
(2006) 07 AHC CK 0140
In the Allahabad High Court
Case No : Writ Petition No.4192 (S/S) of 2002

Ajay Kumar

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 31-07-2006

Acts Referred:

Citation : (2006) 07 AHC CK 0140

Hon'ble Judges : Rakesh Sharma, J

Final Decision : Disposed Of

Judgement

Rakesh Sharma, J.

1. Heard Sri S.K. Mehrotra, learned counsel for the petitioner and the learned Standing Counsel for the respondents.
2. The petitioner has sought a writ of mandamus directing the respondents to treat him to have been appointed on the post of Assistant Auditor in U.P. Palika (Centralized) Audit (Subordinate) Services w.e.f. 19.2.2001. The respondent No.5, Sri Ravindra Kumar, another S.C. candidate belonging to the same category was allowed appointment from 19.2.2001, while the petitioner was issued the order of appointment on 3.10.2001. Both the persons were selected as a result of one and the same selection proceedings, but due to some procedural lacuna like submission of caste certificate and delay in receiving the police verification report, the petitioner appointment got delayed. He ought to have been appointed on the post w.e.f. 19.2.2001 but there occurred eight months delay in issuing the order of appointment.
3. Sri S.K. Mehrotra, learned counsel for the petitioner, has drawn attention of the Court towards the relevant rules of the seniority of U.P. Palika (Centralized) Services. According to him, the petitioner's name was above the name of respondent No.5. The selection of the petitioner and the respondent No.5, was one and the same:

4. The present grievance of the petitioner is that one post of Chief Auditor meant for S.C. category candidate is lying vacant in the department. If the petitioner is not treated to be appointed on 19.2.2001, he may not be promoted on the said post and his right to be considered for promotion shall be adversely affected.

5. Sri S.K. Mehrotra, learned counsel has placed reliance on the judgments reported in 1994 (6) SCC 301, Chairman. Puri Gramya Bank v. Anand Chandra Das and others and (1996) 8 SCC 637, Pill Sita Ram Patrudu v. Union of India, in support of his submissions that in such situation the employee shall not be permitted to suffer as there was no fault of the employee.

6. The learned Standing Counsel has resisted the writ petition and drawn attention of the Court on the following paras of the counter affidavit:

"4. That in reply to paragraph 2 of the writ petition it is submitted that the recommendations in respect of the appointments of the petitioner and other candidates to the post of Assistant Auditor was received on 28.6.2001 but as the recommendation in respect of the petitioner's appointment and one another candidate was provisional (conditional) therefore excluding the petitioner and one another Sri Alok Arya, the appointments orders were issued to all the candidates on 19.2.2001. The Police Report in respect of the character verification of the petitioner was received on 3.8.2001 thereafter the appointment order was issued on 3.10.2001.

8. That in reply to paragraphs 10 and 11 of the writ petition, it is submitted that in the recommendations received from the U.P. Public Service Commission in respect of the Combined Lower Subordinate Services Examination, 1998, recommendations pertaining to Sri Banwari Lal, rather in the recommendations in respect of the appointments of the petitioner and other candidates to the post of Assistant Auditor was received on 28.6.2001 but as the recommendation in respect of the petitioner's appointment and one another candidate was provisional (conditional) therefore excluding the petitioner and one another Shri Alok Arya, the appointments orders were issued to all the candidates on 19.2.2001. The Police Report in respect of the character verification of the petitioner was received on 3.8.2001 thereafter the appointment order was issued on 3.10.2001."

7. A perusal of the counter affidavit reveals that the petitioner was not responsible for delay in submission of the police verification report at a later stage. The petitioner cannot be permitted to suffer for any procedural delay for which he was not responsible. He had submitted desired documents in time.

8. In view of above, the writ petition is finally disposed of. The respondents are directed to reconsider the matter of the petitioner and if the petitioner and the respondent No.5, Ravindra Kumar had been selected in one and the same selection and the petitioner's name finds place above the name of respondent No.5, in the merit list as well as in the seniority list, he may also be appointed w.e.f. 19.2.2001. The service record of the petitioner be corrected and

appropriate orders shall be passed in this regard. If the petitioner is qualified and fit for promotion on the higher post, his case may be considered for the same in accordance with relevant service rules along with other eligible candidates. This exercise shall be completed within two months from the date of production of a certified copy of this order. The other consequential benefits shall follow.

(Ordered accordingly)