



2024:UHC:8114-DB

HIGH COURT OF UTTARAKHAND AT NAINITAL

HON'BLE THE ACTING CHIEF JUSTICE MR. MANOJ
KUMAR TIWARI

AND

HON'BLE SRI JUSTICE VIVEK BHARTI SHARMA

5TH NOVEMBER, 2024

WRIT PETITION (S/ B) NO. 651 Of 2024

Dr. Avdhesh Kumar

.....Petitioner

Versus

State of Uttarakhand and others.

.....Respondents

Counsel for the petitioner

: Mr. R.C. Tamta & Ms. Shobha Mehra,
learned counsel.

Counsel for the respondents

: Mr. K.N. Joshi, learned Deputy
Advocate General with Mr. S.S.
Chaudhary, learned Brief Holder for
the State of Uttarakhand.

Mr. I.D. Paliwal, learned Standing
Counsel for the State of Uttar Pradesh
/ respondent No. 4.

Mr. S.S. Lingwal, learned counsel for
respondent Nos. 2 & 3.

JUDGMENT : (per Mr. Manoj Kumar Tiwari, A.C.J.)

By means of this writ petition, petitioner has
sought the following reliefs:-

"i) Issue a writ, order or direction in the nature of certiorari quashing the impugned Employment Notice No. A-27/2024 annexed as (Annexure NO. 1 to the writ petition).

ii) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondent Nos. 2 & 3 restraining for the recruitment process of the post of Deans / Directors in College of Fisheries which has been advertised by the Employment Notice No. A-27/2024.

iii) Issue a writ, order or direction in the nature of Mandamus directing the respondent Nos. 2 & 3 to withdraw the Employment Notice No. A-27/2024 and re-advertise as per the provisions of reservation roster and Reservation Act, 1994 including the total posts as a cadre of a one unit of G.B. Pantnagar University.

iv) Issue a writ, order or direction in the nature of mandamus directing the respondent Nos. 2 & 3 to call the petitioner, and consider the candidature of



2024:UHC:8114-DB

the petitioner on the post of Dean in College of Fisheries and permitted to participate in the selection process as per the Employment Notice No. A-27/2024.

v) Issue any other writ, order or direction, which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

vi) Award the cost of the petition to the petitioner."

2. According to petitioner, he is the senior most professor serving in Department of Fisheries of Govind Ballabh Pant University of Agriculture and Technology, and presently, he is holding the position of Incharge-Dean by virtue of his seniority among professors serving in the said Department.

3. Petitioner has challenged Employment Notice No. A-27/2024 issued by the G.B. Pant University of Agriculture and Technology, whereby applications were invited for appointment as Dean in the College of Veterinary & Animal Sciences, College of Fisheries, and College of Agribusiness Management. According to the petitioner, since he is the senior most professor in Department of Fisheries, therefore, he is entitled to be appointed as a regular Dean by virtue of his seniority. The said contention, however, cannot be accepted in view of provision contained in Clause 3 of Chapter XIII of the Statute of the University and also the Notification



2024:UHC:8114-DB

dated 24.06.1989 issued by the State Government in exercise of powers under Section 36(1)(b) of Uttar Pradesh Krishi Evam Prodyogik Vishvidhyalaya Adhiniyam, 1958. The said Notification provides that upon occurrence of vacancy on the post of Dean in any faculty of the University, the senior most professor in the concerned Faculty will hold charge as Dean but only till regular selection. Clause 3 of Chapter XIII of the Statute also provides that appointment to the position of Dean shall be only after advertisement of the vacancy in at least three newspapers. Thus, no one can claim regular appointment as Dean merely by virtue of his / her seniority, and seniority would be relevant only for officiating appointment as Dean, till the post is filled by regular selection.

4. In the present case, regular selection is proposed to be made, for which applications have been invited. The procedure, adopted by the University, is as per the Statute and Notification dated 24.06.1989 issued by the State Government. Therefore, the selection process, initiated by the University, cannot be faulted. Petitioner's seniority amongst professors has resulted in his officiating appointment as Dean, however, for regular appointment, he has to face selection as per



the Statute.

5. Learned counsel for the petitioner, then, contended that reservation policy has not been applied in the impugned advertisement and not a single vacancy has been reserved for candidate belonging to Scheduled Caste category. This, according to learned counsel for the petitioner, is violative of Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, which provides that certain number of vacancies have to be kept apart for candidates belonging to Scheduled Caste category.

6. Learned State Counsel and learned counsel for the respondent-University, however, submit that Dean in each Faculty of the University is a single post in the cadre, therefore, such post cannot be reserved in view of the law laid down by the Hon'ble Apex Court in *State of U.P. and others vs. Bharat Singh and others (2011) 4 SCC 120* as it would amount to 100% reservation in favour of the candidates belonging to a particular category. Paragraphs 69 to 73 of the said judgment are extracted below:-

“69. The other reason why we have no difficulty in rejecting the contention urged by appellants is the fact that this Court has in Balbir Kaur case specifically examined the question whether the



post of Principals in secondary institutions can be reserved independent of the provision by which such post are excluded from reservation. This Court held that since the posts of Principals are single post such reservation is not permissible qua them. There is no way that view can be ignored or wished away by the State or the managements. Whether or not a single post can be reserved is even otherwise fairly well settled by the decisions of this Court to which we need refer only briefly.

70. The decision of this Court in Indra Sawhney v. Union of India, continues to be the locus classicus on the subject of reservation. This Court in that case held that reservation under Articles 14, 15 and 16 must be applied in a manner so as to strike a balance between opportunities for the reserved classes on the one hand and other members of the community on the other. Such reservation cannot exceed 50% in order to be constitutionally valid.

71. In Chakradhan Paswan (Dr.) case this Court relying upon the decision in Arati Ray Choudhury v. Union of India, (1974) 1 SCC 87, M.R. Balaji v. State of Mysore AIR 1963 SC 649 and T. Devadasan v. Union of India AIR 1964 SC 179 held that separate posts in different institutions cannot be clubbed together for the purpose of reservation and that reservations may be made only where there are more than one posts. Reservation of only a single post in the cadre would amount to 100% reservation and thereby violate Articles 14(1) and 16(4) of the Constitution. In Bhide Girls Education Society v. Education Officer, Zila Parishad, Nagpur and Ors., 1993 Supp (3) SCC 527 this Court held that a single post of Headmistress of an institution could not be reserved as the same would amount to making a 100% reservation.

72. The controversy was authoritatively set at rest by the Constitution Bench decision of this Court in Postgraduate Institute of Medical Education & Research, Chandigarh v. Faculty Association and Ors. (1998) 4 SCC 1 where this Court overruled the decisions of this Court in Union of India and Anr. v. Madhav s/o Gajanan Chaubal and Anr. (1997) 2 SCC 332, Union of India v. Brij Lal



Thakur (1997) 4 SCC 278 and State of Bihar v. Bageshwari Prasad 1995 Supp (1) SCC 432 and observed: (Faculty Assn. case, SCC p. 23, paras 34-35)

"34. In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such a single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of the public. Such total exclusion of general members of the public and cent per cent reservation for the backward classes is not permissible within the constitutional framework. The decisions of this Court to this effect over the decades have been consistent.

35. Hence, until there is plurality of posts in a cadre, the question of reservation will not arise because any attempt of reservation by whatever means and even with the device of rotation of roster in a single post cadre is bound to create 100% reservation of such post whenever such reservation is to be implemented. The device of rotation of roster in respect of single post cadre will only mean that on some occasions there will be complete reservation and the appointment to such post is kept out of bounds to the members of a large segment of the community who do not belong to any reserved class, but on some other occasions the post will be available for open competition when in fact on all such occasions, a single post cadre should have been filled only by open competition amongst all segments of the society."

73. In the light of the above decision, we have no hesitation in holding that the post of Principals in each one of the aided/affiliated institution being a single post in the cadre is not amenable to any reservation. Question No.(ii) is accordingly answered in the affirmative."



7. Annexure-2 to the writ petition is an order issued by State Government on 06.07.2000, which was issued regarding implementation of reservation in cadres having less posts in Universities of Agriculture and Technology. The said order provides that each subject / Department of the University has to be treated as separate unit for applying reservation policy, as educational qualification for appointment as Teacher is also different. There is no challenge thrown by petitioner to the aforesaid order dated 06.07.2000. The State Government itself has provided that reservation policy would not apply in such cases, therefore the challenge thrown by petitioner, to the employment notice, is without substance.

8. Learned counsel for petitioner has referred to provisions of Central Educational Institutions (Reservation in Teachers' Cadre) Act, 2019. Counsel for the respondents however submit that the said Act is not applicable to State Universities. In view of the definition of the expression 'Central Educational Institution' given in Section 2(c) of the said Act, we are inclined to accept the contention raised by learned counsel for the respondents.

9. Learned counsel for the petitioner, however, relied



upon the judgment rendered by Hon'ble Supreme Court in the case of *State of Uttar Pradesh and others vs. M.C. Chattopadhyay and others* (2004) 12 SCC 333. Paragraph No. 6 of the said judgment is extracted below:-

“6. While, therefore, we are of the considered opinion that there can be a reservation in respect of post of Professor and the provisions of the Reservation Act would apply, but the same cannot be applied taking all the Professors as a cadre and it has to be made subjectwise, as has been earlier construed and held by this Court. We are also of the opinion that there cannot be a reservation for an isolated post. We further observe that in deciding the question of reservation the appropriate authority must follow the roster as has been published in exercise of power under Section 3(5) of the Reservation Act and then the roster should be duly complied with in accordance with the principles enunciated by this Court in R.K. Sabharwal vs. State of Punjab, (1995) 2 SCC 745.”

10. Thus, the aforesaid judgment is of no help to petitioner. Even otherwise also, in the judgment relied by petitioner, the issue was reservation on the post of professor. It is common knowledge that there is only one Dean in a faculty; while, there are several professors in each department in a University and a faculty may consist of two or more departments. Thus, giving reservation on a single post cadre of Dean would result in 100% reservation, which is impermissible.



2024:UHC:8114-DB

11. For the aforesaid reasons, we do not find any scope for interference with the impugned Employment Notice No. A-27/2024 issued by the G.B. Pant University of Agriculture and Technology.

12. Learned counsel for the petitioner then submits that petitioner had applied pursuant to the earlier employment notice issued in 2019, however, he was not called for interview, therefore, petitioner apprehends that this time also, petitioner may not be invited for interview, although he has submitted application in response to the impugned employment notice.

13. We make it clear that if petitioner meets the eligibility requirement mentioned in the Advertisement and is shortlisted as per parameters laid down by the University / Committee, then his candidature shall also be considered by the Selection Committee by inviting him for interview.

14. With the aforesaid observations, the instant writ petition stands disposed of.

MANOJ KUMAR TIWARI, A.C.J.

VIVEK BHARTI SHARMA, J.

Dt: 5th November, 2024
Rathour