

Neutral Citation No. - 2025:AHC:85138

Reserved on 15.05.2025

Delivered on 21.05.2025

Court No. - 6

Case :- WRIT - A No. - 4288 of 2012

Petitioner :- Vidya Rai

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Rishi Kant Rai, Sanjay Kumar Rai

Counsel for Respondent :- B.P. Singh, C.S.C., Shashi Prakash Singh, Tej Bhan Singh

Hon'ble Saurabh Shyam Shamshery, J.

1. Present writ petition was initially disposed of vide order dated 26.11.2013. The entire order is reproduced hereinafter:

“Heard learned counsel for the parties and perused the pleadings.

The petitioner has assailed the selection of Itinerant Teacher of the Mentally Retarded Group apparently on the ground that the reservation policy has wrongly been applied to the 6 posts earmarked for the said group. According to the learned counsel for the petitioner from the 6 posts, 3 posts should have been given to the General Category candidates, 2 posts for the Other Backward Category (OBC) candidates and 1 post for the Scheduled Caste Category candidates whereas the respondents have selected 2 General Category candidates, 2 OBC Category candidates and 2 Scheduled Caste Category candidates which exceeds the maximum permissible reservation quota and therefore is bad in law. It is further submitted by the learned counsel for the petitioner that in case selection for 3 posts from General Category candidates are made, the petitioner being at no.1 in the wait list would have been selected.

In reply Sri B.P. Singh, learned counsel for the respondent, District Basic Education Officer, Azamgarh has referred to paragraph 3 of the counter affidavit and has submitted that there are total 25 posts earmarked for Itinerant Teacher (MR Group). As per the reservation policy, 6 posts would go to the Schedule Caste candidate, 7 post would go to OBC candidates and 12 posts would go to General Category candidates. As against 25 posts, from 19 working strength, there were 4 of the Scheduled Caste Category, 5 of the OBC Category and 10 of General Category and in such circumstances the remaining 6 posts for which selection has been made, it has to fulfil the reservation for the entire cadre on 25 posts by filling 2 posts

from Scheduled Caste, 2 posts from OBC and 2 from General Category which will complete the reservation quota. Selections have accordingly been made and there is no illegality.

This factual position has not been disputed and as such apparently no fault can be found with the reservation applied in making selections on the post of Itinerant Teacher (MR Group).

Petition lacks merit and is accordingly dismissed."

2. This order was thereafter challenged by petitioner in Special Appeal No. 1953 of 2013 which was allowed and matter was remitted to this Court to decide afresh. The order passed in special appeal is reproduced hereinafter:

"This special appeal arises from a judgment of the learned Single Judge dated 26th November 2013 by which a petition under Article 226 of the Constitution filed by the appellant had been dismissed. The selection was for the Itinerant Teachers (Mentally Retarded Group).

The grievance of the appellant was that the reservation has been wrongly applied to the six posts earmarked for the said group. From these six posts it is alleged that only two posts were allotted for General Category candidates while four posts were reserved (two for Other Backward Category and two for Scheduled Caste candidates). The learned Single Judge dismissed the petition after relying on the following submission made on behalf of the District Basic Education Officer;

"In reply Sri B.P. Singh, learned counsel for the respondent, District Basic Education Officer, Azamgarh has referred to paragraph 3 of the counter affidavit and has submitted that there are total 25 posts earmarked for Itinerant Teacher (MR Group). As per the reservation policy, 6 posts would go to the Schedule Caste candidate, 7 post would go to OBC candidates and 12 posts would go to General Category candidates. As against 25 posts, from 19 working strength, there were 4 of the Scheduled Caste Category, 5 of the OBC Category and 10 of General Category and in such circumstances the remaining 6 posts for which selection has been made, it has to fulfil the reservation for the entire cadre on 25 posts by filling 2 posts from Scheduled Caste, 2 posts from OBC and 2 from General Category which will complete the reservation quota. Selections have accordingly been made and there is no illegality."

In Indra Sawhney Vs Union of India 1992 (S) 2 SCR 454, the Bench of Nine learned Judges of the Supreme Court held that the rule of 50

percent should be applied to each year and cannot be applied to the total strength of the Class, Category, service or cadre as the case may be. This has been followed in R.K. Sabharwal and Others Vs State of Punjab and Others 1995 (2) SCC 745 which was a decision of the Constitution Bench of the Supreme Court.

Since the learned Single Judge has not considered this aspect of the matter, we allow the special appeal and restore the writ proceedings back to the file of the learned Single Judge for fresh consideration. To facilitate an order being passed after due consideration of the governing principles of law including those which have been enunciated in the judgment referred to above we set aside the impugned order dated 26th November 2013.

Writ-A No. 4288 of 2012 is restored for hearing afresh and the rights and contentions to be urged before the learned Single Judge are kept open.

The appeal is accordingly disposed of.

There shall be no order as to costs.”

3. Sri Sanjay Kumar Rai, learned counsel for petitioner submitted that initially in advertisement reservation was correctly fixed, however, during recruitment process, number of posts were increased but reservation was not rightly followed which led to a position whereby reservation crossed more than 50% due to which petitioner was not appointed and as such she is before this Court.
4. Sri Shashi Prakash Singh, per contra, learned counsel for respondents has opposed the above submissions.
5. I have considered the above submissions and perused the material available on record.
6. A vital fact which was not brought into notice of Division Bench is that present recruitment process was an appointment on contractual basis under a scheme, therefore, it was not mandatory for State to follow the reservation policy. No Government order or Circular was placed on record that in such appointments the reservation policy has to be strictly followed.
7. Otherwise also, reservation policy as adopted in advertisement was not exactly in terms of Act. During argument the Court has asked a question

to learned counsel for petitioner that whether a contractual appointment can be made specifically limited to women or not, learned counsel for petitioner submitted that it could be. Therefore, the Court is of the opinion that reservation policy or Act was not strictly followed in such type of appointments.

8. In aforesaid circumstances, the present case is not a case of appointments in terms of any service rules, rather the appointments are on contractual basis, therefore, the State is at liberty to frame its policy including reservation policy, if any. In present case, no Government Order or Scheme was placed on record to show how reservation policy applied, therefore, all arguments of learned counsel for petitioner has no legal basis.

9. Recently in some recruitment process even on contractual basis, State or Union has issued direction to ensure reservation but without any specific direction, Court cannot issue mandamus to ensure reservation in contractual appointments.

10. Writ petition is accordingly dismissed.

Order Date :- 21.05.2025

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