

(2006) 03 AHC CK 0085

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5024 of 2005

Chandra Pal Singh and Others

APPELLANT

Vs

U.P. Power Corporation Ltd. and Electricity Service
Commission, U.P. Power Corporation Ltd.

RESPONDENT

Date of Decision : 06-03-2006

Acts Referred:

Citation : (2006) 7 AWC 7220

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : S.K. Chaubey and Kharag Singh, for the Appellant; R.D. Khare and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—This writ petition has been preferred for a writ of mandamus commanding the respondents to issue appointment letters to the petitioners in pursuance of the Select List published on 23.8.2004. After Counter and Supplementary Affidavits were filed, an application for amendment has been filed for quashing of the orders dated 29.3.2005 and 4.7.2005 appended as Annexures C.A. 9 to the Counter Affidavit and Annexure S.C.A 1 to the Supplementary Counter Affidavit respectively.

Backgrounds of the case

2. The facts of the case canvassed before this Court are that the erstwhile U.P. State Electricity Board had sent two requisition letters on (i) 1.1.1996 and (ii) 14.1.1997 to the Electricity Service Commission for holding selections for appointment of 118 "Fero-boys"/Peons/Runners. Consequently, advertisement No. 2 had been published on 30.5.1998 by the Electricity Service Commission for filling up the vacancies of class IV employees as, "Fero-boys"/Peon/Runner etc. in the respondent-Corporation by persons belonging to backward class category.

3. After issuance of the aforesaid advertisement, U.P. Rajya Vidyut Parishad

Karyalaya Chaturth Shreni Karmachari Sangh Niyamawali, 1998 (hereinafter referred to as the "Service Regulation Act, 1998") was framed According to the said Regulations, post of "Fero-boys" was to be filled up by promotion from amongst the members of lower cadre. In the meantime, the post of Runner was re-designated as Peon, as such, after coming into force of the aforesaid Regulations, the number of vacancies reduced from 118 to 106.

4. The petitioners participated in the recruitment/selection proceedings. The results were declared vide Select List published on 23.8.2003 in which the petitioners were declared as selected candidates.

5. It appears that after the selection was made by the Electricity Service Commission for filling up the aforesaid posts, the U.P. Electricity Reforms Act, 1999 (hereinafter referred to as "the Reforms Act") came into force w.e.f. 14.1.2000. Thereupon, the State Government also notified U.P. Transfer Scheme, 2000, which was effective from 14.1.2000. In the meantime, the State Government also imposed a ban on any appointment, hence, the Select List had not been discharged even after its publication.

6. The grievance of the petitioners is that even after the ban was lifted by the State Government vide order dated 15.1.2004, they were not given appointment. As a consequence of lifting of the ban on appointments, the U.P. Power Corporation Ltd., issued letter dated 3.2.2004 by means of which, the process of appointment started.

7. Aggrieved by the action of the respondent-Corporation, the petitioners moved representations for relief of providing them appointment in pursuance of the Select List but their representations were not considered and various posts were further advertised without exhausting the earlier Select List dated 23.8.2003, as such, the present writ petition has been filed.

Contention of Counsel for the petitioner

8. Counsel for the petitioner submits that after hearing the parties, the Court vide interim order dated 3.2.2005 had directed the respondents to issue appointment letters to the petitioners in pursuance of the Select List dated 23.8.2003 or to show cause by next date of listing but neither the respondents have shown cause by filing counter affidavit nor have issued appointment letters to the petitioners. It is urged that since interim order of the Court dated 3.2.2005 was not complied with by the respondents, the petitioners filed Civil Misc. Contempt Petition No. 1119 of 2005 in which notices have been issued. After receipt of the notices, the respondents have filed counter affidavit disclosing the fact for the first time that the entire Select List has been cancelled vide orders dated 29.3.2005 and 4.7.2005, appended as Annexures C.A. 9 to the Counter Affidavit and Annexure S.C.A 1 to the Supplementary Counter Affidavit respectively. These orders have also been challenged by amendment application, as stated above.

9. Counsel for the petitioners contends that the cancellation of entire Select List is arbitrary. He submits that from the aforesaid facts, the legal questions to be determined in this writ petition are:

(i) whether the petitioners have legal right of appointment by virtue of Select List dated 23.8.2003 ? and

(ii) whether the respondents have right to cancel en block the select List, in an arbitrary manner, as contained in the impugned orders?

10. In so far as the first question raised by the counsel for the petitioners is concerned, he submits that the petitioners have legal right to be appointed as there is no statutory embargo upon appointment of the petitioners after declaration of Select List, hence, cancellation of the Select List by the respondents, in arbitrary manner, is not justified, as such, it is urged that the impugned orders are liable to be quashed and the petitioners are liable to be held entitled for appointment by virtue of inclusion of their names in the Select List dated 23.8.2003.

11. He further submits that it is settled principle of law that mere selection does not provide indefeasible right to the petitioners for being appointed, but on the other hand, it does not mean that the respondent-Corporation has the power to cancel the Select List in an arbitrary manner.

12. As regards the second question, he contends that it is closely related with the first question and, therefore, his arguments in respect of first question would also apply to the second question as well. He submits that the perusal of entire record of the writ petition shows that the respondents have acted arbitrarily in cancelling the entire Select List, specially in the case where the selection through advertisement had to be made in order to fill up the quota meant for Backward class candidates. He has placed reliance on the decisions of the Hon'ble Supreme Court in Union of India (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another, Sandeep Singh v. state of Haryana and Ors. 2002 (10) SCC 449 ; Union of India (UOI) and Others Vs. Kali Dass Batish and Another, ; Girish Chandra Srivastava v. State of U.P. and Ors. 1991(2) UPLBEC 1429; and S.C. Shanersan Das v. Union of India and Ors. 1991(2) UPLBEC 933 in support of this contention. The judgments relied upon by the counsel for the petitioner would be dealt with at later part in this judgment.

Contention of Counsel for the respondents

13. Counsel for the respondents submits that a bare perusal of the Reforms Act as well as transfer scheme would demonstrate that the erstwhile U.P. State Electricity Board ceased to exist and in its place independent Corporations were formed and registered under the Indian Companies Act, 1956. By virtue of aforesaid formation of new Corporations employees of the erstwhile U.P. State Electricity Board were also transferred to the newly created Corporations along with work in hand. In this situation, the posts, for which selections were held,

came to be abolished. However, irrespective of this fact, the candidates, who participated in the selection process for filling up 118 vacancies, earlier moved applications/representations before the U.P. Backward Commission and also filed writ petitions before High Court, wherein different orders were passed from time to time. Due to this contingency and pendency of litigation, no order could be passed with regard to the selection held by the aforesaid Service Commission, earlier.

14. It is further submitted that the U.P. Backward commission passed orders on applications of some of the candidates on 25.4.2000, 12.1.2001 and 19.1.2001 directing that entire selection be cancelled and the complainants be interviewed again and only thereafter, the merit list be prepared. The aforesaid orders have been collectively appended as Annexure C.A. 4 to the Counter Affidavit.

15. Counsel for the respondents has also brought to the notice of the Court the orders passed by Lucknow Bench of this Court passed in various writ petitions filed by some of the candidates, who had also participated in the selection process. One of the order passed by Lucknow Bench of the Court filed along with Annexure C.A. 5 to the Counter Affidavit is as under:

U.K. Dhaon, J.

Heard learned Counsel for the petitioners and Sri H.K. Pandey, Advocate who has accepted notice on behalf of the opposite parties.

Grievance of the petitioners is that although result of 400 candidates who also applied against the same advertisement for different posts have been declared by the opposite parties but result of the petitioners has not been declared so far.

List this petition in the 2nd week of January, 2002/

In the meantime, if there is no impediment, the opposites parties will declare the result of the petitioners also.

Sd/- U.K. Dhaon, J. 20.11.2001.

16. It is urged that in the meantime, the State Government also added certain "castes" in the list of members of Scheduled Caste, Scheduled Tribes and Backward class which was also made applicable to the U.P. Power Corporation Ltd. Subsequently, order of the Backward Commission was challenged in Civil Misc. Writ Petition No. 3257 (S/S) of 2003 before the Lucknow Bench of this Court. Vide judgment and order dated 16.3.2003, copy whereof has been appended as Annexure C.A. 7 to the Counter affidavit, Lucknow Bench of this Court has held that the recommendations of Backward Commission be ignored for declaration of results and thereafter the results be declared. In compliance of the direction of Lucknow Bench of this Court, results were declared by the Electricity Service Commission on 23.8.2003.

17. Sri R.D. Khare, counsel for the respondents then urged that after creation of State of Uttaranchal w.e.f. 25.8.2000, addition of certain "castes" in the list of

members of Scheduled Caste, Scheduled Tribes and Backward Class under the Act No. 4 of 1994 and also due to abolition of vacant posts w.e.f. 14.1.2000, there remained no vacancy against no appointment could be made in pursuance of the Advertisement No. 2/Vsa/98, as such, result of the examinations were rightly cancelled. He submits that it is well settled principle of law that a person does not get right to be appointed in Government service merely because his name finds place in the Select List/Merit List. He further urged that even if any selection process is made and the Select List is declared, the person whose name finds place in the Selection List does not acquire any right to be appointed. In support of this contention, he placed implicit reliance upon S.C. Shanersan Das "s case (supra) and Ludhiana Central Co-operative Bank Ltd. V. Amrik Sinsh and Ors. 2003 98 FLR 1186.

18. Reference has also been made by Sri Khare to the judgment rendered by a Division Bench of this Court in Civil Misc. Writ No. 32135 of 2003 decided on 3.12.2003 in Sanjeev Kumar and Ors. v. Union of India and Ors. 2004(1) ESC 402 wherein it has been held the mere selection does not confer any right of appointment.

Conclusions:

19. It is admitted case of the parties that the petitioners had not been issued appointment letters pursuance to result of the selection. Parties are also not at variance on the issue that the State Government had imposed ban and that due to creation of State of Uttaranchal and addition of certain castes to the list of members of Scheduled Casts, Scheduled Tribes and Backward Class, the Select List lost its meaning. Regard may also be had to the fact that the Backward Commission, as well as Lucknow Bench of this Court, in the meantime, had issued various directions which also proved to be an impediment till all the matters were decided and ultimately, the Lucknow Bench of this Court ordered publication of results ignoring the directions of U.P. Backward Commission.

20. In the circumstances, the task of State Government was like putting square pegs in round holes. There were different directions in the writ petition filed by some of the candidates before the High court and in the applications before the Backward Commission. To comply with divergent orders in the same matter, in such circumstances, was impossible for the State Government. Consequently, after doing all the mathematics, the State Government came to the conclusion that no vacancy existed after addition of new castes in the list of members of Scheduled Castes, Scheduled Tribes and Backward class as well as in view of creation of State of Uttaranchal.

21. Following the dictum spelt out by the Hon"ble Apex court, I am of the opinion that a person has no legal right to appointment by virtue of his name appearing in the Select List, unless and until appointment letter is issued to him. The Court is also of the view that as no appointment letters were issued to the petitioners, they have no legal right of appointment, particularly when no vacancy existed

due to the changed circumstances, as such, this Court cannot issue any direction to the State Government for issuance of appointment letters to the petitioners.

22. In so far as second question is concerned, the respondents in the changed circumstances could cancel the Select List, en block. The Select List cannot remain alive ad infinitum and its life expires after one year. There is no arbitrariness in cancellation of the Select List, which has been cancelled for valid reason beyond the control of the State Government.

23. For the reasons stated above, the writ petition is dismissed. No order as to costs.