
(2002) 05 AHC CK 0109
In the Allahabad High Court
Case No : C.M.W.P. No. 33785 of 2001

Smt. Neena Dhawan

APPELLANT

Vs

Divisional Level Committee and Others

RESPONDENT

Date of Decision : 24-05-2002

Acts Referred:

Citation : (2002) 3 AWC 2533 : (2002) 3 UPLBEC 2460

Hon'ble Judges : S.K. Singh, J

Bench : Single Bench

Advocate : Manoj Kumar Pandey and Ravi Kant, for the Appellant;

Final Decision : Dismissed

Judgement

S. K. Singh, J.—By means of this writ petition, petitioner has challenged the orders dated 25.3.2000. 7.3.2001 passed by the respondent No. 2 and 16.8.2001. communicated through letter dated 28.8.2001 passed by the respondent No. 1 as contained in Annexures-6, 7 and 9 respectively. A further prayer has been made for a direction to the respondents to pay arrears of petitioner's salary w.e.f. 11.10.1999, as well as regular salary.

2. There is an intermediate college known as Gauri Pathshala Girls Intermediate College. Allahabad. Petitioner claims to be working as teacher in the primary section, which is claimed to be integral part of the intermediate college. The Committee of Management of the intermediate college as stated is the same and thus it is pleaded that primary section is also governed by the U. P. Intermediate Education Act. It has been pleaded in the writ petition that on occurrence of two vacancies for the post of B.T.C. grade teacher in the primary section, one reserved for the candidate belonging to O.B.C. category and other for General category, advertisement was duly published. Pursuant to the selection, recommendations were made by the selection committee. Petitioner claims to have been appointed by the appointment letter dated 8.10.1999 pursuant to which she joined on 11.10.1999. On sending papers for final approval, it is by

the impugned order approval has been refused giving rise to the cause of action to the petitioner to approach this Court.

3. Learned counsel submits that on 10.11.1999 itself, Committee of Management forwarded the necessary papers to the District Inspector of Schools seeking approval and as no approval or dis-approval was communicated by the D.I.O.S. within one month from the date of receipt of proposal of the management. appointment of the petitioner stood approved and thus the impugned order is liable to be set aside on this ground alone. In this connection, learned counsel for the petitioner referred to the provisions of Regulation 17 (G) of Chapter II of the Regulations framed under the Act. It has been further submitted that the ground as has been given by the District Inspector of Schools in the impugned order that as quota of the reserved category teacher was not complete and thus the selection being against the provisions as contained in the reservation policy, is not acceptable for the simple reason that management has clearly recorded that no suitable candidate belonging to the O.B.C. category was available, therefore, it was not possible for the management to fill up the post by the candidate belonging to O.B.C. category and thus, the vacancy automatically reverted for the General category candidate. Learned counsel submits that in view of the aforesaid if petitioner being General category candidate was selected/appointed, which cannot be held to be illegal. To strengthen the aforesaid submission learned counsel for the petitioner referred the decision given by this Court in writ petition filed by Dr. Shashi Kant Rai and others as Writ Petition No. 30540 of 1996 decided on 20th May, 1998. On the strength of the aforesaid decision, it was argued that the reservation will be year wise and not cadre wise. Learned counsel submits that in the year for which the selection was to take place as no O.B.C. category candidate was available the vacancy will have to be reverted automatically for the candidate belonging to the General category.

4. In response to the aforesaid submission, learned standing counsel on the facts so stated in the counter-affidavit submits that as the college is receiving grant-in-aid, there can be no dispute that provisions of U. P. Act No. 4 of 1994 is applicable. In view of this it has been pointed out that as in the primary section of the college there are ten sanctioned posts, out of which three posts should be filled up by the candidates belonging to O.B.C. category and two posts by the Schedule Caste candidates. Learned counsel submits that in the college there is only one candidate of O.B.C. category and thus the quota as provided by the reservation policy being incomplete, the District Inspector of Schools has rightly rejected the petitioner's claim. It was also submitted that on receipt of the proposal query was made in respect to various aspects and it thereafter decision was taken by the District Inspector of Schools and, therefore, petitioner cannot plead deemed approval in her favour.

5. In the light of the aforesaid submission as has come from both sides, pleadings as has been set forth and the material as has been placed, have been examined. There appears to be no dispute about the fact in the light of the

pleading as has come that the candidate of the reserved category which in view of the reservation policy are to be appointed out of the sanctioned strength, were not working in the primary section of the college. On own showing of the petitioner, the post was to be filled up by the candidate belonging to the O.B.C. category but as no suitable candidate was available, the plea is that the post automatically reverted for the candidate belonging to the General category which is clear from the fact as stated in para 17 of the writ petition. The provisions as contained in U. P. Act No. 4 of 1994 are very clear on the point. Firstly, no details have been placed before this Court in respect to the competitive merits of the candidates belonging to the O.B.C. category that how and in what manner they were not found suitable for the post. If mere averments about nonavailability of the suitable candidate of the reserved category is to be accepted, it will be very easy and convenient for any selecting body to say that, no suitable candidate is available. For accepting of the plea of the management of non-availability of the suitable candidate, it was to be informed to the concerned authority so (o give its approval about that decision. Otherwise also in view of the provisions as contained in U. P. Act No. 4 of 1994. which is quite clear on the point that in the event of nonavailability of suitable candidate of reserved category in a particular year, it is to be carried forward for the next selection and a particular mode is provided for denial of rights of the reserved category candidate in respect to post reserved for that category. The plea as taken by the petitioner and the management that as no suitable candidate was available of the reserved category in the same selection process it will automatically go for general category at first instance cannot be accepted. There is neither any pleading nor it is the case on behalf of the management/petitioner that earlier also the post was tried to be filled up by the reserved category candidate and as nobody was available, as provided in the U. P. Act No. 4 of 1994. It was carried forward and in the next selection also as no suitable candidate became available, the post went to the general category. In the present case, there is another reason for not accepting the plea of the petitioner that on account of nonavailability of the suitable reserved category candidate, it has to go to the candidate of general category. It has not been established that after a fresh advertisement calling upon the candidate of general category, selection proceeded as after coming to know that the post is not for the reserved category and it is available for general category, large number of other meritorious candidates may apply for the same and thus it is in the same selection pursuant to one advertisement, it cannot be accepted that in the event of non-availability of suitable reserved category candidate the post will go to the general category candidate. It appears that on sending the papers by the management as in the writ petition, no specific date has been given and there is no proof that when papers were received in the office of the District Inspector of Schools, necessary queries were made and after getting necessary information and details, the District Inspector of Schools by a reasoned order has rejected the claim of the petitioner. On the findings so given by the District Inspector of Schools in its order dated 25.3.2000, which has been substantiated by the averments as made in the counter-affidavit, it cannot be

said that the decision is erroneous in any manner. No apparent error in the order of the District Inspector of Schools has been pointed out.

6. The decision as has been referred by the learned counsel for the petitioner as given in the case of Dr. Shashi Kant Rai (supra), has no application to the facts of the present case as in the said decision, the question was whether in a particular selection after carry forward of the vacancy of the reserved category candidate whether reservation in their favour can exceed more than 50%. Here in the present case, it is in pursuance of the same advertisement one post was to be filled by the reserved category candidate but it is said that on account of non-availability of the suitable candidate, that post was reverted to the general category candidate and was filled accordingly, which cannot be validly accepted.

7. In view of the aforesaid discussion, this petition lacks merit and it is accordingly dismissed.