

(2010) 07 AHC CK 0478
In the Allahabad High Court

Case No : C.M.W.P. No. 57033 of 2007 And C.M.W.P. No. 14875 of 2008

Yogesh Kumar Yadav

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 26-07-2010

Acts Referred:

Citation : (2010) 127 FLR 739

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : Rajeev Mishra, for the Appellant;

Final Decision : Allowed

Judgement

A.P. Sahi, J.—Heard Sri Rajeev Mishra, learned Counsel for the petitioned in both the writ petitions and learned Standing Counsel for the State.

2. Writ Petition No. 57033 of 2007 has been filed assailing the advertisement dated 22.10.2007 issued by the Regional Ayurvedic and Unani Officer Ghazipur whereby it proceeds to hold selections for appointment against 8 posts of Ward Boy/Chaukidar in the reserved category of Other Backward Classes.

3. The challenge in the said writ petition is that the claim of regularization of the petitioners has not been considered and secondly 100% reservation in the name of backlog vacancies is impermissible keeping in view the law laid down in the case of Indira Sawhney v. Union of India 1992(Supp) (3) SCC 217.

4. Learned Counsel for the petitioners contends that the advertisement is also erroneous, inasmuch as, it tends to indicate that the vacancies are backlog vacancies when as a matter of fact, the said posts were never advertised in the past as backlog vacancies on three occasions as to enable to club them altogether and re-advertised them in a single advertisement. It is submitted that this procedure adopted is in violation of the law laid down in the case of Dr. Vishwajeet Singh and others. v. State of U.P. and others 2009 (4) ADJ 373.

5. Subsequently, Awadhesh Yadav and others have filed another writ petition being Civil Misc. Writ Petition No. 14875 of 2008 and amendment applications have been filed in both the writ petitions claiming minimum of the pay scale. This Court has passed interim orders in both the writ petitions. The first interim order was passed on 20.11.2007 in Civil Misc. Writ Petition No. 57033 of 2007 and the second interim order has been passed on 25.3.2008 in Civil Misc. Writ Petition No. 14875 of 2008.

6. In the counter-affidavits filed in both the writ petitions, the authority has admitted the mistake of calculation of the backlog vacancies and has requested the State Government to grant permission to re-advertise the posts in accordance with Rules applicable and also the nature of the vacancies available in the respective categories for being advertised as backlog vacancies. The aforesaid letter has been brought on record and is dated 7.12.2007. The aforesaid stand taken in the counter-affidavits, therefore, substantiates the plea taken by the petitioners that the advertisement was erroneous.

7. In such a situation and in view of the aforesaid admitted error as indicated in the counter-affidavits, there is no option but to quash the advertisement dated 22.10.2007. It is, accordingly, quashed.

It is now left open to the authorities to proceed to re-advertise the post after carrying out the calculation in accordance with rules applicable and proceed with the selections.

8. The amendment applications filed by the petitioners in both the writ petitions have been allowed by separate orders today.

9. In view of the relief's claimed therein, it is provided that the respondent No.2 shall examine the claim of the petitioners for payment of minimum pay Bias indicated in the interim order dated 29.11.2004 in Writ Petition No. 1285 of 2003 and pass orders as expeditiously as possible preferably within a period of eight weeks from the date of presentation of a certified copy of this order before him.

10. The writ petition is allowed subject to the observations made hereinabove.