

(2003) 05 AHC CK 0194
In the Allahabad High Court
Case No : C.M.W.P. No. 9932 of 1988

Vidya Sagar Sharma

APPELLANT

Vs

District Inspector of Schools II and Another

RESPONDENT

Date of Decision : 07-05-2003

Acts Referred:

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 100, 101

Citation : (2003) 6 AWC 4725

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : R.K. Jain, Rahul Jain, R.B. Trivedi and M.B. Yadav, for the Appellant;

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—By means of the present petition, the Petitioner has assailed the order dated 11.3.1988 passed by the Regional Inspectress of Girls School Meerut thereby refusing to accord financial sanction to the selection and appointment of the Petitioner on the post of Class IV employee in Kasturba Kanya Inter College, Khekra, District Meerut.

2. The facts constitutive of the grievance of the Petitioner is that the said Girls Schools had six posts in class IV category including one post of Safai Karamchari (Bhangi) out of which selections were made on five posts from time to time on the occurrence of vacancies. At the time of institution of the present petition, category wise details consisted of two persons from O.B.C. category, one person from S.C. category and two from general category. On occurrence of sixth vacancy, it would transpire from record, the Principal of the Girls School notified the said vacancy to the Employment Exchange under the Employment Exchanges (Notification of Vacancies) Act, 1959 and as a consequence thereof, the Employment Exchange forwarded various names including the name of the Petitioner. Following selection, the Petitioner was selected and was accordingly appointed vide appointment letter dated 1.1.1988 issued by the Principal of the College. In the wake of selection, the Principal of the Girls School processed the

papers and submitted the same to the Regional Inspectress of Girls School for according financial sanction. However, it would appear, the Regional Inspectress of Girls Schools declined approval to the appointment by means of the impugned orders dated 11.3.1988 and 4.2.1988 which was predicated on the ground that the post in question was liable to be filled up by candidate of Scheduled Caste category.

3. Institution of the instant petition dates back to the year 1988 and from a perusal of the order sheet it would appear that six weeks' time was granted for the first time on 21.5.1988 for filing counter-affidavit. Thereafter, the matter appears to have receded into oblivion and it resurfaced on 17.1.1994 on which date one month's time was again granted to the standing counsel to file counter-affidavit studded with a caveat put in by the Court that no further time will be allowed. Thereafter the matter dragged on frequently receding into background and resurfacing again on various dates. The counter-affidavit is not still forthcoming. In my opinion, the matter has suffered procrastination and it would serve no useful purpose to defer the matter in the fond expectation of having a counter-affidavit.

4. Having heard the learned Counsel for the parties, the question that begs determination is (1) whether the Regional Inspectress of Girls Schools was justified in declining financial approval to the appointment of the Petitioner and further (2) whether the only post on which selection of the Petitioner has been made was liable to be filled up by a candidate belonging to Scheduled Caste Category?

5. The learned Counsel began his submission stating that having regard to the reservation quota of 18% earmarked for Scheduled Caste Category, only one post will fall to be filled up by the person of Scheduled Caste Category out of six existing posts in the college and one Smt. Jihani Devi having already been appointed as Safai Karamchari, the only post on which Petitioner has been appointed through selection is not liable to be filled up by a candidate of Scheduled Caste Category. The objection and consequence denial to financial approval by the Regional Inspectress of Girls School was misconceived, misplaced and cannot be countenanced in law. From a perusal of the record, it would transpire that in reply to the impugned order the Principal of the College sought specific query from the Regional Inspectress of Girls School by means of letter dated 19.2.1988 the text of which is that she be intimated the reference of any Government order which envisaged that the quota of Scheduled Caste has to be determined to the exclusion of the post of Safai Karamchari. It would appear that the Regional Inspectress of Girls Schools parried the question on the ground that the decision in this regard was already conveyed by the impugned order dated 4.2.1988 and she directed that the Principal should act strictly in accordance with the said decision. The learned standing counsel could not repudiate the submission nor did he adduce any evidence or any Government order demonstrative of the fact that reservation quota in relation to Scheduled

Caste Category has to be counted to the exclusion of the post of Safai Karamchari. Even otherwise, from a perusal of the impugned order, it appears that the Regional Inspectress of Girls School has not assigned any cogent reason to prop up her stand that the only post on which selection was made from general category was liable to be filled up by a candidate belonging to Scheduled Caste category. Without there being anything on the record in vindication of the stand of the Regional Inspectress of Girls Schools, the objection and consequent refusal to financial approval falls short of acceptability and conclusion is irresistible that the only post in question was not liable to be filled up by a candidate belonging to Scheduled Caste category.

6. It brooks no dispute that Principal of the college is the authority clothed with the power to make appointment on class IV posts. Chapter 3, Regulation 100 of the U.P. Intermediate Education Act being germane to the point may be excerpted below:

other language

Tracing the history in relation to power to make appointment on class 4 posts in the college, it may be noticed that prior to 1992 there was no requirement of prior approval as envisaged in Regulation 101. The said regulation came into being on the dint of notification dated 30.7.1992 and the same is abstracted below.

other language

7. As stated supra, the only vacancy was notified to the Employment Exchange and the selection proceeded on the basis of names furnished by the Employment Exchange and culminated in the appointment of the Petitioner who it is reported has been working in unbroken continuity. It does not appear from the entire record that refusal to accord financial approval had its genesis in the illegality of selection made by the Principal and in this perspective, I cannot resist the conclusion that the Regional Inspectress of Girls Schools was not justified in refusing to accord financial approval to the appointment of the Petitioner.

8. As a result of foregoing discussion, the petition succeeds and is allowed. The impugned orders dated 4.2.1988 (Annexure-5) and 11.3.1988 (Annexure-7) are quashed accordingly. As a consequence of the above, the Petitioner is held entitled to get all consequential benefits and shall be paid arrears and salary for the period he has actually worked.