

(1996) 05 AHC CK 0154

Allahabad High Court

Case No: C.M.W.P. No. 12592 of 1995

Dr. Dina Nath Shukla

APPELLANT

Vs

State of U.P. and
Another

RESPONDENT

Date of Decision: May 3, 1996

Acts Referred:

- Constitution of India, 1950 - Article 16, 30
- Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 - Section 10, 2, 3, 3(1), 3(2)

Citation: (1996) 05 AHC CK 0154

Hon'ble Judges: R.A. Sharma, J; Alope Chakrabarti, J

Bench: Division Bench

Advocate: Ashok Khare, for the Appellant; S.C. and Ashok Bhushan, for the Respondent

Final Decision: Allowed

Judgement

R.A. Sharma, J.

Whether reservation for the post of Professors, Readers and Lecturers in a University should be made subject-wise or the whole University should be taken as one unit for the purposes of reservation, is the only question involved in this case.

2. University of Allahabad (hereinafter referred to as the University) published an advertisement on January 30, 1995 inviting applications for the posts of Professors, Readers and Lecturers in various departments. The advertisement contains the details of the vacant posts and the posts reserved for Scheduled Castes, Scheduled Tribes and other Backward castes, department-wise. The Petitioner, who is a Lecturer in the department of Botany of the University, applied pursuant to the said advertisement for the post of Reader in the said department. Before the candidates could be selected for the advertised posts, the University received a Government order dated 19.4.1995 directing reservation for the posts of Professors, Readers and Lecturers taking the University as

one unit. Being aggrieved by it, the Petitioner has filed this writ petition.

3. The Government and the University have filed the counter-affidavit. Petitioner has filed rejoinder-affidavit in reply thereto. We have heard Sri Ashok Khare, learned Counsel for the Petitioner, Sri Ashok Bhushan, learned Counsel for the University and the learned Standing Counsel who represents the State. We have also heard Sri R. N. Singh who represents one of the interveners supporting the case of the Petitioner and Dr. R. G. Padia who represents another Intervener who is supporting the Government.

4. The question raised in this petition is not res Integra. It is concluded by a decision of the Supreme Court in [Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others](#), wherein it has been laid down that the posts of teaching staff should be reserved subject-wise. In that case, the University did not notify the reserved posts subject-wise and has merely mentioned the total number of reserved posts categorywise. This is clear from Paragraph 2 of the Supreme Court judgment, relevant extract of which is reproduced below:

2. The University issued the employment notice in question inviting applications for a total of 77 posts which included 13 posts of Professors, 29 posts of Readers and 35 posts of Lecturers in different subjects ranging from Economics, Politics and Sociology to Physics, Pharmacy and Geology. The notice mentioned total number of reservations category-wise but not subjectwise as follows:

Professors--Scheduled Castes-3, Scheduled Tribes-2 and VJ/MT-1

Readers--Scheduled Castes-6, Scheduled Tribes-4 and VJ/MT-2

Lecturers--Scheduled Castes-7, Scheduled Tribes-5 and VJ/MT-4.

Supreme Court while disapproving the method of reservation adopted by the University, had laid down as follows:

According to us, the word "post" used in the context has a relation to the faculty discipline, or the subject for which it is created. When, therefore, reservations are required to be made "in posts", the reservations have to be postwise, i.e., subjectwise. The mere announcement of the number of reserved posts is no better than inviting applications for posts without mentioning the subjects for which the posts are advertised. When, therefore, Section 57(4)(a) requires that the advertisement or the employment notice would indicate the number of reserved posts, if any, it implies that the employment notice cannot be vague and has to indicate the specific post, i.e., the subject in which the post is vacant and for which the applications are invited from the candidates belonging to the reserved classes. A non-indication of the post in this manner itself defeats the purpose for which the applications are invited from the reserved category candidates and consequently negates the object of the reservation policy.

We are, therefore, in complete agreement with the view taken by the Full Bench that the employment notice dated July 27, 1984 was bad in law since it had failed to notify the reservations of the posts subjectwise and had mentioned only the total number of reserved posts without indicating the particular posts so reserved subjectwise.

Supreme Court in Paragraph 5-6 of its judgment in the aforesaid case, relevant extract of which is reproduced below, has also pointed out serious consequences and arbitrariness which may result in case the reservation is not subjectwise:

5-6. As regards the first question, we have narrated earlier the method which was adopted by the University for reserving the posts. It announced the posts categorywise as Professors, Readers and Lecturers in different subjects and made a blanket declaration that 6 of the posts of Professors, 12 of the posts of Readers, and 16 of the posts of Lecturers would be reserved for backward castes. Neither the University nor the candidates know at that time as to for which of the subjects and in what number the said posts were reserved. The result was that the candidates belonging to the reserved category in particular, who wanted to apply for the reserved posts, did not know for which of the posts they could apply and whether they could apply at all for the posts in the subjects in which they were qualified. That this could be the expected consequence of such an employment notice can legitimately be inferred and need not be and indeed cannot be demonstrated by evidence of what actually happened, for there may be a number of candidates who on account of the said uncertainty might have refrained from applying for the posts as against those who applied to take a chance. What is further, the selection committees which were appointed to interview the candidates for the respective posts did not also know whether they were interviewing the candidates for the reserved posts or not, and to assess merits of the candidates from the reserved category as such candidates.

In [Chakradhar Paswan Vs. State of Bihar and Ors.](#), the Supreme court has held that the reservation is to be cadrewise and the posts which are part of the same service, but do not belong to the same cadre, cannot be grouped together for the purposes of reservation. It was further held that the posts which are distinct and separate belonging to different disciplines, cannot be clubbed together for applying the reservation, even though they carry the same pay scale. It was also laid down that no reservation can be made if there is only one post in the cadre. Full Bench of Karnataka High Court in Dr. Raj Kumar v. Gulbarga University AIR 1990 Kar 320, relevant extract from which is reproduced below, has also taken the same view, following the decision of the Supreme Court:

32. The next question for consideration is about the method which should be adopted in providing reservation for the cadres of Professors, Readers and Lecturers for, though these posts are in different subjects, they carry same designation and pay scale. Therefore, the question is as to whether reservation has to be worked out in respect of

such cadres separately. This question is also no longer res integra. This Court in the case of *Dr. Krishna v. State of Karnataka* ILR (1986) Kant 255, has held that in the case of teaching cadres, though the designation and pay scale of the posts of Professors, Readers and Lecturers in different subjects are one and the same, still having regard to the facts that the posts of Professors, Readers and Lecturers in each of the subjects is distinct and separate, each subject has to be treated as independent unit for the purpose of recruitment and reservation. The said view stands confirmed by the decision of Supreme Court in the case of [Union of India \(UOI\) and Others Vs. E.S. Soundara Rajan and Others](#).

5. In view of the law laid down in the aforesaid cases, the reservation has to be subjectwise, treating the subject as one unit. Therefore, the whole University cannot be treated as one unit for the purposes of reservation.

6. In State of U.P., the Legislature has enacted an Act known as The U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994 (hereinafter referred to as the Act) providing for reservation in public services and the posts including the service and the posts in educational institutions in favour of the Scheduled Castes, the Scheduled Tribes and other Backward Class of citizens. The Act has not changed the method of reservation. It remains the same, namely reservation of the posts, which means subjectwise reservation so far as the teachers are concerned. This is clear from Section 3 of the Act which is reproduced below:

3. Reservation in favour of Scheduled Castes, Scheduled Tribes and other Backward Classes:

(1) In public services and posts, there shall be reserved at the stage of direct recruitment, the following percentages of vacancies to which recruitment's are to be made in accordance with the roster referred to in Sub-section (5) in favour of the persons belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes of citizens:

(a) in the case of Scheduled Castes Twenty one per cent

(b) in the case of Scheduled Tribes Two per cent

(c) in the case of other Backward Twenty-seven Classes of citizens per cent:

Provided that the reservation under Clause (c) shall not apply to the category of other backward classes of citizens specified in Schedule II.

(2) If, even in respect of any year of recruitment, any vacancy reserved for any category of persons under Sub-section (1) remains unfilled, special recruitment shall be made for such number of times, not exceeding three, as may be considered necessary to fill such vacancy from amongst the persons belonging to that category.

(3) If in the third such recruitment referred to in Sub-section (2), suitable candidates belonging to the Scheduled Tribes are not available to fill the vacancy reserved for them, such vacancy shall be filled by persons belonging to the Scheduled Castes.

(4) Where, due to non-availability of suitable candidates and of the vacancies reserved under Sub-section (1) remains unfilled even after special recruitment referred to in Sub-section (2), it may be carried over to the next year commencing from first of July, in which recruitment is to be made subject to the condition that in that year total reservation of vacancies for all categories of persons mentioned in Sub-section (1) shall not exceed fifty per cent of the total vacancies.

(5) The State Government shall, for applying the reservation, under Sub-section (1) by a notified order, issue a roster which shall be continuously applied till it is exhausted.

(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 subjected against the vacancies reserved for such category under Sub-section (1).

(7) If, on the date of commencement of this Act, reservation was in force under Government Orders for appointment to posts to be filled by promotion, such Government Orders shall continue to be applicable till they are modified or revoked.

Section 2 (c) which defines public services and posts, so far as it is relevant, is reproduced below:

2 (c) "Public services and posts", means the services and posts in connection with the affairs of the State and includes services and posts in:

2 (c)(iv) an educational institution owned and controlled by the State Government or which receives grants in aid from the State Government, including a University established by or under an Uttar Pradesh Act, except an institution established and administered by minorities referred to in Clause (1) of Article 30 of the Constitution.

Section 10 of the Act authorises the Government to make provisions by a notified order for removing the difficulties. This section is quoted below:

10. Removal of difficulties.---If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by a notified order, make such provisions not inconsistent with the provisions of this Act as appears to it to be necessary or expedient for removing the difficulty.

7. Section 3 (1) of the Act, which provides for reservation in public services and posts, has laid down that the recruitment to the reserved vacancy is to be made in accordance with the roster notified by the Government under Sub-section (5). Sub-section (5) of Section 3 requires the Government to issue roster for applying the reservation under

Sub-section (1). The Government of U.P. has notified the roster under Sub-section (5) of Section 3 showing the posts at the reserve points fixed therein to be filled up from the members of various reserve categories. Roster thus contemplates reservation of the posts. Accordingly, the reservation is to be applied subjectwise as held by the Supreme Court in *Suresh Chandra Verma v. Chancellor* (supra).

8. In this connection, reference may also be made to [R.K. Sabharwal and others Vs. State of Punjab and others](#), wherein the Supreme Court has laid down that the reservation is to be worked out in relation to number of posts in a cadre and vacancy is not relevant in operating the percentage of the reservation. Following the above decision, the Supreme Court in [Union of India and others etc. Vs. Virpal Singh Chauhan etc.](#), has held that, the percentage of reservation has to be worked out in relation to number of posts in a particular cadre, class, category or grade (unit for the purpose of applying the rule of reservation) and not with respect to vacancies." Therefore, the reservation has to be in relation to the number of posts in one unit. In the University, there are number of faculties. According to Section 27 of the State Universities Act, each faculty comprises of such departments of teaching as may be prescribed. Statute 7.03 of the University has specified the departments in the faculty of Arts. Similarly, Statute 7.04 specifies the departments in the faculty of Commerce. Similar Statutes are there specifying the departments for other faculties. The University thus has several departments subjectwise; each department having its own head as required by Sub-section (6) of Section 27 of the Universities Act. These departments represent different disciplines. The posts of the teachers are created subjectwise by the University with the approval of the State Government. Chapter X of the First Statutes of the University deals with the classification of the teachers, Statute 10.01 of which classifies the teachers into three categories, namely, Professors, Readers and Lecturers. As per Statute 10.02, which is reproduced below, teachers of the University are appointed in the subjects:

Teachers of the University shall be appointed in the subject on whole time basis in the scale and pay approved by the State Government.

When the posts are created subjectwise and the appointment of the teachers are also made subjectwise and the teachers of one department cannot be treated as teachers of the other department, all the posts of the teachers of the University cannot be clubbed together categorywise for applying the reservation. Each department of teaching is a separate unit. Therefore, reservation has to be applied subjectwise. This will ensure reservation in all categories of teachers in all subjects/departments. If the reservation is not applied subjectwise, it will result in violation of Article 16 of the Constitution. If all the Professors working in all the subjects in the University are treated as belonging to one unit, the result would be that in some subjects, there will be no reservation while in others, there might be hundred percent reservation. Uncertainty and serious consequences including the violation of Article 16 of the Constitution, as highlighted by the Supreme Court in *Dr. Suresh Chandra Verrra v. Chancellor, Nagpur University* (supra) are bound to occur. For the reasons given above, the impugned order cannot be sustained.

9. Although the Government in its counter-affidavit has stated that the impugned order is not a Government order in real sense, but is merely a clarification given by the Government pursuant to the enquiry made in that connection, but it has reiterated therein that the reservation for the posts of the teaching staff of the University is to be made not departmentwise but by taking the University as one unit. That apart, the impugned order is being treated as binding by the University. Even the Government in its counter-affidavit has insisted for reservation taking the University as one unit. Hence the impugned order cannot be said to be innocuous not affecting anybody. It is being enforced by the University and is not being ignored. For the reasons given above, the impugned order has to be quashed, being contrary to law.

10. The writ petition is accordingly allowed with costs. The impugned Government order dated 19.4.1995 is quashed.