
(2000) 05 AHC CK 0173
In the Allahabad High Court
Case No : Special Appeal No. 226 of 2000

District Judge, Firozabad

APPELLANT

Vs

Arun Sharma and others

RESPONDENT

Date of Decision : 03-05-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 3 AWC 2280 : (2000) AWC 2280 : (2000) 3 UPLBEC 2375 : (2000) 3 UPLBEC 2275

Hon'ble Judges : Lakshmi Bihari, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : Sunil Ambwani, for the Appellant; U.N. Sharma, for the Respondent

Final Decision : Disposed Of

Judgement

Binod Kumar Roy and Lakshmi Bihari, JJ.—This appeal, which was earlier registered as Special Appeal "No. 620 of 1999 (Defective), is directed against the Judgment and order dated 18.6.1999, passed by a learned single Judge in Civil Misc. Writ Petition No. 25349 of 1999 filed by the respondents herein for commanding the appellant--the sole respondent to the writ petition--to give them appointments in the next existing vacancies occurring in the Judgeship of Firozabad in accordance with law, with a further prayer to command the respondent not to make any fresh selection until they are absorbed.

2. The record discloses that a copy of the writ petition was served on 17.6.1998, during summer vacation by the petitioners in the office of the Chief Standing Counsel of the Court despite the well-known fact that there are three special counsel for defending this Court and the subordinate courts in any writ proceeding duly appointed by Hon'ble the Chief Justice. The stamp reporter of the Court, too failed to report this unfortunate lapse.

3. The writ petition was filed on 17.6.1999, and was placed before a learned single Judge on 18.6.1999. On that date, the learned single Judge passed the

impugned order :

"Learned counsel for the petitioner states that the controversy Involved is identical to the Writ Petition No. 37131 of 1997. Atar Singh v. District Judge, Firozabad. decided on 7.1.1998 and the only difference is that the petitioner is a Class-3 employee whereas in that case the petitioner was Class IV employee. This writ petition is finally disposed of with the direction that the petitioners who are at serial Nos. 52, 76 and 80 of the select list of one Class III employee shall be given appointment and according to rules any future vacancies offering in the Judgeship."

The Submissions :

4. Mr. Sunil Ambwani, learned counsel appearing in support of this appeal contended as follows :

(i) The impugned judgment is violative of principles of natural Justice. No copy of the writ petition was served either on him, he being one of the special counsel of the Court as well as Courts subordinate to this Court, or on other two learned counsel Mr. Sudhir Agrawal and Mr. K. Sirohi.

(ii) Had an opportunity been given to the appellant to file counter-affidavit, he would have shown to the learned single Judge that the life of the select list, which was prepared on 22.5.1992. was only one year under the Rules and even laid down by a three Judges Full Bench in Devendra Nath Srivastava v. State of U. P. 1996 UPLBEC 1037 and thus it ceased to be effective w.e.f. 22.5.1993. consequently the petitioners could not at all have been appointed and thus the mandamus issued commanding the appellant to appoint them out of that select list in which the writ petitioners figured at serial Nos. 52, 76 and 80. is apparently in the teeth of the ratio laid down by the Full Bench which was binding on the learned single Judge.

5. Mr. U. N. Sharma, learned counsel appearing on behalf of the respondents/ writ-petitioners, on the other hand contended as follows :

(i) True it is that the writ petition was disposed of on its merit in favour of the petitioners the day on which it was placed for admission before the learned single Judge without serving a copy of the writ petition on any of the special counsel of the High Court and the Courts subordinate to it and for this infirmity, the case may be remitted back for its readjudication in accordance with law.

(iii) the proposition mooted by Mr. S. Ambwani, however, is not applicable to the facts and circumstances of the instant case.

Our Findings :

6. Admittedly, no copy of the writ petition was served on any of three special counsel. The Chief Standing Counsel does not represent this Court or the Courts subordinate to it in the absence of any authority. The service of the copy of the writ petition on him was, thus, inconsequential.

7. Apparently, no opportunity was granted to the appellant to have his say in the matter on merits. The impugned Judgment, therefore, is apparently violative of principles of natural justice. Thus, it cannot be sustained and has to be aside.

8. True it is that now affidavits have been exchanged between the parties raising questions of facts and law both. We consider expedient to give opportunity to both sides to raise those questions before the learned single Judge giving an opportunity to the appellant to file counter-affidavit to the writ petition, with 30 days from today.

9. For the reasons aforementioned, we allow this appeal, set aside the impugned Judgment and order and remit back Civil Misc. Writ Petition No. 25349 of 1999.

10. Cost to abide by the result of the writ petition.

11. The office is directed to handover a copy of this order to Mr. Sunil Ambwani the learned Special Counsel of the Court, for information to and follow-up action.