

(2010) 06 AHC CK 0027
In the Allahabad High Court

Dhiraj Kumar Srivastava and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-06-2010

Acts Referred:

Citation : (2010) 06 AHC CK 0027

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Rakesh Sharma, J.—Heard learned Counsel for the petitioners and learned Additional Advocate General for the State.

2. Six weeks time is allowed to the respondents to file a detailed counter affidavit. Rejoinder affidavit be filed within two weeks thereafter.

3. List this case in the last week of August 2010.

4. Considering the facts and circumstances of the case, this Court does not want to interfere with the process of advertisement and selection which may go on for recruitment of regular candidates or regularisation of the Daily Wagers. As far as petitioners are concerned, the Court is impressed that they were appointed in the year 2004. They had applied for the post of Routine Grade Clerks in response to the advertisement published in the newspaper. They faced written test, typing test and interview etc., i.e. all those proceedings which are required for the direct recruitment was followed. It is noteworthy that in the year 2004, there were no Service Rule regulating Services and Appointments of ministerial employees in the office of Advocate General, Uttar Pradesh. The petitioners were put on the select list, they had undergone various tests required for the selection as Routine Grade Clerks, which is also not disputed by the learned Additional Advocate General. Several posts were available in the said office. Due to increase of litigation with the High Court, several Clerks were required to handle the day to day work in the office of the Advocate General. The six petitioners have

continued on their respective posts. Their work, conduct and performance has always found to be satisfactory and upto the mark since 2004. There appears to be nothing adverse or against the petitioners on the basis of which the Head of Department may remove them from services and infuse new blood in the body of the Office of the Advocate General, U.P. The whole exercise appears to be unnecessary and arbitrary.

5. A perusal of the judgment rendered by the Division Bench of this Court in Special Appeal Nos. 704 of 2005 (State of U.P. and Ors. v. Ashok Kumar and Ors.) and 1026 of 2008 (State of U.P. and Ors. v. Usha Pandey and Ors.) reveals that the dispute in these appeals relate to those two sets of employees, who were engaged as Daily Wagers in the office of the Advocate General, U.P. Such Daily Wagers were not appointed after following a proper procedure of selection i.e. issuance of advertisement, calling applications from eligible candidates, written test, typing test and interview meant for making direct recruitment in government department. In the case of the present petitioners, advertisement was published in the daily newspaper, applications were invited, large number of candidates had applied in response to the advertisement. After written and typing test 186 candidates were called for interview and after interviews were held, 60 persons were found fit and suitable for appointment as "Routine Grade Clerks" in the aforesaid department. Thus, the persons were appointed after undergone detailed direct recruitment process. These candidates eliminated other rival candidates appeared in a large number for selection. They were duly selected by the Selection Committee and appointed by the Appointing Authority.

6. This factual position is also not disputed by the State in para Nos. 20(c), 58 and 60 of the counter affidavit filed by the State in W.P. No. 10439 of 2005 Ashok Kumar and Ors. v. State of U.P. and Ors. (annexure-42 to this writ petition) and in the counter affidavit filed by the State in W.P. No. 14876 of 2005 Ashok Kumar and Ors. v. State of U.P. and Ors. (annexure-44 to this writ petition), a categorical admission has been made on behalf of the State that the candidates i.e. present petitioners have been appointed after going through the complete process of selection. This fact in the grounds taken in the Special Appeal No. 704 of 2005 (annexure-43 to the writ petition) wherein the respondents were those Daily Wagers Class III employees who had been engaged in the department without going through any process of selection, the stand of the State Government in the grounds of appeal was also that candidates i.e. present petitioners have faced the selection held after advertisement of the vacancies and after qualifying the regular selection of written test, typing test and interview.

7. Thus, in the opinion of the Court these candidates cannot be equated with the Daily Wagers or persons entering the department from the backdoor or through other sources. The spirit contained in various judgments of Hon'ble Apex Court and the order of the Division Bench dated 25.08.2008 is that Daily Wagers must undergo formal direct recruitment process so that their candidature be scrutinized. In the present case, the petitioners have already faced the detailed

selection process or Agni Pariksha before being inducted in the office of Advocate General, U.P.

8. In view of above, the petitioners shall not be required to undergo any fresh selection process again. They shall be permitted to continue in their services till further orders of the Court. However, it is open for the respondents to carry on with the recruitment process which was initiated by publishing advertisement in the daily newspapers.