
(2004) 11 AHC CK 0199

In the Allahabad High Court

Case No : C.M.W.P. No's. 35247 of 1994 and 37836 of 1995

Vijai Prakash Dubey and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-11-2004

Acts Referred:

Citation : (2005) 5 AWC 4064 : (2005) 1 ESC 688

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : M.M.L. Srivastava, for the Appellant; Ganga Prasad, S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri M.M.L. Srivastava on behalf of the petitioners and Standing Counsel on behalf of respondents.

2. The petitioners who are 4 in number claim to have been appointed as daily wage employees in the office of the Board of High School and Intermediate Education, Uttar Pradesh, Allahabad (hereinafter referred to as the Board), which is a statutory body constituted under the provisions of the Intermediate Education Act, 1921. The appointment of the petitioners was made in order to cope with the increase of work of the Board due to rapid increase in the number of students appearing in the High School and Intermediate Examinations conducted by the said Board for the entire State of Uttar Pradesh as well as due to the increase in number of institutions recognised for the purposes of admitting students to appear in High School and intermediate Examinations conducted by the Board. Prior to the appointment of the petitioners there were other similarly situated daily wage employees who had been working in the employment of the Board for years together.

3. The cause of all such daily wage employees was spoused by the Uttar Pradesh Madhyamik Shiksha Parishad Parishramik Sangh, amongst others, for the

betterment of service conditions and regularisation of daily wage employees. For the said purpose a Writ Petition No. 691 of 1988 was filed before this Court by the Parishramik Sangh. In the said writ petition counter affidavit was filed on behalf of the State of U.P. stating therein that the State Government is considering the proposal forwarded by the Board dated 26.12.1989 for regularising the services of the daily wage employees. This Court relying on the said affidavit of the State Government provided that the State Government may itself take up the exercise to find a solution to the problem. As a consequence to the aforesaid, the State Government vide Government Order dated 14.12.1990, granted permission to the Board, as per the proposal, to absorb the employees having regard to the length of service and qualifications against the existing vacancies and further created 160 posts for absorption of the daily wage employees according to their qualifications. However, the State Government specified that in future no daily wage appointment shall be made by the Board. As against 160 additional sanctioned posts the Board offered regular appointment to only 157 daily wage employees as per the Office Order dated 4.1.1991. The remaining three posts were filled by promoting class IV employees.

4. The petitioners were not offered regular appointment despite the posts having been created for the said purpose by the State Government. As a matter of fact the Board came up with the plea that out of the total sanctioned 160 posts, 25 posts are reserved for Scheduled Castes/Scheduled Tribes and, as such, there is no post now available for the petitioners who belong to general category. The petitioners were offered appointment as paid apprentice vide letter dated 4.1.1991.

5. In fact, Writ Petition No. 3167 of 1991, Rajesh Kumar and Ors. v. State of U.P. and Ors., was filed claiming reservation to the extent of 45%, against the newly created 160 posts. In the said writ petition an interim order was passed by this Court whereby regularisation of daily wage employees was stayed. The said writ petition was ultimately dismissed on 8.3.1994, with a direction that in case some of the posts created by the Government Order dated 14.12.1990, remain unfilled even after regularisation of daily wage employees, the respondents shall fill the same in accordance with Government Order dated 15.3.1965 (providing reservation for Scheduled Castes/ Scheduled Tribes).

6. The respondents instead of considering the claim of the petitioners for regular appointment subsequent to the judgment and order of this Court dated 8.3.1994, passed in Writ Petition No. 3167 of 1991, made an advertisement inviting fresh applications for appointment against the vacant posts created under the Government Order dated 14.12.1990. The petitioners at this stage filed the present petition challenging the advertisement so made as well as for a writ of mandamus directing the respondents to fill up the posts created under Government Order dated 14.12.1990, by offering regular appointment to the petitioners only.

7. On behalf of the petitioners it is contended that the additional 160 posts which

were created under Government Order dated 14.12.1990 for absorption/adjustment of daily wage employees could not be reserved for any category under the Government Order dated 15.3.1965 inasmuch as the said Government Order had no application to the creation of the posts, which has been done for a particular purpose, in support thereof the petitioner has placed reliance upon the judgment of this Court dated 15.3.1994 passed in Writ Petition No. 16370 of 1991 wherein the State of U.P. and the Board were parties and which has become final between them. It is, therefore, submitted that the respondents were not justified in applying reservation as per the Government Order dated 15.3.1965 in respect of 160 posts which were created under the Government Order dated 14.12.1990 for the specific purpose. It is further stated that the respondents have misread the Government Order dated 14.12.1990, which provided for filling up of 160 posts only by regularisation of qualified daily wage employees. It is also further stated that the petitioners are still working on a fixed pay of Rs. 950/- plus D.A. and the action of the respondents as such on the face of it is arbitrary and unjustified.

8. On behalf of the respondents it is stated that there were 174 qualified persons working on daily wage as against 160 newly created posts of Junior Clerk and therefore last 14 daily wage employees like the petitioners were offered appointment as paid apprentice. However, it has further been admitted that because of the provisions of Reservation Act, 1994 and the Government Orders issued from time to time sufficient number of vacancies have been reserved for Scheduled Castes/ Scheduled Tribes candidates and backward class category candidates against which the petitioners can have no claim never if they are vacant.

9. Thus the controversy which is up for consideration is confined to the issue as to whether in respect of 160 posts which were created under Government Order dated 14.12.1990 the rights of the daily wage employees, belonging to the general category for regularisation can be ignored on the ground that certain number of newly created posts are to be kept reserved for Scheduled Castes/ Scheduled Tribes and backward class candidates. For resolving the dispute, it would be relevant to refer to the provisions of the Government Order dated 14.12.1990 whereunder 160 posts were created, the relevant portion whereof is as follows :

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4- bl lecU/k esa eq>s ;g Hkh dgus dk funsZ"kk gqvk gS fd ek? f"kk? i? dh vksj ls "kklu dks bl vk"kk; dk vUMjVsfdax rqjUr miyC/k dj;k tkos ftlesa;g mYys[k gks fd Hkfo"; esa ek? f"kk? i? }kjk fdLH Hkh :i esa nSfud osru vFkok fu;r osru ij fcuk "kklu dh iwoZ vuqefr ds dksbZ fu;qf?;k? ugha dh tk;sxA**

10. From the aforesaid Government Order it is apparently clear that the said 160 posts were created only for the purposes of absorption of daily wage employees who were working in the Board as per details mentioned in the said Government Order, namely number of daily wage employees who were said to be employed in various regional offices of the Board at Allahabad, Meerut, Varanasi and Bareilly. The determination of number of post so sanctioned has been done independent of the category of the persons working on daily wages, consequently the question of any reservation being applied in respect of the 160 posts, specifically created for absorption of daily wage employees, does not arise.

11. The issue as to whether the Government Order dated 15.3.1965 providing for reservation for Scheduled Castes/Scheduled Tribes and backward class candidates would be attracted in respect of the aforesaid 160 posts created under Government Order dated 14.12.1990, was the subject matter of consideration before this Court in Writ Petition No. 16370 of 1991 wherein this Court has specifically held as follows :

"A perusal of the Government Order dated 14.12.1990, annexed as Annexure C.A.I would indicate that 160 posts in question were created for absorption/adjustment of daily rated labourers working in the office of Madhyamik Shiksha Parishad, Uttar Pradesh. Para V of the Government Order specifically provides that the posts created by means of the said Government Order shall be filled by adjusting the daily labourers working in the establishment of Madhyamik Shiksha Parishad for years together."

12. The said judgment has become final between the parties as the same has not been challenged. Nor it is the case of the respondents that the said judgment and order has been upset by any higher Court. In view of the aforesaid judgment of this Court the Government Order dated 15.3.1965, providing for reservation cannot be applied to the 160 posts created under Government Order dated 14.12.1990. It is no more open to the respondents to deny consideration of claim of the petitioners for regularisation against the posts created under Government Order dated 14.12.1990, on the ground that the vacant posts are required to be filled from Scheduled Castes/Scheduled Tribes and backward class category candidates.

13. In view of the aforesaid the reason assigned by the respondents for not considering the claim of the petitioners for regularisation on the posts created under Government Order dated 14.12.1990 cannot be legally sustained and therefore the respondents are not entitled to fill up the said posts by direct recruitment without considering the claim of the petitioners for regularisation in terms of Government Order dated 14.12.1990.

14. Further since the petitioners have been denied regularisation/ appointment, from the date on which other similarly situated daily wage employees have been regularised, it is provided that the respondents shall consider the claim of the petitioners for regularisation from the date on which other similarly situated

employees have been regularised i.e. from 1.1.1991. Such an exercise may be completed by the respondents within one month from the date a certified copy of this order is filed before the respondents. So far as the advertisement dated 10th August, 1994 is concerned, it is not in dispute that no appointments could be made because of the interim order passed by this Court in the present petition. The advertisement dated 10th August, 1994, as such has become redundant due to passage of time.

In view of the aforesaid the writ petition is allowed.