

(2001) 04 AHC CK 0012

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 50352 of 1999

Bhavga Srivastava and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 1 UPLBEC 922

Hon'ble Judges : Yatendra Singh, J

Bench : Single Bench

Advocate : R.G. Padia, for the Appellant; S.C. and V.K. Shukla, for the Respondent

Judgement

Yatendra Singh, J.—This is a writ petition for cancelling the selection of Respondent Nos. 3 to 8 which was made in pursuance of the interview held on 25th October, 1999. The facts are as follows.

2. The District Magistrate, Sant Kabir Nagar published an advertisement on 10th August, 1999 for filling up the post of junior clerks in his Collectorate. These posts admittedly are out side the purview of Public Service Commission, and are covered by U.P. Procedure for Direct Recruitment for group-C Posts (out side the purview of the Uttar Pradesh Commission) Rules, 1998 (the Rules). A written test was held on 30th December, 1998 and successful candidates were called for interview. The interview was held on 12th March, 1999 and thereafter final select list was published on 16th March, 1999. Six persons were selected. Five of them are petitioners here and sixth persons was respondent No. 8. However, no appointment letters were issued and the petitioners received a fresh letter dated 22nd October, 1999 on 23.10.1999 for appearing in the interview again on 25.10.1999. The subsequent interview was held and thereafter fresh selection list was published on 28th October, 1999. In this list none of the petitioners were selected and in their place respondents No. 3 to 7 were selected. Respondent No. 8 was again selected. This subsequent interview was held in pursuance of the

Government Order dated 19th April, 1999. According to the petitioner they had no knowledge about the same and they came to know about it subsequently. According to this letter the earlier interview was cancelled as the selection committee was not properly constituted. The petitioners have challenged this letter dated 19.4.1999, subsequent interview and the results on the basis of this subsequent interview.

3. I have heard Dr. R. G. Padia, learned Counsel for the petitioners learned Standing Counsel for respondents No. 1 and 2 and Sri V. K. Shukla, learned counsel for the respondent No. 3. Following points arise for determination in this case:

(i) Whether the respondent No. 8 never appeared in the interview and he could not be selected?

(ii) Whether the petitioners had appeared in the subsequent interview without there being any objection? Are they estopped from challenging the same?

(iii) Whether the petitioners have any right to challenge the subsequent selection list?

(iv) Whether the earlier selection list was rightly cancelled?

4. I have considered the aforesaid submission made by the parties. The respondents No. 1 and 2 have stated in their counter affidavits that the respondent No. 8 was selected as he got highest marks in the written examination but he neither joined the services nor got his medical examination done. He has not been appointed. In view of this there is no necessity to consider this point.

5. The respondents submit that petitioners had appeared in the subsequent interview without any objection and they are estopped from challenging the selection. It is true that the petitioners appeared in the subsequent interview without any objection. The petitioners were given notice dated 22.10.1999 for the subsequent interview. It was served upon them on 23.10.1999. They were asked to appear in the interview on 25.10.1999. There was only one day in between. The petitioners could not take any legal proceeding and as such it would be inequitable to estop the petitioners from raising the illegality of the subsequent interview.

6. It is true that the selection list does not confer any right. However the fact remain that the petitioners were selected and the vacancies continued. The selection list cannot be cancelled arbitrarily. It can only be cancelled on reasonable grounds. In case the selection list has been cancelled on arbitrarily grounds the person already selected has right to maintain the writ petition.

7. Sri Shukla, Counsel for respondent No. 7 submitted that earlier selection was mala fide and for extraneous grounds. It was rightly cancelled.

8. The selection has been cancelled by the order dated 19.4.1999. It does not

indicate that earlier selection was cancelled as it was mala fide or on extraneous consideration. It is neither the case of the State Government nor any documents were produced on behalf of the State to show that earlier selection was bad for extraneous consideration. The records were summoned. Nothing was pointed out during argument that there was any extraneous consideration while making earlier selections or it is bad for malice in fact. The respondents have not cancelled the earlier selection on the ground that there was any extraneous consideration in making the selection. It was done on the ground earlier selection committee was not properly constituted. There is no merit in, this contention.

9. Sri Shukla submits that the petitioner No. 1 is nephew of the earlier Chairman and as such selection is bad. One does not know whether at the time of interview the Chairman was present or not. If he had excused himself then there was no illegality. The State Government does not say so. There is nothing to show that earlier Chairman participated while giving marks to the petitioner No. 1. There is no allegation about any other selection. This submission of Sri Shukla fails.

10. The only reasons for cancelling the earlier selection was that the selection committee was not properly constituted. The validity of the order is to be seen only on this ground. Petitioners dispute it according to them it was properly constituted. According to the respondents, the Collector could nominate the members of the selection committee but could not nominate the Chairman of the Committee because the Collector was only the appointing authority but has not the head of the department. They submit that:

The appointing authority could nominate the Chairman of the selection committee only if he was also the head of the department.

The Collector should have himself conducted the selection as the Chairman and could not nominate SDM to Chair the selection committee. There is no dispute regarding members of the selection committee. Dispute is regarding Chairman of the committee.

11. I do not wish to go in this controversy. It is not denied that the Chairman of the Selection Committee was nominated by the Collector. Petitioners had no role in that. Even if the case of the respondents is accepted. It would at the most legally constituted committee or a defecto committee. The Selections made by such Committees cannot be cancelled as explained in the Apex Court in decision reported in Gokaraju Rangaraju Vs. State of Andhra Pradesh, . In view of this the earlier selection could not be cancelled. The result is that the Government order dated 19.4.1999 and fresh select list dated 28.10.1999 are hereby quashed. The respondents may appoint the petitioners in accordance with law.

12. I have already set aside the selection of the respondents No. 3 to 7 made on 28.10.1999. The respondents thereafter was appointed and are working for two years. In view of this respondents may, if possible, adjust the respondent Nos. 3 to over any other post. It is however made clear that in case they are so adjusted they will be treated as junior than the petitioner. The petitioners will be

treated as senior than the respondent Nos. 3 to 7. However, they will not be entitled to get any salary for the period that they have not worked.

13. With these observation, this writ petition is disposed of.