
(2014) 05 AHC CK 0121

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 26561 of 2014

Daulat Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 13-05-2014

Acts Referred:

Citation : (2014) 6 ADJ 783 : (2014) 5 AWC 5407

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : Arvind K. Pandey, Advocate for the Appellant

Final Decision : Dismissed

Judgement

B. Amit Sthalekar, J.—I have heard Sri Arvind K. Pandey, learned counsel for the petitioner and learned standing counsel for the respondents. The petitioner is aggrieved by order dated 29.3.2014 by which the claim of the petitioner for appointment on the post of Cook/Kahar has been rejected.

2. The petitioner alongwith others applied for the post of Cook/Kahar against four vacant posts. In the select list (Annexure-2 to the writ petition) the petitioner's name was placed in the waiting list. The four posts were filled up as the selected candidates had joined. Thereafter one Bittu Singh at serial No. 4 resigned after joining. It is against the vacancy created by the resignation of Bittu Singh that the petitioner is claiming his appointment on the ground that he is the only candidate in the waiting list.

3. From the documents on record, it is noticed that there were four posts in Class IV and the four selected candidates, who were above the petitioner, had joined. Thereafter selected candidate at serial No. 4 Bittu Singh resigned. Thus it is not a case where the selected candidate has not joined rather it is a case where the selected candidate joined and thereafter submitted his resignation. Therefore, it cannot be said to be a vacant post where the petitioner may be adjusted from the waiting list. After joining the post and then resigning, the post in question

shall be deemed to have been operated.

4. The Supreme Court in *State of Punjab Vs. Raghubir Chand Sharma and Another*, has held that where in respect of one post the first candidate in the select panel was not only offered but on his acceptance of offer came to be appointed and it was only subsequently that he came to resign, the panel ceased to exist and no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently. The relevant paragraph of the said judgment reads as under:

"4. We have carefully considered the submissions of the learned counsel on either side. In our view, the judgment rendered by the learned Single Judge as well as the Division Bench of the Punjab and Haryana High Court cannot be sustained. As rightly contended for the appellant-State, the Notification issued inviting applications was in respect of one post and the first candidate in the select panel was not only offered but on his acceptance of offer came to be appointed and it was only subsequently that he came to resign. With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select panel prepared, the panel ceased to exist and has out-lived its utility and, at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently. The Circular Orders dated 22.3.1957, in our view, relates to select panels prepared by the Public Service Commission and not a panel of the nature under consideration. That apart, even as per the Circular Orders as also the decision relied upon for the first respondent, no claim can be asserted and countenanced for appointment after the expiry of six months. We find no rhyme or reason for such a claim to be enforced before Courts, leave alone there being any legally protected right in the first respondent to get appointed to any vacancy arising subsequently, when somebody else was appointed by the process of promotion taking into account his experience and needs as well as administrative exigencies."

5. A Division Bench of this Court in the case in *Jagmohan Singh, Brij Raj Singh and Ramesh Singh (In Jail) Vs. State of U.P.* has held in para-6 as under:

"6. Although the provisions do not apply in terms, the college being a minority one, yet the principles might be applied as a good guide. It would be seen that the first candidate has joined and resigned and therefore, the process of selection on the basis of the panel had taken effect and it was only thereafter that a vacancy occurred. On this basis, seeking to keep the panel alive even thereafter would not be proper. If the first candidate had worked for four years instead of four months, the matter would not be logically or legally different."

6. In this view of the matter, the petitioner has no claim for appointment against the vacancy created by resignation of Bittu Singh, respondent No. 4 as such vacancy would not be treated to be a fresh vacancy.

7. The writ petition lacks merit and is accordingly dismissed.