

# **Padmakar Dixit vs State Of Up And 6 Others on 2 January, 2025**

**Bench: Siddhartha Varma, Yogendra Kumar Srivastava**

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:6803-DB

AFR

Court No. - 39

Case :- SPECIAL APPEAL No. - 432 of 2024

Appellant :- Padmakar Dixit

Respondent :- State Of Up And 6 Others

Counsel for Appellant :- Siddharth Khare, Sr. Advocate

Counsel for Respondent :- C.S.C., Kushmondeya Shahi, Sunil Kumar Dubey

Hon'ble Siddhartha Varma, J.

Hon'ble Dr. Yogendra Kumar Srivastava, J.

1. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Siddharth Khare, learned counsel for the petitioner-appellant and Sri Kushmondeya Shahi, learned counsel appearing for the Board of Basic Education.

2. Instant special appeal has been filed challenging the judgment and order dated 1.3.2024 passed by a learned Single Judge of this Court in Writ-A No.695 of 2023 (Padmakar Dixit vs. State of UP & Others), whereby the writ petition filed by the petitioner-appellant has been dismissed.

3. By a notification dated 16.6.2016, the State Government notified a recruitment of Assistant Teachers in the State of Uttar Pradesh to all the Basic Shiksha Parishad Schools and to that effect, an advertisement was also issued on 27.6.2016. Applications were invited for recruitment in all the districts of Uttar Pradesh between 30.6.2016 to 15.7.2016. In the advertisement, it was provided that in the first round of counselling, a candidate could apply for being appointed as Assistant Teacher only in the district from where he/she had done his/her BTC Training Certificate Course. However, it was provided that in the second round of counselling, a candidate could apply for the remaining unfilled vacancies in any district of Uttar Pradesh. The first round of counselling was held on 16.8.2016 and 17.8.2016. The appellant had passed his BTC Training Certificate Course from district Varanasi and, therefore, he applied for the vacancies as were there in district Varanasi. However, he was unsuccessful in the first round of counselling and, therefore, he applied for the second round of counselling and since there was an option that in the second round of counselling, application may be made for any district of the State, the appellant opted for district Mirzapur and made that district as his first preference. The counselling, which was conducted for district Mirzapur, was so done on 24.8.2016 and when the merit list was prepared, the appellant was placed at serial no.1 of the merit list. Thereafter, the appellant was issued an appointment letter on 27.8.2016 by the Basic Shiksha Adhikari, Mirzapur and in pursuance thereof, he joined on 6.9.2016. However, on 18.11.2021, a show cause notice was issued to the appellant, stating therein that after completion of the first counselling, 17 posts of Assistant Teacher remained vacant in district Mirzapur, which included 3 posts under vertical reservation of Scheduled Castes and 14 posts under Horizontal Reservation out of which, 2 posts were reserved for Physically Handicapped candidates suffering from visual disability and 2 posts were for candidates suffering from hearing disability, 10 posts were for Ex-servicemen. In the show cause notice, it was stated that since there was no post for General Category candidate, the appellant was wrongly appointed in the second round of counselling. The appellant, replied to the show cause notice and thereafter, the Basic Shiksha Adhikari, Mirzapur, on 10.3.2022, passed an order for stopping the payment of salary to the appellant. This order was challenged by the appellant by filing of a writ petition, being Writ Petition No.11964 of 2022 (Padmakar Dixit vs. State of UP & Others).

4. However, when the appointment of the appellant itself was held to be invalid by an order dated 2.12.2022, he challenged the same by means of a writ petition, being Writ-A No.695 of 2023. When the said writ petition was dismissed by the order impugned dated 1.3.2024 of a learned Single Judge, the instant appeal was filed.

5. Learned counsel for the appellant assailed the order of the learned Single Judge, by submitting that the inquiry itself was a belated inquiry, it having commenced after a period of six years of the initial appointment of the appellant. It has further been argued that the appellant was a simple candidate, who had participated in the second round of counselling and was unaware of the fact that the post on which he was being appointed was reserved for Visually Handicapped persons. Learned counsel for the appellant has also submitted that the termination order was not preceded by any departmental inquiry as was prescribed under the UP Basic Education (Staff) Service Rules, 1973 read with UP Government Servant (Punishment & Appeal) Rules, 1999. It has been further stated by learned counsel for the appellant that the objection which was taken in the impugned order, which was challenged in the writ petition, that the petitioner was appointed against a vacancy which stood

covered under Horizontal Reservation for Physically Handicapped was absolutely misplaced. Learned counsel for the appellant has stated that even if the post on which the appellant was appointed was reserved for the purposes of accommodating a physically handicapped candidate, which was left unfilled in the first round of counselling, in that case also, it became a vacancy which could be filled by a general category candidate, as the relevant Act with regard to reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen, i.e. the Uttar Pradesh Public Service (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993 had undergone an amendment and by the amendment, sub-section (5) of Section 3 of the said Act, which provided for carrying forward of an unfilled reserved vacancy to the next year, had been deleted by UP Act No.12 of 2016 and thus, conscious of the fact that the reserved category vacancy could not be carried forward to the next year, in the second round of counselling, the vacancy was filled by a general category candidate.

6. Learned counsel for the appellant still further assailed the order of the learned Single Judge, by submitting that the writ petition was dismissed on a wrong premise that the appellant could not bring on record any material in support of the charges levelled against him. Learned counsel has submitted that the appellant was expected to prove the fact that he had appeared in the second round of counselling. This evidence could not have been brought by the appellant. However, the fact that the appellant had appeared in the second round of counselling was clear from RA-1, which was filed to the Rejoinder Affidavit to the writ petition. Whether the appellant appeared in the first round or in the second round of counselling, could have been clarified only from the records of the respondents in the case. During the time, when the respondents were inquiring into the case of the appellant, an inquiry report was submitted by the Regional Assistant Director of Education (Basic), Mirzapur before the Director General, School Education of Uttar Pradesh on 23.12.2021, and that was brought on record by means of Annexure-8 to the Supplementary Counter Affidavit filed on behalf of respondent nos.2, 4, 5 and 6. Following paragraphs were relevant according to learned counsel for the appellant, for the purpose of this case and, since he relied upon the same, they are reproduced as under:

"ftyk cssfld f'k{kk vf/kdkjh ehjtkij ls izkIr vufUre p;fur lwph ds vuqlkj izFke pj.k ,oa f}rh; pj.k ds vH;fFkZ;ksa dh ,d vufUre p;u lwph rS;kj dh x;h gS tcfv vyx&vyx gksuk pkfg, Fkk D;ksafd izFke ojh;rk tuin ds vH;fFkZ;ksa dh esfjV vyx ,oa f}rh; ojh;rk ds vH;fFkZ;ksa dh esfjV vyx gksxh] fdUrq ftyk csfld f'k{kk vf/kdkjh }kjk ,d gh lwph rS;kj dh x;h] tks fd fu;ekuqlkj ugha gSA izFke pj.k ds dkmfUlfyax ds vH;fFkZ;ksa dk mifLFkfr i= ftyk csfld f'k{kk vf/kdkjh ehjtkij }kjk miyC/k dj;k;k x;k gS fdUrq f}rh; pj.k dh dkmfUlfyax ds vH;fFkZ;ksa dk mifLFkfr i=d ftyk csfld f'k{kk vf/kdkjh ehjtkij }kjk miyC/k ugha dj;k;k x;k gSA"

7. Relying upon the aforesaid paragraphs, learned counsel for the appellant has submitted that it was the case of the respondents that a combined select list of the selected candidates was published by the Department and, therefore, there was no question to have two different select lists. Learned counsel for the appellant submits that since the candidates, who had been selected in the first and the second round of counsellings, both were shown in the composite list, therefore, it appears that the vacancies, which were earlier left unfilled in the first round of counselling, though could not be

carried forward to the next year in view of the amendment in sub-section (5) of Section 3 of the Act, 1993, were erroneously shown as reserved category vacancies. Learned counsel further states that against the aforesaid erroneous entry of the vacancies as reserved vacancy, the petitioner's name was shown and, therefore, the entire case was proceeded with against the appellant on a wrong premise.

8. During the hearing, learned counsel appearing for the Board of Basic Education, confined his argument only to the fact that in the select list prepared after the first round of counselling held on 16.8.2016 and 17.8.2016, the appellant was shown as selected candidate against the category of a Visually Handicapped candidate and that too, in the first round of counselling. He further submitted that the appellant had got his name entered in the select list fraudulently.

9. It has further been alleged that since the appellant had committed fraud, his name was shown in the select list against the vacancy which was reserved for a Visually Handicapped person.

10. After hearing learned counsel for the parties and after having perused the records, it appears that in the first round of counselling, the appellant had appeared from district Varanasi as he had completed his BTC Training Certificate Course from that very district, but when he was declared unsuccessful in the first round of counselling, he again appeared in the second round of counselling held on 24.8.2016 and was selected as an Assistant Teacher on 27.8.2016 to be appointed in a School, namely, Prathamik School Araji Devghata, Vikas Khand Lalganj, District Mirzapur.

11. We are definitely impressed by the argument advanced by learned counsel for the appellant that whether the appellant appeared in the second round of counselling would not be a question to be answered by the appellant because the appellant's name appeared at serial no.1 in the combined select list, which has been annexed at page 51 of the supplementary counter affidavit. It mattered little that the post on which the appellant had been selected was shown as a post reserved for Visually Handicapped persons. This we say for the reason that the posts which were not filled in the first round of counselling could not be carried forward to the next process of selection in view of the amendment of sub-section (5) of Section 3 of the Act, 1993 and, therefore, the vacant posts, by implication, could have been filled in by general candidates.

12. The 'rule of carry forward' in respect of reservation of posts in favour of physically handicapped candidates, being no longer applicable in view of the omission of sub-section (5) of Section 3 of the Act, 1993, in terms of the amending Act of 2016, the filling up of the said posts by general category candidates, cannot be said to suffer from any legal infirmity.

13. Learned counsel appearing for the Board has also not been able to dispute the position of law with regard to the amendment of sub-section (5) of Section 3 of the Act, 1993, whereby the unfilled posts of reserved category could not have been carried forward to the next selection year and, therefore, the general category candidates could have been selected against those unfilled posts.

14. In the light of the arguments which have been made and the reasoning given, we are of the view that the order dated 2.12.2022, terminating the services of the appellant, was suffering from an

error apparent on the face of record, as it was passed after putting the burden of bringing the evidence wrongly on the appellant that he had participated in the second round of counselling. The fact of the matter is that all the relevant documents and the evidence with regard to the procedure of appointment/counselling were with the Board and in such a situation, the evidence of participating in the second round of counselling could not have been produced by the appellant. The appellant was selected as a general category candidate. In view of the amendment made in Section 5 (3) of the Act, 1993, there was now no provision to carry forward the vacancies in the reserved category to the next selection. Since in respect of the candidates who had been selected after both rounds of counselling, a single/combined select list had been prepared, as had been admitted by the respondents, there was no error in the petitioner's claim, whose name found place at serial no.1 of the select list published compositely.

15. In view of the foregoing discussions, we are of the opinion that the present special appeal deserves to be allowed and the same is, accordingly, allowed. The impugned order passed by the learned Single Judge dated 1.3.2024 is set aside. Consequently, the order passed by the Basic Shiksha Adhikari dated 2.12.2022 is also set aside. Since we have allowed the special appeal, the appellant be reinstated in service and he shall be entitled for all the consequential benefits.

Order Date :- 2.1.2025 RKK/-

(Dr Y K Srivastava, J)

(Siddhartha Varma, J.)