
(2003) 03 AHC CK 0210

In the Allahabad High Court

Case No : C.M.W.P. No's. 18347 and 19607 of 1996

Arvind Kumar

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 03-03-2003

Acts Referred:

Citation : (2003) 6 AWC 4840

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : A.P.N. Giri, for the Appellant; M.C. Chaturvedi, Addl. C.S.C. S.S. Sharma, Deepak Sharma, Ranjit Saxena, Enakshi Sharma and S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—Heard Sri A. P. N. Giri, learned Counsel for the Petitioner in both the petitions as well as Sri M. C. Chaturvedi, Additional Chief Standing Counsel, along with Sri S. S. Sharma, Sri Deepak Sharma and Km. Enakshi Sharma, learned standing counsel and Sri Ranjit Saxena, learned Counsel for the Respondents.

2. In the first Writ Petition No. 18347 of 1996 the Petitioner has prayed quashing the impugned selection of the driver should be cancelled and Petitioner's service be regularised and treating the Petitioner as a driver and a direction to the Respondents to pay the salary to the Petitioner since 26.4.1993. In the second Writ Petition No. 19607 of 1996 the prayer has been made quashing the order dated 7.6.1996 (Annexure-13) whereby 30 persons have been appointed to the different posts including the post of driver, chowkidar, mali, sweeper and Class IV employee. According to the Petitioner he gave an application on 20.4.1993 before the District Magistrate, Etawah and the District Magistrate has indicated that the applicant should be appointed on ad hoc basis in Auariya Tehsil. According to the Petitioner he has worked for some time but he was not paid the salary and treating him as ad hoc appointee by order dated 25.4.1993 of the

then District Magistrate, Etawah, the Petitioner prayed for regularisation to the post of driver. It appears that certain posts of Class IV including the post of mali, sweeper, chowkidar and driver who have been filled up. For that purpose notice was pasted on the notice board and conveyed to the employment exchange, so that, other candidates may know the vacancies and a large number of candidates from open market participated in the selection/interview and the selection committee constituted for the purpose and selection committee has recommended the case in respect of 30 persons on June 7, 1996. This order is under challenged in Writ Petition No. 19607 of 1996 by saying that the Petitioner's services was to be regularised treating him to have been appointed on ad hoc basis and he was not given prior notice of participation in the said selection. However, when he participated he was not declared successful. In these circumstances the above two writ petitions have been filed. The counter-affidavit on behalf of the Respondents have been filed in both the petitions.

3. I have gone through the contents of the counter-affidavit preferred in the Writ Petition No. 18347 of 1996. It has been indicated that the Petitioner was never appointed on ad hoc basis and he has not worked as a driver in the Collectorate of Etawah and by mere writing by the then District Magistrate Sri Nirotilal Gupta on the application of the Petitioner, dated 25.4.1993, "the Petitioner was to be given ad hoc basis" ; is not a valid appointment. According to the Respondents the contention of the Petitioner that he had worked on the Jeep U.R.B.-9933 is incorrect because such Jeep was never in existence with the Respondents. It has also been submitted on behalf of the Respondents that the Petitioner's brother was working as a driver with the then District Magistrate and on his request such order of District Magistrate dated 25.4.1993 was passed which was subsequently by another District Magistrate Sri K. S. Atoria was not acknowledged as such the Petitioner was never appointed on ad hoc basis and in absence of law and Government rules for the purpose. However, for selecting the different posts from persons whose names were forwarded from the employment exchange, interview were on 15.5.1996 to 18.5.1996 and in respect of those candidates whose application has been received from the open market proper notices were advertised on the notice board. The Petitioner was aware of the interview and was declared unsuccessful. This aspect has not been denied by the Petitioner. Now according to the Petitioner, irregularity has been committed by the Respondent which has been denied by the Respondents in the counter-affidavit. According to the Annexure-C.A.-3 enclosed with the counter-affidavit, the Petitioner himself has submitted before the District Magistrate that though he was given direction to the ad hoc basis however, for some reasons he was not allowed to join. The counter-affidavit filed in Writ Petition No. 19607 of 1996 was also perused. According to the contents of paras 3 and 7 it was only by virtue of mercy of the then District Magistrate this direction was given and that appointment purported to be made on ad hoc basis cannot be treated as valid appointment.

4. The endeavourance has been made on behalf of the Petitioner to deny the

contents of counter-affidavit, I have heard learned Counsel for the Petitioner and I find that whether Petitioner was given ad hoc basis earlier or not. The salary for the period during the persistence of ad hoc appointment is not a point of consideration before this Court and as the Petitioner has participated in the selection process and was declared unsuccessful, therefore, the unsuccessful candidates cannot challenge the process of selection after participation in the light of judgment of Supreme Court in Swaran Lata Vs. Union of India and Others, ,where a person who appeared in selection but was not selected cannot turn back and challenge the selection. The Petitioner has no legal right to selection of driver made on 7.6.1996. Therefore, the writ petition is dismissed.