
(2016) 01 AHC CK 0208

In the Allahabad High Court

Case No : Special Appeal Nos. 731 and 800 of 2013

Kamla Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-01-2016

Acts Referred:

Citation : (2016) 2 ADJ 225 : (2017) 1 AILLJ 711 : (2016) 3 AllWC 2527

Hon'ble Judges : Rakesh Tiwari and Shashi Kant, JJ.

Bench : Division Bench

Advocate : Vinod Kumar Rai and Ashok Khare, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—1. Heard Sri Ashok Khare, learned senior counsel appearing for the appellants and Ms. Subhash Rathi, learned Standing Counsel for the respondents and perused the record.

2. These appeals have been preferred against the common judgement and order dated 04.10.2012, whereby writ Court has dismissed two writ petitions, being Writ-A No. 68174 of 2005, Kamla Singh & others vs. State of U.P. & others, connected with, Writ-A No. 2941 of 1998, Man Singh & others vs. State Of U.P. & Others.

3. By these writ petitions the petitioners had prayed for issuance of directions against the respondents to consider the Sub Inspectors of Armed Police/Platoon Commanders of the U.P. Police Force for promotion to the post of Company Commander on the basis of criteria of seniority, subject to rejection of unfit in terms of Rule 4 of the U.P. Government Servant (Criterion for Recruitment by Promotion) Rules, 1994 and also for mandamus directing the respondents not to fill up the post of Reserve Sub Inspectors or Company Commanders on the basis of the impugned selection which was scheduled to conclude on 24.01.1998. Prayer was also made to scrap the routine test, infantry test and physical test from the 39th training course of Reserved Sub Inspectors. A writ of mandamus

was also sought to adopt the same procedure which was laid down for promotion by the Apex Court in the case of Chandra Prakash Tiwari and Others v. Shakuntla Shukla, , 2002(6) SCC 127.

4. By the impugned order, after considering the provisions of paragraph 435(a) of the U.P. Police Regulations along with Government Order dated 10.06.1965, writ Court has held that the criteria for promotion in question is fitness of the incumbent and has concluded vide paragraphs 15 & 16 of the judgement in question, as under:

"15. A conjoint reading of Regulation 435(a) along with Government Order dated 10.06.1965 would manifest that only such Sub Inspectors of the Armed Branch are to be recommended by the Superintendent of Police who have rendered at least 5 years as Sub Inspector (Armed Police/Civil Police) who are likely to be fit for the post of "Reserve Inspector" for training to the rank of "Reserve Inspector". Thus the criteria for promotion is the fitness of the incumbent. The word "fit" (adj) has been defined in the Chambers' Dictionary (10th Edition) as "meeting required standards; of suitable ability; having a high level, or the required level, of stamina, suppleness or other athletic strength". Similarly, the New International Webster's Comprehensive Dictionary (2004 Edition) defines the word "fit" as "good physical condition and training and also as confirmed; standard, suitable; appropriate. From the aforesaid definition, it is evident that the procedure for ascertaining the fitness of the incumbent for the post in question has to be such as would help the respondents in ascertaining the physical efficiency/mental aptitude of the candidate so as to select the best available candidate for the post. Paragraph 18 to 24 of the Regulation contained in Chapter 2 of the U.P. Police Regulations prescribes the duties and responsibilities of the Reserve Inspectors (Armed). The primary duties are to train the new recruits and for the instruction and exercise of the whole force in drill; command escorts and guards on special occasions, when his presence is considered necessary on account of danger of a disturbance or the importance of the charge and to monitor armed operations. Accordingly, the procedure so evolved by the Selection Committee for indicating the IT/PT test is not only desirable but is mandatory to ascertain the fitness of the incumbent in view of the arduous duties, assigned to the post.

16. Once a criteria is laid down in Regulation 435(a) of the Regulations read with Government Order dated 10.06.1965, then in the absence of anything to the contrary, it is open for the Selection Committee to evolve a procedure for ascertaining the suitability of a candidate by requiring the incumbents to undergo the rigorous process of selection comprising of IT/PT test for promotion to the post of Reserve Inspector (Armed). Thus the report of the Selection Committee dated 22.11.2005 comprising the Director General, PAC, Eastern Zone, Lucknow, DIG, PAC, Lucknow and Commandant 35th Battalion, PAC, Lucknow, which provided an elaborate procedure for carrying out the physical efficiency test/ interview, assessment of service record of the incumbents for the post in

question cannot be described as illogical or irrational or having no nexus with the object sought to be achieved i.e. to select the best available candidate. Thus, the first submission of learned counsel for the petitioner has no merit and deserves to be rejected.

5. The writ Court has also considered the contention of learned counsel for petitioners that as the Sub Inspector (Civil) Police are not subjected to any physical efficiency test etc. therefore, the same criteria was applicable in the case of petitioners also. This submission has been repelled by saying that the duties performed by the Sub Inspectors (Civil) are qualitatively different from that of the members of the Armed Police, inasmuch as, the duties of Sub Inspectors (Civil) are primarily to control crime and investigation as well as maintenance of law and order, whereas the duties of the Sub Inspectors (Armed) are absolutely different from that of the Sub Inspectors (Civil) as they have to perform duties which are vigorous and arduous in nature. Rejecting the submissions of learned counsel for the petitioners, the writ Court concluded as under:

"Thus, the factual position which emerges is that the action of the respondents in insisting the petitioners to undergo IT/PT test for the purposes of promotion from the post of Sub Inspector (Armed Police) to that of Reserve Inspector (Armed), is not unreasonable or illogical so as to strike down the same."

6. The aforesaid findings recorded by the writ Court have been challenged in these special appeals on the grounds; that writ Court has wrongly assumed that a conjoint reading of Regulation 435(a) along with Government Order dated 10.06.1965 shows that the criteria of selection for promotion is at least 5 years services as Sub Inspector along with the physical fitness, therefore, the procedure so evolved by the Selection Committee for the IT/PT test is not only desirable but is mandatory also; that the report of selection committee is not an executive instruction rather it is merely an opinion of the department; that writ Court has failed to consider this aspect of the matter that if the vacancies of 10 years are clubbed together, the senior-most person will have to compete in I.T/P.T. Test with 10 years younger persons which would reduce chances of selection of senior persons and that in the matter of civil police, the Government Order dated 05.11.1965 has been quashed by the apex Court vide order dated 09.05.2002 passed in Civil Appeal No. 3441-3446/2002, Chandra Prakash Tiwari and others vs. Shakuntala Shukla and others (, SCC 2002 (6) page 127).

7. In support of his contentions, learned senior counsel for the appellants has relied upon the provisions of The Uttar Pradesh Sub-Inspector and Inspector (Civil Police) Service Rules, 2008, The Uttar Pradesh Pradeshi Armed Constabulary Subordinate Officers Service Rules, 2008 and judgements of the apex Court rendered in Union of India Vs. Vipinchandra Heera Lal (, 1996 (6) SCC 721) & Syed Khalid Rizvi vs. Union of India (, 1993 suppl. (3) SCC 575).

8. In the instant case, the appellants were appointed as Sub-Inspectors in the

Armed Police of the State and the selection in question was for promotion to the post of Reserve Inspectors (Armed). Paragraph 435 of the U.P. Police Regulations (for short "Regulations") provides a criteria for promotion from the post of Sub Inspector (Armed) to that of Reserve Inspector (Armed). The provisions of Paragraph 435 of the Regulations framed under the Police Act, 1861 is quoted hereunder:-

"435- Promotion to the rank of Reserve Inspector is made in the following manner:

(a) a Superintendent of Police may recommend a Sub Inspector of the Armed Branch including a Probationary Sub Inspector, who is likely to be fit for the post of Reserve Inspector, for training to the rank of Reserve Inspector. When suitable Sub Inspectors of the Armed Branch are not available Sub Inspectors of the Civil Police may be so recommended.

All the Sub Inspectors so recommended will first be examined and interviewed by their Deputy Inspectors General. The Deputy Inspectors General will then nominate only those whom they consider suitable for the Reserve Branch, for appearing before the State Selection Committee. The Sub Inspectors selected by the State Selection Committee will then undergo such course of training as the Inspector General may prescribe.

(b) On the successful conclusion of this course of training, he will be placed on a Provincial List of Reserve Sub Inspectors approved for promotion to the rank of Reserve Inspector. Seniority on this list will be determined by the date of selection for inclusion in the Provincial List. Relative seniority for those selected on the same date will be fixed in order of merit as disclosed by the result of the final examination. In the event of two or more candidates securing equal marks the seniority inter se will be determined on the basis of seniority as a Sub Inspector.

(c) The Provincial List of Reserve Sub Inspectors will also include those Sub Inspectors who were approved for appointment as Reserve Inspector prior to 1st April, 1948 or who were called Sergeant before 1st April, 1948.

(d) Promotion to the rank of Reserve Inspector will be made by the Deputy Inspector General, Headquarters, by seniority from the list provided that-

(i) an underserving officer may be passed over or a particularly good officer promoted out of his turn, and

(ii) temporary vacancies not exceeding four months in duration may be filled up locally by the Deputy Inspector General of the Range, by promoting, irrespective of seniority, an officer in the district of range concerned whose name is on the list or, where there is no such officer available, by promoting a Sub Inspector whose name is not on the approved list.

(e) The Deputy Inspector General of Police, Headquarters, may at any time order the removal of any name from the list, if in his opinion, the officer has proved

himself unfit for retention thereon. Such order of removal will be final notwithstanding anything contained in paragraph 508."

9. Therefore, the rules relied upon by the learned counsel for the appellants have no application and the inferences drawn by the writ Court on the basis of the provisions of Regulation 435(a) of the Regulations framed under the Police Act, 1861 read with Government Order dated 10.06.1965 in respect of promotions of the sub-inspectors in the armed police, do not call for any interference by this Court.

10. So far as the cases relied upon by the learned counsel for the appellants are concerned, reliance has been placed on both the cases in support of the contention that the vacancies of several years should not have been clubbed together. But these cases are to no avail to the present appellants as in the case of Vipinchandra Heera Lal (supra), their lordships of apex Court have held that the requirement prescribed in sub-regulation (1) of Regulation 5 regarding the Committee meeting at intervals not exceeding one year and preparing a list of such members of the State Civil Service who are suitable for promotion to the Service was a mandatory requirement, which had to be followed. Similarly in Syed Khalid Rizvi's case (supra), it was mandatory requirement of Regulation 5(1) of IPS (Appointment by Promotion) Regulations, 1955 that each committee may ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Police Service as are found suitable for promotion to the Service. Whereas in the instant case there is no such mandatory requirement of rules or regulations. However, there is no quarrel with the proposition of law laid down by their lordships but since the cases relied upon by the learned counsel for the appellants are distinguishable on facts and in law from the instant case, hence, the appellants herein cannot be held entitled to any relief on the basis of case laws cited before us by their counsel.

11. In view of the discussions made above, the reasoning given and conclusions drawn by the writ Court in the facts and circumstances of instant case, do not require any interference by this Court. We see no illegality or infirmity in the order impugned. Therefore, both the special appeals fail and are dismissed.