
(2010) 07 AHC CK 0484

Allahabad High Court

Case No: C.M.W.P. No. 52797 of 2007

Ram Prakash Katiyar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: July 22, 2010

Citation: (2010) 6 AWC 5536

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

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

A.P. Sahi, J.

Heard Sri Alok Dwivedi, learned Counsel for the Petitioner and Sri A. K. Yadav for Respondent No. 6. Notices were issued to the Respondent No. 5, who is the main contesting Respondent but he has not put in appearance till date.

2. The management is not opposing this petition.

3. The dispute raised in this petition is in relation to the post of Lecturer in Mathematics in an Intermediate college governed by the provisions of U. P. Intermediate Education Act, 1921 and the regulations framed therein read with U. P. Secondary Education Service Selection Board Act. 1982 and the regulations framed thereunder.

4. According to the Petitioner, the post in question falls within 50% promotion quota and the Petitioner being fully eligible and qualified for the same is entitled to be considered for promotion. The post fell substantively vacant on 30.6.2007 due to retirement of a permanent incumbent of the post.

5. The Petitioner moved his request for promotion but instead of that the Respondent No. 5 who was a candidate selected directly by the Respondent No. 6 - Board was sought to be adjusted and accommodated against the said post. The said accommodation of the Respondent No. 5 has been challenged in this writ petition

on the ground that the post being of promotion quota, the same could not have been offered for direct recruitment that too even in the reserved category.

6. The second contention is that the candidate who appeared against advertisement No. 2 of 2004 and was selected namely Respondent No. 5 is sought to be accommodated under the said advertisement whereas the post has fallen vacant subsequently on 30.6.2007. Learned Counsel contends that the post itself was not in existence when the advertisement was made and, therefore, the Respondent No. 5 could not have applied against the said post.

7. Sri Ashok Yadav contends that the aforesaid adjustment has been made in terms of Sub-rule (5) of Rule 13 of the 1998 Rules and, therefore, there is no error in the action taken by the Respondent-Board for accommodating the Respondent No. 5. A counter-affidavit has also been filed on behalf of the District Inspector of Schools wherein it has been alleged that the post in question belongs to the reserved category and, therefore, the Petitioner cannot claim any such benefit of promotion as the post has to be filled up by the appointment of a Scheduled Caste category candidate.

8. Learned Counsel for the Petitioner in rejoinder submits that out of 22 posts of Lecturer in the institution, 4 posts are already occupied by the Scheduled Caste category candidates and, therefore, the reservation in the said category has already been saturated. He submits that there is no occasion in treating the post reserved and secondly the post falls within the promotion quota as only 8 Lecturers have been appointed by way of promotion on the date when the vacancy arose and as such, 2 other posts were available for being filled up by promotion. He, therefore, submits that the accommodation made by the Board is without authority and against the Rules and even against the availability of the vacancies in the institution.

9. The Respondent No. 5 in spite of notice has not chosen to contest this petition. It has been brought on record through the rejoinder-affidavit filed by the Petitioner that the Respondent No. 5 during the pendency of this petition has been accommodated as a Lecturer in Vikas Inter College, Khesraha, Siddharth Nagar. In view of this changed position, learned Counsel for the Petitioner contends that the order accommodating the Respondent No. 5 in the institution of the Petitioner loses its efficacy and, therefore, the order dated 27.6.2007 does not survive.

10. The aforesaid submissions made on behalf of the Petitioner has to be accepted inasmuch as once the Respondent No. 5 has been accommodated elsewhere, the order dated 27.6.2007 does not survive and cannot be enforced.

11. So far as the claim of the Petitioner for promotion is concerned, the same is yet to be assessed by the appropriate authority namely the Respondent No. 2 before whom the Petitioner shall represent his claim and the Respondent No. 2 shall, after calling for the comments thereon and after examining the facts, proceed to pass an order within 3 months from the date of production of a certified copy of this order

before him.

With these observations, the writ petition is disposed of.