

Satendra Singh Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Jan-13-2011

Judge : Sudhir Agarwal, J.

Appeal No. : WRIT - A No. - 50204 of 2008

Appellant : Satendra Singh

Respondent : State of U.P. and Others

Advocate for Def. : C.S.C. Adv

Advocate for Pet/Ap. : Vinod Sinha; Mahesh Sharma, Advs

Judgement :

1. By means of the impugned order the petitioner, who belongs to OBC, and was selected for class IV post in Adarsh Krishi Inter College, Saraul, District Aligarh, has been declined approval on the ground that the vacancy was unreserved and was also advertised as unreserved vacancy, yet the petitioner, who belongs to OBC, has been selected, which is not permissible in law.

2. It is contended that assumption on the part of the Joint Director of Education, Aligarh that the reserved category candidate cannot be selected against the unreserved vacancy is clearly illegal and contrary to what has been held by this Court in Sanjeev Kumar Singh v. State of U.P. and others, 2007 (2) ESC 1042 (ALL)(DB) and the Apex Court in Jitendra Kumar Singh and another v. State of

3. Learned standing counsel, per contra, attempted to defend the order for the reasons stated in paras 7 and 8 of the counter affidavit, which reads as under: -

"7. That in reply to the contents of paragraphs 12 to 16 of the writ petition, it is most respectfully submitted that the District Inspector of Schools has granted permission for filling up the post from amongst unreserved candidates/general candidates and accordingly, the advertisement was published for appointment under the quota of general category but the selection committee has illegally and arbitrarily selected the petitioner who belongs to the backward category while the post in question was required to be filled up from the general category candidate. However, after the selection, the matter was referred to the Regional Committee for necessary approval and the said committee after having scrutinized the matter has found the alleged selection of the petitioner to be illegal and against the permission granted by the department hence the selection of the petitioner was rejected by the regional committee vide its order dated 3.9.2008, which is perfectly just and legal, and there is no illegality in it.

8. That the contents of paragraphs 17, 18 and 19 of the writ petition are not admitted and in reply it is submitted that the post in question of Class IV employee was for the quota of general category candidate and accordingly, permission was granted by the department for filling up the said post from amongst unreserved candidates and accordingly, the advertisement was published for appointment under the quota of general category but the selection committee has illegally and arbitrarily selected the petitioner who belongs to the backward category while the post in question was required to be filled up from the general category candidate. However, after the selection, the matter was referred to the Regional Committee for necessary approval and the said committee after

having scrutinized the matter has found the alleged selection of the petitioner to be illegal and against the permission granted by the department hence the selection of the petitioner was rejected by the regional committee vide its order dated 3.9.2008, which is perfectly just and legal and there is no illegality in it."

4. In my view, this writ petition deserves to succeed. It is well established now that an unreserved vacancy is open to all and even a candidate belonging to reserved category is entitled and eligible to be considered thereagainst, though the general candidate is excluded from the zone of consideration against the reserved category vacancy. Considering the various authorities on this subject in para 40 of *Sanjeev Kumar Singh v. State of U.P. and others* (supra) this Court has held as under: -

"40. At this stage, it would be prudent to notice when certain seats are reserved, it would not result in making unreserved seats compartmentalized for general category candidates i.e. unreserved candidates. There is no reservation for general category candidates. In other words we can say, when certain seats are reserved, a reserve category candidate in addition to reserve seats can always compete for unreserved seats. The unreserved seats are available to all the candidates who participate in the selection irrespective of category for which they belong but a reserve seat is available only to the category of the candidate to which such reserve seat is meant for. To illustrate, if out of 100 seats, 27 are reserved for O.B.Cs., 18 for S.C. and 2 for S.T. candidates, it would mean that an O.B.C. candidate would be able to compete against 27 seats reserved for O.B.C. as well as remaining 53 unreserved seats. Similarly a S.C. candidate would be able to compete against 18 seats reserved for S.C. as well as remaining 53 unreserved seats, and a S.T. candidate would be able to compete against 2 seats reserved for S.T. as well as remaining 53 unreserved seats. On the contrary a general category candidate would be able to compete

only against 53 unreserved seats. The zone of consideration, therefore, against the unreserved seats is much wider and extend to 100% of the candidates who participate in the selection but it is not so for reserved seats. The only rider would be, if in the selection process, the test of assessment, merit etc. is different qua unreserved seats and reserved seats, and the candidates belonging to reserved seats enbloc are considered, separately at any stage, than such difference in standard or criteria or indicia having a material bearing in the assessment of merit and influence the open competition and in such case the reserve category candidate may not compete for unreserved seats on account of variation in the standard and not otherwise. It is true and as already observed above, a reasonable balance has to struck between the rival claim of respective categories."

5. A mere fact that reserved category candidates are entitled for concession in fees, age relaxation does not mean that it changes their category and disentitled them to be considered against the general vacancy. Similar argument was considered in paras 52, 53, 54 and thereafter in para 55. This Court in para 60 has held as under: -

"60. This also leads to the conclusion that recruitment of reserve category candidates against unreserved seats therefore would not be material for the purpose of applying the principle of 50% reservation since the candidate selected against unreserved seats are not to be counted for the purpose of applying 50% limit of reservation in view of the discussion made above. Here also we are fortified in taking this view by the judgments of the Apex Court in Indra Sawhney (Supra), R.K. Sabharwal (Supra). In M. Nagraja (Supra), the Court in para 58 of the judgment after referring to the earlier judgments has reiterated as under:-

"In Indra Sawhney Reddy, J. noted that reservation under Article 16(4) do not operate on communal ground. Therefore if a member

from reserved category gets selected in general category, his selection will not be counted against the quota limit provided to his class. Similarly, in R.K. Sabharwal the Supreme Court held that while general category candidates are not entitled to fill the reserved posts; reserved category candidates are entitled to compete for the general category posts. The fact that consideration number of members of backward class have been appointed/promoted against general seats in the State services may be a relevant factor for the State Government to review the question of continuing reservations for the said class."

6. This aspect of the matter was considered in appeal taken before the Apex court against Sanjeev Kumar Singh v. State of U.P. and others (supra) and in Jitendra Kumar Singh and another v. State of Uttar Pradesh and others the Apex Court has affirmed the aforesaid view and held in paras 75 to 77 as under: -

"75. In our opinion, the relaxation in age does not in any manner upset the "level playing field". It is not possible to accept the submission of the learned counsel for the appellants that relaxation in age or the concession in fee would in any manner be infringement of Article 169 (1) of the Constitution of India. These concessions are provisions pertaining to the eligibility of a candidate to appear in the competitive examination. At the time when the concessions are availed, the open competition has not commenced. It commences when all the candidates who fulfil the eligibility conditions, namely, qualifications, age, preliminary written test and physical test are permitted to sit in the main written examination. With age relaxation and the fee concession, the reserved candidates are merely brought within the zone of consideration, so that they can participate in the open competition on merit. Once the candidate participates in the written examination, it is immaterial as to which category, the candidate belongs. All the candidates to be declared eligible had participated

in the preliminary test as also in the physical test. It is only thereafter that successful candidates have been permitted to participate in the open competition.

76. Mr. Rao had suggested that Section 3 (6) ensures that there is a level playing field in open competition. However, Section 8 lowers the level playing field, by providing concessions in respect of fees for any competitive examination or interview and relaxation in upper age limit. We are unable to accept the aforesaid submission. Section 3 (6) is clear and unambiguous. It clearly provides that a reserved category candidate who gets selected on the basis of merit in open competition with general category candidates shall not be adjusted against the reserved vacancies. Sections 3 (1), 3 (6) and Section 8 are interconnected. Expression "open competition" in Section 3 (6) clearly provides that all eligible candidates have to be assessed on the same criteria.

77. We have already noticed earlier that all the candidates irrespective of the category they belong to have been subjected to the uniform selection criteria. All of them have participated in the preliminary written test and the physical test followed by the main written test and the interview. Such being the position, we are unable to accept the submissions of the learned counsel for the appellant-petitioners that the reserved category candidates having availed relaxation of age are disqualified to be adjusted against the open category seats. It was perhaps to avoid any further confusion that the State of Uttar Pradesh issued directions on 25-3.-1994 to ensure compliance with the various provisions of the Act. Non-compliance with any officer was in fact made punishable with imprisonment which may extend to period of three months."

7. In view of above exposition of law and the fact that the petitioner merely for the reason that he belongs to OBC candidate could not have been held to be disqualified for applying to selection of class IV post available for general category

candidate, the order in question, in my view, cannot sustain.

8. In the result, the writ petition is allowed. Impugned orders dated 26.6.2998 and 3.9.2008 are hereby quashed. Respondents are directed to consider the matter afresh in the light of above discussions and pass order on the matter of approval of the petitioner's appointment within one month. In case the approval is granted, the consequential appointment letter shall be issued by the concerned authority within one month thereafter.

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