

Dubari and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : May-11-2007

Reported in : [2007(115)FLR653]

Judge : Pradeep Kant and ;Ran Vijai Singh, JJ.

Appellant : Dubari and ors.

Respondent : State of U.P. and ors.

Advocate for Pet/Ap. : Shri. Sanjay Kumar

Disposition : Petition allowed

Judgement :

Pradeep Kant and Ran Vijai Singh, JJ.

1. Heard Shri Sanjay Kumar, learned Counsel for the petitioners and Shri Alok Sinha for the respondents.

The petitioners have approached this Court with the grievance that the persons junior to the petitioners have been given promotion on the post of District Commandant, Home Guards on 14.12.2005 but their case was not considered.

2. Initially the Court directed the authority concerned to dispose of the pending representation of the petitioners which was rejected by means of order dated

22.4.2007. By means of order dated 22.5.2007 the order aforesaid also became the subject-matter of challenge by means of amendment application which stands allowed. The affidavits have been exchanged and therefore, we proceed to decide the writ petition on merit.

3. At the very outset, we may put on record that it is admitted to the respondent-State that the case of the petitioners was not considered when the promotion of the persons junior to the petitioners was made.

4. There appear to be total 13 vacancies for selection in the year 2003-04 which were said to be of General Category and there was no vacancy for reserved category. For selection in the year 2004-05, the total vacancies were 14, out of which 12 were of General Category and two vacancies were for Scheduled caste.

5. The petitioners' claim has been rejected on the ground that they belong to Schedule Caste and since there were only two reserved vacancies in the selection year of 2004-05, therefore, they could not be considered. In other words, the petitioners' were not eligible for being considered for promotion against general vacancies and the two candidates who were promoted against the reserved vacancies were senior to the petitioners.

6. Similar is the argument with respect to the vacancies of the selection year of 2003-04 for which it is said that there is no vacancy reserved for any Schedule Caste candidate and therefore, the petitioners' case was not considered.

7. The learned Counsel for the State could not show any Rule under which a quota of general vacancies is fixed nor he could show that if a person who belongs to a reserved category, if falls within the zone of consideration and is eligible for being considered to the next higher post even against that vacancy which is not reserved for any particular category, he or she as the case may be would not be entitled for such consideration.

8. Claiming benefit of reservation for the purpose of appointment or promotion is a different situation, which may be applied in a case where the appointment or promotion is sought against a post marked for reserved category or against the

vacancy which falls against a post earmarked for reserved category or against the vacancy which falls in reserved category.

9. Against the reserved vacancies the general category candidate would have no right for being considered but for open category namely, which is commonly known as General vacancy, no quota can be fixed for general candidate nor it can be said that the persons belonging to any reserved category shall stand disqualified and would not be eligible for being considered for appointment or promotion against such post of general vacancy.

10. The logic of the respondents that since there were no reserved vacancies in the selection year 2003-04 and there were only two posts in the subsequent selection year of 2004-05 over which the persons senior to the petitioners have been promoted, therefore, the petitioners were not entitled for being considered for promotion, is not legally tenable.

11. We, therefore, find that non-consideration of the petitioners for promotion at the time, his juniors were considered for promotion against the general vacancies, vitiates the selection/promotion so made but since we do not intend to quash the selection already made, we direct that the petitioners' case for promotion be also considered from the date when the persons junior to the petitioners were promoted in accordance with rules if they fall within the field of eligibility and within the zone of consideration as per rules and the fact that the vacancies are nor reserved vacancies and are rather general vacancies, could not be a ground for refusal or rejection of the candidature of the petitioner. If necessary, supernumerary posts be created for giving benefit to the petitioners as we have already protected the promotions already made. This shall be done within the maximum period of four months from the date of production of certified copy of this order.

The writ petition is allowed.