

(2002) 09 AHC CK 0051
In the Allahabad High Court
Case No : C.M.W.P. No. 27339 of 1991

Hari Shankar Dwivedi and Others

APPELLANT

Vs

U.P. State Electricity Board and Another

RESPONDENT

Date of Decision : 18-09-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2002) 5 AWC 3583

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Pradeep Chandra, M.M.L. Srivastava, R.C. Srivastava and K.K. Tripathi, for the Appellant; Arvind Kumar and A.S. Kapoor, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard the learned Counsel for the Petitioners and the learned standing counsel and perused the records.

2. The controversy involved in the present writ petition is covered by the decision of the Division Bench of this Court in Manoj Kumar Mishra v. Maha Prabandhak, K.E.S.A., Kanpur and Anr. 1996 AWC 266, in which the controversy arose from same advertisement as in the present writ petition.

3. The Petitioners in pursuance of the advertisement applied for the post of "Shramik/Labourer". It is alleged that they were selected and were directed to submit two character certificates and to present themselves before the Chief Medical Officer. It is further alleged that the Petitioners were medically examined and medical certificates were issued to them by the Chief Medical Superintendent, U.H.M. Hospital, Kanpur, they also filled up declaration forms supplied by the department. Thus, they completed all the formalities for appointment, but they were not allowed to join.

4. In paragraph 16 of the writ petition, it is averred that the Petitioners have come to know through reliable sources that instead of permitting the Petitioners

to function on the said posts, the Respondents appointed some other persons, who were not only lower in the list, but were asked to complete the formalities much later than the Petitioners. This action on the part of Respondents was wholly illegal and discriminatory and is also in violation of Articles 14 and 16 of the Constitution of India.

5. In paragraphs 5 and 9 of the counter-affidavit filed by O. P. Mishra, Senior Personnel Officer, Kanpur Electricity Supply Company Limited, K.E.S.A. House, Kanpur, it has been stated that according to the guidelines issued by the Government for recruitment, the pass marks were kept as 60% and after completion of the selection, it was found that 435 candidates secured more than 60% marks and subsequently a merit list was prepared and 259 candidates were initially given appointments and before 1991 in all 383 candidates were issued appointment letters. A list of remaining 34 candidates, who had completed the formalities for being appointed as Shramiks, were placed in the waiting list in order of merit. As the vacancies exhausted, no further appointment letter was issued to any candidate appearing in the waiting list. The guidelines for selection were issued on 18.10.1989 duly approved by the General Manager. The waiting list of 34 candidates has been annexed with the counter-affidavit.

6. In the waiting list, only the names of Petitioner Nos. 2 and 3 find place, who secured more than 60% marks and the names of Petitioner Nos. 1 and 4 are in the select list which shows that they had secured less than 60% marks.

7. In view of the peculiar facts and the circumstances of the case, Petitioner Nos. 1 and 4 cannot get any relief in terms of aforesaid Division Bench judgment as they have failed to secure minimum marks for selection. In so far as Petitioner Nos. 2 and 3 are concerned, they have completed all the formalities. It is undisputed that they were selected candidates on the waiting list.

8. The counsel for the Respondents has admitted that the Division Bench decided the matter in favour of the Petitioner Manoj Kumar Mishra in Writ Petition No. 24506 of 1992 as the department had not filed any counter-affidavit inspite of repeated time having been granted to it. He submits that the aforesaid judgment in Manoj Kumar Mishra (*supra*) cannot be treated as precedent as in this case, counter-affidavit is on the record.

9. It is also not in dispute that Petitioner Manoj Kumar Mishra of Writ Petition No. 24506 of 1992, who is lower in rank than the Petitioners, has been given appointment pursuant to the order of this Court. Since the aforesaid Division Bench judgment is binding on this Court, as such Petitioner Nos. 2 and 3 are entitled for similar relief.

10. In view of the aforesaid reason and the circumstances, the writ petition is allowed directing the Respondents to accommodate Petitioner Nos. 2 and 3 on Class IV posts in the department forthwith on the same terms, but they shall not be entitled to any back wages upto date of this judgment.