
(2006) 12 AHC CK 0034
In the Allahabad High Court

Gyan Prakash and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-12-2006

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2007) 1 ADJ 163 : (2007) 5 AWC 4535

Hon'ble Judges : Sanjay Misra, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Lala, J.—All the writ petitions are similarly placed and as such connected with each other. The judgment and order to be passed hereunder will have binding effect upon all the writ petitions.

2. The dispute is in respect of quashing the recommendations made by the Departmental Promotion Committee dated 20th/21st December, 2005 for promotion to the post of U.P; Civil Service (Executive Branch) from amongst the Tahsiidars and/or quashing the select list dated 10th January, 2006 issued by the selection committee.

3. Admittedly, the panel of promotees was prepared by the State as per seniority. Such panel was sent to the Uttar Pradesh Public Service Commission for the purpose of selection by them on merit which was also done. It is further admitted position that previously as per the Uttar Pradesh Civil Service (Executive Branch) Rules, 1982, 33.33% quota was to be reserved for departmental promotees, which was enhanced upto 40% and now it is enhanced upto 50%. The petitioners' contention is that the promotion can not be clubbed together for the years 2001-2005 to include in the list of 50% amongst departmental promotee but will be made on year to year basis. According to Mr. Ashok Khare, learned Senior Counsel appearing in support of the writ petitions with the able assistance of their respective juniors, that under Rule 3(j) of U.P.

Civil Service (Executive Branch) Rules, 1982, "year of recruitment" means the period of twelve months commencing from the first day of July of a calendar year. As per Rule 5 of the said Rules, source of recruitment will be of two types:

(i) by direct recruitment on the result of a competitive examination conducted by the Commission;

(ii) by promotion from amongst the permanent Tehsildars.

4. In the second proviso to Rule 5(1) the Naib-Tahsildars approved for temporary vacancies in the Tahsildar service will be appointed to the service only after Naib-Tahsildars approved for permanent vacancies in Tahsildars service have either been appointed against the aforesaid temporary vacancies in the service or have, for reasons to be recorded in writing, been found to be unsuitable for such appointment, provided also that the recruitment shall be so arranged that as far as may be 33.33% post in the cadre are held by the promotees and the rest by direct recruits. All the petitioners have been confined on the post of Tehsildars. They belong to general category. Rules 16 of the said Rules speaks about recruitment by promotion as follows:

16. Recruitment by promotion.-Recruitment by promotion to the ordinary grade shall be made on the basis of merit in accordance with the Uttar Pradesh Promotion by Selection in Consultation with Public Service Commission (Procedure) Rules, 1970, as amended from time to time.

5. We have come to know from the submissions of both the contesting parties that the selection in respect of direct recruit is being made year to year basis. The apprehension of the petitioners is that if for the direct recruit only the process is followed regularly leaving aside the departmental promotee, then there would be possibility of suppression by the direct recruit over and above the departmental promotees. Clubbing of the years is against the intention of the legislature.

6. The respondents including the State vehemently opposed the submissions of the learned Counsel appearing for the petitioners. Mr. K.S. Kushwaha, learned Standing Counsel, contended that relevant rule does not provide that recruitment shall be arranged on year to year basis. The recruitment will be arranged as per the percentage in the cadre. As on 01st February, 2004 working strength was 1082. Amongst those candidates, as per the seniority, a combined list was prepared for departmental promotee and direct recruit as per the seniority. Presently, 54 posts are to be filled up. From the rejoinder affidavit filed by the petitioners themselves in Civil Misc. Writ Petition No. 3728 of 2006 it appears that in the examination of year 2001 a total number of 9 vacancies were filled up by direct recruitment while 15 posts of Deputy Collector were filled up in the examination for the year 2002 and 19 posts were filled up in pursuance of the examination of the year 2004. Thus, 43 posts of Deputy Collectors have been filled up by direct recruitment in the above years and keeping in view that 50% posts are reserved to be filled up by promotion, a corresponding number of posts

were in existence for promotion purposes. In the said affidavit it is stated that the Vacancies arose in different years by way of retirement or death. The present dispute is only for the year 2004-05, therefore, the seniority list of the year 2004-05 is to be taken note. Mr. Khare added that as per the Uttar Pradesh Civil Service (Executive Branch) (Fifth Amendment) Rules, 1997 a proviso is substituted as against Rule 5 that "provided also that the recruitment shall be so arranged that with effect from the commencement of the Uttar Pradesh Civil Service (Executive Branch) (Fifth Amendment) Rules, 1997, as far as may be, 40% posts in the cadre are held by the promotees selected by the commission and with effect from the first day of July, 1999, 50% posts in the cadre are held by the promotees selected by the Commission.". The words "as far as may be" and the word "held" are holding some useful meaning. There should be a fair reading of the rules by the State.

7. Mr. Shashi Nandan, learned Senior Advocate, also appeared in support of the writ petitions and relied upon the judgment reported in *Badrinath Vs. Government of Tamil Nadu and Others*, He contended that every officer has a right to be considered for promotion under Article 16 of the Constitution of India to a higher post subject to eligibility, provided he is within the zone of consideration. But the question is in which manner cases will be considered. This aspect is a matter of considerable importance in the service jurisprudence as it deals with fairness" in the matter of consideration for promotion under Article 16 of the Constitution,

8. Mr. R.N. Singh, learned Senior Counsel appearing for the respondents, contended that individual cases can not be considered stopping the selection of the entire lot by making it general. As against a question of this Court all the Counsel including Counsel for the Commission in chorus stated that entire selection process is over. Excepting issuance of appointment letter nothing is left. Due to interim order passed by a Division Bench of the High Court in the earlier occasion, the publication of the select list is awaiting.

9. Mr. S.P. Singh, learned Counsel appearing for the respondent No. 6, contended before this Court relying upon paragraph-7 of his counter affidavit that there had not been any promotion from P.C.S. cadre to I.A.S. cadre for quite long time. The promotion from P.C.S. cadre to I.A.S. cadre took place in the year 2004-05. Thus, the vacancies become available for the P.C.S. cadre in the year 2005. The emphasis that the vacancies of previous years were clubbed together, is not correct. It has been wrongly mentioned without ascertaining correct fact. The age of superannuation was enhanced from 58 years to 60 years from the appointment year 2001. The theory of clubbing previous year vacancies all of a sudden in the year 2004-05 has wrongly been placed. In the year 2004-05 there were 42 vacancies of general category. Against the said vacancies, 7 vacancies of general category were reserved on account of various reasons. Against 35 vacancies for general category the name of 105 candidates were placed in the eligibility list. Subsequently, 7 vacancies, which were reserved, were released for

the purpose of promotion. Thus, the names of 126 candidates were placed in the eligibility list. Therefore, the candidates within the zone of eligibility criteria are liable to be placed in the eligibility list in pursuance of Rule-8 of the relevant rules, so far as the criteria is concerned.

10. Therefore, we have to see the scope and ambit of RuIe-8 of the Uttar Pradesh Promotion by Selection in Consultation with Public Service Commission (Procedure) Rules, 1970. Rule-8 of such Rules, 1970 is as follows:

8. Preparation of eligibility list.- The Appointing Authority shall prepare a list (hereinafter in this Part referred to as the eligibility list) of the senior-most eligible candidates containing names so far as may be, in the following proportion 3 time the number of vacancies subject to the minimum of 8. Provided that if recruitment is to be made for vacancies occurring during more than one year, of recruitment, separate eligibility lists will be prepared in respect of each such years in such a case while preparing the eligibility list for second and subsequent years of recruitment, the number of candidates to be included in the eligibility list shall be-

(a) for the second year...the number of according the said proportion plus the number of vacancies in the first year;

(b) for the third year... the number according to the said proportion plus the number of vacancies in the first and second years; and so on:

Provided further that candidates who are not considered suitable, prima facie, for promotion shall not be taken into account in calculating the said proportion and a note to the effect that they are not so considered shall be added against their names:

Provided also that in the case of higher research posts in departments in which research work is done, the names of all eligible candidates shall be included in the list irrespective of the number of vacancies.

Provided also that if eligibility list is being prepared for substantive vacancies, the names of candidates who have previously been appointed in temporary or officiating vacancies from List B shall be included in the eligibility list if otherwise found eligible.

Explanation

In this rule-

(a) "the number of vacancies" means the total number of substantive, temporary or officiating vacancies occurring during the year of recruitment.

(b) "higher research posts" means posts requiring technical knowledge and ability or a high order for undertaking and guiding research work.

Explanation

A single eligibility list shall be prepared to cover all types of vacancies.

11. Therefore, irrespective of the fact that the vacancies arose only in the year 2004-05, there is no bar to include the number of vacancies for different years in the eligibility list. It is cautioned under such rule that the candidates, who are not considered as suitable, *prima facie*, the promotion shall not be taken into account in calculating the said proportion and a note to the effect that they are not so considered shall be added against their names. Therefore, the point of clubbing is totally demolished both in the fact and law. Grievances against the individual candidates, if any, have been sufficiently clarified by the State-respondent on the basis of their A.C.Rs. Hence, the petitioners can not have any objection against their selection. In respect of own grievance of any of the petitioners there is no bar about their Representation but not at the cost of selection process held by the experts on the basis of the merit. We can not sit on appeal over such selection particularly at the cost of unsuccessful candidates. So far as Rule 16 of the Uttar Pradesh Civil Service (Executive Branch) Rules, 1982 is concerned, it clearly stated that selection will be made on the basis of merit in Consultation with Public Service Commission. According to us, it is well considered process of selection. Although nobody has cited before us *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, but for our own satisfaction and strengthening the judgment we have considered remotest applicability of the ratio herein. In a completely different context of reservation quota, the Supreme Court held that in fixing such quota vacancies of each year should be taken as unit. In the reasoning it is said that unless each year is considered as unit and the entire cadre, service or the unit as the case may be is taken into account, then it will overlap the unreserved quota. Here neither there is any question of overlapping direct recruit or reserved quota. Here, admittedly vacancies are arising out of promotees of general category. Therefore, if the vacancies arose in 2004-05 in respect of such category only, right of all the candidates will have to be considered. It can not be construed by any means that as because vacancies arose in 2004-05, the candidates of such year will be eligible ignoring candidates became notionally eligible earlier.

12. The petitioners further said that the Uttar Pradesh Government Servants Criterion for Recruitment by Promotion Rules, 1994 does not apply only with the promotion outside the provisions of the Public Service Commission. According to us, it is a desperate attempt. Sub-rule (3) of Rule 1 of the Uttar Pradesh Government Servants Criterion For recruitment by Promotion Rules, 1994 is quoted hereunder to give reply by its own:

(3) They shall apply to a recruitment by promotion to a post or service for which no consultation with the Public Service Commission is required on the principles to be followed in making promotions under the Uttar Pradesh Public Service Commission (Limitation of Functions) Regulations, 1954, as amended from time to time.

13. Thus, taking into account totality of the matter we do not find any justiciable

cause to pass any affirmative order in favour of the petitioners herein. Hence, the writ petitions stand dismissed. Interim order, if any, stand vacated. Therefore, there is no embargo in publication of the respective results.

14. However, no order is passed as to costs.

15. In any event passing of this order will not debar any genuinely affected individual to raise his grievance by way of representation to the appropriate authority but not at the cost of all the selectees selected on merit following the selection process.

Sanjay Misra, J.

16. I agree.