

Ashish Kumar Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Jan-05-2009

Reported in : 2009(2)AWC1186

Judge : Shashi Kant Gupta, J.

Appellant : Ashish Kumar

Respondent : State of U.P. and ors.

Disposition : Petition allowed

Judgement :

Shashi Kant Gupta, J.

1. This writ petition has been filed by the petitioner for quashing the impugned order dated 23.11.2006. passed by respondent No. 3 and for directing the respondents to accord approval and appoint the petitioner on the post of Lab. Assistant (Chemistry) forthwith with all consequential benefits.

2. The background facts in a nutshell essentially are as follows:

3. Raghu Nath Girls (P.G.) College, Meerut (in short 'institution') is affiliated to Chaudhary Charan Singh University, Meerut and is governed by Higher Education Services Commission Act, U.P. State Universities Act, 1973 and statutes made thereunder. The aforesaid institution issued an advertisement inviting the

applications for the post of Clerk, Bursar and Laboratory Assistant (Chemistry). The essential qualification mentioned in the aforesaid advertisement for the post of Lab Assistant (Chemistry) was Intermediate with Chemistry and the candidates having experience in computer was to be given priority over other candidates. Petitioner possessed the qualification as mentioned in the aforesaid advertisement, hence he applied for the post of Lab. Assistant (Chemistry) and was called to face an interview. As per the advertisement the post of Lab. Assistant (Chemistry) was not reserved for women. Petitioner after fulfilling all the formalities appeared before the selection committee for interview on 7.5.2006 and was later on declared successful in the interview by the selection committee.

4. The selection committee on 7.5.2006 submitted its recommendation to the appointing authority, selecting the petitioner at serial No. 1 in order of merit and one Smt. Swar Bharti respondent No. 6 was placed at serial No. 2. After receiving the said merit list from the selection committee the appointing authority was supposed to forward the same to the Director of Higher Education or an Officer authorised by him in this behalf for its approval as provided under Statute 24.4 of the Meerut University. By letter dated 4.10.2006 petitioner was informed that the Committee of Management did not approve the appointment of the petitioner on the ground that no woman candidate was selected as such male candidate cannot be granted approval.

5. Petitioner feeling aggrieved with the resolution dated 18.6.2006 contained in a letter dated 4.10.2006 issued by respondent No. 5, filed a Writ Petition No. 58524 of 2006, Ashish Kumar v. State of U.P. and Ors. for quashing the resolution dated 18.6.2006 passed by respondent No. 4 and further sought a direction to the respondent No. 4 to send the papers of the petitioner's appointment for approval to the respondent No. 2. This Court by judgment and order dated 19.10.2006 directed the petitioner to make a representation ventilating his grievances before Regional Higher Education Officer, Meerut Region, Meerut (respondent No. 3) and respondent No. 3 was directed to decide the same in accordance with law by means of a reasoned and speaking order after affording opportunity of hearing to the Committee of Management as well as to any other person interested in such appointment. In compliance of the said order dated 19.10.2006, petitioner filed a

representation dated 28.10.2006, before the respondent No. 3. The respondent No. 3 by order dated 23.11.2006 rejected the representation of the petitioner merely on the ground that a male candidate cannot be appointed on the post of Lab. Assistant (Chemistry) in a girls institution as he will have regular interaction with girl students.

6. Learned Counsel for the petitioner has submitted that the post of Lab. Assistant (Chemistry) is a Group C post and was to be filled up according to the provisions laid down in U.P. Procedure for Direct Recruitment for Group-C post (outside the purview of U.P. Public Service Commission) Rules, 2002 read with Chapter XII of the 1st Statute of the University of Meerut, 1972. It was further submitted that as per the advertisement the post of Lab. Assistant (Chemistry) was not reserved for women and no Rules were framed to prohibit the appointment of male candidates on the post of Lab. Assistant (Chemistry) in the institution. It was further submitted that in pursuant to the advertisement the petitioner appeared before the selection committee for an interview and was declared successful in the aforesaid interview by the selection committee and was placed at serial No. 1 in the merit list but still respondent No. 6 who was below the petitioner in the merit list is being preferred on the post of Lab. Assistant (Chemistry).

7. Learned Counsel for the petitioner has also referred to Para 23 of the writ petition which reads as follows:

23. That it is not out of place to mention here that the post become vacant on the retirement of a Lab. Assistant (Chemistry) who has been working on the post of Lab. Assistant (Chemistry) in the aforesaid institution. It is also relevant to mention here that besides this there are several other male persons working in the different cadre and post at the aforesaid institution. One Sanmek is working on the post of Assistant Librarian. The another male candidate working as Lab. Assistant in Geography namely Sri Raj veer Singh. Besides this there are several male candidates working on the post of Clerks, Stenographers, Accountants, Peons. It is also relevant to mention here that even the Lab. Assistant Rajveer Singh working on the post of Lab. Assistant (Geography) and being conducting the practical of Geography subject and have regular interaction with the female

candidates.

8. It was further submitted that no Bye-laws or Rules have been framed which creates a bar or provide reservation for women on the post of Lab. Assistant (Chemistry), therefore, resolution disapproving the selection of the petitioner by the Committee of Management is illegal, arbitrary and violative of Articles 14, 15 and 16 of the Constitution of India.

9. On the other hand learned Counsels appearing on behalf of respondents have supported and justified the impugned order on the ground that there would be a regular interaction of the male Lab. Assistant with the girl students, therefore, it is not desirable and proper for the girls college to have any male Lab. Assistant in the institution. Learned Counsels for the respondents have also submitted that the petitioner is not qualified for being appointed to the post of Lab. Assistant (Chemistry).

10. Heard the learned Counsel for the parties and perused the record and considered the facts and circumstances of the case.

11. It was not disputed by the learned Counsel for the respondents that the advertisement was published inter alia for the post of Lab. Assistant (Chemistry) and as per the said advertisement the post of Lab. Assistant (Chemistry) was not reserved for woman candidate. Both the male and female candidates were eligible for the said post. It was also not disputed that the petitioner after the interview was placed at serial No. 1 in the merit list much above the respondent No. 6.

12. Petitioner's right to be appointed on the post of Lab. Assistant (Chemistry) in the institution has been denied solely on the ground that it will not be in the interest of institution (girls college) that the post of Lab. Assistant (Chemistry) be filled up by some male candidate, since the Lab. Assistant (Chemistry) will have regular interaction with the female students, therefore, the appointment of male Lab. Assistant (Chemistry) would not be proper.

13. In Para 23 of the writ petition it was categorically stated that already several other male persons are employed in the college on various posts and this fact was

not denied by the respondents in their counter-affidavits.

14. Neither any Law nor Rules nor statutes of the University prohibit the appointment of a male candidate on the post of Lab. Assistant (Chemistry) in the institution.

15. It is also useful to refer to Para 41 of the counter-affidavit filed by respondent No. 6, which reads as follows:

41. That the contents of paragraph No. 24 of the writ petition are denied as stated. In reply it is submitted that although there is no byelaws or rules for appointment of man or female candidate in the institution but in the interest of the institution and for the purposes of girls students who are studying in the institution that the post of Lab. Assistant be filled up by way of female candidate only.

16. Learned Counsel for the respondents has failed to point out any legal provision which prohibits the appointment of male candidate on the post of Lab. Assistant (Chemistry) in the institution. It is also evident from the advertisement that the applications from both male and female candidates were invited. The objection of the Committee of Management, if any should be just, fair, legal and reasonable and it cannot be arbitrary and whimsical. There is not even a whisper in the impugned order or in the resolution dated 18.6.2006, passed by the Committee of Management that the petitioner is not qualified for the said post as such this plea taken for the first time before this Court cannot be entertained. In any event, I do not find any merit in the argument.

17. In *Smt. Shanta Bahukhandi v. Basic Shiksha Adhikari and Anr.* : 1998(2)AWC1280 , the female teacher was transferred from a boys junior high school to a girls junior high school on the ground that male teacher shall be posted in the boys school. This Court in the said judgment observed as follows:

In my opinion, this policy is wholly arbitrary and hence violative of Article 14 of the Constitution. In this modern age, to say that only male teachers will teach in a boys school is, in my opinion, wholly unreasonable and arbitrary. There is no basis of saying that only male teachers can teach well in boys schools. In fact, lady

teachers are even teaching grown up boys in Universities, excellently what to say of schools. It is shocking that at this time when the country is going to enter in the 21st century, a stand is being taken which only reflects the backwardness of some people.

18. There is one more aspect of the matter which deserves notice, is a fact that the institution is a post graduate college and girls student at post graduate level cannot be said to be of tender age who can easily be swayed by anyone. Modern age witnesses advancement of women rapidly and many outstanding events significantly land mark the awakening and emancipation of Indian woman. Women have joined the main stream of the socio economic political movement. They are equal partners in the development of the country. Modern age woman is more confident, bold and courageous to handle any adversity.

19. In any view of the matter, considering the nature of duties which required to be performed by the Lab. Assistant in relation to the girl student, it cannot be deduced that such students could be subjected to any sort of exploitation. Besides this, there are several other male persons, who are already working in the said institution.

20. In view of the above discussions, the writ petition succeeds and is allowed. The order dated 23.11.2006 (Annexure-1 to the writ petition) passed by respondent No. 3 as well as the resolution dated 18.6.2006 (Annexure-8 to the writ petition) passed by respondent No. 4 is accordingly quashed insofar as it relates to the petitioner. The respondents are directed to consider the appointment of the petitioner on the post of Lab. Assistant (Chemistry) in the institution within a period of two months from the date of production of the certified copy of this order.