

(2012) 05 AHC CK 0132

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 56133 of 2008

Smt. Kiran Dubey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-05-2012

Acts Referred:

Citation : (2012) 8 ADJ 309

Hon'ble Judges : Rakesh Tiwari, J;Arvind Kumar Tripathi, J

Bench : Division Bench

Advocate : S.K. Pandey and Vijay Gautam, for the Appellant; Pushpendra Singh, Gautam Baghel and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Rakesh Tiwari, J.—An Advertisement No. A-1/E-1/2005 was issued by State of U.P. through Secretary (Karmik), U.P. Lucknow for Combined State/ Upper Subordinate Examination, 2005 in which essential as well as other qualifications were mentioned for the post of Principal, Food Science Training Centre Group-II, which is as under:

The petitioner after submitting her application form appeared in the preliminary examination and was declared successful. Thereafter she has submitted her application form for the main examination in which she was also declared successful and called for interview. It appears that in the interview post wise preference were invited by the respondents and the petitioner had given sixth preferences for the post of Principal, Food Science Training Centre Group-II. The petitioner secured 1011.69 marks in the examination even though the minimum cut off marks for women category was 1043.07 in Group Executive and 941.33 in Group DPO for the women candidate. The result of the examination was declared on 21st of June, 2008 but no person was selected for the post of Principal, Food Science Training Centre Group-II due to non availability of suitable reserved category candidates belonging to OBC category.

2. The contention of the learned counsel for the petitioner is that when information regarding the result came to her knowledge through news item, she submitted an application before respondent No. 2 i.e. Public Service Commission, U.P., Allahabad through its Secretary on 24.6.2008 stating that she fulfils the eligibility criteria for the aforesaid post of Principal and may be declared to be selected for that post. The petitioner was informed by the Office Memorandum dated 28.6.2008 by respondent No. 2 that the post of Principal, Food Science Training Centre Group-II was reserved for OBC candidates hence representation of the petitioner is not acceptable. It appears that the petitioner also sought some information from respondent No. 2 relating to reservation criteria through an application dated 5.8.2008 under the Right to Information Act, 2005. She was informed for that query which is as under:

3. According to the petitioner, the information dated 12.9.2008 is contradictory to the reply given on 28.6.2008. She submits that from a perusal of the information dated 12.9.2008, it is clear that amongst the two posts of Principals minimum one post ought to be filled up by general candidate as 100% reservation for a post is not permissible and is against the constitutional provisions.

4. It is asserted that since the petitioner had made sixth preference at the time of interview keeping her eligibility/ suitability for that post, she is entitled to be appointed on the post of Principal, Food Science Training Centre Group-II and has been illegally restrained by the respondents for that post by incorrectly saying that both the posts of principals are reserved for OBC candidates.

5. Per contra, learned counsel for the Public Service Commission, Sri Gautam Baghel submits that the petitioner has no locus standi to claim even one post of the Principal for the reason that it was clearly mentioned in the advertisement that once the forms have been submitted, the candidates cannot change their option. Sri Gautam Baghel has invited the attention of the Court to the terms and conditions as referred in the advertisement at serial number 5, which is as under:

6. Sri Gautam Baghel submits that even if the case of the petitioner that 100% reservation cannot be applied is taken to be correct still the petitioner would not be able to qualify as she was a general candidate and could not fill up the form for that post of reserved category.

7. It is argued that admittedly the petitioner had given her option for that post at the time of interview and in view of Clause 5 referred to above, she cannot change her option once she had submitted her form.

8. After hearing counsel for the parties and on a perusal of the record, we are of the view that the petitioner is not entitled for that post as she at the time of submitting her application form had not applied for the post of Principal, Food Science Training Centre Group-II and after submitting the form she could not have changed her option. Initially had the petitioner filled up her choice on the ground of discrepancy in the advertisement for that post she might have a case

but once she had chosen not to fill up that post then she cannot be declared to have appeared in the examination for that post. For all the reasons stated above, we dismiss the writ petition. No order as to cost.