
(1987) 02 AHC CK 0002

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11017 of 1986

Hari Lai and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 24-02-1987

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (1987) 02 AHC CK 0002

Hon'ble Judges : K.J. Shetty, C.J.;A.N. Varma, J

Bench : Division Bench

Advocate : K.M. Sinha, for the Appellant;

Judgement

K.J. Shetty, C.J.—In this petition Under Article 226 of the Constitution the Petitioners have challenged the validity of a communication dated June 24, 1986 sent by the State Government by radiogram. The communication has been sent to all the District Authorities stating that the Rules regarding selection for ministerial posts of the lowest cadre and also group " D " posts through District Selection Committees have been abrogated with effect from July 1, 1986 and from July 1, 1986 selection for the said posts shall be made through the Departmental Selection Committees. It was also directed that appointments against such vacancies available up to June 30, 1986 shall be made out of the select list already prepared by the District Selection Committees and thereafter the said list shall not be acted upon. Finally it was stated therein that Rules regarding departmental selection would be framed and detailed instructions would follow.

2. It is now necessary to refer to the Rules to which a reference has been made in the said radiogram They are the Rules framed by the Governor in exercise of powers conferred under Proviso to Article 309 of the Constitution. They relate to appointment and recruitment of the employees in Class III and IV for subordinate offices of U.P. Government (the " Rules "). The Rules are called Adhinast Karyalaya Lipik Vargiya Karamchari Varg (Sidhi Bharti) Niyamawali,

1985. They were framed on March 16, 1985. They provide procedure to be followed by District Selection Committees for selection of candidates for class III and IV posts. The selection of typists shall be made by holding test and selection of clerks by interview. Every year such selection shall be made and the select list shall be prepared according to the requirements of the District departments. The select list so prepared would be valid for one year or till the next selection takes place.

3. According to the procedure prescribed Under the Rules, the Selection Committee constituted for the District Fatehpur, selected candidates both for the posts of typists and also for clerks. The select list for typists was prepared on April 9, 1986 and a similar list for clerks was prepared on May 9, 1986. The said lists would be valid till April 9, 1987 and May 9, 1987 respectively or till the next select list is prepared.

4. Petitioners have been selected either as typists or as clerks and they have been included in the select lists. They were anxiously waiting for appointment orders but to their utter disappointment, the State Government sent the radiogram which we have earlier referred to. The decision of the State Government communicated in that Radiogram has the effect of nullifying the selection of the Petitioners. Petitioners therefore, have approached this Court for relief Under Article 226 of the Constitution.

5. The main contention urged for the Petitioners is that the Government could not have, and indeed has no power to supersede the statutory Rules by an executive instruction. On behalf of the Respondents no counter affidavit has been filed. Perhaps, no counter could justify the action taken since the decision taken by the Government is indefensible. The Rules for recruitment were promulgated by the Governor under Proviso to Article 309 of the Constitution. The Government in exercise of executive powers could not supersede such statutory rules. It is a well established principle of law which does not require much elucidation. If any authority is needed - see the decision of the Supreme Court in State of Haryana, Vs. Shamsher Jang Bahadur, etc. etc., wherein it has been observed (at page 1547):

The Government is not competent to alter the rules framed Under Article 309 by means of administrative instructions.

6. The action of the Government communicated by the aforesaid radiogram is, therefore, clearly illegal and unauthorised. The Respondents should be Restrained from giving effect to it.

7. In the result, we allow the writ petition and issue a direction to the Respondents not to give effect to the Radiogram communication found in Annexure 3 to the writ petition. There shall be a further direction to District Magistrate Fatehpur, Respondent No. 2 to make appointments in accordance with the select list prepared on April 9, 1986 and also on May 9, 1986 till new selection is made in accordance with law.

8. Petitioners are entitled to their costs. Advocate's fee Rs. 500/-.