

Court No. - 1

Case :- WRIT - A No. - 14467 of 2021

Petitioner :- State Of U.P. Thru. Prin. Secy. Excise Lko. And Anr.

Respondent :- Ramesh Kumar And Anr.

Counsel for Petitioner :- C.S.C.

Counsel for Respondent :- In Person, Brajesh Kumar
Chaudhary, Dinesh Kumar Mishra

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Om Prakash Shukla, J.

1. Heard Sri Prakhar Mishra, learned Additional Chief Standing Counsel for the State, Sri Brajesh Kumar Chaudhary learned counsel who has put in appearance on behalf of opposite party no.2 and Sri Ramesh Kumar the opposite party no.1 in person.

2. Sri Prakhar Mishra, learned Additional Chief Standing Counsel at the very outset, has pointed out that the state government has already circulated an advisory to all the Commissions apprising them to act within their respective jurisdictions and not to transgress the same on the strength of complaints received from the aggrieved parties. The complaints may be verified, so that recommendations for positive action are made to the state government.

3. Position to this effect has also been clarified in paragraph-4 of the affidavit filed on 03.10.2023 in so far as opposite party no.2 is concerned.

4. The State has filed this writ petition under Article 226 of the Constitution of India questioning the legality of the order passed by the U.P. State Commission for Backward

Classes as contained in annexure no.1 to the writ petition.

5. In operative part of the order passed by the Commission, it is gathered that a direction has been issued for appointment of opposite party no.1 on the post of Excise Constable.

6. Strangely enough the complaint at the instance of opposite party no.1 which has culminated into a direction as mentioned above, the same person had previously approached this Court through Writ Petition No.6692(S/S) of 2013 raising some grievance in relation to the recruitment on the post of Excise Constable. The writ petition filed by the petitioner alongwith one more candidate was consigned to record in terms of an order passed on 05.01.2018 and the same is extracted below:-

'Heard learned counsel for petitioners who are challenging the order dated 1.5.2013 by which his representation has been rejected. While rejecting the presentation, it is categorically noted that the petitioner got lesser marks to the persons duly selected in the selection.'

Learned counsel for petitioners has tried to raise number of discrepancies in the selection process but none of the same was coming to help of petitioners and hence this Court does not find any cause to interfere in the impugned order.

In view of aforesaid, the matter is consigned to record.'

7. The respondent no.1, who was a party therein has not assailed the said order by taking up any grievance against the above order whatsoever. On the contrary, he filed a complaint before the Commission which was ultimately disposed of in terms of the impugned order assailed before us in the present writ petition by the State. The ground urged before us by the State is that

the Commission is possessed with the power of recommendation and that too after verifying all the relevant facts including any remedy, if availed of. The power of recommendation, if a complaint be filed by an aggrieved person raising some grievance, cannot be taken to the level of decision making for issuance of a direction on the State, as is the case at hand.

8. Learned counsel for the respondent-commission has also not disputed the position of law insofar as the recommendatory jurisdiction of the Commission is concerned. It is conceded that the Commission has transgressed its jurisdiction in the present case. An order for appointment on the part of Excise Constable concededly was beyond the scope of jurisdiction of the Commission.

9. Respondent no.1, who has appeared in person, has raised manifold objections against the selection in which he had participated but the question for consideration before us is limited.

10. The issue before us is confined to the validity of the impugned direction whereunder, the appointment is sought to be made. The respondent no.1, while arguing in person, was not able to justify as to how such a direction could be issued by the Commission. The power of the Commission could not be traced to any provision of law under which its validity might be sustained.

11. In the totality of circumstances, the grounds urged before us in the present writ petition are made out. The impugned order passed by the U.P. State Commission for Backward Classes does not satisfy the jurisdictional limits within which it could be passed, therefore, the same being palpably wrong is liable to be set aside.

12. We accordingly **allow** the writ petition and set aside the impugned order dated 24.11.2020 contained in annexure no.1 to the writ petition. It is expected that the advisory issued by the State to the Commissions may be implemented in its letter and spirit and the complaints, if found tenable, may be dealt with accordingly. In the present case, however, the matter stands concluded in terms of the order already passed by this Court on 05.01.2018 as noted above.

Order Date :- 28.10.2023

Shahnaz