

(2002) 08 AHC CK 0219
In the Allahabad High Court
Case No : C.M.W.P. No. 27361 of 1993

Chotey Lal and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 09-08-2002

Acts Referred:

Citation : (2002) 5 AWC 3931

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Ashok Khare, for the Appellant;

Judgement

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

2. Petitioner Nos. 1, 2, 3 and 5 were employed as Assistant Wasil Baqi Navis under the Collectorate, Allahabad. They had worked for different periods during the years 1983 to 1987. In 1987, a list of selected candidates from amongst Seasonal Assistant Wasil Baqi Navis was prepared by the District Magistrate, Allahabad, which is Annexure-2 to the writ petition.

3. The contention of the Petitioners is that though there were large number of substantive vacancies in the clerical cadre existing in the Collectorate, Allahabad and they being selected were not granted appointment and no work has been taken from them subsequent to 31.7.1987 inspite of repeated reminders.

4. Aggrieved by the aforesaid situation, the Petitioners along with other persons filed Writ Petition No. 7867 of 1987 in this Court with the following prayers:

(i) issue a writ, order or direction in the nature of mandamus commanding the Respondent to regularise the Petitioner's services by appointing them as clerks, in the Collectorate of Allahabad against permanent vacancies ;

(ii) issue a writ, order or direction in the nature of prohibitory injunction restraining the Respondents from holding any interview and from preparing any fresh list and making any appointments of clerks etc. in Collectorate, Allahabad,

in pursuance of the notice dated 30th of March, 1987 (Annexure-15) or any other such notice issued in the names of other persons ;

(iii) issue a writ, order or direction quashing the notice dated 30.3.1987 (Annexure-15 to the writ petition) ;

(iv) issue a writ of mandamus commanding the Respondents to issue an order to the effect that the services of the Petitioners stand regularised and to issue necessary orders in respect of such regular appointments as clerks in the Collectorate, Allahabad, in the name of Petitioners ;

(v) issue any other writ, order or direction which this Hon''ble Court may deem just and proper in the circumstances of the case ;

(vi) award the costs of the petition to the Petitioner.

5. The aforesaid writ petition was dismissed by a Division Bench of this Court, vide judgment and order, dated 5.3.1990. In the meantime, the Petitioners and some selected candidates in the select list, dated 31.1.1987, filed a representation before the District Magistrate, Allahabad, as well as before the Board of Revenue. On the said representation, an enquiry was conducted by the Board of Revenue, thereafter an order, dated 10.9.1992 (Annexure-4 to the writ petition) was passed by the Board of Revenue directing departmental action to be taken against some persons and further directing that appointment should be granted to the candidates from the select list, dated 31.1.1987 against the existing vacancies as per seniority position in the said list. The merit placement of the Petitioner Nos. 1 to 5 in the select list, dated 31.1.1987 is at serial Nos. 4, 5, 12, 17 and 10 respectively.

6. The Petitioners contend that inspite of the order passed by the Board of Revenue, none of them have been granted appointment and on the contrary, persons much lower than the Petitioners in the select list, dated 31.1.1987, have been granted appointment on 28.2.1993 and 8.7.1993, e.g. appointment has been granted to one Maqsood Ahmad placed at serial No. 13, who is lower in the merit placement than the Petitioner Nos. 1, 2, 3 and 5. It is further averred in paragraphs 14, 15 and 16 to the writ petition that by order, dated 8.7.1993, appointment has been granted to ten persons including 3 persons, whose names were in the select list, dated 31.1.1987, namely, Imtiaz Ahmad, Anirudh Pratap Singh and Surendra Kumar Chaurasia whose names are at serial Nos. 22, 15 and 16 in the select list, dated 31.1.1987. The remaining persons, in the order, dated 8.7.1993, are promotees from Class IV against promotion quota. It is alleged in the writ petition that grant of appointment to 4 persons as mentioned in the orders, dated 28.2.1993 and 8.7.1993 is without any justification, they being junior and lower in merit than the Petitioners in the select list, dated 31.1.1987.

7. In paras 23, 24 and 25 to the writ petition, mala fide has been pleaded and in paras 23 and 24, it has been stated as under:

23. That it is also pertinent to point out that Sri Maqsood Ahmad is the son of Sri

Niyaz Uddin the Stenographer to the District Magistrate, Allahabad. Further Sri Imtiaz Ahmad is the nephew of the personal peon of the Collector, Allahabad. Sri Anirudh Pratap Singh is the son of Shri Ram Singh, the Excise Head Clerk in the Collectorate, Allahabad. Sri Surendra Kumar Chaurasiya is the son of Sri Bakey Lal Chaurasia the Naib Nazir (Cash) in the Collectorate, Allahabad.

24. That the aforesaid four persons have been granted appointment in total derogation to the merit placement in the select list dated 31.1.1987, while ignoring the claims of the present Petitioners solely on account of the reasons specified in the preceding paragraphs.

8. In view of the allegations of malice and illegalities alleged to have been committed by the Respondents, this Court directed the standing counsel on 15.7.1999 to produce the entire records relating to the selection held on 19.7.1999. On 19.7.1999 Sri S. N. Srivastava, the then standing counsel had made a statement that he had informed the District Magistrate who in time informed him that he had no information about the order dated 15.7.1999 passed by this Court for producing the record relating to the selection in question. Sri S. N. Srivastava, the standing counsel, as he then was, stated that the District Magistrate had informed him that he would send the record on the next date fixed by the Court. Thereafter, the case was directed to be listed on 23.7.1999. Both the orders dated 15.7.1999 and 19.7.1999 were passed by Hon''ble V. M. Sahai, J., on 23.7.1999 when the case was listed before him. His Lordship had passed the following order:

List this petition after three weeks before another Bench of which I am not a member after getting nomination from Hon''ble the Chief Justice.

9. After getting nomination from Hon''ble The Chief Justice, this case was listed on 8.8.2002. The standing counsel prayed that he would place the record before this Court by tomorrow. Therefore, an order was passed on 8.8.2002 for listing the case after lunch, the next day i.e., 9.8.2002.

10. The standing counsel has neither produced the record relating to selection held on 19.7.1999 nor was able to give effective reply to the argument of the Petitioner as to how subsequent to selection the persons below them in the select list dated 31.1.1987 have been appointed.

11. Admittedly, the Petitioners were senior to the persons who have been given appointment from the select list, dated 31.1.1987.

12. From the conduct of the Respondents, it is clear that they are concealing the material facts from this Court and have no answer to the mala fides alleged by the Petitioners. The action of the Respondents is discriminatory, illegal and unjustified. The Respondents cannot be permitted to make any discrimination in the matter of employment. The Petitioners being higher in the merit are entitled to be appointed and Respondents cannot be allowed by this Court to appoint their kith and kin and not to give appointment to the meritorious candidates,

who are running from pillar to post.

13. Once the selections were being made from the select list, dated 31.1.1987, the Respondents should have appointed the candidates strictly according to the merit and seniority and any deviation from the same, cannot be sustained by this Court.

14. In view of the facts stated above, it is directed that Respondent No. 2 shall pass appropriate orders on the representations of the Petitioners in the light of the observations in this order for appointment of the Petitioners in the clerical cadre, in the Collectorate, Allahabad.

15. With the aforesaid directions, the writ petition is disposed of. No order as to costs.