

(2005) 02 AHC CK 0111

In the Allahabad High Court

Case No : Special Appeal No. 99 of 2005

Conservator of Forest and Regional Director, Chief
Conservator of Forest, Principal Chief Conservator of Forest
and State of U.P.

APPELLANT

Vs

Pankaj Kumar Srivastava

RESPONDENT

Date of Decision : 17-02-2005

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2005) 3 AWC 2429 : (2005) 2 ESC 1289

Hon'ble Judges : Vikram Nath, J;S. Rafat Alam, J

Bench : Division Bench

Advocate : Ashok Mehta and Abhinav Upadhyaya, for the Appellant; T.P. Tiwari, R.K. Ojha and V. Singh, for the Respondent

Final Decision : Allowed

Judgement

S. Rafat Alam and Vikram Nath, JJ.—This special appeal has been filed against the judgment of the learned Single Judge dated 27.4.1998 allowing the Writ Petition No. 10199 of 1996 and directing the respondents therein to fix the date for interview within a reasonable time with regard to selection for the post of Forester (Van Daroga) of the candidates whose results have been declared.

2. In short, the facts of the case are that the Conservator of Forest/Regional Director, Eastern Circle, Gorakhpur issued letter dated 22.12.1994 to the eight District Employment Officers of the region inviting four names from each District Employment Exchange for filling up three posts of Forester (Van Daroga) by direct recruitment. Pursuant thereto names were forwarded from each district and written examinations were held on 04.01.1995. On the basis of the said written examination ten candidates were called for interview to be held on 05.01.1995, however, the interview was not held on the said date and was postponed.

3. In the meantime a large number of writ petitions were filed, in which thousand

of class III and IV employees of the forest department, who had been working for decades in the state on daily wage basis or as temporary/ad hoc employees had claimed regularization and equal pay for equal work. The leading case was of Putti Lal v. State of U.P. and Ors., Writ Petition No. 15302 of 1995 in which an interim direction dated 21.08.1995 was issued by a learned Single Judge of this Court directing the respondents therein to draw up provisional but equitable scheme for absorption and regularization of the petitioners and similarly situate persons taking into consideration their length of service, qualification, experience and other relevant facts.

4. The State of U.P. preferred special appeal against the aforesaid interim order in the case Putti Lal, which was registered as Special Appeal No. 653 of 1995. A Division Bench of this Court vide order dated 29.09.1995 after hearing both the sides directed the State Government to file counter affidavit within two months and to formulate a scheme for absorption of the employees, who had been working for a long period. It also stayed the operation of the order dated 21.08.1995 of the learned Single Judge with further direction that the services of the petitioner-respondents therein shall not be terminated and they will be paid their salary and also restrained the government from making any appointments by directing that no fresh selections or appointment shall be made on the posts in question till further orders.

5. The State Government following the direction of the Division Bench dated 29.09.1995 passed in the Special Appeal No. 653 of 1995 issued direction dated 01.12.1995 to the Principal Conservator of Forest to ensure that no appointments are made on any posts falling in category "C" or "D" by direct recruitment. Consequent thereto the Principal Conservator of Forest issued letter dated 19.12.1995 to all the Chief Conservator of Forest and also all the Conservator of Forest to strictly follow the order of the High Court as well as the State Government. All this was done in order to furnish a scheme for absorption of the employees working on daily wages in the forest department on group "C" and "D" posts.

6. In the same continuation the Conservator of Forest and Regional Director, Eastern Region vide letter dated 09.01.1996 informed the District Employment Officers in response to their queries regarding declaration of results of the examination for selection to the posts of Forester that the same have been stayed pursuant to the orders passed by the High Court. Later on the Chief Conservator of Forest, Eastern Region vide letter dated 17.01.1996 informed the Conservator of Forest, Eastern Circle, Gorakhpur that as ban has been imposed by the State Government vide Government Order dated 01.12.1995 and also by the letter of the Principal Conservator of Forest dated 19.12.1995 on direct appointment on the posts of category "C" and "D", therefore, the entire proceedings for selection to the post of Forester be treated as cancelled.

7. Aggrieved by the said order the respondents to this appeal filed Writ Petition No. 10199 of 1996 praying therein for quashing the orders dated 01.12.1995,

09.01.1996 and 17.01.1996 and further for a direction to declare the result of the examinations held in January, 1995 for selection to the post of Forester. The impugned order dated 27.04.1998 has been passed in the said petition allowing the writ petition on the ground that the basis on which the order was passed canceling the proceedings for selection was based on misconstruction of the order of the High Court.

8. We have heard Sri Abhinav Upadhyaya, learned Standing Counsel for the appellant and Sri R.K. Ojha, learned counsel for the respondents and have also perused the record of the special appeal as well as the writ petition.

9. It has been contended by the learned counsel for the appellant-State that the examinations for the selection to the post of Forester had been rightly cancelled in view of the directions issued by the Division Bench of this Court in Special Appeal No. 653 of 1995 as there was a clear ban on fresh appointment on any category "C" and "D" posts and the post of Forester undisputedly falls in category "C". It is further contended on behalf of the appellant that the petitioner-respondents having not been appointed to the posts for which the selection was being held they had no legal right whether vested or otherwise to maintain the petition against the cancellation of the selection process as they had only participated in the selection process, which had never been completed and had been cancelled before finalization or issuance of appointment letters.

10. On the other hand, learned counsel appearing for the respondents has contended that the post of Forester was never the subject matter of dispute in the bunch cases headed by Putti Lal's case and further that the cancellation of the selection proceedings for the post of Forester was arbitrary and unreasonable. The further contention is that the respondents had a right to maintain the petition as the entire process had been arbitrarily cancelled without any justifiable reason.

11. We proceed to first consider whether the reason given by the appellant for canceling the selection process was just and proper or not and in case it was, then whether the respondents would still have a right to maintain the writ petition.

12. It is not in dispute that during the process of selection after the written test was held and before the interview could be held, a decision was taken to cancel the selection on the ground that in view of the orders of this Court in the case of State of U.P. v. Putti Lal the policy/rules regarding absorption of daily wagers against Groups "C" & "D" are to be submitted and, therefore, no appointment should be made through direct recruitment. In the case in hand, the State Government and the Forest Department on account of the reason that the daily wagers are to be regularized by framing rules in compliance with the judgment of the High Court, had taken decision not to proceed further with the process of selection for direct appointment to the post of foresters, therefore, it cannot be contended that the process of selection, so abandoned or cancelled, was without

there being any reasonable ground.

13. It will be relevant to take note of the fact that the special appeal of the State was partly allowed with a direction to appoint a committee to frame the scheme for absorption/regularization of daily wager Group "C" & "D" employees of the Forest department and to implement the same within six months vide judgment dated 10.12.1997 reported in State of U.P. and Others Vs. Putti Lal, Further the matter was carried to the Apex Court by the State of U.P. The State Government framed a set of Rules in exercise of powers conferred under proviso to Article 309 of the Constitution called "The Uttar Pradesh Regularization of Daily Wagers Appointment on Group "D" Posts Rules, 2001". Similar Rules for group "C" employees was also framed. These rules were placed before the Apex Court in the special leave petition. The Apex Court disposed of the special leave petitions according approval to the Rules framed by the State Government. The judgment of the Apex Court in the case of State of U.P. and Others Vs. Putti Lal, .

14. The petitioner-respondents have not alleged any mala fide against the appellant in deciding to cancel the selection. The only contention of the learned counsel for the respondents is that, the ground on which they propose to cancel the selection, in fact, did not exist as no daily wager was working on the post of Forester nor any daily wager could be regularized against the post of Forester.

15. We do not find any force in the submission for the reason that the post of forester is in Group "C" post i.e. Class III is not in dispute. It is also not in dispute that many daily wagers were working against Class III posts and in the scheme, copy of which is enclosed as Supplementary Affidavit, the post of Forester has been mentioned. We are, therefore, of the view that the cancellation of the selection for the post of Forester was rightly cancelled pending finalization of the regularization scheme under the orders of this Court in the case of Putti Lal. We now proceed to consider the second part of the argument as to whether the participants, who had appeared in the written examination, had a right to maintain the writ petition for declaration of results and to hold the interview.

16. Learned counsel for the appellant has relied upon a series of decisions of the Supreme Court wherein it has been held that mere participation in selection process does not confer any right in the candidate either to seek appointment or even to challenge any policy decision of the employer canceling the selection process. Reference is made to State of Andhra Pradesh v. D. Dastagiri and Ors. 2003 (2) Shankarsan Dash Vs. Union of India, Hanuman Prasad and Others Vs. Union of India (UOI) and Another, S. Renuka and Others Vs. State of Andhra Pradesh and Another, and Vice-Chancellor, University of Allahabad and Others Vs. Dr Anand Prakash Mishra and Others,

17. Shri R.K. Ojha, learned counsel for the respondents has strongly contended that assuming that respondents had no right to appointment but they could always challenge the decision of the State Government to cancel the selection as being arbitrary and without any reasonable basis. It is contended that in case the

decision of the State was arbitrary in canceling the selection process then this Court could always direct for setting aside the illegal and arbitrary decision of the State. Shri Ojha has relied upon the following decisions in support of his contention: -

(i) Amar Nath Singh v. Union of India 1998 (2) ESC 1240 (Allahabad);

(ii) Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others, and

(iii) Ram Darash Rai Vs. State of U.P.,

18. In all the above decision it has been held the mere fact that a candidate has applied for appointment to a post and appears for selection does not create any right in him that the selection process should continue and he inevitably be considered for appointment. However, it was held that where either the action of the State in canceling the selection was found to be mala fide or without any basis and arbitrary that the decision of the State for cancellation of selection process could be interfered with. None of the decisions apply in the facts of the present case where the State Government has given sound reasons for canceling the selection as it was framing a regularization/absorption scheme under directions of the Court.

19. It is settled legal position that mere selection does not confer any right to such selected candidates to claim appointment on the basis of the selection, so made. In the case of State of Andhra Pradesh and Ors. v. D. Dastagiri and Ors. (supra) the process of selection for the appointment on the post of Excise Constables was cancelled. The result was not declared and no selection list was published. On the challenge being made, the Division Bench of the Andhra Pradesh High Court granted relief and directed to consider the case of appointment against the existing vacancies. The Hon'ble Supreme Court observed that even if the selection process was complete and assuming that only select list was remained to be published, that does not advance the case of the respondents for simple reason that even the candidates, who are selected and whose names find place in the select list, do not get vested right to claim appointment based on the select list. It was further observed that it was open to the State Government to take a policy decision either to have prohibition or not to have prohibition in the State. If pursuant to a policy decision taken to impose prohibition in the State there was no requirement for the recruitment of Constables in the Excise Department, no body can insist that they must appoint candidates as Excise Constables. In these circumstances, the Apex Court held that the respondents cannot have any right to maintain the petition.

20. Therefore, in the fact of the case and also in view of the law that mere selection does not confer any legally enforceable right to such selected candidates, we are of the view that the order of the learned Single judge cannot be sustained.

21. In the result, this appeal is allowed. Consequently, the order of the learned Single Judge dated 27.4.1998 is set aside and Writ Petition No. 10199 of 1996 is dismissed. However, there shall be no order as to costs.