

(2013) 02 AHC CK 0079

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 50331 of 2010

Rajeev Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-02-2013

Acts Referred:

Constitution of India, 1950 — Article 162, 309

Citation : (2013) 4 ADJ 726 : (2013) 4 AWC 3331

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : Vinod Sinha and Mahesh Sharma, for the Appellant; Dinesh Rai and Dr. Aditya Kumar Trivedi, for the Respondent

Final Decision : Allowed

Judgement

A.P. Sahi, J.—Heard Sri Mahesh Sharma, learned counsel, for the petitioner and the learned Standing Counsel for the Respondent Nos. 1 to 5. Notices were issued to the Respondent Nos. 6 and 7 and Sri Dinesh Rai has supported the case of the petitioner on behalf of the said respondents.

2. Sri A.K. Trivedi has filed an impleadment application on behalf of Pavan Sharma claiming that it is the applicant who was entitled to be selected and that the selection of the petitioner was erroneous which has already been set aside by the Regional Level Committee. Sri Trivedi submits that the applicant stands higher in merit than the petitioner and in such circumstances, it was the applicant who ought to have been selected.

3. The respondent-State was granted time on 20.8.2010 to file a counter-affidavit which is said to have been served on the learned counsel for the petitioner in February, 2013. A copy of the counter-affidavit has been placed before this Court.

4. The Regional Level Committee by the impugned order dated 22.7.2010 has held that after excluding the post of a sweeper there are only 11 posts

sanctioned in the Class-IV cadre and accordingly three posts have to be filled up by giving the benefit of reservation to the scheduled caste category candidate. In such circumstances, the District Inspector of Schools had erroneously granted permission to fill up the post under the general category. Accordingly, the claim of the petitioner was rejected.

5. The contention of Sri Sharma is that not only the calculation is wrong but even otherwise the exclusion of the post of sweeper from the cadre of Class-IV employees is also contrary to law. He contends that the post is of the general category and the petitioner was found to be the best suitable candidate and, therefore, he was entitled for being appointed to which the respondents are bound to give an approval. The prayer, therefore, is to quash the order and direct the respondent to proceed accordingly.

The Committee of the Management and the Principal have supported the cause of the petitioner. Learned Standing Counsel contends that the post of Sweeper has to be excluded and in such circumstances the calculation of the post in favour of a scheduled caste candidate has been rightly made under the impugned order.

6. Sri Trivedi, learned counsel, for the caveator who has filed an impleadment application has been heard by this Court under Chapter 22 Rule 5-A of the Allahabad High Court Rules. Even though, in the opinion of the Court, he is neither a proper nor a necessary party in this writ petition. The argument of Sri Trivedi is two fold; firstly that the applicant Pavan Sharma is higher in merit and secondly the direction issued to hold a fresh selection should be modified to reconsider the merit of the applicant who, according to him, was entitled to higher marks than the petitioner.

7. I have perused the counter-affidavit filed by Pavan Sharma. In paragraph 7 of the said affidavit it has been stated that the post neither belongs to the OBC category nor the scheduled caste category. In such circumstances, the selection of the petitioner as an OBC candidate is erroneous and approval has rightly been refused to the petitioner.

8. There appears to be a conflicting stand taken by the said applicant. On the one hand he claims selection as a general category candidate and on the other hand it is urged that the impugned order rightly sets aside the selection of the petitioner. There is no challenge to the order dated 22.7.2010 by the applicant, Pavan Sharma. In the aforesaid circumstances, if the applicant has not chosen to challenge the said order the aforesaid argument cannot be entertained and it is for this reason that he is neither a proper and necessary party to the present writ petition.

9. Coming to the merits of the matter, it is undisputed that there are 12 posts of Class-IV employees in the institution including that of a sweeper. The issue whether the post of a sweeper is included within the cadre of Class-IV strength of an institution or not is already settled by this Court in the decision of Amit

Tewari Vs. State of U.P. and Others, . A learned Judge of this Court categorically found that the Government order, on the basis whereof such a distinction was sought to be drawn, does not comply at all and is not a Government order in terms of Article 162 of the Constitution of India. The learned Single Judge also found that for the purpose of calculating a post for reservation, the provision of U.P. Public Service Reservation for Scheduled Castes and Scheduled Tribes Act, 1994 shall be applicable which does not draw any such distinction.

10. Apart from this, and the ratio of the aforesaid decision, with which I fully agree, there is yet another reason, that if there was a Government order, the same would apply in the cases of Government servants who are governed by the provisions of Article 309 of the Constitution of India. The instant is a case relating to a Class-IV employee of an Inter Mediate College where such Rules for bifurcation of the cadre between sweepers and other Class-IV employees in Government service would not be applicable.

11. In the aforesaid circumstances, the stand taken and the impugned order for bifurcating the post of sweeper from the cadre of Class-IV employees is absolutely erroneous and cannot stand the scrutiny of law.

12. The impugned order dated 22.7.2010 is, therefore, quashed.

13. The writ petition is allowed. The Regional Level Committee is directed to pass a proper resolution and dispatch it to the District Inspector of Schools within six weeks in the light of the observations made hereinabove and the District Inspector of Schools shall proceed to consider the grant of approval/financial sanction to the appointment of the petitioner accordingly.