

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3184 OF 2020
(Arising out of SLP (Civil) No.11096 of 2020
Arising out of Diary No.28677 of 2019)

STATE OF UTTAR PRADESH & ORS. ... Appellants

VERSUS

GOPAL GUPTA ... Respondent

ORDER

Delay condoned.

Leave granted.

This appeal arises out of the final judgment and order dated 22.10.2018 (corrected vide order dated 03.01.2019) passed by the High Court of Judicature at Allahabad in Special Appeal No.1018 of 2018.

The validity of the decision of State of Uttar Pradesh in prescribing the criteria of selection whereby performance in TET (Teacher Eligibility Test) was the sole parameter for selection as Assistant Teachers, without giving any weightage to the marks in the qualification prescribed by the National Council for Teachers Education (“NCTE”, for short) was under challenge in the High Court. It was submitted that the decision of the State was not in conformity with the guidelines issued by the NCTE on 11.02.2011.

The Division Bench of the High Court set aside the decision of the State, which judgment was under challenge before this Court.

While the challenge was pending in this Court, as there were large number of vacant posts, a formula was devised in terms of which some teachers were appointed by way of an interim arrangement. While disposing of the matter finally, this Court affirmed¹ the view taken by the High Court and directed fresh selections in terms of the decision of the High Court. However, since about 66655 teachers were appointed in pursuance of various interim orders passed by this Court, those appointments were protected. It was observed:-

“19. Vide interim order dated 25-3-2014 [*Ram Prakash Sharma v. State of U.P.*, (2015) 17 SCC 230, 235 (footnote 4)] , this Court directed the State of Uttar Pradesh to fill up the vacancies of Assistant Teachers in terms of the impugned judgment [*Shiv Kumar Pathak v. State of U.P.*, 2013 SCC OnLine All 11012 : (2013) 10 ADJ 121]. Thereafter, on 17-12-2014 [*State of U.P. v. Shiv Kumar Pathak*, (2014) 15 SCC 606 : (2015) 3 SCC (L&S) 664 : 7 SCEC 278] , the said order was modified and the State was directed to appoint candidates whose names were not involved in malpractices in the TET test and who had obtained 70% marks (65% for SC, ST, OBC and physically handicapped or any other category covered by the government policy for reservation). 54,464 posts have already been filled up in compliance with the orders of this Court. The said appointments were subject to result of these matters. It was also observed that if anyone without TET qualification is appointed his services will be terminated. Vide order dated 2-11-2015 [*State of U.P. v. Shiv Kumar Pathak*, (2015) 17 SCC 230 : (2015) 17 SCC 238 : (2015) 3 SCC (L&S) 724 : (2015) 3 SCC (L&S) 732] it was noted that against 72,825 posts which were advertised, 43,077 candidates had completed training and were working while 15,058 candidates were undergoing training. Around 14,690 posts were vacant. It was further observed that

¹ State of Uttar Pradesh and Others vs. Shiv Kumar Pathak and Others ((2018) 12 SCC 595)

candidates who had the required percentage of marks in terms of order dated 27-7-2015 [*State of U.P. v. Shiv Kumar Pathak*, (2015) 17 SCC 230 : (2015) 17 SCC 233 : (2015) 3 SCC (L&S) 724 : (2015) 3 SCC (L&S) 727] were to file their applications and a Committee constituted for the said purpose could verify such percentage and if parity was found the same benefit could be extended.

20. We have been informed that 66,655 teachers have already been appointed in pursuance of the interim orders of this Court. Having regard to the entirety of circumstances, we are not inclined to disturb the same. We make it clear that the State is at liberty to fill up the remaining vacancies in accordance with law after issuing a fresh advertisement.”

(Emphasis added)

In the instant case, the respondent had participated in the selection process and, according to him, he was entitled to be considered in the category of ‘dependents of freedom fighter’, for which category horizontal reservation of 2% was prescribed. Though the judgment under appeal was rendered by the High Court well after the decision of this Court in *State of U.P. and Others vs. Shiv Kumar Pathak and Others*, it was observed by the High Court:-

“It is also admitted fact that the process of selection is still going on therefore, in the light of the judgment in the case of Isha Tyagi (Supra), the present appellant-petitioner is also entitled to be considered as a candidate under the category of dependents of freedom fighter by Act No.4 of 1993 after verifying his authenticity as a dependents of freedom fighter under the 2% horizontal reservation provided for him.

In view of whatever stated above, the special appeal is allowed. The order dated 18.09.2018 passed by learned single Judge in Writ-A No.1990 of 2018 is set aside. The writ petition is also allowed. The order dated 10.08.2018 passed by Director, State Council for Education Research & Training, U.P., Lucknow is set aside.

Accordingly, the Special Appeal No.1018 of 2018 is allowed in the aforesaid terms.”

It must be stated that, as on the date when the matter was considered by the High Court, the process of selection undertaken by the State Government was already set aside by the Division Bench and the matter was also dealt with by this Court affirming the view taken by the Division Bench. The selection, if any, had to be undertaken afresh in terms of the directions passed by this Court. Consequently, the High Court could not have issued the directions quoted hereinabove.

We, therefore, allow this appeal and set aside the order under appeal.

No costs.

It is made clear that if the respondent/original writ petitioner is otherwise eligible, his candidature be considered in ensuing selection.

.....J.
[UDAY UMESH LALIT]

.....J.
[VINEET SARAN]

.....J.
[AJAY RASTOGI]

New Delhi;
September 16, 2020.

ITEM NO.24

COURT NO.4
(HEARING THROUGH VIDEO CONFERENCING)

SECTION XI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No.28677/2019

(Arising out of impugned final judgment and order dated 22-10-2018 in SPLA No.1018/2018 passed by the High Court Of Judicature At Allahabad)

STATE OF UTTAR PRADESH & ORS.

Petitioner(s)

VERSUS

GOPAL GUPTA

Respondent(s)

(FOR ADMISSION and I.R.; IA No.14727/2020 - FOR CONDONATION OF DELAY IN FILING; IA No.14730/2020 - FOR CONDONATION OF DELAY IN REFILEING/CURING THE DEFECTS; IA No.86291/2020 - APPLICATION FOR PERMISSION; IA No.64920/2020 - FOR EXEMPTION FROM FILING AFFIDAVIT; IA No.65103/2020 - FOR INTERVENTION/IMPLEADMENT; IA No.64915/2020 - FOR INTERVENTION/IMPLEADMENT; and, IA No.64303/2020 - FOR INTERVENTION/IMPLEADMENT)

Date : 16-09-2020 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE VINEET SARAN
HON'BLE MR. JUSTICE AJAY RASTOGIFor Petitioner(s) Ms. Sansriti Pathak, Adv.
Mr. Krishnanand Pandeya, AORFor Respondent(s) Mr. Yatish Mohan, Adv.
Mr. Subhash Sagar, Adv.
Mr. E. C. Vidya Sagar, AOR

Dr. Kedar Nath Tripathy, AOR

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

The appeal is allowed, in terms of the Signed Order.
No orders on applications for intervention/impleadment.
Pending applications, if any, also stand disposed of.

(MUKESH NASA)
COURT MASTER

(PRADEEP KUMAR)
BRANCH OFFICER

(Signed Order is placed on the File)