
(2015) 05 AHC CK 0150
In the Allahabad High Court
Case No : Special Appeal No. 310 of 2015

U.P. Power Corporation Ltd. and Others	APPELLANT
Vs	
Nitin Kumar and Others	RESPONDENT

Date of Decision : 19-05-2015

Acts Referred:

Citation : (2015) 5 ADJ 417 : (2015) 5 ALJ 162 : (2015) 4 AWC 3672 : (2015) 4 ESC 1934

Hon'ble Judges : D.Y. Chandrachud, C.J;Manoj Kumar Gupta, J

Bench : Division Bench

Advocate : J.P. Pandey, for the Appellant; Siddharth Khare, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. The special appeal has arisen from the judgment of a learned Single Judge dated 16 April 2015. An advertisement was issued by the Electricity Service Commission (Commission) for recruitment on 2211 posts of Technician Grade-II (Trainee) Electrical. Of these posts, the posts reserved for OBC, Scheduled Caste and Scheduled Tribe candidates were as follows:

- (i) OBC - 597 posts;
- (ii) Scheduled Castes - 464 posts; and
- (iii) Scheduled Tribes - 44 posts.

Thus, out of 2211 posts that were advertised, 1105 were reserved. 1106 posts were unreserved and were to be filled up by open competition. The selection process comprised of a written test followed by an interview. The Commission released a list of candidates who were declared to be successful in the written examination on the basis of which candidates were to be called for an interview. The Commission called three times the number of candidates for interview from each category applying what is described as a "3x formula". The petitioners who

filed writ proceedings before the learned Single Judge were candidates belonging to the OBC category. Their grievance was that though the last candidate from the unreserved category had secured lower marks, none of the petitioners were called for the interview.

2. In the affidavit which has been filed on behalf of the Commission, it has been stated that results of successful candidates were declared for the written test category-wise. In other words, candidates belonging to the OBC category were confined only against the merit list of the OBC category. Consequently, an OBC candidate who may have been meritorious enough to be within the short-list for the unreserved posts was not included in the shortlist on the ground that such a candidate could only compete for a post in the category to which the candidate belongs. Hence, the Commission stated that in the process of short-listing, candidates were short-listed for interview category-wise. This is clear from the following averments contained in paragraph 8 of the affidavit filed by the Secretary to the Commission in the special appeal which reads as follows:

"That it is stated that a counter-affidavit on behalf of the appellants was filed in the aforesaid writ petition. It was specifically contended on behalf of the appellants in the said counter-affidavit that the candidates had applied for selection on the post of TG-II category-wise and as per law, the results of the successful candidates in the written test were also declared category-wise and since the petitioners-Respondents were of the OBC category and therefore, they can set up their claims under their own category and they have no right under the law to over-lap under the different category for which they have never applied. It is, thus, a specific stand was taken on behalf of the appellants that the successful candidates were invited for interview in the ratio of 3 times of the existing vacancy of their own category in which they had applied for and since the petitioners have secured less marks and therefore, they were out of the zone of consideration in their own category as the candidates securing higher marks in their own category i.e. OBC were available. The petitioners cannot contend for encroachment of posts which do not fall under their own reserved category."

3. The learned Single Judge in the course of the judgment indicated the consequence of the procedure of short listing which was followed by the Commission, in the following observations:

"...The petitioners have been left out of the field of consideration for being called in the interview only because there were a large number of candidates in the OBC category who had secured higher marks than the petitioners and by applying the three times formula it has resulted in the ouster of the petitioners from the field of consideration for being called for interview. On the contrary the petitioners having secured higher marks in the written test than the last unreserved category candidate, were entitled to compete against the unreserved vacancies/posts solely by virtue of their higher merit and they cannot be relegated to take the seats reserved for the OBC category to which they belong. OBC candidates having lower marks than the petitioners would have to be

adjusted against the seats reserved for OBC..."

4. In the view of the learned Single Judge, a candidate belonging to a particular reserved category would be entitled to be considered for short-listing in the unreserved category if the position on merit of a candidate was such as to fall within the number of short-listed candidates in the unreserved category. Accordingly, a direction was issued by the learned Single Judge to the appellants to apply the formula of shortlisting uniformly to all categories reserved as well as unreserved.

5. The Power Corporation and the Commission are in appeal.

6. The submission which has been urged on behalf of the appellants is based on the provisions of Section 3(6) of the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act 1994. Section 3(6) provides as follows:

"(6) If a person belonging to any of the categories mentioned in sub-section (1) gets selected on the basis of merit in an open competition with general candidates, he shall not be adjusted against the vacancies reserved for such category under sub-section (1)"

7. The submission is that the principle which is enunciated in sub-section (6) of Section 3 applies only at the stage of final selection and not at an intermediate stage when a short-list of candidates is drawn up for being called for interview. At the present stage, it has been submitted that the appellants were justified in taking recourse to the process of shortlisting by confining reserved category candidates to their own category and necessarily therefore by excluding them from the unreserved category for the purpose of shortlisting. That is the submission which falls for consideration.

8. Section 3(6) is a statutory recognition of the principle that if a candidate belonging to a reserved category is selected on the basis of merit in open competition with general candidates, such a candidate is to be adjusted not against the vacancies reserved for the reserved category to which the candidate belongs but against the unreserved seats. This proceeds on the foundation that where a candidate is meritorious enough to be placed within the zone of selected candidates independent of any claim of reservation and purely on the basis of the merit of the candidate, the candidate ought not to be relegated to a seat against the reserved category. The simple reason for this principle is that reservation is a process by which a certain number of posts or seats is carved out for stipulated categories such as OBC, Scheduled Castes and Scheduled Tribes. Unreserved seats do not constitute a reservation for candidates belonging to categories other than the reserved categories. An unreserved post or seat is one in which every individual irrespective of the category to which the person belongs can compete in open merit. Hence, the principle which is embodied in Section 3(6) is not confined in its application only at the stage when the final select list is to be drawn up. If the submission of the appellants were to be accepted, that would

result in seriously absurd consequences. As the learned Single Judge noted, in the present case itself, the petitioners who belong to the OBC category had in fact secured higher marks in the written test than the last short-listed candidate from the unreserved category. However, they were sought to be excluded from short-listing for the unreserved posts only on the ground that as a candidate who had declared himself or herself to be of a reserved category, that candidate would have to be excluded from shortlisting from the unreserved category even if on the basis of the position in merit, such a candidate would otherwise fall in the list of short-listed candidates in the open or unreserved category. Such a consequence would not be permissible in law.

9. The principle of law has been laid down in the judgment of the Supreme Court in *A.P. Public Service Commission Vs. Balaji Badhavath and Others*, (2009) 5 JT 563 : (2009) 5 SCC 1 : (2009) 1 SCC(L&S) 999 : (2009) 5 SCR 688 : (2009) 3 SLJ 476 : (2009) 4 SLR 635 : (2009) 4 UJ 1692 , in the following observations:

"One other aspect of the matter must be kept in mind. If category wise statement is prepared, as has been directed by the High Court, it may be detrimental to the interest of the meritorious candidates belonging to the reserved categories. The reserved category candidates have two options. If they are meritorious enough to compete with the open category candidates, they are recruited in that category. The candidates below them would be considered for appointment in the reserved categories. This is now a well-settled principle of law as has been laid down by this Court in several decisions. (See for example, *Union of India (UOI) and Another Vs. Satya Prakash and Others*, AIR 2006 SC 3409 : (2006) 4 JT 524 : (2006) 4 SCALE 60 : (2006) 4 SCC 550 : (2006) 3 SLJ 371 : (2006) 3 SLR 56 : (2006) 1 UJ 532 : (2006) AIRSCW 1815 : (2006) 3 Supreme 453 ; *Ritesh R. Sah Vs. Dr. Y.L. Yamul and others*, (1996) 2 AD 224 : AIR 1996 SC 1378 : (1996) 2 JT 495 : (1996) 2 SCALE 341 : (1996) 3 SCC 253 : (1996) 2 SCR 695 : (1996) 1 UJ 735 and *Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Others*, AIR 2007 SC 3127 : (2007) 115 FLR 10 : (2007) 10 JT 154 : (2007) 10 SCALE 50 : (2007) 8 SCC 785 : (2007) 8 SCR 972 : (2007) AIRSCW 5650)"

10. In a decision of a Division Bench of this Court in *Sanjeev Kumar Singh Vs. State of U.P. and Deputy Inspector General of Police (Establishment) and Secretary Police, P.A.C. Selection Board* , the Division Bench held that competition commences only at the stage where all the persons who fulfill the requisite conditions are short-listed. In that context, it was also held that a concession in fee or relaxation in the upper age limit are provisions not concerned with the process of selection. The Division Bench observed in para 53 as follows:

"In a selection which can be termed as open competition with general category candidates, the candidature of the reserved category candidates as well as the general category candidates is to be tested on the same merit and if in that case a reserved category candidate succeeds in the open competition with general

category candidates, he would be placed amongst the general category candidates."

11. The judgment in Sanjeev Kumar Singh (supra) was followed by another Division Bench of this Court in Shiv Prakash Yadav, Ganesh Prasad Patel, Munnu Ram and Santosh Kumar Seth Vs. The State of U.P. and Others, (2008) 2 AWC 1391 : (2008) 1 UPLBEC 49 . In that case, the learned Single Judge had held that once a reserved category candidate had exercised his option to be treated as a reserved category candidate, the provision of Section 3(6) of the Act would not apply. This view was held to be erroneous in view of the judgment of the Division Bench in Sanjeev Kumar Singh's case (supra).

12. For these reasons, we are of the view that there was no error in the judgment of the learned Single Judge. The learned Single Judge has upheld the right of the appellants to carry out short-listing. However, the appellants have been faulted for having excluded candidates belonging to the reserved categories from the shortlist of candidates for the unreserved posts which has resulted in a situation where candidates with higher marks failed to get short-listed for the unreserved posts merely because they belong to a reserved category. The view of the learned Single Judge and directions which have been issued consequently do not suffer from any error. The special appeal is, accordingly, dismissed. There shall be no order as to costs.