

Court No. - 2

Case :- WRIT - A No. - 10584 of 2021

Petitioner :- Sandeep Mittal

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Sharad Chand Rai, Subhash Chandra
Srivastava

Counsel for Respondent :- C.S.C., Ashish Mishra

And

Case :- WRIT - A No. - 10036 of 2021

Petitioner :- Anuj Kumar

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Pankaj Kumar Tyagi, Amit Pandey

Counsel for Respondent :- C.S.C., Ashish Mishra

Hon'ble Dr. Kaushal Jayendra Thaker, J.

Hon'ble Ajai Tyagi, J.

1. Heard learned counsel for the petitioner and Mr. Ashish Mishra, learned counsel for the respondent no.2.
2. The writ petition no. 10584 of 2021 has been filed by the Sandeep Mittal-petitioner, the interim prayer prayed for as follows:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow this application and to stay the effect and operation of the direct recruitment to Uttar Pradesh Higher Judicial Service 2020, impugned notification dated 20.01.2021 passed by respondent no.2, during the pendency of the writ petition."

3. The petitioner's final prayer is as follows :-

I. Issue a writ, order or direction in the nature of certiorari quashing the impugned notification dated 20.01.2021 passed by the respondent no.2.

II. Issue a writ, order or direction in the nature of mandamus commanding and directing the respondent no.2 to issued amended notification for 10% reservation for Economically Weaker Sections (E.W.Ss.).

III. Issue a writ, order or direction in the nature of mandamus commanding and directing the respondent no.2 i.e. Registrar General, High Court of Judicature at Allahabad to decide the representation of the petitioner dated 08.02.2021, 18.02.2021 and 12.04.2021 within some

stipulated period."

4. The brief facts of the writ petition no.10584 of 2021 are that the petitioner is a practicing advocate and practicing since 18.12.2005 till date in District Court Meerut, U.P. and his enrollment no. is U.P.7070/2005. The respondent no.2 issued a notification for Direct Recruitment to Uttar Pradesh Higher Judicial Service, 2020 (hereinafter referred to as "U.P.H.J.S.").

5. The total vacancies notified were 98 and 87 vacancies for direct recruitment out of the same, 18 vacancies are reserved for Scheduled Castes candidates, 01 vacancy is reserved for Scheduled Tribes candidates, 23 vacancies are reserved for Other Backward Class candidates and 45 vacancies are for General Category candidates. 11 unfilled vacancies of reserved category were also notified.

6. The petitioner applied for the same on 18.02.2021 and he was allotted serial number 5309. The experience certificate and character certificate issued by the District Judge are not in dispute. A representation was made by the petitioner by speed post so as to grant benefit to the petitioner belonging to Economically Weaker Sections (in short "E.W.S.") belong to the General Category other than the category of O.B.C.,SC/ST.

7. It is submitted by the learned counsel for the petitioner that respondent no.2 did not take any action on the representation of the petitioner and no information was given. The petitioner submits that as per the Constitutional mandate and the amendment in the Constitution, 10% reservation to be provided to the E.W.S. General Category candidates. As per the Article 16(6), the Uttar Pradesh Legislative Assembly also passed the bill in the year 2020.

8. It is also submitted that the same reservation should have been

applicable to the High Court also and non providing of such reservation is against the constitutional mandate. Petitioner submits that the Rajasthan High Court which issued notification prior to the notification of this Court earmarked 10% reservation and similar was the case with Punjab and Harayana High Court.

9. The parity was sought by the petitioner. According to the petitioner, the respondent no.2 while recruiting and issuing the notification has committed violation of Article 14 and 16(6) of the Constitution of India and, therefore, has sought a mandamus against the respondent no.2 so as to declare the inaction or omission on the part of the respondents issued illegal, arbitrary, mala fide and is manifest error of law.

10. On notices being served, the respondent no.2 has filed reply contending that the reservation of E.W.S. has provided under the Act No.10 of 2020 was not adopted by the High Court while issuing the notification. The reply in paragraph 11 reads as follows:-

"That furthermore the Hon'ble Selection and Appointment Committee while considering the matter regarding query of Government of Uttar Pradesh on issuance of advertisement for Direct Recruitment to UPJHS-2020 without implementation of 10% EWS category quota, in its meeting dated 22.03.2021 was pleased to resolve the following:-

".....amendment in Rule 7, Part III of the U.P. Higher Judicial Service Rules, 1975, was placed before the Committee in its meeting held on 09.02.2021, wherein it was resolved as under:-

".....the Committee has been apprised that the matter with regard to making provisions for E.W.S. category by making suitable amendments in U.P. Judicial Service Rules, 2001 is already placed before the Administrative Committee of this Court under the recommendations dated 18.03.2020 of the Committee. Thus, in view of the above, the Committee resolved that the matter with regard to making for EWS category by making suitable amendments in Rule 7, Part-III of the U.P. Higher Judicial Service Rules, 1975, be placed before Hon'ble the Chief Justice for appropriate order."

It has been informed that now after the approval of Hon'ble the Chief Justice, the matter is pending considering before the Administrative Committee.

In such circumstances the Committee feels it appropriate that the provision of reservation to EWS category cannot be made in the ongoing recruitment exercise of UPJHS-2020....."

11. The petitioner has approached this Court on 11.8.2021 for permitting him to take the examination of U.P. Higher Judicial Services. During this period, he has not cleared the preliminary examination. He has contended that from the beginning, the petitioner is eligible for the reservation in Economically Weaker Sections Quota as per the Constitutional Amendment and Legislative Amendment, adopted by the State of U.P.

12. Learned counsel for the petitioner has submitted that petitioner belongs to Economically Weaker Sections category. It is also submitted that Rajasthan High Court has provided 10% reservation for Economically Weaker Sections candidates. According to 103rd Amendment of Constitution of India, 10% reservation is provided to the Economically Weaker Sections candidates, under Article 16(6) dated 12.01.2019, hence, petitioner be given benefit of said reservation as per the constitutional amendment and legislative amendment adopted by the State of U.P.

13. *Per contra*, Mr. Ashish Mishra, learned counsel for the respondent no.2 has submitted that Constitutional Amendment, which is brought in the legislation and made part of the Constitution has to be adopted by the High Court. It is next submitted that the petitioner is seeking reservation which will not be applicable this year i.e. notification dated 20.01.2021 because the High Court has taken a view that an advertisement had already been issued before adopting the aforesaid amendment.

14. Learned counsel for the petitioner orally submits that either the petitioner be permitted to take the main examination or he may be given one more chance by raising the age as he would become disqualified next year for being overage.

15. We are unable to subscribe to the oral requests of the petitioner. We cannot issue a writ of mandamus where the petitioner has appeared in preliminary examination as general category candidate with open eyes. It is admitted by the petitioner that he never challenged the rules of Uttar Pradesh Higher Judicial Services. It is also the admission of petitioner that he has not cleared the preliminary examination.

16. We are unable to accept the submissions of the petitioner. The advertisement issued by the respondent no.2 cannot be turned as illegal or arbitrary and against the mandate of the Constitution of India. It cannot be said that petitioner is discriminated.

17. The decision of the *Apex Court* in ***Nawal Kishore Mishra and Others Vs. High Court of Judicature of Allahabad through its Registrar General and Others, (2015) 5 Supreme Court Cases 479***, would apply to this case. The autonomy of the High Court has envisaged under Article 233 to 235 is basic structure of Constitution. The State legislature was not permitted to lay down statutory scheme of reservation, which would govern judicial service and which would be bypassing constitutional mandate for Articles 233 to 235. In our case, the High Court in his wisdom had not adopted the said rules for the academic year 2020. We have our sympathy with the candidates but we cannot grant a mandamus to the petitioner to reconsider where the rules are silent.

18. Once the advertisement is out, it would not be just and proper

for the authorities to insert any new clause. The *Apex Court* has also held that change of any condition in the advertisement would be violative of constitutional mandate. Hence, we cannot direct the High Court by way of mandamus to provide reservation benefit to the Economically Weaker Sections category candidates for taking the examination this year. However, we request the High Court of Judicature at Allahabad to adopt the same, if not adopted.

19. With these observations, both writ petitions stands **dismissed**.

Order Date :- 25.3.2022

P.S.Parihar