

(2016) 11 AHC CK 0191
In the Allahabad High Court
Case No : Special Appeal No. 644 of 2006

Sukkhu Ram

APPELLANT

Vs

Bhola

RESPONDENT

Date of Decision : 22-11-2016

Acts Referred:

Citation : (2017) 2 ADJ 473 : (2017) 1 AllWC 1066 : (2017) 121 ALR 430

Hon'ble Judges : Arun Tandon and Mukhtar Ahmad, JJ.

Bench : Division Bench

Advocate : Indra Raj Singh, Advocate, for the Appellant; C.S.C., Vinod Sinha, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. This Special Appeal is directed against the judgment and order of learned Single Judge dated 06.09.2005 passed in Writ Petition No. 4913 of 2003 (Bhola v. The District Inspector of Schools and others) and Writ Petition No. 5818 of 2003 (Santosh Kumar Mishra v. District Inspector of Schools and others).
2. The appellant before this Court namely Sukkhu Ram was not a party to the writ proceedings. He has moved an application for leave to appeal on 08.05.2006.
3. It appears that on 03.12.1994, a vacancy on the post of Clerk in Tulsi Das Inter College, Anei, Varanasi was caused due to grant of promotion to one Shailendra Kumar Singh as Head Clerk. In the institution, there were four posts within Clerical cadre duly created i.e. namely, one post of Head Clerk and three posts of Clerks. Durga Prasad Singh and Shivdhari Singh were working as Assistant Clerk in the institution at the relevant time.
4. The vacancy caused on the post of Assistant on the promotion of Shailendra Kumar Singh was filled by the Management by direct recruitment. One Indra Bahadur Singh was selected for the post. The papers in that regard were forwarded to the District Inspector of Schools for approval, who refused such approval on the ground that the vacancy which has fallen vacant in the

institution was within reserved category of Schedule Caste. A candidate belonging to that category can alone be appointed.

5. It is not in dispute that the Management of the institution advertised the vacancy afresh within the reserved category and selected Bhola, one of the petitioner in the writ petition referred above.

6. Before any appointment could be offered to Sri Bhola, the Head Clerk in the institution namely Shailendra Kumar Singh expired during harness and therefore, the District Inspector of Schools vide letter dated 12.07.1996, required that Santosh Kumar Mishra be offered appointment in view of Regulation 103 and 107 of Chapter-3 of the Regulations framed under the Intermediate Education Act.

7. As a result whereof, three persons are contesting for the same post of Assistant Clerk in the institution namely; Bhola who was selected within the reserved category, Santosh Kumar Mishra who was claiming compassionate appointment and Indra Bahadur Singh who was claiming appointment on the ground that there could be no reservation. The parties have been litigating since 1996 on the said aspect of the matter.

8. In the judgment and order of learned Single Judge giving rise to the present appeal, the claim of Bhola for appointment on the post of reserved category has been upheld" So far as Santosh Kumar Mishra is concerned a direction has been issued to adjust him against some other vacancy in any other institution. The claim of Indra Bahadur Singh has been rejected on the ground that the vacancy was reserved for the Schedule Caste.

9. It may be noticed that neither Santosh Kumar Misra nor Indra Bahadur Singh have chosen to challenge the judgment and order of learned Single Judge dated 06.09.2005.

10. The order of the writ Court has become final against them. The appellant Sukkhu Ram before this Court claims that he had been appointed in the year 1989 as a Class-IV employee in the institution and he is entitled to be considered by way of promotion against the said vacancy. The prayer in that regard has only been made on the ground that vacancy which was caused in the institution in the year 1994 could not be reserved for Schedule Caste category candidate as the total number of post in the cadre required to be filled by promotion was two only. Reference is made to the Full Bench decision of this Court in the case of Hira Lal v. State of U.P. & others 2010 (3) Education Service Cases page 2091.

11. We are of the opinion that there is substance in the contention raised by learned Counsel for the appellant-Sukkhu Ram, in the matter of reservation applied, on the vacant post of Clerk in the institution where cadre strength was only two. The legal position in this regard has been settled by the Full Bench of this Court in the case of Hira Lal (supra). But the chapter does not end here inasmuch as even if the contention raised on behalf of Sukkhu Ram is accepted on its face value, the net result would be that the vacancy on the post would be

treated to be one within general category to be filled by direct recruitment. Once, it is found that the vacancy falls within quota for direct recruitment, the claim of Sukkhu Ram for promotion cannot be entertained and therefore, no effective relief can be granted in favour of appellant-Sukkhu Ram in the present appeal.

12. We may also take note of the fact that Bhola has been working in the institution since last more than eleven years and that the parties to litigation namely Santosh Kumar Misra and Indra Bahadur Singh have accepted the directions issued by the writ Court.

13. In the totality of the circumstances on record, we see no reason to entertain the present appeal of the appellant-Sukkhu Ram.

14. The appeal is, accordingly, dismissed. However, if any future vacancy on the post of Assistant Clerk has become available in the institution within the quota for promotion, the appellant-Sukkhu Ram is at liberty to move a representation for consideration of his claim before the competent authority.