
(2003) 04 AHC CK 0130
In the Allahabad High Court
Case No : C.M.W.P. No. 36643 of 2001

Shiv Prabhu Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 AWC 1840 : (2003) 2 UPLBEC 1138

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : S.R. Pal and A.T. Kulshrestha, for the Appellant;

Final Decision : Allowed

Judgement

Anjani Kumar, J.—The petitioner applied in response to the advertisement made in the year 1998-99 for the post of Village Development Officer. The respondents have prepared three select list for different categories. One for General Category, second for O.B.C. and third for Schedule Caste and few candidates in the waiting list also. The petitioners name finds place in the waiting list.

2. It so happened that two of the persons amongst the O.B.C. category, who joined the post, have resigned and thus, according to the petitioner, there arose two vacancies, which, according to the submission made by the learned counsel for the petitioner, ought to have been given to the petitioner, who is in the waiting list of O.B.C. category waiting for his turn to be given appointment in case any vacancy remain unfilled during the life of the waiting list. These are the admitted facts which are not disputed. It is also not disputed that the resignation of these to persons belonging to O.B.C. category has taken place during the period of one year which is the life of the waiting list.

3. Learned counsel for the petitioner submitted that in view of the fact that now two vacancies are available, the petitioner who belongs to O.B.C. categories ought to have been given appointment on the post. The respondents have denied

the claim of the petitioner. Therefore, the petitioner has approached this Court by means of this writ petition under Article 226 of the Constitution of India for a writ of mandamus.

4. A counter-affidavit has been filed by the respondents in reply to the writ petition. In paragraphs 5 and 6 of the counter-affidavit, particularly, in paragraph 6 of the counter-affidavit, the stand taken by the respondents is that since the post on which the petitioner is claiming right to be appointed by virtue of his name being there in the waiting list has already been filled-in who admittedly resigned after joining the service. The appointment to this post, if at all is to be made, can be done only after following the procedure prescribed under Rule 17 of the Uttar Pradesh Gram Vikas (Gram Sewak) Sewa Niyamawali, 1980. Rule 17 is reproduced below :

^^fu;qfDr&&?1? ekSfyd fjfDr;ka gksus ij] fu;qfDr izkf/kdkjh vH;fHkZ;ksa dks ml ?e ls ysdj ftlesa muds uke fu;e 17 ds v/khu rS;kj dh xbZ lwph esa gks] fu;qfDr;ka djsxk A

?2? ;fn fdlh ,d p;u ds laca/k esa ,d ls vf/kd fu;qfDRk ds vkns"tk tkjh fd;s tk;sa rks ,d la;qDr vkns"tk Hkh tkjh fd;k tk;] ftlesa O;fDr;ksa ds ukeksa dk mYys[k T;s"Brk?e esa fd;k tk,xk] tSlk fd ;FkkfLFkfr] p;u esa vo/kkfjr dh tk;] ;k tSlk fd ml laoxZ esa gks ftlls mUgs inksUur fd;k tk; A

?3? fu;qfDr izkf/kdkjh mifu;e ?1? ds v/khu rS;kj dh xbZ lwph ls vLFkk;h vkSj LfkkukiUu :i ls Hkh fu;qfDr;ka dj ldrk gS ;fn bu lwfp;ksa dk dksbZ vH;FkhZ miyC/ k u gks rks og ,slh fjfDr;ksa esa bl fu;ekoyh ds v/khu ik= O;fDr;ksa esa ls fu;qfDr;ka dj ldrk gS A ,slh fu;qf?;ka ,d o"kZ ls vf/kd vof/k ds fy, ;k bl fu;ekoyh ds v/khu vxyk p;u fd;s tkus ds ckn] blesa tks igys gks] ugh jgsxh A**

5. The respondents have also annexed to the counter-affidavit the documents which appears to be office memorandum dated 29th August, 1992, wherein Clause 3 (3) provides that waiting list shall be prepared only for one year and it will die after expiry of the period of one year. Learned counsel for the petitioner relied upon two Division Bench decisions of this Court, one in Ved Prakash Tripathi Vs. State of U.P. and others, and another in Dvijendra Singh and Ors. v. State of U. P. and Ors. 2001 (2) AWC 1389 : ESC (All) 619, wherein in similar circumstances, a mandamus has been issued to the U. P. Public Service Commission, Allahabad to send the name of the petitioners, who were waiting list, candidate for appointment.

6. Learned counsel for the petitioner has further relied upon a decision of the learned single Judge passed in Civil Misc. Writ Petition No. 11606 of 2000, Pradeep Kumar Gautam v. State of U. P. and Ors., decided on 3rd March, 2000 which arises out of the same set of selection with regard to general candidate.

7. In view of the aforesaid decisions, the contention advanced on behalf of the contesting respondents cannot be accepted.

8. In view of what has been said above, this writ petition succeeds and is

allowed. The respondents are directed to send the name of the petitioner for appointment against the vacancy caused due to the resignation of the two O.B.C. candidates.