
(2005) 11 AHC CK 0015

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 36712, 39949, 39952, 39956, 43399 and 43401 of 2004

Alok Awasthi and Prem Chandra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-11-2005

Acts Referred:

General (Civil) Rules, 1957 — Rule 29, 9

Citation : (2006) 5 AWC 4970

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Ashok Khare, V.D. Chauhan, M.S. Siddhiqi, A.M. Tripathi, S.C. Srivastava and O.P. Singh, for the Appellant; Amit Sthalkar, V.K. Birla, Vipul Prakash, K.R. Sirohi, Madhur Prasad and S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri Ashok Khare, Senior Advocate, assisted by Sri M.S. Siddhiqi, Advocate holding brief-of Sri A.M. Tripathi, Advocate on behalf of the petitioner (in writ petition No. 36712 of 2004), Sri S.C. Srivastava, Advocate on behalf of the petitioners (in writ petition nos. 39956 of 2004, 39952 of 2004 and 39949), Sri O.P. Singh, Advocate on behalf of the petitioners (in writ petition Nos. 43401 of 2004 and 43399 of 2004), Sri Amit Sthalkar, Advocate on behalf of the Hon'ble High Court as well as on behalf of District Judge, Kanpur Dehat in all the writ petitions, Sri V.K. Birla and Sri Vipul Prakash, Advocates on behalf of private respondents (in writ petition No. 36712 of 2004) and learned Standing Counsel on behalf of the State-respondents (in all the writ petitions).

2. These six writ petitions have been filed by 7 petitioners against one common order of the District Judge, Kanpur Dehat dated 2nd August, 2004 where-under the ad-hoc appointment of the petitioners as Class-III employees in the judgeship of Kanpur Dehat has been brought to an end, in view of the selection process having been completed and select-list of Class-III employees

including Hindi Stenographers in the Judgeship of Kanpur Dehat having been notified. Since the facts giving rise to all these writ petitions are more or less identical, Civil Misc. Writ Petition No. 36712 of 2004 has been treated to be the leading case and facts as are being recorded in the present order with reference to the records of the said writ petition.

3. Petitioners were appointed as paid apprentice in the Judgeship of Kanpur Dehat on consolidated pay of Rs. 3050/- per month. Petitioners jointed and continued to function as such.

4. It is alleged that four persons, namely, Amit Kumar Bajpai, Mahendra Kumar, Ashish Kumar Shukla and Sanjay Sahu, who were initially appointed as Ad-hoc Peshkar in Fast Track Courts under appointment orders dated 1st July, 2002 and dated 4th September, 2002 respectively, were regularized under order of the District Judge, Kanpur Dehat dated 28th March, 2003. The petitioners on the strength of the allegations that they were senior to all the aforesaid four ad-hoc appointees, set up a claim for regularization on the ground of parity. One of the petitioners filed writ petitions before this Court seeking disposal of his representation for regularization on the ground of parity referred to above.

5. Before their claim could be processed an advertisement dated 9th June, 2004 was published inviting applications for appointment against six posts of clerk in Group-III in the pay-scale of Rs. 3050-4590 and six posts of stenographers in the Judgeship of Kanpur Dehat.

6. It is not in dispute that the petitioners applied in pursuance of the said advertisement and also participated in the process of selection by way of direct recruitment. The result of the selection so held was published on 6th August, 2004 and as many as 36 candidates were shown to be selected in different categories against the vacancies advertised. It is further stated that the roll number of the petitioner No. 1 was included in the merit list of the General Category while name of petitioner No. 2 was included in the list of backward class category.

7. By means of the impugned order dated 2nd August, 2004 the fixed pay appointment of the petitioners has been cancelled by the District Judge, Kanpur Dehat on the ground that a select-list of Class-III employees including stenographers (Hindi) have been notified and therefore, appointment of the petitioners and other similarly situate employees made on ad-hoc basis would come to an end with immediate effect. Petitioners were asked to sign the order so circulated without a copy of the same being supplied to the petitioners. It is against this order of the learned District Judge, Kanpur Dehat that the present writ petition has been filed.

8. The petitioners seek quashing of the order dated 2nd August, 2004, as well as a writ of mandamus commanding the respondents not to interfere in the working of the petitioner and to regularize the petitioners within a period to be specified by this Court.

9. On behalf of the petitioners it is contended that they are senior to four persons, namely, Amit Kumar Bajpai, Mahendra Kumar, Ashish Kumar Shukla and Sanjay Sahu, who were initially, appointed as Ad-hoc Peshkar in Fast Track Courts, and have since been regularized. Therefore, petitioners are also entitled to similar treatment. It is further contended that the petitioners have a preferential claim for regular appointment in view of Rule 29 of General Rule Civil. Lastly it is contended that since six posts of Group-III alone were advertised, only six appointments could be made against the advertised vacancies. Thereafter vacancies still remain available, against which the petitioners, who were earlier appointed, would be continued on ad-hoc basis in preference to afresh appointment pending regular selection against unadvertised vacancies. Therefore, the order dated 6th August, 2004 be quashed.

10. A counter affidavit has been filed on behalf of the District Judge, Kanpur Dehat and in paragraph-18 of the counter affidavit it is admitted that 12 candidates have been appointed as regular clerk while two candidates have been appointed as paid apprentice in pursuance of the selection held, qua the advertisement published on 9th July, 2004. It has not been disputed that only six vacancies of clerk advertised. It has been pointed out that the petitioners have also participated in the process of selection, they have not been offered appointment having regard to the merits secured by them in the said process of selection. It has further been pointed out that four persons, namely, Amit Kumar Bajpai, Mahendra Kumar, Ashish Kumar Shukla and Sanjay Sahu, were appointed on ad hoc basis after regular selection while the petitioners have been offered appointment as paid apprentice only without following any procedure prescribed under the Rules applicable. Therefore, the petitioners cannot claim parity with Amit Kumar Bajpai, Mahendra Kumar, Ashish Kumar Shukla and Sanjay Sahu. With regard to Rule-29 of the General Rule Civil it has been submitted that the same has no application in the facts of the case, inasmuch as the petitioners have been appointed as paid apprentice without following any procedure known to law.

From the aforesaid, following facts emerge:

(a) four persons, namely, Amit Kumar Bajpai, Mahendra Kumar, Ashish Kumar Shukla and Sanjay Sahu, were offered ad-hoc appointment at the time of creation of Fast Track Courts on 1st July, 2002 and 4th September, 2002 respectively, have been regularized under order of the District Judge, Kanpur Dehat, dated 28th October, 2003 i.e. only after completing few months of service in the Judgeship of Kanpur Dehat on ad-hoc basis. The Statutory provision under which such regular appointment has been offered, has not been disclosed nor any other reasons has been furnished by the District Judge, Kanpur Dehat for offering regularizing the services of the aforesaid persons, namely, Amit Kumar Bajpai, Mahendra Kumar, Ashish Kumar Shukla and Sanjay Sahu. Since the aforesaid persons are not party to the present writ petition, no adverse orders can be passed, however, this Court is of a firmed opinion, that the matter must

be looked into by the Hon'ble High Court on the administrative side and in that regard all the records with regard to the regular appointment offered to the aforesaid persons, namely, Amit Kumar Bajpai, Mahendra Kumar, Ashish Kumar Shukla and Sanjay Sahu, be placed before the concerned Administrative Judge of this Court, within one month from today by the Registrar General of this Court for the purpose of appreciating as to whether regularization of persons is legally justified or not and for all consequential action being taken.

(b) It is not in dispute that against six vacancies of routine grade clerk advertised under the Advertisement dated 9th June, 2004, a;, many as fourteen persons have been offered regular appointment. The Decision Bench of this Court in the case of the District Judge, Baghpat and Anr. v. Sri Anurag Kumar and Ors. passed in Special Appeal No. 702 of 2005 decided on 31st May, 2005 has held that appointment made in excess of the posts advertised/against subsequent vacancies is legally not justified. The relevant portion of the judgment of the Division Bench of this Court is being quoted herein below:

A perusal of the aforesaid Rules would establish that the number of vacancies which have to be advertised are to be in accordance with the Rule 9 and, therefore, the recital in the advertisement that the vacancies are likely to increase or decrease has to be strictly construed in accordance with the aforesaid Rules. What logically follows is that the District Judge is not at liberty to prepare a list dehors the number of vacancies advertised. This position stands further clarified by the Circular Letter No. 9A/VIIb-104 Admin. Dated 29.04.1999 issued by the High Court which clearly states that the select list shall not be prepared by the District Judges for more than the double of the vacancies advertised....

In view of the above, we are of the considered opinion that as only ten vacancies had been advertised, there could be no justification for the authority concerned to fill up more than ten vacancies as it, included the then misting as well as vacancies likely to occur in the course of the year. Once ten vacancies had been filled up. the selection process stood exhausted, and the authority concerned become functus officio. Any appointment made by him beyond that number, is without jurisdiction, therefore, a nullity, inexecutable and un-enforceable in law.

In such an eventuality after issuing appointment letters to ten candidates, the select list/waiting list stood exhausted and and not have been used by perennial source for appointment against any other vacancy. There can be no controversy to the settled legal proposition that even if a successful candidate joins the post and resigns or dies or stands transferred, his vacancy stands exhausted merely by his Joining and the post could not be filled up from the waiting list as the statutory rules do not provide for such a course.

12. Sri V.K. Birla, Advocate, Sri Vipul Prakash, who have heard on behalf of the private respondents as well as learned Counsel for the District Judge, have not been able to dispute the factual averments made in the present writ petition, qua appointments having been offered in excess of the advertised vacancy.

13. In view of the aforesaid judgment of the Division Bench of this Court the appointment offered to 8 persons in excess of the advertised vacancies cannot be said to be legal in any manner nor they are entitled to occupy the vacancies, which had not been advertised as a consequent thereto the petitioners, who were earlier working on a-fixed salary been will have a right to be considered for being permitted to continue against unadvertised vacancies till regular appointments are made in accordance with law. Accordingly the following directions are issued:

(i) The District Judge, Kanpur Dehat shall take all appropriate actions in respect of appointments offered to the persons In excess of the advertised posts, strictly in light of the decision of the Division Bench of this Court in the case of District Judge, Baghat and Anr. v. Sri Anurag Kumar and Ors (Supra).

(ii) In case after the filling up the advertisement posts, there still remain vacancies/requirement of the work, the District Judge may consider the claim of the petitioners to be continued on fixed salary before engaging fresh hands. Such continuance will only be till regular selection against the available vacancies are held and shall confer no right of regularization.

(iii) The records of regularization pertaining to the four candidates referred to above, be placed before the Administrative judge of Kanpur Dehat Judgeship for taking appropriate administrative decision in accordance with law.

14. The order passed by the District Judge, Kanpur Dehat dated 2nd August, 2004 is hereby quashed. The writ petition is accordingly allowed subject to the observations made herein above.