
(2005) 07 AHC CK 0144

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4448 of 2003

Shambhoo Lal Srivastava and Ors.

APPELLANT

Vs

District Judge, Kushi Nagar & Ors.

RESPONDENT

Date of Decision : 13-07-2005

Acts Referred:

Citation : (2005) 07 AHC CK 0144

Hon'ble Judges : Sunil Ambwani, J

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Sri Satish Mandhyan, learned Counsel for the petitioner and Sri Neeraj Upadhyay, Special Counsel for the respondents.

2. The District Judge, Kushi Nagar issued an advertisement dated 1361999 for direct recruitment to fill up 42 vacancies of Class III employees in the judgship. All the petitioners applied and appeared in the written examinations held on 24101999. The result was declared on 822000 including the names of petitioners at serial Nos. 19, 20, 21 and 22 of the list of "general" candidates. Sixteen persons out of merit list of general candidates; eight persons from the list of "scheduled caste" candidates and eleven persons from the list of "other backward caste" were given appointments on the same day on 822000. The list also included names of those Class IV employees, who were found eligible for promotion in their quota to Class III posts. In this manner a total number of 35 candidates were given appointments. The petitioners made a joint representations dated 2652000 objecting, that these 42 vacancies could not include the promotion quota. The reserved categories candidates were wrongly adjusted in general category. Sri Shaktidhar Dube at serial No. 1 of the list of promotees was not eligible as he had suffered punishment in a departmental enquiry, and that petitioner No. 3 as grandson of freedom fighter was not given the benefit of reservation in his category.

3. The District Judge, Kushi Nagar appointed the petitioners and one Sri Vineet Kumar Pandey on leave vacancies on temporary basis from 162000 to 3162000.

These appointments were made under Rule 269 of the General Rules (Civil) which enables the District Judge to appoint copyists to take care of increased and urgent pending copying work. The High Court, however, did not grant approval of such appointments as these were made without any budgetary sanction and in pursuance of the orders of the High Court dated 16122002 on administrative side the petitioners were ceased from functioning as temporary copyists. The petitioners have challenged the consequential orders 312003 in this writ petition.

4. The petitioners also claimed appointment on regular basis from out of select list dated 822000 and sought amendment of the writ petition. The amendment application was allowed on 2412003.

5. Sri Satish Mandhyan submits that the order of the District Judge dated 312003 ceasing the petitioners' employment under Rule 269 of the General Rule (Civil) violates the principals of natural justice. The petitioners had competed in the examinations and were included in the select list. They entered in the service within one year i.e. before the select list expired. Their appointments in leave vacancies were likely to be continued as service rules do not provide for contingency of ceasing employment after the return of selected candidates from leave. The vacancies did not include the promotion quota and that the District Judge had wrongly applied promotion quota to the advertised vacancies. The reservation for freedom fighters was not provided and that the persons selected in their own quota after having taken the benefit of relaxation of age could not be given appointment in general quota even if on merit they had secured higher marks than the general category candidates.

6. During the pendency of the writ petition, Hon''ble Administrative Judge, Kushi Nagar, has by an order dated 1912005, decided the representations made by the petitioners and one Sri Vineet Kumar Pandey. The order is enclosed with the supplementary affidavit sworn by the petitioner No. 2. It is a reasoned and exhaustive order taking care of almost all the issues raised in this writ petition. He has allowed the representation of Sri Mukul Gaur (petitioner No. 3 in this writ petition) giving him benefit of appointment in the quota (horizontal) reserved for dependants of freedom fighters. He has been given appointment. The relief claimed by petitioner No. 3 in this writ petition as such does not survive.

7. In his order dated 1912005, the Administrative Judge, Kushi Nagar has found that the select list dated 822000 prepared by duly constituted selection committee, included 24 candidates in the general category, 12 of other backward castes, and 11 of scheduled caste candidates. There was no dispute with regard to vacancies and selection of two posts of Stenographers. Out of 42 vacancies, 41 were existing vacancies and one was expected on 3172000 on the retirement of Sri Lalji Pandey, Senior Administrative Officer. Out of these 15% vacancies, i.e. 6 were to be filled from Class IV employees by promotion from amongst eligible and qualified candidates. For that purpose a separate select list through competitive examination held in August, 2000 was prepared. There was no dispute with regard to these selections for promotion. The grievance raised by

representationists were that out of 42 advertised vacancies, 22 were in the higher pay scale. The promotion quota was available to the vacancies in the lowest of the pay scale of Class III employees and since only 20 vacancies in the lowest scale was available, the quota of 15 % of Class III employees was only 3. It was further alleged that certain candidates of reserved category were included in the select list of general category, though they had taken benefit of reservation for seeking relaxation in age, and thus they should be excluded from the list of general category. Sri Mukul Gaur was denied appointment in the category of dependants of freedom fighters.

8. It was found that all the 42 advertised vacancies were in the pay scale of Rs. 30504590 which is the lowest pay scale of Class III service and thus District Judge had rightly determined the quota for promotions. Section 3(6) of the U.P. Public Service (Reservation of Scheduled Caste and Scheduled Tribe and Other Backward Classes) Act, 1994, provides that if a person belonging to any of the categories mentioned in subsection (1) (reserved categories) 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 subsection (1). Accordingly Sri Bhupesh Kumar with 81 marks (SC), Karunish with 73 marks (SC), Aftabh Hussain Nomani with 73 marks (OBC) who had secured more than 70 marks which were the lowest in the general category candidates out of 200 who were placed in general category. Consequently some more candidates belonging to reserved categories were included in their quota. Relying upon Indira Sawhney's case, AIR 1973 SC 477, he found that out of 36 vacancies, which could be filled up from the recruitment, the quota of OBC (27%) comes to 9.7 and thus 10 vacancies could be allotted to them, and the quota of SC and ST would be come to 8.20 vacancies which were rounded off to 8 and thus 18 vacancies out of 36 which is 50% were filled from the reserved categories candidates. Sri Mukul Gaur was entitled to horizontal reservation for dependants of freedom fighters (2%) which comes to 0.7% vacancies and if rounded off and consequently he was entitled to the vacancy. The other issue decided by Hon''ble Administrative Judge relates to SC, ST candidates, who have not challenged the selections and is not relevant for the purpose of deciding this writ petition.

9. Learned Counsel for the petitioner submits that the quota for promotion was filled up and thus District Judge could not have allotted six vacancies out of 42 to the promotion quota. He further submits that the reserved category candidates had taken the benefit of age relaxation and thus they are not entitled to further benefits under Section 3 (6) of the U.P. Act No. 4 of 2004.

10. There is no merit in the submissions. The Government Order dated 3181989 provides for 15% promotion quota in Group C posts. In the counteraffidavit of Sri Rama Shanker (respondent No. 10) a promoted employee, it is stated that the vacancies were correctly worked out. There is no averment or any material in the writ petition supporting the submission that this 15% quota stood exhausted. In any recruitment the quota is to apply to the vacancies. All the advertised posts

were in the pay scale of Rs. 30504590, and thus the quota was rightly worked out to 6 vacancies and was filled up from the Class IV employees by a separate examination. So far as the second argument is concerned, the State Government has consistently adopted the policy of giving the benefit to meritorious candidates of reserved categories by adjusting those in general category who have secured higher marks than the last general category. Para 4 of the Government Order dated 2531994 provided that where a person belonging to reserved category is selected in open competition with general category candidates, he shall not be adjusted towards the reserved category candidates, even if he has taken any benefit or relaxation (age relaxation etc.). The same policy has been followed in Section 3 (6) of U.P. Act No. 4 of 1994. In *P.G.I. of Medical Education and Research v. K.L. Narsimbhan*, 2000(3) LBESR 572 (SC) : 1997 (6) SCC 283, it was held in paragraph 5 as follows:

?(5) It is settled law that if a Dalit or Tribe candidate gets selected for admission to a course or appointment to a post on the basis of merit as general candidate he should not be treated as reserved candidates. Only one who do not get admission or appointment by virtue of relaxation of eligibility criteria should be treated as reserved candidate.?

11. These observations in *P.G.I. of Medical Education and Research* were not overruled in *Dr. Preeti Srivastava v. State of Madhya Pradesh*, 1999 (7) SCC 120 (Constitutional Bench), by the majority opinion, in paragraphs 2 and 66.

12. In this case, the submission that a reserved category candidate, who has taken any benefit of relaxation or exemption as such, cannot adjust in general category on the basis of their merit, cannot be taken into account. There is no pleading or assertion of the fact that Bhupesh Kumar (SC), Karunesh (SC) and Aftab Hussain Nomani (OBC) had taken any benefit of any relaxation applicable to SC/OBC candidate. Further, I find that these persons have not been impleaded as party to the writ petition and thus the petitioners cannot get any relief against them.

13. The appointment under Rule 269 of the General Rule (Civil) do not confer any benefit or advantage to the petitioners. Such appointees, have no right to hold the post as they are appointed on purely temporary basis in the exigency of increase of copying work. In *Subedar Singh v. District Judge, Mirzapur*, 2001(1) LBESR 969 (SC) : (2001) 1 SCC 37, the Supreme Court did not accept the rights of such appointees for regularisation. The life of select list is one year and as held in *Devendra Nath Srivastava's case* (Full Bench) 1996(2) LBESR 437 (All) (FB) : 1996 (2) UPLBEC 1037, and it came to an end on 722001.

14. The petitioners have not made out any case for interference. The writ petition is consequently dismissed with no order as to costs.