

(2003) 09 AHC CK 0151

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 32799 of 2001

Ashok Kumar

APPELLANT

Vs

State of U.P.through its Secretary Audyogic Vikas,Lucknow
U.P.& Ors.

RESPONDENT

Date of Decision : 29-09-2003

Acts Referred:

Citation : (2003) 09 AHC CK 0151

Hon'ble Judges : Rakesh Tiwari, J

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. This writ petition was filed challenging the validity of advertisement dated 3082001 for examination of Group ?C? posts of Typist in Government Press Allahabad and for commanding the respondents to take interview and appoint the petitioner who were successful in the selection held earlier. The prayer in the writ petition are as follows:

(1) Issue writ, order or direction in the nature of Certiorari quashing the impugned vacancies of typist, advertised on 3082001 by the Government Press, Allahabad.

(2) Issue writ order, or direction in the nature of Mandamus commanding the respondents to appoint the petitioner on the post of typist in the Government Press Allahabad, by adopting a due procedure of law.

(3) Issue any other writ, order or direction, which this Hon''ble Court may deem fit and proper under the facts and circumstances of the case.

(4) Award the cost of the petition to the petitioner.

3. So far as the second prayer is concerned for commanding the respondents to appoint the petitioners on the post of typist is concerned cannot be granted by this Court. As early as in 1991 a constitution bench of the apex Court in the case of Shanker Das v. Union of India, 1991 (2) UPLBEC page 933, held that the

successful candidates do not acquire an indefeasible right to appointment in government Services. The decisions not to fill up the vacancies is prerogative of the Government and unless relevant recruitment rules provide so, the state is under no legal obligation to fill up all or any of the vacancies.

4. In this view the second prayer is misconceived. In so far as question of quashing the vacancies is concerned. It appears that the petitioner prayed for quashing of the advertisement and not for quashing the vacancies.

5. Initially vacancies for the post of junior clerks and typist were published on 1081998. By a subsequent corrigendum dated 491998 the posts of junior clerks and typists were advertised separately. After examination interviews were postponed on two occasions but result was not announced, hence some candidates who had appeared in the interview approached this Court by means of Writ Petition No. 42197 of 1959 Km. Sudha Pandey v. Government Press Allahabad. The writ petition was filed on the ground that the respondents had no authority to republish the vacancies of typist on Government Press. Without deciding the claim and right of those candidates who had already appeared in the test and interview and had been declared successful and they have right to appointment as only 12 candidates had been found successful as against thirteen vacancies. No enquiry is said to have been held till filing of the writ petition.

6. The Court by order dated 29111999 disposed of the writ petition with a direction to the Government Press Allahabad to decide the matter and this complaint received within three months.

7. At the time of the admission an interim stay was granted on 9102001, which was modified on 3102002 to the extent that authorities should complete selection process in respect of posts advertised except the posts of typist.

8. A counter affidavit has been filed stating that the proceedings of selection of group "C" posts was found to be irregular and an enquiry was directed to be made in this regard. The selection for Group "C" post from 199899 was cancelled by the State Government by G.O. dated 1061999 and fresh advertisement was issued under G.O. dated 2082001 and process of selection was carried on according to rules known as U.P. Procedure for Direct Recruitment for Group "C" Posts Rules 1998 published on 20 August, 2001. It is submitted by the respondents that contempt application No. 1508 of 2000 had been filed which had been dismissed by the High Court on 21112000. In compliance of the order of the High Court selection of Group "C" post was held on 7102001 and those who found entitled are liable to be taken in service.

9. In the case of Shanker Dash (supra) it was also been held that decision not to fill up the vacancies has to taken bona fide for appropriate reasons. In the instant case a large number of complaints were received by the Government regarding selection for Group ?C? and ?D? posts. Which were enquired into and it was found that selection was not according to the rules and fresh advertisement was issued. The case of Typist in Government Press, Allahabad was specific and

separate which was stayed by this Court for these posts only. Enquiry was got conducted by the Government level and by the Commissioner, Allahabad in which complaints relating to the selection of typist in the Government Press Allahabad was found correct hence the examination was held for the posts of clerks/typist as has been stated in para 7 of counter affidavit as under:

10. In view of the aforesaid reasons this petition is liable to be dismissed. The interim order is vacated. No order as to costs.