
(2010) 07 AHC CK 0355
In the Allahabad High Court

Girija Shanker Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Citation : (2010) 07 AHC CK 0355

Hon'ble Judges : Sunil Ambwani, J; Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The petitioner appeared in the selections in pursuance to the Advertisement No. A-5 E-1/1997-98 issued by the Public Service Commission, U.P., for selection on the post of Asstt. Prosecuting Officers in the Asstt. Prosecuting Officers Examination, 1997 held u/s 15 of the U.P. Prosecuting Officer Service Rules, 1991. The advertisement was made for total 218 posts of APO to which reservation was applied in accordance with the U.P. Public Services (Reservation for Scheduled Castes/Scheduled Tribes/Other Backward Classes) Act, 1994.

2. Shri Sheo Shyam and 5 others filed Writ Petition No. 28192 of 2002 alleging that the appointments were made in pursuance to the selection by the State Government on three dates. A large number of selected candidates failed to join. The number of these candidates was found to be 30 out of 218 recommended by the Public Service Commission. The High court found that the result was declared on 20.3.1999, and that even if the appointments were given on different dates, waiting list was valid only for a period of one year upto 20.3.2000, and in view of the decision of the Division Bench in Surendra Kumar Pandey v. State of U.P. in Writ Petition No. 16899 of 2001 decided on 1.3.2002, the waiting list was no longer valid and operative to be used for making appointments.

3. The petitioner challenged the judgment in the Supreme Court in SLP (Civil) No. 6505 of 2003, which was converted into Civil Appeal No. 1035 of 2004. The Supreme Court found that the appointments were given on different dates from

10.5.1999 to 26.7.2001. It posed a question to itself as to whether the period of validity of the waiting list has to be one year from the date of the first recommendation made by the Commission, or from the date of the last of the recommendations. In view the peculiar nature of the fact situation, the Supreme Court allowed the Special Appeal with directions that the appellants shall be considered by the Commission and the State Government for appointment and that they will be appointed, if otherwise found suitable and eligible after verification of such credentials, documents and background as are necessary to be done for appointment. The last four paragraph of the judgment of the Supreme Court are quoted as below:

In the aforesaid background, in a case of this nature and in view of the peculiar nature of the first situation noted above, it would be inequitable and unjust to compute the one year period form the date when the first recommendation was made by the Commission. Undisputedly, appointments were made till the end of 2001. Therefore, it would be proper to reckon the period from the last date when the recommendation was made. But another situation has developed subsequently. The state Government itself had requisitioned for 56 posts including the unfilled posts of the previous selection and examinations are stated to have been already held. The fate of present 11 appellants has suffered a set back on account of the action of both the Commission and the State Government. If the Commission's stand is that the validity period of the waiting list is one year, it should have sought for clarification from State Government as to why unfilled posts were included in the requisition, when its specific stand in the office memorandums referred to above was to the contrary. AT the same time, the State Government having taken a positive stand all through that the date of reckoning would be the last date on which the recommendation was made, it should not have included the unfilled posts in its requisition. The career of 11 candidates cannot be jeopardized in this battle of inconsistent and varying stands taken and moves adopted by the State Government and the Commission at different stages for different purposes.

Had the Commission on receipt of the office memorandum dated 14.1.1999 pointed out to the State Government that its view was not in line with the Commission's view that would have sorted out the areas of differences. Interestingly, in a particular case referred top by the appellants, commission accepted that the period was to be from the last date of recommendation. Though there cannot be any estoppels in law, yet a statutory body like the commission cannot blow hot and cold at the same breath. There has to be consistency in its view. To rule out unfortunate situations like the present one being allowed to recur again, both the State Government and the Commission are required to be more vigilant and constructive in their approach. When dealing with the careers of large number of candidates, their stands have to be consistent and not varying to avoid giving room for unsavory suspicions and ensuring the systems to work more transparently to add to its reputation an d strength.

In the peculiar circumstances noted above, we direct that the appellants shall be considered by the Commission and the State Government and they would be appointed if otherwise found suitable, and eligible after verification of such credentials, documents and background as are necessary to be done for appointment.

The appeals are allowed to the aforesaid extent without any order as to costs.

Sd/- (Doraiswamy Raju) Sd/ (Arijit Pasayat)

4. By letter dated 28th December, 2004 the Special Secretary, Government of U.P. informed the Secretary of the Public Service Commission that the Commission has made available a list of 7 persons in its letter dated 30.6.2004 and further list of 17 persons with its letter dated 3.11.2004, as wait list. Out of these only 8 persons were appellants in the Supreme Court. The names of three persons were not made available. The State Government in pursuance of the direction of the Supreme Court dated 16.2.2004 decided that the appointments is to be given to 11 persons, if they are found eligible after verification. The 11 persons, who were appellants before the Supreme Court were thus given appointments.

5. The five writ petitions namely Writ Petition Nos.28192 of 2002; 39796 of 2002; 29793 of 2002, 28840 of 2002 and 34081 of 2002 were dismissed by the High Court vide its judgment dated 18.12.2002. The Supreme Court allowed the Civil Appeal No. 1035 of 2004 by its judgment and order dated 16.2.2004. In the said judgment and order of the Hon''ble Supreme Court the writ petitions filed by Smt. Kamla Srivastava in the year 2002 was also disposed of vide judgment and order dated 2.12.2005 and similar directions were issued in her favour. The State Government vide order dated 30.1.2006 refused to consider her claim for appointment on the ground that judgment and order of Hon''ble Supreme Court was limited to 11 appellants, who had filed special leave petition. Shri Ghanshyam was also similarly placed and his writ petition was also decided by judgment dated 2.12.2005. The State Government by its order dated 30.1.2006 refused to consider the claim of the petitioners on the ground that the judgment of the Supreme Court was limited only to 11 appellants, who had filed special leave petition. Aggrieved Ms. Kamla Srivastava and Shri Ghanshyam filed Writ Petition No. 24190 of 2006 and Writ Petition No. 20176 of 2007. Both these writ petitions were allowed with following directions:

We have heard Counsel for the parties and gone through the records of the present petition.

The petitioner had approached this Court in the year 2002 itself, for reasons beyond the control of the petitioner her writ petition could not be decided by this Court. While petitions filed by other similarly situate candidates were dismissed under the judgment and order dated 18.12.2002, giving rise to Special Leave to Appeal being filed before the Hon''ble Supreme Court. The Special Leave to Appeal has been allowed vide judgment and order dated 16.2.2004 with the

direction as noticed hereinabove. The Division Bench of this Court, therefore, following the judgment and order of the Hon"ble Supreme Court dated 16.2.2004 disposed of the writ petition filed by the present petitioner in the year 2005 on similar terms and directions.

In our opinion, the petitioner who has been vigilant and has been contesting before this Court with due diligence cannot be permitted to suffer because of the fact that this Court could not decide her writ petition within reasonable time.

It is settled law that no party is to suffer because of the act of the Court. In any view of the matter, once the Division Bench has issued directions under its judgment and order dated 2.12.2005 following the judgment and order of the Hon"ble Supreme Court referred to above, the State Authorities are bound to carry out the said directions with all promptness and due diligence. They cannot be permitted to refuse the consideration of the claim of the petitioner on the ground that the petitioner had not approached the Hon"ble Supreme Court. As already noticed hereinabove, there was no occasion for the petitioner to approach the Hon"ble Supreme Court as her petition remained pending before this Court itself.

In view of the aforesaid, we are satisfied that the order passed by the State Government dated 30.1.2006 is illegal and cannot be sustained. The order impugned is hereby quashed. The writ petition succeeds and is allowed. The respondents are directed to consider the claim of the petitioner for appointment strictly in accordance with law in the light of the Division Bench judgment and order dated 2.12.2005, subject however to the condition that the vacancies which were subject matter of advertisement in the year 1997, within the category to which the petitioner belongs is still available and no person over and above the petitioner in the merit list still remains to be offered appointment.

6. The petitioner, thereafter, made representations to the State Government, which have been rejected by the impugned order dated 13th October, 2008 by the Principal Secretary (Home), Government of U.P. giving rise to this writ petition.

7. The State Government has rejected the representation on the grounds that there were 24 vacancies, which could not be filled up in the Asstt. Public Prosecuting Officer Examination, 1997. The Commission has made available the wait list of 24 persons out of which 10 persons have been given appointment and that there are still 14 vacancies available to be filled up from the examination held for direct recruitment in the year 1997. The petitioner, however, cannot be given appointment, as his name is not included in the wait list. Thus it is clear that the persons available in the wait list are higher in merit than the petitioner.

8. The petitioner was placed at Sl. No. 283. He was not included in the wait list. His name, therefore, was not forwarded by the Commission to the State Government. Since he was not included in the wait list, the question of his appointment to the unfilled vacancies does not arise.

9. The submission of Shri Ashok Khare that even if the petitioner was not included in the wait list, he should have been given appointment, does not merit consideration. The Court was concerned, and can give directions, after the decision of the Supreme Court in Sheo Shyam's case, and High Court in Kamla Srivastava's case, only to those persons, who were included in the wait list.

10. The writ petition is dismissed.