

Court No. - 46

Case :- CIVIL MISC REVIEW APPLICATION No. - 44 of 2022

Applicant :- Rakesh Kumar

Opposite Party :- State Of U.P. And 7 Others

Counsel for Applicant :- Ram Pyare,Ram Pyare,Sanjeev Singh

Counsel for Opposite Party :- C.S.C.,A.K.S.Parihar,Ajeet Kumar Baranwal

Hon'ble Ashwani Kumar Mishra,J.

Heard learned counsel for the petitioner, Sri Ajit Kumar Baranwal, learned counsel for respondent no. 6 and learned State counsel.

Petitioner has instituted the present application for review of the judgment and order passed by this Court on 7.1.2021 which is extracted hereinafter:-

"Order on Civil Misc. Amendment Application No. 22 of 2020

Heard.

Amendment application is allowed.

Let necessary amendment be carried out during course of the day.

Order on Petition

This writ petition has been filed for a direction upon the respondents to grant seniority to the petitioner from the date of initial appointment by the Board with other consequential benefits.

Facts giving rise to filing of the present writ petition are required to be noticed at the outset. Uttar Pradesh Secondary Education Service Selection Board (hereinafter referred to as the Board) published Advertisement No. 1 of 2003 for selection to different post of Lecturer in the aided education institutions recognized by the Board. Petitioner applied against said post and was selected in the Scheduled Caste Category. He was offered appointment on the post of Lecturer in Sri Jagat Guru Shankaracharya, Inter College, Mehdawal, Sant Kabir Nagar on 17.3.2005.

Petitioner's placement in the College concerned came to be questioned by one Kirti Prakash Misra, who was seeking promotion on the post against which the petitioner was appointed in Sri Jagat Guru Shankaracharya Inter College. Aggrieved by the placement of the petitioner, Kirti Prakash Misra filed writ petition No. 18899 of 2005 challenging the select panel, which included the petitioner, on the ground that post itself was reserved for

promotion and not for direct recruitment. This writ petition came to be allowed by this Court on 27.11.2006. Facts, which were relevant for the present purposes have been noticed in the order of the Court. Relevant portion of the order dated 27.11.2006, reads as under:-

"It is apparent that only one post of Lecturer (Geography) was requisitioned vide letter dated 18.9.2002, photo copy of which has been received. Against such vacancy one candidate alone can be empaneled for the post of Lecturer (Geography). In Jagat Guru Shankaracharya Vidyalyaya Inter College, Mehdawal, Sant Kabir Nagar. However, it is further admitted from the record that selection board with reference to Advertisement No. 1/2003 has declared select panel on 7.2.2004, wherein two teachers have been recommended against one post of Lecturer accordingly. At Serial No. 28 of the list of candidates empanelled in general category. One Brijendra Pratap Singh has been recommended while at Serial No. 61 of the list of candidates belonging to Schedule Caste Category, one Rakesh Kumar has been recommended. On being asked as to how second candidate has been recommended when one vacancy was requisitioned. Sri Dubey produced a copy of the letter sent by District Inspector of Schools, Basti which has been received by hand in the office of Secondary Education Service Commission on 5.7.2004. On the basis of said letter it is alleged that another vacancy was empanelled within reserved category. It is further admitted that as per record available the vacancy requisitioned under letter dated 10.5.2004 was not the subject matter of advertisement no. 1 of 2003. It is surprising to note that the letter specifically records that vacancy is to be filled by promotion. Despite such requisition the Board has empanelled the candidates in pursuance to advertisement no. 1/2003. This Court has no hesitation in recording that the Board has acted in an arbitrary manner and has flouted the Rules, which has resulted in a chaos being created.

.....

It is provided that Rakesh Kumar may make an application for his adjustment in some other institution in accordance with law having regard to the post which were subject matter of advertisement and which remained unfilled within two weeks from today. One such application being made the Board shall take action in accordance with law within a period of two weeks thereafter. After one month Rakesh Kumar shall cease to function in the institution and shall join on the post for which he is directed to be adjusted by the Board, as directed above."

Pursuant to the above observations of the writ court, the Secretary of the Board has passed an order on 3.7.2007 directing the District Inspector of Schools, Sant Kabir Nagar to adjust the petitioner in any other institution against post of Geography in Scheduled Caste Category. Consequent upon such observation of the Board, the District Inspector of Schools, Sant Kabir Nagar has directed petitioner to be allowed joining in Nehru Krishak Inter College Khalilabad, Sant Kabir Nagar. Petitioner, accordingly, has actually joined on 20.9.2007. He has been accorded seniority in the institution on the post of Lecturer from the date of his joining.

According to petitioner, he was selected by the Board and, therefore, had acquired right to be granted seniority from the date other selected persons in

the panel had been accorded seniority. Petitioner, accordingly, contends that his period of working in Sri Jagat Guru Shankaracharya Inter College be taken note of for the purposes of reckoning the seniority in the subsequent institution i.e. Nehru Krishak Inter College Khalilabad, Sant Kabir Nagar. As this claim has not been considered by the management and his claim for payment of bonus etc. has been rejected, the petitioner has approached this Court. It is contended that petitioner's claim for appropriate placement in the seniority list of the institution has not been examined and, therefore, direction is sought from this Court against the respondents to consider petitioner's claim.

A counter affidavit has been filed by the respondent no. 6, who is contesting the petitioner's claim of seniority from the previous date. It is stated that petitioner has been illegally allowed joining in Nehru Krishak Inter College Khalilabad, Sant Kabir Nagar, inasmuch as, the post of Lecturer in the said institution was reserved for OBC category candidate, but the petitioner has been erroneously and illegally adjusted against such post, although he belongs to Scheduled Caste and not Other Backward Class. It is also stated that the petitioner has no right to claim seniority from a previous date, inasmuch as, his very initial selection itself was against a non-existence post.

By means of an amendment application the petitioner has also sought quashing of the seniority list prepared by the subsequent institution i.e. Annexure 4 to the amendment application in which petitioner's seniority is shown from 20th September, 2007.

I have heard Sri Sanjeev Singh, learned counsel for the petitioner, Sri Ajeet Kumar Baranwal, learned counsel for the respondent and perused the materials on record.

Facts, which have been noticed by this Court in the previous round of litigation needs to be taken note of before proceeding any further. This Court has clearly recorded that only one post of Lecturer in Geography was requisitioned in Sri Jagat Guru Shankaracharya Inter College, Mehdawal, Sant Kabir Nagar. The Court had summoned original records and it transpired that the select panel prepared by the Board included the name of the petitioner only because of the fact that a vacancy had been requisitioned on 10.5.2004. It has been further noticed that vacancy requisitioned was to be filled by promotion. In such circumstances, no vacancy on the post of Lecturer in Scheduled Caste Quota was ever requisitioned for the Institution against which the petitioner's name was included in the select panel. However, as petitioner had not only been selected, but had been permitted to join by the Board, as such, this Court while allowing the writ petition on 27.11.2006 observed that petitioner's claim for adjustment be considered against a post which was duly advertised vide Notification No. 1 of 2003 and had remained pending.

The adjustment of petitioner, as per law, could have been made only in terms of the observation made by this Court on 27.11.2006. The respondents in their counter affidavit have specifically stated that there exists only post of Lecturer in Geography in Nehru Krishak Inter College Khalilabad, Sant Kabir Nagar was reserved for OBC category and was not meant for a Scheduled Caste Category candidate. Specific averment made in paragraph 6

of the counter affidavit has not been denied in the rejoinder affidavit. It is, therefore, apparent that the placement of petitioner in respondent no. 5 Institution has not been allowed in terms of the observation made by this Court on 27.11.2006. However, as the placement of petitioner in respondent no. 5 Institution is not under challenge and he has otherwise worked for the last 13 years, as such, it would not be appropriate for this Court to interfere with the working of the petitioner in the Institution concerned. However, when it comes to the determination of petitioner's seniority, he cannot claim any equity or right to be placed higher in seniority merely because of his selection against Advertisement No. 1 of 2003. This is so as the placement of petitioner's name in the select panel itself was not in accordance with law. Even his subsequent adjustment is not in terms of the observation made by this Court. Petitioner, therefore, having been granted seniority from the date of his joining in the institution itself cannot now claim seniority from any prior date.

The writ petition lacks merit and is accordingly, dismissed.

It is however clarified that benefits which have already been granted to the petitioner on account of his working in respondent no. 5 Institution shall not be withdrawn, nor his working would be discontinued on account of dismissal of this writ petition."

The review is sought on the ground that the vacancy against which the petitioner was adjusted in Nehru Krishak Inter College Khalilabad, District Sant Kabir Nagar belonged to Scheduled Castes and not OBC. Submission is that contrary conclusion drawn by this Court is against the evidence available on record and that there is an apparent error on face of the record which is liable to be corrected.

The review application has been entertained and affidavits have been invited from the District Inspector of Schools, Sant Kabir Nagar as also the Board which undertook the recruitment exercise pursuant to the vacancies advertised in the year 2003 vide advertisement no. 1 of 2003. Various orders from time to time have been passed in the review matter to ascertain the category to which the post of lecturer in geography fell vacant but none of the State authorities or the Board has been able to place relevant records in that regard. It is the specific case of District Inspector of Schools as well as the Board that the requisition sent by the Institution indicating the category to which the post of lecturer in geography fell is not traceable nor has been brought on record.

On behalf of the petitioner, Sri Sanjeev Singh vehemently submits that the private respondent, who is opposing the claim of the petitioner, i.e. respondent no. 6, alone has stated that the vacancy belongs to OBC category and but for such bald statement contained in the affidavit, there is no other material to come to the

conclusion that the vacancy in question belonged to OBC category. Sri Singh further places reliance upon the placement order of the Board dated 7.12.2004, in which the name of the respondent no. 5 Institution is mentioned at serial no. 51. One Dharam Pal Singh was placed in such institution as a Scheduled Caste candidate. Sri Singh submits that this fortifies the stand of the petitioner that the vacancy in fact belonged to Scheduled Caste category and not to the OBC category.

On behalf of the respondents, it is submitted that Dharam Pal Singh has admittedly never joined the institution. It is also submitted that the vacancy on the post of lecturer in geography has fallen vacant upon retirement of one Chaturgun Chaudhary, who belonged to OBC category. It is submitted by the respondents that the fact that Chaturgun Chaudhary belonged to OBC category is undisputed and the vacancy since has arisen pursuant to his retirement the category to which Sri Chaudhary belong would constitute strong basis and circumstance to determined the category to which this post fell.

I have heard learned counsel for the parties and have perused the materials on record.

It is already observed that the State authorities or the Board has not been able to place any definite material to indicate the category to which the post of lecturer (geography) belonged. It is from the circumstances existing on record that the Court will have to ultimately conclude as to which category the post of lecturer in geography pertained. Following circumstances are available to determine the issue:-

- (i) The fact that petitioner was issued appointment letter by the management on the post of lecturer in geography after noticing his category as Scheduled Caste;
- (ii) The placement order dated 7.12.2004 as per which Dharam Pal Singh belonging to Scheduled Caste category was proposed to be appointed in the institution as lecturer in geography;
- (iii) The fact that vacancy on the post has come into existence consequent upon retirement of Chaturgun Chaudhary, who belonged to OBC category.

Though Sri Sanjeev Singh has pressed the review application with vehemence but there is no denial of the fact by him that the vacancy on the post of lecturer in geography has come into

existence consequent upon retirement of Chaturgun Chaudhary, who demitted the office on attaining the age of superannuation on 30.6.2003. Sri Singh further does not dispute the fact that Sri Chaturgun Chaudhary belonged to OBC category. The fact that the post was held by a candidate belonging to OBC category would be a strong circumstance to indicate that the vacancy which came into existence actually pertain to OBC category.

The mere fact that petitioner was offered appointment in Scheduled Caste category may not be determinative since an issue had been raised in that regard culminating in filing of the writ petition before this Court. The other circumstance, i.e. the placement order dated 7.12.2004 although supports the petitioner but it is admitted to the parties that Dharam Pal Singh actually never joined in the institution concerned. What exactly was the reason for non-joining of Dharam Pal Singh is not known nor is placed on record. The order dated 7.12.2004 was not given effect to in respect of the institution concerned, diminishes its importance.

In the absence of availability of relevant record which may conclusively establish the category to which the post fell, it would be prudent and safe to rely upon the admitted documents on record. The fact that Chaturgun Chaudhary belonged to OBC category and the vacancy came into existence on account of his retirement would thus be the most authentic material and circumstance available to the Court to determine the category in which the vacancy had arisen. In such circumstances, I am inclined to endorse the view previously taken by this Court that in fact the vacancy on the post of lecturer in geography was of OBC category.

The review application, accordingly, lacks merit and is rejected.

Order Date :- 17.11.2023

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