

याचिका ए सं०-28255 / 2014

डॉ० प्रतिमा मिश्रा बनाम उ०प्र० राज्य व अन्य में पारित आदेश

दिनांक-22.05.2014

मुख्य बिन्दु- विज्ञापन सं०-46 को मा० उच्च न्यायालय एवं सर्वोच्च न्यायालय के विभिन्न आदेशों के आलोक में महाविद्यालयवार विषयवार आरक्षण व्यवस्था लागू करने का निर्णय



**Court No. - 3**

**Case :-** WRIT - A No. - 28255 of 2014

**Petitioner :-** Dr. Pratima Mishra

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Petitioner :-** Alok Mishra

**Counsel for Respondent :-** C.S.C., Archana Singh

**Hon'ble Amreshwar Pratap Sahi, J.**

**Hon'ble Rajan Roy, J.**

This writ petition has been filed questioning the authority of the respondent Higher Education Service Commission to hold selections under Advertisement No.46 dated 21.3.2014 without appropriately applying the law of reservation collegewise and subjectwise.

This matter had been taken up yesterday and the following order was passed:

*"Heard learned counsel for the petitioner and Smt. Rathi, learned Additional Chief Standing Counsel.*

*The order of the Director dated 7.3.2014 has been placed before us. This is a clear issue where we prima facie find that the Director of Higher Education has proceeded to pass a completely misleading order without any reference to the judgments of this Court or the order passed by the Apex Court in relation to the Institution wise reservation in matters of selection even though the said authority has contested this litigation throughout upto the apex court involving the same issue as per the decisions noted hereinunder :-*

*(i) (1996) 3 UPLBEC 1869, Ram Niwas Pandey Vs. State of U.P. and others.*

*(ii) (1997) 9 SCC 662, State of U.P. Vs. Dr. Dina Nath Shukla & another.*

*(iii) (2004) 12 SCC 333, State of U.P. & others Vs. M.C. Chattopadhyay & others*

*(iv) (2008) 12 SCC 1, Balbir Kaur & another Vs. U.P. Secondary Education Service Selection Board & others.*

*(v) (2009) 4 ADJ 373, Dr. Vishwajeet Singh & others Vs. State of U.P. & others*

*(vi) (2011) 4 SCC 120, State of U.P. Vs. Bharat Singh.*

*We are, therefore, prima facie of the view that the Director of*



*Higher Education Dr. Naved Bahar Khan has interfered with the course of justice and has deliberately omitted to mention the judgments of this Court as well as the order passed by the Apex Court in his communication dated 7.3.2014 thereby generating unnecessary litigation.*

*Consequently, the Court proposes to initiate proceedings of contempt against the said Director by tomorrow.*

*Smt. Rathi prays that the matter be taken up tomorrow.*

*Put up tomorrow.*

*Dr. Naved Bahar Khan, Director of Higher Education, shall be personally present before this Court by tomorrow for the said purpose."*

Today, an affidavit of the Director of Higher Education has been filed, a copy whereof has been served on the learned counsel for the respondent U.P. Higher Education Service Commission. Along with the affidavit which has been sworn by Dr. Naved Bahar Khan, Director Higher Education, who is present in Court, a clarification dated 22.5.2014 has been issued informing the respondent Commission that reservation in terms of the judgments that have been referred to in our order dated 21.5.2014 shall be applied collegewise and subjectwise.

In view of the said affidavit having been filed by the respondent-Director of Higher Education, we do not find it necessary to issue any direction to the respondents. The respondent Commission shall proceed accordingly to hold selections as per the said corrigendum and the directions contained in the orders passed in Writ Petition No.4236 of 2014.

Learned counsel for the petitioner has also pointed out that against the judgment in the case of Dr. Vishwajeet Singh (supra) a Special Leave Petition has been filed, but no interim orders have been granted by the Apex Court, which fact has not been disputed by the learned Additional Chief Standing Counsel. Secondly, doubting the correctness of the judgment in the case of Dr. Vishwajeet Singh (supra) a co-ordinate bench of this Court in the case of **Archana Mishra Vs. State of U.P. and others, 2011 (2) ADJ Page 1** had referred the matter together with the Full Bench judgment in the case of **Heera Lal Vs. State of U.P. and others, 2010 (6) ADJ Page 1**. This referring order in the case of Archana Mishra was also assailed before the Apex Court and has been



stayed as categorically stated in paragraph 16 of the writ petition which also has not been disputed by the learned Additional Chief Standing Counsel. It may also be noticed that against the Full Bench decision in the case of Heera Lal (supra) an aggrieved private party had filed a Special Leave Petition before the Apex Court that was got dismissed as withdrawn. The Director of Higher Education and the Higher Education Services Commission were trying to take shelter of the pendency of the aforesaid S.L.P. and the reference order which, in our opinion, in no way allows the respondents to disobey the law laid down by this Court which still holds the field.

Thus, the respondents are bound to hold selections only as per the declared law and they cannot on the pretext of the pendency of the Special Leave Petition before the Apex Court proceed to adopt a wrong procedure that is contrary to the law as referred to hereinabove.

The Directorate of Higher Education and its officials as well as the respondent U.P. Higher Education Services Commission and its authorities will take notice of this order to effectively and honestly implement the judgments and orders of this Court and the Apex Court in as much as the said respondents are party to the litigation and the judgments and orders delivered by this Court are binding on them. Not only this, the judgments of the Apex Court, as referred to, in the order are also binding and they have to be implemented, as all civil and judicial authorities have to act in aid of the Supreme Court. The binding nature of law of the Supreme Court should be clearly understood in terms of Article 141 read with Article 144 of the Constitution of India. Any defiance in future would be seriously viewed and the authorities, including the State Government, may be liable for contempt in the event any deviation is made either deliberately or otherwise from the law laid down and referred to hereinabove.

The writ petition is, accordingly, disposed of. The presence of the Director of Higher Education is exempted.

**Order Date :- 22.5.2014**

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