

(2001) 04 AHC CK 0058

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 28606 of 2000

Sheshmani Yadav

APPELLANT

Vs

District Inspector of Schools, Allahabad and Others

RESPONDENT

Date of Decision : 25-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 04 AHC CK 0058

Hon'ble Judges : R.K.Agrawal, J

Final Decision : Allowed

Judgement

R.K. Agrawal J.

1. The petitioner, Sheshmani Yadav has filed this petition under Article 226/227 of the Constitution of India seeking a writ, order or direction in the nature of certiorari quashing the order dated 1362000 passed by the respondent No. 1, contained in Annexure 6 to the writ petition. The petitioner further seeks a writ of mandamus commanding the opposite parties No. 1 and 2 to consider the promotion of the petitioner on the post of Assistant Clerk in Lal Ram Lal Agarwal Inter College, Sarasa Allahabad (hereinafter referred to as the College).

2. By the impugned order dated 1362000 the District Inspector of Schools while deciding the representation made by the respondent No. 3 had directed for his appointment on the post of Assistant Clerk in the College.

3. I have heard Shri R.K. Jain learned Senior Counsel on behalf of the petitioner, the learned standing Counsel for the respondent No. 1 and Shri Z.K. Hasan, learned Counsel for the respondent No. 2, Shri C.B. Yadav learned Counsel for the respondent No.3.

4. The learned Counsel for the petitioner submitted that the post of Assistant Clerk in the said College which has fallen vacant on account of promotion of one person on the post of Head Clerk is liable to be filled up by way of promotion from amongst eligible class IV employees of the said College and cannot be filled

up by direct recruitment by the District Inspector of Schools under the provisions of Dying in Harness Rules. He relied upon the decision of Hon"ble Supreme Court rendered in the case of Heera Mani v. State of U.P. and others reported in 1997 (7) S.C. 324.

5. Shri Z.K. Hasan learned Counsel for the respondent No. 2 submitted that in all there are five posts of clerk in the College including one post of Head Clerk and three persons who have been appointed by direct recruitment are working on the said posts. Thus, the post of Assistant Clerk which has fallen vacant on account of promotion of one person to the post of Head Clerk is to filled up by way of promotion from amongst class IV employees of the College.

6. Shri Y.S. Vohra learned standing Counsel does not dispute the proposition that if class III post which has fallen vacant in the College is to be filled up by way of promotion as per 50% promotion quota, is liable to be filled up by way of promotion and in that event direct appointment cannot be made in view of the aforesaid decision. However, he submitted that this fact was not in the notice of the District Inspector of Schools when he directed for appointment of the respondent No. 3.

7. Shri C.B. Yadav learned Counsel for the respondent No. 3 also does not dispute the above proposition.

8. Having heard the learned Counsel for the parties, I find that the specific case put up by the College authorities before the District Inspector of Schools was that the post of Assistant Clerk which has fallen vacant is liable to be filled up by way of promotion from amongst class IV employees as would be clear by the letter dated 821999 written by the College Authorities to the District Inspector of Schools a copy whereof is contained in Annexure 4A to the writ petition. Thus it cannot be said that the post of Assistant Clerk was to be filled up by way of direct recruitment. Since the post is liable to be filled up by way of promotion, the direction given by the District Inspector of Schools for appointing the respondent No. 3 under the provisions of Dying in Harness Rules, as given in the order dated 1362000 is hereby quashed. The District Inspector of Schools is directed to adjust the respondent No. 3 in some other Institution in accordance with law within six weeks from the date of filing of a certified copy of this order.

9. In the result, the writ petition succeeds and is allowed.