

SUPREME COURT OF INDIA

Babloo Singh

Vs.

State of U.P.

C.A.No.31222 of 2018

(Uday Umesh Lalit and R.Subhash Reddy,JJ.,)

27.11.2018

ORDER

Uday Umesh Lalit,J.,

1. Permission to file special leave petition granted in all matters. Heard Mr. Shekhar Naphade, Mr. Salman Khurshid and Mr. S.G. Hasnain, learned Senior Advocates in support of the petitions.
2. These petitions are directed against the order dated 10.10.2018 passed by a bench of five learned Judges of the High Court of Allahabad in Writ Petition No.51212 of 2010 and other connected matters turning down the reference made to a larger bench and directing that the concerned matters be placed before an appropriate court for disposal of writ petitions and other connected matters.
3. Two learned Judges of the High Court, finding themselves unable to agree with the view taken by another bench of two learned Judges in *Dr. Vishwajeet Singh and others. v. State of U.P. and others*¹. as well as the view expressed by a Full Bench of the High Court in *Heera Lal v. State of U.P.*². formulated following questions to be considered and decided by a bench of more than three Judges.

“1. Whether the rules of reservations under the U.P. Act No.4 of 1994 are applicable to appointment on the post of lecturers, by direct recruitment, in the aided postgraduate and undergraduate colleges in the State of UP, affiliated to the State Universities by clubbing all the vacancies as provided under Section 12(3) of the UP Higher Education Service Commission Act, 1980 subject-wise; or the vacancies have to be worked out for applicability of rules of reservation college-wise and subject-wise?

2. Whether there has to be plurality posts in the cadre, for applying the rules of reservation, which means more than one; or there has to be at least five posts in the cadre for applying the rules of reservations?

3. Whether the vacancies arising in any recruitment year under Rule 3(2) of UP Act No.4 of 1994 can be filled up separately even if they have not been advertised earlier, in that recruitment year or in the subsequent recruitment year, or such reserved vacancies have to be advertised at least once to be carried over for the recruitment in the same year or in the subsequent year?

4. What is the meaning of the words 'unfilled vacancies' in Section 3(2) of UP Act No.4 of 1994?

5. Whether Dr. Vishwajeet Singh's case (supra) and the Full Bench decision in Heera Lal's case (supra) have been correctly decided?"

4. In Dr. Vishwajeet Singh's case (supra), challenge was raised to an advertisement issued by the U.P. Higher Education Service Commission initiating selection process for filling-up 838 posts of lecturers in different subjects in various graduate/post-graduate colleges in the State of Uttar Pradesh. The selection process was described to be a special recruitment drive to clear carry forward and backlog vacancies of the reserved categories and all the posts were said to be reserved for Scheduled Castes, Scheduled Tribes and other backward classes. Apart from the other questions raised in the matter, the clubbing of vacancies by the Director of Education for the purpose of sending requisition to the Commission was specifically in issue. The submission as recorded in Dr. Vishwajeet Singh's case (supra) was as under:

“The clubbing of the vacancies by the Director of Education for the purpose of sending requisition to the Commission for advertisement may be permissible for the purpose of recruitment but the entire vacancies of Lecturers in different post-graduate colleges/graduate colleges cannot be treated to be one unit for applying the rules of reservation. The vacancies have to be advertised subject-wise, college-wise and the roster has to be applied subject-wise and college-wise. Neither the vacancies of Lecturer in different colleges can be clubbed nor the vacancies of Lecturers even in one college can be clubbed together for applying the roster. There is no common cadre of Lecturers in different colleges. The posts are sanctioned by the Director of Higher Education subject-wise, separately for each institution. There is no common cadre of Lecturer throughout the State.”

5. In Dr. Vishwajeet Singh's case (supra), questions 3, 4 and 5 were taken-up for consideration together. After considering provisions of UP Act No.4 of 1994 from paragraph 31 of the judgment, the discussion proceeded with framing a question as to “what is a unit?” for applying the rules of reservation. After discussion that the posts of lecturers which had been advertised were posts in different colleges affiliated to different universities in the States it was observed:

“As noted above, different institutions are separate entities and there being no common service of Lecturers throughout the State, the consolidated list required to be

prepared under Section 12(3), is at best preparation of consolidated list of vacancies for the purpose of recruitment and cannot be treated as a unit for applying the reservation.”

6. Analysing the matter in great detail, the Division Bench accepted the challenge and passed following directions in Dr. Vishwajeet Singh’s case (supra):

“(i) The advertisement No.37 dated 9.7.2003 insofar as it advertised 467 vacancies which arose up to 30.06.2003 due to death, resignation or retirement is quashed. However, the advertisement insofar as it advertises 371 carry forward vacancies which remained unfilled is maintained.

(ii) The Director, Higher Education shall before declaring the result against 371 carry forward vacancies shall re-determine the number of vacancies against which select list be issued by applying reservation and roster subject-wise and college-wise. The declaration shall be confined only to those vacancies which were carry forward vacancies and were advertised earlier by advertisement No.29 and could not be filled-up. The Director may determine on the basis of records available with him or may call for any other reports or record from management or any other competent authority. The candidates whose names are included in the select list shall be given option to give fresh choice of the colleges as required by the second proviso to Section 12(4) which has become necessary in view of quashing the advertisement against 471 vacancies and direction issued by this order to the Director to redetermine the correct number of reserved vacancies out of carry forward vacancies against which select list is to be issued. The Director shall complete the aforesaid exercise within three months from the date of production of certified copy of this order and thereafter take appropriate steps for issuing recommendation for appointment in accordance with U.P. Higher Education Services Commission Act, 1980.

(iii) The Director shall take steps for advertising 471 vacancies which were covered by advertisement No.37 applying the rules of reservation and roster as per the above directions by taking necessary steps at an early date.

(iv) The rules of reservation and roster shall be applied college-wise and subject-wise when there are plurality of posts as indicated above.”

7. The aforesaid view taken by the Division Bench in Dr. Vishwajeet Singh’s case (supra) was challenged before this Court. After grant of special leave to appeal, Civil Appeal Nos.6385-6396 of 2010 were dismissed by this Court on 19.01.2017 in following terms:

“We have heard learned counsel for the parties at length. We are in agreement with the view taken in the impugned judgment. The judgment of the High Court is accordingly affirmed. The civil appeals are accordingly dismissed. No costs.

Pending applications, if any, shall also stand disposed of.”

8. It appears that in *Dr. Archana Mishra and others. v. State of U.P. and others.* (Writ Petition No.51212 of 2010), a doubt was raised as to the correctness of the decision of the Division Bench in *Dr. Vishwajeet Singh's* case (supra) as well as the decision of the Full Bench in *Heera Lal's* case (supra) and, therefore, the matters stood referred to the bench of five learned Judges of the High Court to consider five questions as referred hereinabove.

9. In view of the fact that the decision of the Division Bench in *Dr. Vishwajeet Singh's* case (supra) was affirmed by this Court, the bench of five Judges considered whether the reference could be entertained by that bench. In the light of the law laid down by this Court in *Kunhayammed & others v. State of Kerala and another* and *S. Shanmugavel Nadar v. State of Tamil Nadu* the bench observed:

“ The Supreme Court, while dismissing the appeal has clearly observed that it is in agreement with the view taken in *Dr. Vishwajeet Singh* and, accordingly, affirmed the same. There is thus a positive and unambiguous expression of approval of the said decision and, therefore, it cannot be said that the order of the High Court did not merge into the order of the supreme Court. Insofar as the case before us is concerned, it is clear from the order that the Supreme Court not only dismissed the Civil Appeals after granting leave but while doing so, clearly observed that it was in agreement with the view taken in the impugned judgment and, accordingly affirmed the judgment of this Court.

Our unequivocal answer therefore to the issue framed would be that the decision in *Dr. Vishwajeet Singh* stood duly affirmed by the Supreme Court. The terms of the order dated 19.01.2017 clearly establish that the said decision and the view taken by the Division Bench therein was specifically approved. The said decision consequently merged in the order of the Supreme Court. The order of the Supreme Court came to be rendered after grant of leave. Once the decision of this Court stood merged in the order of the Supreme Court, it would not be legally permissible for this Full Bench to consider the correctness or otherwise of *Dr. Vishwajeet Singh*”

10. The bench of five learned Judges found itself to be bound by the decision of this Court in Civil Appeal Nos.6385-6386 of 2010 decided on 19.01.2017 and as such held that there was no occasion to rule on the reference. The reference was accordingly turned down.

11. Said order turning down the reference is presently under challenge.

12. It is accepted by the learned counsel appearing for various petitioners that in Civil Appeal Nos.6385-6386 of 2010 questions were specifically raised regarding clubbing of all vacancies in various colleges under different universities in the State. It is, thus, accepted that the discussion and the reasoning of the Division Bench in *Dr. Vishwajeet Singh's* case (supra) touching upon said issues including the applicability of the provisions of UP Act No.4 of 1994 definitely arose for consideration before this Court. However, an attempt has been made by the learned counsel to submit that certain aspects were not considered by the

Division Bench in Dr. Vishwajeet Singh's case (supra) and thus could not arise in Civil Appeals before this Court and the matter may require fuller consideration.

13. We have anxiously considered the submissions and are unable to accept the contentions raised by the learned counsel. In our view, the questions as are sought to be raised now had already been considered in Dr. Vishwajeet Singh's case (supra) which view was approved in terms by this Court. In the circumstances, the larger bench of five Judges of the High Court was right and justified in turning down the reference. We, therefore, see no reason to entertain these special leave petitions, which are accordingly dismissed.