
(2013) 09 AHC CK 0198
In the Allahabad High Court
Case No : C.M.W.P. No. 45858 of 2013

Abhay Kumar Mishra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Citation : (2013) 101 ALR 18

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Judgement

Sudhir Agarwal, J.—The only relief sought in the writ petition is that the petitioner's representations dated 12.7.2004, 31.8.2009 and 22.1.2013 be directed to be decided. Despite repeated query, learned Counsel for the petitioner could not at all show as to under which provision such representation is entertainable so as to cast an obligation upon the respondent No. 1 to decide the same failing which the petitioner who is entitled for issuance of writ of mandamus. It is well settled that a writ of mandamus would lie only if the petitioner is enforcing a legal right and the respondents are under a statutory obligation to do or not to do something but have failed to do so.

2. In Oriental Bank of Commerce Vs. Sunder Lal Jain and Another, , Apex Court after referring to its earlier judgments in The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, ; Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, ; Dr. Uma Kant Saran v. State of Bihar, 1 993 (1) SCC 485 and observed as under:

There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation.

3. Since no legal right has been shown to exist for enforcement whereof the petitioner has come to this Court, the relief sought cannot be granted.

4. Even otherwise, no person has any right to seek a mandamus for getting appointment on a particular post. In the case of Shankarsan Dash Vs. Union of India, , the Hon"ble Apex Court said:

7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in The State of Haryana Vs. Subash Chander Marwaha and Others, , Miss Neelima Shangla, Ph. D. Candidate Vs. State of Haryana and Others, and Jitendra Kumar and others v. State of Punjab and others (1985) 1 SCR 899.

5. In the case of U.P. Public Service Commission, Allahabad and Another Vs. State of U.P. and Another, in which rights of wait list candidate was considered by this Court, in para-15 of the judgment held:

A wait list candidate does not have any indefeasible right to get appointment merely for the reason that his name finds place in the wait list.

6. This Court in taking the aforesaid view relied upon the decision in Ved Prakash Tripathi Vs. State of U.P. and others, and Surinder Singh and Others Vs. State of Punjab and Another, and held that even a select list candidate has no indefeasible right to claim appointment. In para. 31 of the judgment in U.P. Public Service Commission, Allahabad and another(supra) this Court has further held as under:

Moreover, even in the case of a select list candidate, the law is well settled that such a candidate has no indefeasible right to claim appointment merely for the reason that his name is included in the select list as the State is under no legal duty to fill up all or any of the vacancy and it can always be left vacant or unfilled for a valid reason.

7. In view of the aforesaid law laid down in Shankarsan Dash (supra and U.P. Public Service Commission Allahabad and another (supra), I am of the opinion that petitioner has no legal or statutory right to enforce The writ petition lacks merit and it is accordingly dismissed.