
(2015) 07 AHC CK 0154

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 41899 of 2014

Ram Prakash and Others

APPELLANT

Vs

State of Uttar Pradesh Ors.

RESPONDENT

Date of Decision : 21-07-2015

Acts Referred:

Citation : (2015) 7 ADJ 627 : (2015) 112 ALR 673 : (2015) 5 AWC 5228 :
(2015) 4 ESC 2407 : (2015) 147 FLR 995 : (2015) 4 UPLBEC 3293

Hon'ble Judges : Arun Tandon, J; Ashwani Kumar Mishra, J

Bench : Division Bench

Advocate : Rakesh Kumar Gupta, for the Appellant; Archana Singh, Advocates
for the Respondent

Final Decision : Disposed off

Judgement

1. Petitioners, who are four in number, have submitted application for being considered for the post of Lecturer in the subject of Hindi, Economics, Political Science and Geography respectively in response to the Advertisement published by the U.P. Higher Education Services Commission (herein after referred to as the "Commission") dated 4.3.2014. The petitioners are aggrieved with the modification which has been made, in respect of advertised vacancies, under the Advertisement dated 19.6.2014 and dated 21.7.2014 by the Commission.

2. On examination of the records we find that this amended notification has been published in compliance to the judgment of the High Court in the case of Dr. Pratima Mishra v. State of U.P. and others (Civil Misc. Writ Petition No. 28255 of 2014 decided on 22.5.2014) where-under the State authorities as well as the Commission was directed to apply reservation treating the subject/department as the Unit and not the institution as a unit.

3. We may only record that the legal position in that regard has been well-settled by the Full Bench judgment of this Court in the case of Heera Lal vs. State of U.P. and Others 2010 (82) ALR 453, which has approved the proposition of law as laid

down in the case of Dr. Vishwajeet Singh and Others Vs. State of U.P. and Others, (2009) 3 AWC 2929 : (2009) 2 UPLBEC 1443 and had disagreed with the judgment of the Division Bench of this Court in the case of Dr. Archana Mishra and Others Vs. State of U.P. and Others, (2011) 2 ADJ 1 .

We may record that the Full Bench has relied upon the judgment of the Apex Court in the case of State of U.P. and others v. M.C. Chattopadhyay and others, (2004) 12 SCC 333.

4. We do not find any illegality in the modified notification which has been published by the Commission. The Commission has rightly permitted the applicants to revise their option in the matter of choice of advertised posts because of change of reservation which has come into play because of the judgment, referred to above.

5. Counsel for the petitioners, however, submitted that from the language of the amended notification it is clear that the respondents now want to confine the persons to the Reserved Category which he claims to belong and to exclude them from consideration against the posts which are meant for general category/ open category.

6. In our opinion the contention raised on behalf of the petitioners is totally unfounded. Act No. 4 of 1994 takes care of the case of Reserved Category candidates as against the general category post (open category post).

It is also submitted that the petitioner No. 4 is a Scheduled Tribe Category Candidate and that no vacancy has been reserved for such category of persons, contrary to the constitutional mandate.

7. The contention so raised on behalf of the petitioners has been stated to be rejected inasmuch as the Full Bench of this Court in the case of Heera Lal and others (Supra) has held that for reservation being provided in favour of Scheduled Caste Category, there must be at least five posts in the cadre/subject concerned.

8. There is absolutely no pleading in the writ petition that in any College there are five requisite number of posts duly created in the subject concerned qua which reservation can be provided to Scheduled Tribe Category candidates.

9. It is also contended that as per the advertisement approximately 86 per cent posts fall within the general category while 14% posts fall within the reserved category which according to the petitioners is bad.

10. Nothing more needs to be recorded by this Court as the issue stands settled in view of the judgment in the case of Heera Lal (Supra).

11. If the petitioners have any other grievance in the matter of reservation being provided against any particular advertised post of a College, they are at liberty to approach the Director of Higher Education. Accordingly, the present writ petition is disposed of with liberty to the petitioners to ventilate their grievances in

respect of any particular post of a College before the Director of Higher Education within two weeks from today alongwith a certified copy of this order. On such a representation being made the Director shall call for the records and shall pass a reasoned speaking order preferably within eight weeks thereafter.