

(2005) 10 AHC CK 0082

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14523 of 2002

Ravindra Singh

APPELLANT

Vs

Regional Higher Education Officer and Principal, Arya Kanya
Pathshala Post Graduate College

RESPONDENT

Date of Decision : 25-10-2005

Acts Referred:

Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 — Section 3, 3(1), 3(2), 3(5)

Citation : (2006) 1 AWC 988

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Vinod Sinha and S.P. Singh, for the Appellant; Suresh Singh and Dinesh Rai and S.C., for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—On the retirement of an employee, a vacancy occurred on a Class-IV post in a Post Graduate College, which is affiliated to Chaudhary Charan Singh University, Meerut. The Principal of the institution sought permission from the Regional Higher Education Officer, Meerut to fill up the vacancy. The authority by an order dated 5.12.2000 accorded approval to the college authority to fill up the post. It transpires that the college advertised the vacancies in two newspapers pursuant to which, 223 candidates appeared and the selection committee recommended the name of the petitioner. The college issued an appointment letter to the petitioner and also forwarded his papers to the Regional Higher Education Officer, Meerut, for grant of financial approval.

2. The Regional Higher Education Officer by its letter dated, 14.5.2001 directed the Principal to intimate as to whether the vacancy was filled up after applying the roster as required under the Uttar Pradesh Public Services [Reservation For Scheduled Castes, Scheduled Tribes And Other Backward Classes] Act, 1994 [hereinafter referred to as the Act of 1994]. Pursuant to the aforesaid direction,

the Principal of the College vide letter dated 21/23.4.2001 and 27.6.2001 intimated the authority that there were 11 sanctioned Class-IV post in which four employees were Schedule Caste [SC], four employees belonged to Other Backward Class [OBC] and two employees were from the General Category and, therefore, the application of the roster did not apply.

3. It transpires that based on the aforesaid information, the authority by its order dated 30.7.2001 refused to accord approval to the appointment of the petitioner on the ground that the roster was not applied. On the basis of the aforesaid order, the Principal terminated the services of the petitioner by an order dated 20.11.2001.

4. Aggrieved, the petitioner filed Civil Misc. Writ Petition No.43425 of 2001, which was disposed off by an order dated 25.1.2002 directing the petitioner to make a fresh representation which would be decided again by the authority concerned. Pursuant to the aforesaid direction, the petitioner made a representation which was again rejected by the authority by its order dated 30.3.2002 on the ground that the post was required to be filled up by a candidate belonging to the reserved category as per the roster indicated under the Act of 1994.

5. The petitioner has now again filed the present writ petition praying for the quashing of the order of the Regional Higher Education Officer dated 30.3.2002 and has further prayed that the respondents be directed to permit the petitioner to work as a class-IV employee.

6. Heard Sri Vinod Sinha, the learned counsel for the petitioner, Sri Suresh Singh, the learned counsel for the Regional Higher Education Officer and Sri Dinesh Rai, the learned counsel appearing for the educational institution.

7. The stand taken by the Regional Higher Education Officer is that since the vacancy had occurred in the institution for the first time after the enforcement of the Act of 1994, the first vacancy, as per the roster, had to be filled up by a candidate who was to a Schedule Caste. On the other hand, the stand of the educational institution is, that out of 11 posts, 8 posts had already been filled up by Schedule Caste and Other Backward Class [OBC] candidates and therefore their quota had already been filled up. The Regional Higher Education Officer however insisted that the vacancy was required to be filled up as per the roster indicated in the Act of 1994.

8. In order to appreciate the rival submission of the parties, it is essential to take a look at the provisions of the Act of 1994. Section 3 of the Act of 1994 states as under :

"3. Reservation in favour of Scheduled Casts, Scheduled Tribes and other Backward Classes :

[1] In public services and posts, there shall be reserved at the stage of direct recruitment, the following percentages of vacancies to which recruitments are to

be made in accordance with the roster referred to in sub Section [5] in favour of the persons belonging to Scheduled Castes, Scheduled Tribes and other backward classes of citizen.

[a] in the case of Scheduled Castes 20% [b] in the case of Scheduled Tribes 2% [c] in the case of other backward 27% classes of citizens Provided that the reservation under Clause [c] shall not apply to the category of other backward classes of citizens specified in Schedule 11.

[2] If, even in respect of any year of recruitment, any vacancy reserved for any category of persons under sub Section [1] remains unfilled, special recruitment shall be made for such number of times, not exceeding three, as may be considered necessary to fill such vacancy from amongst the persons belonging to that category.

[3] If, in the third such recruitment referred to in sub Section [2] suitable candidates belonging to the Scheduled Tribes are not available to fill the vacancy reserved for them, such vacancy shall be filled by persons belonging to the Scheduled Casts.

[4] Where, due to non-availability of suitable candidates any of the vacancies reserved under sub-section[1] remains unfilled even after special recruitment referred to in sub-section[2] it may be carried over to the next year commencing from first of July, in which recruitment is to be made, subject to the condition that in that year total reservation of Vacancies for all categories persons mentioned in sub-section[1] shall not exceed fifty percent of the total vacancies.

[5] The State Government shall, for applying the reservation under sub-section [1], by a notified order, issue a roster which shall be continuously applied it is exhausted.

[6] If, a person belonging to any of the categories mentioned in sub-section [1] gets selected on the basis of merit in an open competition with general candidates, he shall not be adjusted against the vacancies reserved for such category under sub-section[1].

[7] If, on the date of commencement of this Act, reservation was inforce under Government Orders for appointment to posts to be filled by promotion, such Government Orders shall continue to be applicable till they are modified or revoked.

9. From a perusal of Section 3[1] read with Section 3[5] of the Act, it is clear that the recruitment is required to be made in accordance with the roster. The State Government by a notification dated 29.3.94 has issued a roster indicating the particular post which is required to be filled up by a S.C/S.T. or O.B.C. or a General Category candidate For example, for the first eleven posts, post No., 5 and 11 is required to be filled up by a S.C. Candidate, post Nos.3,7 and 9 are required to be filled up by an O.B.C. Candidate and post No.2,4,6,8 and 10 are required to be filled up by a general category candidate. Therefore, the aforesaid

roster point which is reserved for a S.C. Category or an O.B.C. Category can only be filled up by way of an appointment from a person of that category alone. No person from the General Category could be appointed against a post reserved in the roster which is reserved for a SC or an OBC candidate.

10. The stand taken by The Regional Higher Education Officer that since this is the first appointment after the enforcement of the Act of 1994, the vacancy is therefore, required to be filled up as per the roster by a candidate belonging to a reserved category, is patently misconceived.

11. It must not be lost sight of the fact that u/s 3 [1] of the Act, 50% of the total number of sanctioned post could only be filled up by the candidates belonging to the reserved category. At no point of time the number of post occupied by candidates from the reserved category could exceed 50%. In the light of the aforesaid, the roster issued u/s 3[5] of the Act has to be applied. The Supreme Court in R.K. Sabharwal and others Vs. State of Punjab and others, held that once the total number of post are filled up as per the roster, the said roster comes to an end and does not survive any longer and that the roster could not be used any further. The Supreme court further held -

"Therefore, the only way to assure equality of opportunity to the Backward Classes and the General Category is to permit the roster to operate till the time the respective appointees/promotees occupy the post meant for them in the roster. The operation of the roster and the "running account" must come to an end thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporarily in a particular post the same has to be filled from amongst the category to which the post belong in the roster. For example the Schedule Caste person holding the posting at roster points 1,7, 15 retire then these slots are to be filled from amongst the person belonging to the Schedule Castes. Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire then these slots are to be filled from among the General Category. While following this procedure there shall neither be shortfall nor excess in the percentage of reservation."

12. The Supreme Court held that when the total number of posts in a cadre has filled up by operation of the roster, then the result envisaged by the roster was achieved and there was no justification to operate the roster thereafter.

13. In Bhup Singh Vs. State of Haryana and Others, the facts were that in a cadre strength of 44 posts of Labour Inspectors, 9 posts were required to be filled up by way of promotion or by direct recruitment from Schedule Caste candidates. 9 persons belonging to SC category were already working as Labour Inspector. However, when the vacancy at roster point No.68, which was reserved for a Schedule Caste candidate, was required to be filled up, the same was filled up by a candidate from the General Category. The High Court took the view that since the prescribed quota of Schedule Caste candidates had already been attained, the roster point lost its utility. The High Court held that the candidate

selected from the General Category could not be displaced on the ground that the roster point indicated the vacancy to be filled up by a Schedule Caste candidate. The Supreme Court affirmed the view of the High court and held that once the quota had been achieved, the roster point could not be followed thereafter. The Supreme Court further held

"Utility of a roster is to provide a guideline for filling up the reserved quota for different groups vis-a-vis the candidates from the General category. Once the quota is achieved as for one or the other group of communities entitled to reservation, the roster will cease to have utility for that community because the guideline would already have been followed."

14. In view of the aforesaid, the stand of The Regional Higher Education Officer that the roster has to be applied is erroneous. In the present case, admittedly, all the 11 posts were filled up. Eight persons from the reserved category are still working which is more than 50% of the permissible limit. The Principal in the supplementary affidavit has submitted that the eight persons, in the past, had been appointed as candidates belonging to the reserved category and that none of these eight persons were appointed on merit in the General Category. The averments in the supplementary affidavit has not been denied by the Regional Higher Education Officer. Consequently, the vacancy was required to be filled up by a General Category candidate.

15. Consequently, the petitioner is entitled to the relief claimed. The writ petition is allowed. The impugned order dated 30.3.2002 is quashed. A writ of mandamus is issued commanding the Principal of Arya Kanya Pathshala Post Graduate College, Khurja, district Bulandshahr, to file an affidavit before the Regional Higher Education Officer within one month from the date of the receipt of a certified copy of this order, indicating therein, that the eight SC & OBC employees working were appointed in the reserved category and were not appointed in the General Category. On the receipt of this affidavit, the Regional Higher Education Officer shall accord approval to the appointment of the petitioner as a General Category on a class-IV post within four weeks thereafter. The petitioner shall be entitled for the payment of the salary from the State Exchequer only from the date of approval accorded by the Regional Higher Education Officer, Meerut.