the Apex Court that if there is a single post of lecturer in a particular subject, it can be treated as a cadre in itself because the post was not interchangeable with any other post. Since, the Rules of reservation cannot be applied to a single isolated post, the single post would be cadre in itself.

The submission of learned counsel for the appellantpetitioner is that there are four posts of English Master and therefore, applying the rules of reservation, one out of four posts cannot be reserved for SC category. Thus the only point in controversy which is to be considered at this stage is as to whether the entire teaching staff is to be treated as a single cadre or subject wise posts would be treated as a single cadre. The AppendixI of the rules describes four categories of posts, one cadre is that of Principal, second cadre is that of Head Master, third cadre is that of Registrar and fourth cadre is that of Teaching Staff which has 21 posts.

The submission of learned counsel for the opposite parties is that in view of the Rules of the school, there are four cadres and all the 21 posts of the Masters would be treated as a single cadre. There are 21 posts of Masters and applying the rules of the reservation there would be four posts of Masters available for SC

category. Since only two candidates are presently working in the SC category, hence, two more posts are to be filled up from the SC category to complete the representation of SC category.

Having heard learned counsel for the parties and going through the rules of the school, it is clear that the entire teaching staff would be a single cadre and subject wise teachers cannot be treated as cadres. Rule 4 of the Rules provides that the strength of each cadre of posts to which these rules apply shall be such as may be determined by the Board from time to time. It is also provided in the Rules that the strength of each category of posts shall be as specified in Appendix I.

From the Appendix, it is clear that there are four cadres and the fourth cadre is that of teachers. There are total number of 21 posts of teachers in all the subjects.

Thus, the argument of learned counsel for the appellant/petitioner that reservation should be applied subject wise, is not acceptable because the entire teaching staff has been placed under one category. It is not in dispute that presently out of 21 posts of teachers only two candidates of SC category are working and thus, applying the reservation rules, two more posts could be filled up from the SC category.

The case of State of Karnataka and others (supra) cited by the learned counsel for the appellant/petitioner does not help him because in that case there was only one post of teacher in a particular subject and that post was reserved for a SC candidate. It was in this background that the Hon'ble Apex Court held that where there is only one post in a particular subject, that would itself be treated as a cadre as it cannot be interchanged.

Apart from the fact that out of 21 posts of teachers, four posts belong to SC category and only two candidates are working in this category while two posts of SC category are still to be filled up, it also cannot be ignored that the appellant/petitioner is not eligible to apply for the post advertised. It is a settled proposition of law that the person who is not qualified or eligible, cannot challenge the advertisement unless he is precluded to take part in the selection process for any valid reason. The appellant/petitioner according to his own case, is not eligible to apply for the post advertised and if he is not eligible, then he cannot be aggrieved by the advertisement made by the opposite parties. Moreover, the appointment of the appellant/petitioner was only for a fixed term and his term has already expired by efflux of time. He has no valid claim to continue on the post in question as his appointment was on contract basis.

The learned Single Judge after considering all the legal aspects of the matter has concluded that the rules of reservation cannot be applied subject wise. It has to be applied by treating the entire category of teachers as one cadre. The learned Single Judge has also concluded that the petitioner being not eligible to apply for the post advertised and he being not an aggrieved party, cannot assail the

advertisement issued by opposite party no.4.

Thus, we do not find any illegality in the order passed by learned Single Judge and, as such, the special appeal has no force and is liable to be dismissed.

The special appeal is dismissed without any order as to costs.