
(2006) 01 AHC CK 0181

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44550 of 2002

Surendra Narayan Singh and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 30-01-2006

Acts Referred:

Citation : (2006) 01 AHC CK 0181

Hon'ble Judges : D.P.Singh, J

Final Decision : Dismissed

Judgement

D.P. Singh, J.—Heard learned Counsel for the parties.

2. The relief claimed in this petition is for quashing an advertisement No. 1 of 2001 inviting applications for appointment to the posts of Routine Grade Clerks, Data Entry Operators and Stenographers. A further prayer is for grant of appointment on the aforesaid posts and for regularization.

3. Large number of nonteaching employees were appointed by various Universities of the State without any sanctioned posts. The petitioners were also appointed as Class III employees against such unsanctioned posts in Mahatma Gandhi Kashi Vidya Peeth, Varanasi, (hereinafter referred to as the University) which is a University governed by the U.P. State Universities Act, 1973 and its first statutes framed thereunder. A committee was constituted to deal with this problem and it submitted its report to the State Government. The State Government vide its order dated 19.2.1998 sanctioned total of 184 nonteaching posts of different category for the University for the purposes of absorbing such employees working on various unapproved posts. This Government Order was followed by various Government Orders dated 4.4.1998, 27.4.1998, 2.5.1998, 27.5.1999 and 5.12.2000. The Government Order prescribed various formalities to be followed for absorption and further provided that the reservation rules in vogue should be followed while passing appointment/absorption orders. In pursuance of the procedure provided, the Executive Council of the University constituted a committee, which examined the cases of all such appointees,

including the petitioners, and prepared a tentative list of those persons who were sought to be absorbed and pasted the list on the notice board inviting objections. Some of the petitioners filed their objections whilst others did not. After considering the objections, the committee submitted its report to the Executive Council, which accepted it and forwarded the list to the State Government and after its clearance, large number of persons, but excluding the petitioners, were absorbed/appointed on various posts. However, the impugned advertisement has been issued inviting applications for filling up 18 posts of Routine Grade Clerks, 12 posts of Data Entry Operators and 12 posts of Stenographers, which is impugned on the ground that the petitioners who are working as Routine Grade Clerks should be absorbed in those vacancies.

4. Learned Counsel for the petitioner has firstly urged that at least 22 persons, whose names have been given in paragraph 33 of the writ petition had been wrongly absorbed against those posts created in 1998 even though their names did not form part of the list sent to the Stage Government prior to creation of the posts. Therefore, it is contended, that the petitioners should be absorbed on those posts.

5. From a perusal of the relief and the array of parties it is apparent that none of those 22 persons have either been impleaded as parties or any relief for quashing their absorption has been sought. Apart from that, the respondents have explained the absorption of those 22 persons. It is contended on their behalf that persons whose names have been mentioned at serial Nos. 1 to 7 were promoted on already existing posts. With respect to persons mentioned at serial Nos. 8 to 15, it is stated that they were granted compassionate appointment and were working, thus, they were regularized on posts existing prior to 1998. Similarly persons mentioned at serial Nos. 16 to 18 were dependents of such employees of the University who had become incapable and were given voluntary retirement under a scheme, therefore, they were regularized but on posts existing prior to 1998. With regard to persons mentioned at serial Nos. 19 to 22 it has been stated that in view of an interim order passed in another Writ Petition No. 6770 of 1993, they were regularized. In paragraph 15 of the counteraffidavit a specific case has been set up that all these posts were sanctioned prior to 1998 and this factual statement has not been denied in the rejoinder affidavit.

6. Therefore, for the reasons given above, the first submission of learned Counsel for the petitioner cannot be accepted.

7. It is then urged that the rules of reservation will not apply as they apply only to direct recruitment.

8. A perusal of the various Government Orders, specially the Government Order dated 5.12.2000, provides tat the roster of reservation was to be followed. In the Government Order dated 5.12.2000 it was clearly stipulated that any unfulfilled reserved post was to be filled up by resorting to the procedure of recruitment.

Admittedly, the petitioners have not challenged any part of any of the aforesaid Government Orders and, therefore, the action taken by the respondent University was in consonance with the Government Orders. Apart from this, it is apparent that the list of proposed absorption was published at the notice board inviting applications from all the candidates but petitioner Nos. 2, 4, 6, 8 to 11 did not file any objection before the committee. Though petitioner Nos. 1, 3, 5 and 7 filed their objections but the same were decided by the committee and this decision has also not been challenged by those petitioners.

9. Thus, for the reasons given above, the second contention of learned Counsel for the petitioner also cannot be sustained.

10. It is contended on behalf of respondents that in view of the Government Orders, no absorption on the technical posts could be made and, therefore, the unfulfilled reserved posts and the technical posts have been advertised in pursuance of the said Government Orders for direct recruitment.

11. Learned Counsel for the petitioners has lastly urged that similarly placed employees of the Lucknow University who could not be absorbed in view of the application of the roster, were allowed by the State Government to be absorbed and, therefore, similar treatment should be meted out to the petitioners also. From a perusal of the resolution of the Executive Council, which is annexed with the short counteraffidavit, it is apparent that similarly placed employees of the Lucknow University were absorbed when certain reserved posts could not be filled up, as no candidate was available. This argument of learned Counsel for the petitioner appears to be justified. The petitioners, who are general candidates, have been working for more than a decade and they should not be discriminated with the employees of the Lucknow University. Thus, the State Government and the University are directed to consider extending the same benefit to the petitioners and the services of the petitioners should not be dispensed with till a decision is taken.

12. For the reasons given, subject to the observations made hereinabove, I do not find that this is a fit case for interference under Article 226 of the Constitution of India. Rejected. Petition dismissed