

(2006) 02 AHC CK 0163

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 55368 of 2004

Jitendra Kumar

APPELLANT

Vs

State of U.P., Engineer-in-Chief Department of Irrigation and
Superintending Engineer

RESPONDENT

Date of Decision : 20-02-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Uttar Pradesh Procedure for Direct Recruitment of Group C Posts (Outside the Purview of Public Service Commission) (First Amendment) Rules, 2003 — Rule 5

Citation : (2006) 5 AWC 5360 : (2006) 2 UPLBEC 1263

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Ashok Khare and Sunil kumar Srivastava, for the Appellant; C.M. Yadav and S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri Ashok Khare, Senior Advocate, assisted by Sri Sunil Kumar Srivastava, Advocate on behalf of the petitioner and learned Standing Counsel on behalf of the respondents.

2. On 15th June, 2003 an advertisement was published by the Superintending Engineer, Ban Sagar Nagar Nirman, Allahabad (respondent No. 3) inviting applications for appointment against 120 posts of Junior Clerk in the divisional cadre. This process was initiated for filling-up of the back-log of reserved category of vacancies for Scheduled Castes and Scheduled Tribes. Out of total 120 vacancies so advertised, 100 vacancies were reserved for member of Scheduled Castes while remaining 20 vacancies were reserved for member of Scheduled Tribes. Petitioner, namely, Jitendra Kumar belongs to Scheduled Castes category, therefore, he applied for the post. The application of the petitioner was processed and he was invited for type-test on 19th July, 2003 and thereafter for interview on 28th July, 2003. The final result of the said selections

was published on 30th July, 2003. In the result so declared the name of the petitioner finds placed at serial No. 1 of the wait-list. However, no appointment in pursuance of the said select-list, could be made, as the State Government imposed a ban vide Government Order dated 29th August, 2003. The said ban was lifted on 15th January, 2004. As a consequent thereto persons, who were issued appointment letters, were permitted to join. One Kumari Mithlesh and one Sri Bhartiya Bhushan Bhartiya, whose names were included in the main select-list, declined to join on the post in question.

3. The petitioner on the strength of his name being included/placed at serial No. 1 of the wait-list, set up a claim for being appointed against the vacancies which had become available due to the joining of the selected candidates of the main select-list. Since the claim of the petitioner was not processed, he filed Civil Misc. Writ Petition No. 28778 of 2004 before this Court. The writ petition was disposed of by this Court vide judgment and order dated 28th July, 2004 with a direction upon the respondents to consider the representation of the petitioner in accordance with law.

4. By means of order dated 15th October, 2004, Superintending Engineer, Ban Sagar Nagar Nirman, Allahabad (respondent No. 3) rejected the representation so made by the petitioner on the ground that under the U.P. Procedure for Direct Recruitment for Group "C" Posts (outside the purview of U.P. Public Service Commission) Rules, 2002 (hereinafter referred to as the "Rules of 2002") and U.P. Procedure for Direct Recruitment for Group "C" Posts (outside the purview of U.P. Public Service Commission) Rules, 2003 (hereinafter referred to as the "Rules of 2003"), there is no provision for any wait-list being prepared and therefore, the petitioner is not entitled for appointment on the basis of his name being mentioned in the wait-list. It is against this order of the respondent No. 3, dated 15th October, 2004 that the present writ petition has been filed.

5. The petitioner with reference to the judgment and order of this Court in the case of State of U.P. v. Ravindra Nath Rai reported in 1999 (I) 949 ALLD as also in view of judgment of this Court in the case of Trilok Nath Mishra and Others Vs. State of U.P. and Another, submits that even if there was no provision for preparation of a wait-list it is to be presumed that inclusion of the name of the petitioner in the list termed as "wait-list, only means that after the 100 candidates mentioned in the main select-list the petitioner is next lower in merit and therefore, the petitioner is entitled for such appointment once a person higher in merit, has refused to join the post. It is further submitted that in view of the judgment of this Court in the case of Trilok Nath Mishra and Ors. (Supra) the respondents are under legal obligation to prepare a "wait-list" and in any case prepare merit-list of candidates, in excess to the number of vacancies advertised, inasmuch as if persons higher in merit for same reason, refuse to join, person lower in merit, would be offered appointment against the advertised vacancies. Recruitment process takes long time and therefore, no purpose would be served by keeping advertised vacancies unfilled while deserving candidates

are available to take up the job.

6. Learned Standing Counsel on the other-hand submits that under Regulation of the Rules of 2002 and that of 2003, there was no provision for preparation of wait-list and therefore, on the basis of unauthorized wait-list prepared by the Appointing Authority as has been done in the facts of the present case, no rights are conferred upon the petitioner.

7. I have heard learned Counsel for the parties and have gone through the records of the writ petition.

8. It is, no doubt, true that under Rules of 2002 and that of 2003, there is no provision for preparation of a wait-list. However, under the aforesaid Rules there is also no prohibition qua preparation of merit list in excess of the number of vacancies advertised or for preparation of wait-list. It may also be noticed that under Rule-5 of the aforesaid Rules, the number of candidates to be invited for interview has been provided as ten times, the number of vacancies. This Court in the case of State of U.P. v. Ravindra Nath Rai (Supra), has held as follows in paragraph Nos.-15 and 21:

15. Second submission of the learned Standing Counsel that there is no provision, either statutory or otherwise, to prepare waiting list is correct. It may also be correct that no waiting list was prepared in terms of the expression "waiting list". But neither has it been nor can it be disputed that a comparative merit list of all the candidates found eligible and qualified for appointment was prepared: that there is no statutory rule or executive instruction limiting the life of the said comparative merit list that the comparative merit list has not been nullified: and that the comparative merit list was treated to be surviving by the appellants themselves which is evident from the fact that for filling up 86 newly created posts candidates were picked up from that very list from which the candidates for filling 630 advertised vacancies were selected, and out of 630 so selected candidates 123 did not join and 13 dropped out which resulted in creation of 136 vacancies qua 630 advertised posts.

21. There being no statutory rule or executive instruction limiting life of the comparative merit list: the list having not been treated by the appellants as exhausted, and 136 vacancies against the advertised posts being available, and there being no justifiable reason for not considering the candidature of the candidates figuring in the comparative merit list next below the last candidate absorbed. the appellants must consider the candidature of such candidates for filling up 136 advertised vacant posts. Rule of fair play, which has to be reflected in all actions of the State, demands so.

9. Similarly this Court in the case of Trilok Nath Mishra and Ors. (Supra) has held as follows in paragraph Nos. 17 and 18:

17. There is no object sought to be achieved by giving up preparation of waiting list. The vacancies will remain unfilled for long period, whereas deserving

candidates will be kept waiting or take up other jobs. The U.P. Public Service Commission shall have to bear avoidable cost of selections for the same vacancies afresh. The candidates will either become over-age, or will have to again compete for the same vacancies. It is thus in the interest and benefit of candidates, as well as in public interest to prepare a waiting list.

18. The contents of the impugned Office Memorandum speak for the State of affairs in the State Government. The direction contained in Paragraph 2 of the order states that correct calculation of vacancies must be ascertained in respect of recruitment before sending the requisition to the commission and no change should be made in the number of vacancies after the requisition has been sent. After the receipt of recommendations the selected candidates must be allowed to join and that appointment orders must be issued within three months giving a maximum extension for one month in unavoidable circumstances. These directions were issued when the offices in the State Government, in which the vacancies arise, were found to be negligent in the past in calculating the number of vacancy and in requesting the appointments made within the time. The decision of the State Government for giving up the waiting list and reshuffling for reasons stated above is thus wholly unjustified, unreasonable and arbitrary and amounts to violation of petitioners right under Article 14 read with 16 of the Constitution of India.

10. In view of the aforesaid judgments of this Court the right of the petitioner for being considered for appointment against the available advertised vacancy, which remain unfilled because of candidates higher in merit having not joined, cannot be defeated by the respondents on the ground that under the Rules of 2002 and that of 2003, there is no provision for preparation of the waitlist. As already noticed herein above, there is no prohibition under the aforesaid Rules qua preparation of the wait list, on the contrary this Court has held that an order restraining the preparation of the wait list, would be arbitrary. In such circumstances order dated 15th October, 2004, passed by the Superintending Engineer, Ban Sagar Nagar Nirman, Allahabad (respondent No. 3) cannot be legally sustained and is hereby quashed.

11. The writ petition is accordingly allowed.

12. The respondent No. 3 is directed to reconsider the claim of the petitioner for appointment strictly in accordance with merit of the petitioner against the vacancies which may have remained unfilled because of the candidates higher in merit having not joined, preferably within six weeks from the date a certified copy of this order is filed before the respondent No. 3.