
(2010) 07 AHC CK 0170
In the Allahabad High Court

Smt. Rana Nigam

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

Constitution of India, 1950 — Article 15, 16

Citation : (2010) 07 AHC CK 0170

Hon'ble Judges : Sunil Ambwani, J; Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Shri Virendra Pratap Pal, learned Counsel for the petitioner. Learned Standing Counsel appears for the State respondents. Shri V.P. Varshney appears for Public Service Commission U.P. at Allahabad.

2. The petitioner is a qualified Ayurvedic Medical Practitioner. She holds B.A.M.S. Degree from Jiwaji University, Gwalior and is registered with the Indian Medicine Board U.P. vide certificate No. 48189 dated 25.7.2003. She was born in Gwalior (Madhya Pradesh). Her father belongs to "Jatav" community, which is a notified Scheduled Caste both in the State of Madhya Pradesh and in the State of Uttar Pradesh. After marriage to Shri Raj Kumar Nigam she shifted to Kanpur in the State of U.P. The petitioner applied for appointment as Ayurvedic & Unani Medical Officer (Community Health Cadre) in the State of Uttar Pradesh, in pursuance to advertisement No. 1/2003-04, issued by the Public Service Commission, U.P. to the backlog vacancies by direct recruitment. She appeared in the interview on 24.10.2007, and relied upon the caste certificate issued by the Tehsildar Kanpur, Uttar Pradesh, in the name of her husband. The Commission, relying upon the Government Order dated 12.5.2008, required her to produce the caste certificate in the name of her father. On her application, she was allowed to appear on the adjourned date of interview on 20.11.2007. On that date she produced the caste certificate issued from Gwalior in the State of Madhya Pradesh, in the name of her father verifying that she belongs to "Jatav" community which is a notified

Scheduled Caste. The Commission referred the matter to the State Government and after receiving the reply from the Government on 19.5.2008, refused to extend the benefit of Scheduled Caste on the basis that the certificate has not been issued in the State of Uttar Pradesh.

3. In paragraph 6 of the counter affidavit of Shri Vijai Bahadur Singh, Under Secretary, U.P. Public Service Commission, Allahabad, it is stated as follows:

6. That the averments made in paras 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 of the writ petition are misconceived, misleading and baseless, hence denied. It is submitted that requisition has been received by the Commission through State Government for making direct recruitment of backlog vacancies of 367 posts, of Ayurvedic and Unani Medical Officer (Community Health Cadre) and 440 posts of Ayurvedic and Unani Medical Officer (Ayurvedic and Unani Cadre) under the Department of Ayurvedic and Unani, U.P. Out of 367 posts, 198 posts for SC, 148 posts for OBCs and 86 posts for S.T. candidates were required and were not bifurcated as Community Health Cadre and Ayurvedic Unani Cadre. On the other hand out of 640 posts of Ayurvedic and Unani Medical Officer (Ayurvedic and Unani Cadre) 264 posts for S.C. 144 posts for OBCs and 38 posts for S.T. candidates of U.P. were also reserved and bifurcated as 98 posts for Unani medical Officer and 348 posts for Ayurvedic Medical Officer by the State Government.

It is further stated here that after receiving the requisition the Commission issued as Advt. No. 1/2003-04 as Deptt. No. 11/23 and 11/24 respectively and last date for submission of application form was 14.7.2002 fixed by the Commission and again this date was extended upto 20.8.2008 due to adding of aforesaid vacancies by Government. After advertisement applications were received in the office of the Commission and after scrutiny of applications the Commission decided to take interview jointly of both cadre due to its policy decision and eligible candidates were called for interview and interviews were held on 20.8.2007. Thereafter the result of said posts was declared on 22.7.2008 by the Commission and carried forward 46 posts of Unani Medical Officer and 46 posts of Ayurvedic Medical Officer due to non-availability of S.C. And S.T. candidates of U.P. and Commission sent the recommendation vide its letter No. 29/1/06/S-13/2003-04 dated 10.9.2008 to the State Government and appointment letters have been issued to the maximum recommended candidates by the State Government.

It is further submitted here that the petitioner Rana Nigam has also applied for said posts and called for interview on 4.10.2007. She appeared in the office of the Commission on scheduled date. But during the checking of her documents it was found that her caste certificate issued by concerned authority was not in prescribed format. It was from the side of her husband, then she was directed to produce the scheduled caste certificate from the side of her father and she was not allowed for interview on same day. The birth place of the petitioner Smt. Rana Nigam D/o Shri Bharasi Lal is 97 Laxmi Bai Colony, Gwalior in the State of

Madhya Pradesh and she belongs to scheduled caste (sub caste Jatav) in the said posts. She was married with Mr. Raj Kumar in U.P. at Kanpur. But benefit of reservation in Government service was given to the candidates only by birth not by marriage as per G.O. dated 17 May, 1988. When the interview of the petitioner was not conducted on the same day then she moved an application on 4.10.2007 before the Commission for interview against said post and the Commission allowed her provisionally for interview on 20.11.2007 and she appeared before the interview board. Then after the Commission sent this matter for consideration to the Government and the Government replied vide its letter dated 19.5.2008 that the benefit of reservation in U.P. would not be given on the basis of posts certificate issued by other State as per G.O. No. 22/38/1988 Karmik-2 dated 17.6.1988 in which it was clearly mentioned that benefit of reservation in Government service was given to the candidates only by birth and not by marriage. The matter was put U.P. before the Commission with reply of the State Government after due consideration the Commission rejected the candidature of the petitioner against said posts regarding the G.O. Dated 17 May 1988 and informed to the petitioner vide its letter No. 176/1986/03/2003-04 dated 29.7.2008.

4. It is submitted by Shri Virendra Pratap Pal that the petitioner has been denied appointment to the backlog vacancies of Scheduled Caste only on the ground that the caste certificate in the name of her father was not issued in the State of Uttar Pradesh. He submits that since her father is a permanent resident of Madhya Pradesh, the certificate was rightly issued in the name of her father by the Zila Sanyojak, Adim Jati Kalyan Gwalior, District Gwalior, Madhya Pradesh (Competent Authority) on 13.8.1985. The certificate verified that she, in the name of her father, belongs to Scheduled Caste. It is submitted that she cannot be denied appointment in the State of Uttar Pradesh on the basis of certificate issued in the name of his father, who is a permanent resident of Madhya Pradesh, only on the ground that the certificate has not been issued in the State of Uttar Pradesh. It is alleged that the petitioner's valuable fundamental right guaranteed under Articles 15 and 16 of the Constitution of India has been violated. She has not been considered for the backlog vacancies, which have been reserved for Scheduled Caste and which have been carried forward, only on the ground that her caste certificate in the name of her father was not issued in the State of Uttar Pradesh.

5. Learned Counsel for the petitioner has rightly submitted that the Competent Authorities in the State of Uttar Pradesh are required to issue caste certificate to the permanent residents of the State of Uttar Pradesh only, after making due enquiries. A Tehsildar in the State of Uttar Pradesh will not be competent to issue a caste certificate of a person in the name of her father who is a permanent resident of another State. He submits that at best, if there was any doubt about the caste certificate issued by another State, the Commission or the State Government could have made enquiries about the validity of the caste certificate.

6. The office Memorandum dated 22.7.2008 issued by the State Government rejecting petitioner's candidature on the ground that the caste certificate has not been issued in the State of U.P., is therefore liable to be set aside.

7. We have decided a similar controversy in Writ Petition No. 52252 of 2007 Dr. Madhu Rana v. State of U.P. and Ors. In our judgment dated 22.4.2010, we relied upon a judgment in U.P. Public Service Commission v. Sanjay Kumar Singh 2003 SCC (L&S) 1081 and a judgment of State of Uttarakhand against which the SLP was dismissed. The relevant part of our judgment dated 22.4.2010 is quoted as below:

Learned Counsel for the petitioner relied upon a Supreme Court decision in the case of U.P. Public Service Commission Allahabad v. Sanjay Kumar Singh 2003 SCC (L&S) 1081 and a judgement of Uttarakhand High Court in Jyoti Bala v. State of Uttarakhand and Anr. in writ petition No. 297 of 2008 (S/B) decided on 16.12.2008 - SLP arising out of the said judgement was dismissed on merits by the Supreme Court.

In U.P. Public Service Commission v. Sanjay Kumar Singh (Supra), it was held by the Supreme Court that person certified as SC/ST in relation to one State, if migrates to another State, would not be entitled to benefits available to SCs/STs in the State in which he migrated unless he/she belongs to SC/ST in that State also. In the present case sub caste "koheri" falls under the category of Other Backward Class both in the States of U.P. and Jharkhand. The Government Order dated 17.5.1984 providing for admissibility of caste certificate in the name of a father also does not prohibit the petitioner to be as Backward Class as she belongs to the same caste even after her marriage. The certificate issued in the name of her father is a valid certificate for the purpose of admissibility of the caste of the petitioner.

8. It is not denied that the petitioner belongs to "Jatav" caste which is a notified Scheduled Caste both in the State of Madhya Pradesh and in the State of Uttar Pradesh. The only ground, on which the petitioner was not found eligible and her candidature was rejected, is that the caste certificate in the name of her father has not been issued by the Competent Authority, in the State of Uttar Pradesh.

9. The Writ Petition is allowed. The letter of the U.P. Public Service Commission dated 22.7.2008 based upon the letter of the State Government dated 12.5.2008 rejecting petitioner's candidature as a Scheduled Caste candidate is set aside. The Public Service Commission is directed to consider her candidature for backlog vacancies of the Ayurvedic & Unani Medical Officer (Community Health Centre) advertised vide advertisement No. 1/2003-04, and for which the petitioner was subjected to interview on 24.10.2007 and thereafter on 20.11.2007. The Commission will interview her for the vacancies relating to the subject advertisement. If she is found successful, she will be recommended and will be given appointment by the State Government, along with the candidates of the same batch.