

(1997) 11 AHC CK 0022

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No's. 6423 and 6424 of 1990

Bajrang Bahadur Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-11-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 235

Uttar Pradesh Nyayik Sewa Niyamavali, 1951 — Rule 19, 20, 21, 22, 23

Citation : (1998) 3 UPLBEC 1876

Hon'ble Judges : R.K. Mahajan, J;Palok Basu, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.K. Mahajan, J.—These writ petitions were originally filed in Lucknow Bench of this Court being Civil Misc. Writ Petition No. 3538 of 1989 and Writ Petition-No. 5433 of 1989 and were ultimately transferred to this Court under orders of Hon'ble the Chief Justice, as such both these writ petitions are being disposed of by a common judgment as common questions of fact and law are involved in these petitions.

2. The short question involved in these writ petitions is whether the High Court on its administrative side after lapse of one year i.e., panel life according to Government Rules could have made recommendations for appointment and the same was rightly rejected by the Government and in case it was not rightly rejected then the petitioner can claim benefit of the same? Another question which has crept in these writ petitions is whether after cancellation of the candidature of Shailendra Kumar on 15.12.1987 and V.K. Yaduvanshi on 10.2.1988, as they were unwilling to join the post, the appointments could be given after the lapse of one year to seniormost general category waiting list candidate and seniormost SC category waiting list candidate?

3. The leading case is Civil Misc. Writ Petition No. 6423 of 1990, Bajrang Bahadur Singh and Ors. v. The State of U.P. and Ors. The main prayer made by means of

this petition is to issue a writ, order or direction in the nature of mandamus commanding the opposite parties to appoint the petitioners on the post of Munsif on the basis of the list prepared by the Commission out of 1985 Munsifs Examination.

4. It may be mentioned at the very outset that in Writ Petition No. 6424 of 1990 it was ordered that one vacancy will not be filled up and in writ petition No. 6423 of 1990 it was ordered that the opposite parties shall not fill up 3 posts of Munsifs. It may also be mentioned at the outset that the petitioner in writ No. 6424 of 1990 is posted as Assistant Prosecuting Officer at Faizabad, petitioner No. 1 In writ No. 6423 of 1990 is working as Under Secretary In the Secretariat, Lucknow, petitioner No. 2 in Writ No. 6423 of 1990 is posted as A.P.O. at Lucknow and petitioner No. 3 in Writ No. 6423 of 1990 was selected as Munsif in the Batch of 1986 as is clear from the supplementary affidavit filed in these writ petitions.

5. Now coming to the brief facts as enumerated in the writ petitions which are more or less based on the same allegations it appears that the advertisement were published by the Public Service Commission inviting applications for appointments to the post of Munsifs in U.P. Rozagar Digest (fortnightly paper) in the month of July, 1985 (Vide Annexure 1 to the writ petition). The number of posts advertised was 75 subject to decrease or increase. The petitioners applied for the post and as a result of competitive examination they qualified to appear for the interview before the Commission and interviews were held thereafter ultimately the result was published on 21.1.1987 vide press communique in various News papers by the Public Service Commission and it is undisputed that petitioners names find place in the waiting list at serial Nos. 4,6,7 & 8 receptively (Vide Annexure 3 to the writ petition and paras 2 & 3 of the writ petition which are admitted by the opposite parties in paras 3 and 4 of the counter affidavit). The number of candidates in the main list was 98 and in the waiting list 24. There is no dispute made by the opposite parties in this regarded.

6. It appears that a controversy started which is not relevant here, regarding reservation of 15 vacancies for backward class candidates and the matter was taken to Supreme Court as the High Court declared the reservation invalid in writ petition No. 2637 of 1978, Chhotey Lal Pandey and Others Vs. State of Uttar Pradesh and Another, against which special appeal was dismissed on 11.8.1987.

7. The grievance of the petitioners is that there was heavy pendency of cases in subordinate Courts and on the representations of various Bar Associations the High Court on its administrative side recommended vide its letter dated 17.11.1988 pursuant to the resolution of its Administrative Committee dated 2.11.88 to make appointments of 25 more Munsifs out of 1985 Munsif Examination but the State Government did not accept the same and refused to do so arbitrarily, it is also alleged that (Vide Paras 11 of the writ petition) on February 25, 1986, 194 vacancies in the cadre of Munsif were available, yet initially advertisement was issued only for 75 vacancies and it was later on

increased to 100 vacancies. It is also alleged that after 1985 Examination only written test for 1986-87 Examination has been held and viva- voce. test has not been held so far and no result has been declared so far after U.P. Judicial Service Examination, 1985. It is further pleaded that there is an order of U.P. Government dated March 25, 1985 to the effect that the waiting list prepared by the Commission shall be valid till the declaration of the result of next selection and the appointments on the basis of said waiting list can be made provided (i) the vacancies are of the same year in which the selection has been made (ii) the requisition has not been sent to the Commission for the next selection carrying forward the said vacancies. Copy of the said Government Order is also filed as Annexure 7 to the writ petition. The grievance of the petitioners is that they are claiming vacancies of the same year by virtue of the said G.O. It is further pleaded that in case of non- availability of suitable candidates of scheduled tribes, the vacancies reserved for scheduled tribes shall be treated to be in general category and it shall be filled from the general category but it shall be carried forward for next selection and said vacancies shall be de-reserved if suitable candidates are not available within the period of five years. The 2+5 carried forward vacancies reserved for scheduled tribes candidates were five and reserved vacancies in 1985 examination for scheduled tribe were two and thus seven vacancies were not filled on account of the non- availability of the suitable candidates of scheduled tribes and the said vacancies have also not been filled from the general category although suitable candidates of general category of the waiting list were available, and the petitioners could be appointed in these vacancies. It is further submitted that the list of 1985 remains valid even after one year from the date of declaration of the result as the State has been following this practice in various services of the State. The petitioners made efforts for their appointments but of no avail.

8. The case of the respondents as revealed in the counter affidavit is that there were 88 successful candidates and 24 waiting list candidates in the list prepared by the Commission which was intimated to the Government. Out of those 96 candidates joined the service and two candidates namely Sarvsri Vinod Kumar Yaduvanshi (general candidate) and Shailendra Kumar (S.C. Candidate) showed their unwillingness to join the service, therefore, the Government in accordance with the Government Order contained in Annexure 7 to the writ petition and referred above, utilised the waiting list prepared by the Commission within the period of one year from the date of the receipt of the results from the Commission and the Commission recommended two waiting list candidates namely Sri Vishesh Sharma (seniormost candidate of general waiting list) and Sri Ganga Ram (seniormost candidate of S.C. waiting list) and the Government made their appointments vide order dated 20.8.1988. It appears from the counter affidavit that the result was sent by the Commission on 24.3.1987 and received by the Government on 25.2.1987 and the Notification was issued on 20.8.1988 as mentioned on page 3 of the counter affidavit. It is also averred that under Article 234 of the Constitution of India the reservation is made in

consultation with the High Court with respect to various categories of candidates as mentioned in para (v) of the counter affidavit, and the High Court on administrative side has given approval except to two percent reservation to the physically handicapped persons of the society.

9. It is also averred that Hon"ble High Court has granted stay in Chhote Lai's case (supra), regarding its operation. It is also averred that the Government then promulgated Ordinance in 1989 protecting all the appellants, State's plea is that waiting list could be utilised by the appointing authority up to February, 1988 and the High Court made recommendations for the appointment of 25 candidates after lapse of one year i.e., on November 17, 1988 when the Examination for 1986-87 had been conducted and the Government did not think it worth accepting in 1988. It is also pleaded that there has to be stop in the waiting list as it cannot be kept alive for indefinite period. There is a writ petition filed in Allahabad High Court being writ Notice No. 23059 of 1988, Sushil Kumar Singh v. State of U.P. and Ors.. With the passage of time and with the result of these writ petition that has become infructuous as pointed out by the learned Standing Counsel. There is also reference of the same in para 8 (vi) of the counter affidavit.

11. It is also submitted that there is policy of the State Government that in case of non-availability of Scheduled Tribes candidates for filling up their vacancies carried forward for a period of 5 years continuously the same can be filled up only by the Scheduled Caste candidates. It is also submitted that there is provision for special examination for S.C. (Scheduled Caste) candidates. The rejoinder affidavit need not be referred as the allegations made in the petition are reiterated therein.

12. High Court also after all was asked by this Court to apprise the Court of the correct possession, Sri Kazami learned Counsel for the High Court apprised us that the Administrative Committee of the High Court held a meeting on 2.11.1988 in view of the Note of the Registrar suggesting that 25 Munsifs may be recruited out of 1985 Examination and approved the said Note, and resolved that the Government may be moved to take steps in this behalf. This information has been given to this Court by way of an affidavit.

13. Sri A.P. Singh, learned Counsel for the petitioners submitted that if two candidates as mentioned above could be appointed after expiry of one year it would be irrational and arbitrary if the petitioners are not appointed from the waiting list when there are vacancies in a particular year and the same has not been denied in the counter affidavit. It is further submitted that Uttar Pradesh Nyayik Sewa Niyamawali, 1951 (hereinafter referred to as the Niyamawali) does not describe duration of the select list and as such the principle of one years lifetime cannot be applied. He further submitted that the High Court's proposal should not have been brushed aside as it was mandatory for the Government to accept it. He also submitted that the appointments can be made against the anticipated vacancies and the list can be prepared for more than the advertised

vacancies. In other words his submission is that considering the request of the High Court which arose from administrative necessity therefore, the Government should have made appointments of the petitioners and the refusal of the same is invalid and illegal consequently necessary directions may be issued.

13. Smt. Poonam Srivastava another learned Counsel for petitioner adopted the arguments of Shri Singh made in the other writ petition.

14. Learned Standing Counsel submitted that since the panel expired and the examination for 1986-87 as mentioned above has been conducted and it was not considered desirable to extend the panel therefore, the appointments were not made and as such he supported the stand of the Government.

15. Now we would deal first of all the life of panel in order to appreciate the arguments advanced by learned Counsel for the parties. The Rule 19 of Niyamawali is quoted with advantage :

"19. List of candidates approved by the Commission:-The Commission shall prepare a list of candidates who have taken examination for recruitment to the service in order of their proficiency as disclosed by the aggregate marks finally awarded to each candidate. If two or more candidate obtain equal marks in the aggregate, the Commission shall arrange them in order of merit on the basis of their in order of merit on the basis of their general suitability of the service :

Provided that in making their recommendation the Commission shall satisfy themselves that the candidates has obtained such an aggregate or marks in the written test that he is qualified by his ability for appointment to the service."

Rule 20 of Niyamawali deals with the physical fitness of the candidate, Rule 21 deals with the appointment and reads as under:

"21. Appointment - (1) Subject to the provisions of Rule 20, the Governor shall on receipt of the list prepared by the Commission consult the High Court and shall, after taking into consideration the view of the High Court, select candidates for appointments from amongst those who stand highest in order of merit in such list, provided that he is satisfied that they are duly qualified in order respects.

(2) The Governor may make appointment in temporary or officiating vacancies from persons possessing necessary qualifications prescribed under these rules.

(3) All appointments made under this rule shall be notified in the Official Gazette." Rule 22 deals with seniority and Rule 23 deals with probation. Rule 24 of the Niyamawali deals with the termination.

16. Thus, it is clear that the life of the panel is not provided in the Rules. Therefore, now coming to the relevant Government Order contained in Annexure 7 to the writ petition it appears that where the Commission holds examinations every year regularly, the panel prepared by the Commissions shall not be utilised for filling the vacancies occurred beyond the period of one year from the date of receipt of the panel by the appointing authority. In other departments where the

selections are held after the gap of many years the panel can be utilised till the next selection under certain conditions mentioned in the Government Order itself. It appears that the Munsifship Examinations for the years 1986, 87, 88 and 90 have been conducted smoothly, therefore, the submissions of learned Counsel for the petitioner are of no avail. Even if there is no express provision in the Rules as to for what period the list prepared under Rule 19, can be utilised for making appointment to the service, it does not mean that the list should continue for indefinite period. There has to be reasonable time for the life of the list. If this principle is not adopted the right of equal opportunity guaranteed under Article 14 of the Constitution of future candidates would be jeopardised, and it would be fraught with dangers of favoritism and nepotism. It is not possible to make a select list of particular year for many years to come and the deadline has to be drawn some where.

17. Sri A.P. Singh's submissions that 2 candidates of waiting list have been inducted after expiry of the life time of the list i.e., after one year of the receipt of the list by the appointing authority, is not acceptable for the following reasons; firstly that the Commission had recommended 98 candidates out of which two candidates refused to join and against those two vacancies on account of refusal of those two candidates the appointments from waiting list were made and as such the list remained confined to 98 candidates. In this regard the observations of Apex Court in *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, , are very relevant which read as under :

"It is easy to visualise that if requisition is for 11 vacancies and that results in the initiation of recruitment process by way of advertisement, whether the advertisement mentions filling up of 11 vacancies or not, the prospective candidates can easily find out from the office of the Commission that the requisition for the proposed recruitment is for filling up 11 vacancies. In such a case a given candidate may not like to compete for diverse reasons but if requisition is for larger number of vacancies for which recruitment is initiated, he may like to compete. Consequently, the actual appointments to the posts have to be confined to the posts for recruitment to which requisition is sent by the Government. In such an eventuality, candidates in excess of 11 who are lower in merit list of candidates¹ can only be treated as wait listed candidates in order of merit to fill only the 11 vacancies for which recruitment has been made. In the event of any higher candidate not being available to fill the 11 vacancies, for any reason. Once the 11 vacancies are filled by candidates taken in order of merit from the select list that list will get exhausted, having served its purpose."

While making aforesaid observations the Apex Court agreed with the contention that while sending a requisition for recruitment to posts the Government can keep in view not only actual vacancies then existing but also anticipated vacancies. However, in the instant case before us as stated above the last two appointments made by the Government were made within the limit of 98 candidates and not beyond that. No doubt the appointment orders were issued

on 20.8.1988 but it cannot be ruled out that the process must have been started immediately after refusal of two candidates to join the service and judicial notice can be taken that it is a time consuming process at various levels before the appointment orders are issued as it has to be filtered at various levels from selection to appointment and therefore, the process must have commenced within the lifetime of the panel. There can be so many reasons for not joining the service which cannot be anticipated and differs from case to case. It may be death of a candidate or joining a better service or changing of his mind to join the service or so on. The Government has filled up the quota of Scheduled Caste and General both as the two candidates who refused to join the service belonged to Scheduled Caste and General both and there was rationale behind it. The policy decision regarding the appointment of these two candidates cannot be describe as arbitrary. But if this analogy is extended any further, there will be no end.

18. Regarding the appointment of 25 candidates from the waiting list as suggested by the High Court, the submission of Mr. Singh is that the Government is bound to make appointments of the candidates in consultation with High Court as it was its duty under Rule 21 of the Niyamawall. There are catena of authorities of the Apex Court that the advice of the High Court is binding on the Government under the provision of Article 235 of the Constitution while interpreting the term "control". The term "control" has been interpreted regarding disciplinary matters of the officers of subordinate Courts with respect to dismissal, reduction in rank, termination of service, etc. and the High court has to decide as to who is to be dismissed terminated after due enquiry and the Government is bound to accept the advice of the Council of Ministers. Of course, the President can return the proposal of the Council of Ministers for reconsideration but second time the President has to accept it (Kindly see Article 74 for the analogy). Similarly the Government can also sent for reconsideration to the High Court or for discussions but ultimately High Court's advice would be mandatory on the Government in disciplinary matters. The leading authority on the point is Samsher Singh Vs. State of Punjab and Another, .

19. As regards the submission of Mr. Singh, according to him there were 194 vacancies in 1985-86 and this fact has not been denied in the counter- affidavit, therefore, more candidates could have been taken against those vacancies, this submission is of no avail as subsequent examinations have been held and number of vacancies have been shown for those examinations. Had the vacancies been 194, the advertisement would have been issued for the same but since only 75 vacancies have been advertised, this argument is of no consequence.

20. Another aspect of the case is that the High Court knew the needs and whether the Government was aware of the paucity of the officers in the field and whether the administrative opinion of the High Court was binding on the Government is to be seen. Judicial notice can be taken in this state that there is

large pendency of the cases and there is also delay in recruitments but in the present case the Examinations of 1986-87 had been held by the time the request was made by the High Court. The High Court should have made the request immediately after declaration of the result of 1985 Examination and not in November, 1988 when so many circumstances intervened. Even the request of the High Court on administrative side can be refused by the Government if the request does not fall within the parameters of the reasonable time and considering reasonableness of time and also the fact that the request has been made after lapse of one year we are of the considered view the request of the High Court in the facts and circumstances of the case was rightly refused but ordinarily if the request is made within time, the Government is bound to give due considerations in view of the latest trend expressed by the Apex Court in Supreme Court Advocates-on-Record Association and Anr. v. Union of India JT 1993 (5) SC 479). The relevant observations of that case at page 664 are quoted below :

"To enable proper exercise of this function of appointment of "other Judges", it is necessary to make a periodical review of the Judge strength of every High Court with reference to the felt need for disposal of cases, taking into account the backlog and expected future filing. This is essential to ensure speedy disposal of cases, to "secure that the operation of the legal system promotes justice", a directive principle "fundamental in the governance of the country" which, it is the duty of the State to observe in all its actions; and to make meaningful the guarantee of fundamental rights in Part III of the Constitution. Accordingly, the failure to perform this obligation, resulting in negation of the rule of law by the laws delay must be justifiable, to compel performance of that duty."

21. Similarly on the same analogy if the High Court reviews the strength of the Judges of the lower Courts in order to give speedy justice at grass route level to the public at large, the Government is not lightly to reject its opinion. The reference is being made in this case as recommendation of the Administrative Committee is figuring regarding strength of the officers and filling up of the vacancies.

22. Considering the facts and circumstances of the case we are of the opinion that the request made by the High Court in the instant case was late and therefore, it was not in consonance with the principles ingrained under Article 14 of the Constitution.

23. Learned Counsel for the petitioners placed strong reliance on Prem Singh and Others Vs. Haryana State Electricity Board and Others, where the advertisement given was for 62 posts the Board made appointments for 138 posts and when the selection process was started, anticipated vacancies were not taken into account. The selection process could be started for clear vacancies and anticipated vacancies but not for the future vacancies. 87 appointments made against the future vacancies (newly created) were held invalid and even when filling up of more posts, than advertised is challenged the Court may not, while

exercising its extra-ordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment. Thus, the facts of this case are distinguishable and the ratio is not applicable.

24. Learned Counsel also placed reliance on Miss Neelima Shangla, Ph. D. Candidate Vs. State of Haryana and Others, . This case is also not applicable to the facts of instant case as in this case PSC (Public Service Commission) withheld names of petitioners and others on the ground of limited number of vacancies whereas under the Rules of that State the Public Service Commission was duty bound to send the names. In the instant case it is not that the Commission has withheld the name of petitioners.

25. Besides these, learned Counsel for the petitioners cited a number of cases of this Court, other High Courts and Apex Court but they need not be referred and discussed as the facts of those cases are distinguishable to the facts of the instant case and the ratio laid down in those cases being in different context does not help the present petitioners.

26. In view of the discussions made and reasonings given above we are of the considered opinion that both these writ petitions lack merits consequently both writ petitions are dismissed. Petitions dismissed.