

(2002) 10 AHC CK 0046

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 43529 of 1999

Uttam Gulati (Dr.) (Mrs.)

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 03-10-2002

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2002) 5 AWC 3651 : (2003) 1 UPLBEC 229

Hon'ble Judges : R.B. Misra, J;M. Katju, J

Bench : Division Bench

Advocate : Prakash Padia and R.G. Padia, for the Appellant; Srikrishan Yadav and A.K. Maurya, S.C., for the Respondent

Final Decision : Allowed

Judgement

R.B. Misra, J.—In this writ petition the petitioner has prayed for quashing the impugned order dated 12.7,1999 (Annexure-6) and for the consequential benefits including promotion, seniority w.e.f. 1990 as had been given to the respondent No. 2 who admittedly was placed below the petitioner in the main select list of 1990, and for further relief of arrears of difference of salary paid and due to the petitioner.

2. Heard Sri Prakash Padia, learned Counsel for the petitioner as well as learned Counsel for the respondents.

3. The brief facts necessary for adjudication of the writ petition are that the petitioner is M.A. (Hindi and Economics) from University of Kanpur. Ph.D. in (Hindi), B.Ed, from Bundelkhand University was initially selected in 1990 under Subordinate Education Service (Gazetted) (in short SESG) in the pay-scale of Rs. 2000-60-2300-E.B. -75-3200-100-3500 (women branch) and was initially appointed as Deputy Inspectress of Girls School (DIOGS), district Bahraich, U.P. The name of petitioner was shown at Serial No. 9 of list for appointment in the order dated 8.6.1990 of Director Education (Basic), U.P. (enclosed as Annexure-5

to the writ petition), however, at relevant time the petitioner was assigned and worked as Basic Education officer. The U.P. Public Service Commission (in short called hereinafter as "Commission"), on the basis of an earlier another advertisement dated 24th August, 1985 (Annexure-1) recruited 33 posts of the "Principal" of Government Girls Intermediate College (in short GGIC). The petitioner was also selected and final selection list dated 14.6.1989 known as select list of 89-90 (enclosed as Annexure-2) was published where the name of the petitioner was shown at Serial No. 1 of the waiting list. By an order dated 1.8.1990, the State Government appointed only 32 candidates, (Annexure-3 to the writ petition) mostly to the post of Principal, " GGIC " in the scale of Rs. 2200-75- 2800-EB-100-4000 in which one candidate namely, Mrs. Parvati Singh was left over (as her appointment was cancelled in April, 1992 (therefore, the State Government requested the "Commission" to forward the name of the petitioner from the above waiting list, however, the Commission, declined to do so, being aggrieved of the petitioner filed a Writ Petition No. 10175 of 1993, Dr. (Smt.) Uttam Gulati v. State of U.P. and Ors., for a writ of mandamus seeking direction to the respondents for issuance of an appointment order to the post of Principal of Government "GGIC along with other benefits as admissible to the selectee Principals of Examination, 1985. The above writ petition was allowed by this Court on 2.5.96 (enclosed as Annexure-4 to the present writ petition) and the Commission was directed to send the name of the petitioner from the said waiting list so that the State Government might issue an appropriate order in respect the appointment of the petitioner as "GGIC.

4. The relevant part of order dated 2.5.96 reads as below :

"For the reasons given above, this writ petition is allowed with costs. The Commission is directed to send the name of the petitioner from the waiting list to the Government for appointment to the post of Principal of the Government Girls Intermediate College, within a period of one month from the date of presentation of certified copy of this order before it. The Government thereafter will pass appropriate order in connection with the appointment in accordance with law forthwith."

5. A representation dated 24.10.96 of petitioner in reference to the above judgment dated 2.5.96 of this Court seeking benefit of appointment and fixation of her seniority along with other selectee Principals of "GGIC was rejected by the order dated 12.7.1999 impugned in the present writ petition (Annexure-6) mainly on the following aspects :

(a) By virtue of her previous selection and appointment dated 8.6.90 in Subordinate Education Service (Gazetted) "SESG" in pay-scale of Rs. 2000-3500, the petitioner was working as Deputy Inspector of Girls School ("DIOGS") and then Basic Education Officer and at appropriate time was granted promotion to the post of Group "Kha" (Samooch Kha) in "U.P.(Shaikshik) Sanianya Shiksha Samvarg (Sewa Samooch "Kha")" by Government Order No. 574/XV-1-95-8/92, dated 17.2.95 and was posted as "senior lecturer" in District

Education and Training Institute (DETI), Gorakhpur, which is equivalent to the post of "Principal" Government Girls Inter College ("GGIC") in the pay-scale of Rs. 2200- 75-2800-EB-100-4000 that is the post in question for which the petitioner was selected and the petitioner had been shown at Serial No. 475 in the seniority list of officers of promotion post of "DIOGS" i.e. in Samooh "Kha" issued on 10.1.1996 by the State Government.

(b) The petitioner was granted the only relief of appointment to the post of Principal" GGIC " in accordance to the above judgment dated 2.5.96 of High Court as such the petitioner is entitled to the post of "Sainooh "Kha" which she has already got by promotion on by her own on 17.2.95.

(c) The petitioner has since already got an appointment to that post of the senior lecturer in "DETI" by virtue of promotion from "DIOGS" which is Group "Kha" post equivalent to that of Principal "GGIC for which the petitioner is striving for on the basis of 1985 examination of Commission in these circumstances the consequential benefits to the petitioner were rejected.

6. After the above decision dated 12.7.1999 of State Government the petitioner filed another representation on 2.8.99 to the Secretary, State of U.P. claiming her seniority from the year 1990 and placing her above to respondent No. 2/ Smt. Shail Kumari Yadav by contending that the fixation of seniority at Serial No. 475 in the seniority list of officers of Samooh "Kha" issued on 10.1.96 by State Government in the year 1995 is on the basis of her promotion in her own right treating her as promotee by virtue of her holding the post of Deputy Inspector of Girls Schools (DIOGS) and not in reference to the direct recruitment of Principal of GGIC held in 1985 examination of Commission, and the petitioner was to be appointed as Principal of "GGIC and was to be given seniority along with the selectee Principals appointed by order dated 1.8.90 (Annexure-3) whereas, the respondent No. 2 was at Serial No. 6 in waiting list of same selection yet she was appointed w.e.f. 1996 to the equivalent post of "Principal" in Group "Kha" in Samooh "Kha" and was given seniority as the last selected candidate of list of the year 1990.

7. It is because the respondent No. 2 filed a Writ Petition No. 3791 of 1990 before the High Court (Lucknow Bench) and by order dated 18.7.1999 (Annexure- 8), the High Court (D.B.) has observed which reads as below :

"The short point involved in this petitioner is as to whether the petitioner who was placed at Serial No. 1 of the waiting list meant for the reserved category could be inducted into the main select list on the ground that one of the reserved category candidate who competed along with her for the General Category was selected in the later class also."

To have a little glance into the facts of the case, the petitioner along with number of other candidates including one Km. Rama Verma competed for the post of Principal, Government Girls" Inter College run by the State Government in response to an advertisement issued in August, 1985. 33 vacancies are to be

filled and they include 5 which were reserved for backward class candidates. As indicated herein before Km. Rama Verma also belongs to the backward class and she made the grade from the General Category whereas the petitioner's name was placed at Serial No. 6 of the backward class merit list. In a manner of speaking she was the first in the waiting list of the reserved category meant for the backward classes. The respondents are alleged to have committed a mistake in assigning the backward class quota to Km. Rama Verma. In case the letters were to be included in the General Category the petitioner deserves to be included in the select list. She, therefore, prayed for a writ of mandamus for the necessary directions to the respondents to include her" in the select list and simultaneously requested for quashing the relevant order dated 14.6.1989, Annexure No. 2 depriving her of the selection :

"The petitioner's specific averment of being placed at Serial No. 1 in the waiting list for the backward class on being placed at Serial No. 6 of the merit list of that class was admitted in Para 4 of the counter affidavit and that clinches the issue in so far as her being placed at Serial No. 1 in waiting list is concerned. Similarly it is not denied that Km. Rama Verma also belong to the backward class on record, that she had made the grade in the General Category of selected candidates.

In our considered opinion the arrangement made by the respondents is contrary to the spirit of law because it is almost a settled proposition that the benefit of reservation, including to those belonging to the backward category, is a concession over and above the common law rights. A person belonging to such category can compete both for the open as well as for the reservation class and if he makes the grade in the open competition he has to be inducted therein, thus leaving place for the next below him in the reservation category. The petition accordingly succeeds and this on modifying the impugned order of selection, Annexure No. 2 dated 14.6.1989 we issue a command to the respondents to include the petitioner in the select list of candidates and accord her all the consequential benefits. There would be, however, no order as to costs. Sd/- S.H.A. Raza, J. SdAI.P. Vasishth, J."

8. It has been contended on behalf of the petitioner that indisputedly the petitioner was at Serial No. 1 and the respondent No. 2 was placed at Serial No. 6 of the waiting list of same selection, and the petitioner working as Basic Education Officer i.e. Class-II post whereas the respondent was promoted and assigned Class-I post. of Dy. Director (Education), therefore, the petitioner is entitled benefits over and above to the respondent No. 2.

9. In the counter affidavit, the respondent No. 1 had reiterated the same factual stand as taken in foregoing Paragraphs 5 (a), 5 (b) and 5 (c) above.

10. The respondent No. 2, in Para 5 of her counter affidavit has contended that according to the Government Order No. 736/40-1-81-13(40)-78, Lucknow, dated 19.2.1981, if a person belonging to any of the reserved categories gets selected

on the basis of merits in an open competition with general candidates then the said candidate shall not be adjusted against the vacancies reserved for such category, and since one Km. Rama Verma belonging to backward placed at SI. No. 7 in the same selection (select list dated 14.6.1989) was wrongly selected against the vacancies earmarked for backward class category, whereas, Km.Rama Verma on the basis of her merit ought to have been selected and adjusted against the vacancies for General Category, therefore, the select list declared by "Commission" was not in accordance to the above Government Order dated 19.2.1981. There were only 5 seats earmarked for the candidates of backward class. If the candidature, of Km. Rama Varma was adjusted against the General Category then one post/seat under reserved category of backward class had fallen vacant and such vacancy under the reserved category of backward was to go to the next below candidate in the said reserved backward category. Since, the respondent No. 2 was in the waiting list at Serial No. 1 in the category of backward classes, therefore, a lawful right has accrued to her for selection within the list of 33 selected candidates. It is, therefore, according to Para 17 of counter affidavit in the light of the above order dated 18.9.1999 of High Court the respondent No. 2 was given appointment to the post of Principal by Government Order dated 28.6.1996 with all consequential benefits, including seniority and further promotion to the post of Deputy Director of (Education).

11. Whereas in Para 5 of the rejoinder affidavit in reference to the counter affidavit of respondent No. 2, it was contended on behalf of the petitioner that there is no direct conflict between the petitioner and respondent No. 2., except as has been contended in Para 11 she was to be appointed in same category with same consequential benefits like the respondent No. 2 as she after her appointment in the year 1996 was awarded all the benefits including seniority and placement at Serial No. 242-A in the list of seniority of selectee officers of select list of 14.6.89, whereas, the name of the petitioner is at Serial No. 475, although she should have been placed between 234 and 235 i.e. at Serial No. 234-A.

12. In view of the above, it is evident that the petitioner was in the waiting list at Serial No. 1 whereas the respondent No. 2 was at Serial No. 6 in the same selection and select list dated 14.6.89 of year 1989-1990 for being appointed to the post of Principal of "GGIC" and in the light of the order dated 18.7.1999 of this Court in Writ Petition No. 3791 of 1990 when the vacancy of Principal was made available in backward category one Km. Rama Verma, a backward candidate, shown at Serial No. 7 in the select list, had secured selection by virtue of having secured upper position in the genem-category candidates and was subsequently treated not entitled to claim the selection in the reserve category therefore, in her place the claim of respondent No. 2 being at Serial No. 6 in waiting list was allowed by this Court by its order 18.7.1999 for the appointment as Principal of "GGIC" whereas the vacancy having fallen vacant due to non-joining of one Smt. Parwati Singh, a general candidate, was to be provided to the petitioner but despite the clear order dated 2.5.1996 of this Court, above the

decision of State Government dated 12.7.1999 on the representation of the petitioner is discriminatory, illegal and contrary to the spirit of Article 14 of the Constitution. The order in question dated 12.7.99 of State Government was in utter disregard and in derogation to the directions of this Court.

13. The State Government's contention that the petitioner was since already promoted on 17.2.1995 to "Group Kha" post and was working as "senior lecturer" in "DETI" in the pay scale of Rs. 2200-4000, which is also the pay scale and is equivalent post to that of Principal of "GGIC", therefore, no necessity was felt to issue appointment of Principal of "GGIC treating her to be selectee, in selection of year 1989-90, as such, the representation of the petitioner was rejected on 12.7.1999. Such stand and contention of State Government is in utter disregard to the directions dated 2.5.1996 of this Court given in Wrt Pettiori No. 10175 of 1993. In fact the petitioner was selected earlier in another selection of "SESG" in pay scale of Rs. 2000-3200 and was appointed as "DIOGS" and was working as District Basic Education Officer at relevant time and it was on her own merits and in her own right at due time she was granted promotion on 17.2.1995 in Group "Kha" post of U.P. (Shaikshik) Samanaya Shiksha Sambarg (Sewa Samooch Kha) and as such was appointed as "senior lecturer" in DETI. The post and scale of Group "Kha" post of "senior lecturer" is equivalent to that Principal of "GGIC" i.e. a post to which the petitioner was selected on the basis of 1985 examination of commission and was striving for the same. In fact the petitioner was to be appointed as such w.e.f. 1.8.90, taking her from the select list dated 14.6.89/1989- 90 of selectee Principals of "GGIC in the light of the order dated 2.5.96 of this "Court". It was after the order dated 2.5.96 of this Court the petitioner happened to work on that promotional post of "senior lecturer" in "DETI" from 17.2.95 which is by chance equivalent in status and scale to that of Principal of "GGIC and legal right the petitioner was ignored and in place of granting her the benefit of claim of status and scale of Principal "GGIC from 1.8.90 was rejected absolutely on 12.7.1999 arbitrarily solely on irrelevant ground as indicated above.

14. In our consideration, the order dated 12.7.1999 was passed in utter disregard, misinterpreting the order dated 2.5.1996 passed in Writ Petition No. 10175 of 1993, therefore, in the light of observations made above the impugned order dated 12.7.1999 is set aside and the writ petition is allowed, with cost, with a direction to consider the case of the petitioner in view of the observations made above and pass appropriate order in favour of the petitioner treating the petitioner to have been appointed as Principal of "GGIC w.e.f. 1.8.90 along with other selectee Principals and for giving all consequential benefits and promotion as given to the respondent No. 2 and allocate the petitioner by placing her in the seniority above the respondent No. 2.