
(2010) 07 AHC CK 0166
In the Allahabad High Court

Kamla Srivastava and Another	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Citation : (2010) 6 AWC 5734

Hon'ble Judges : Sunil Ambwani, J;Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The petitioners Ms. Kamla Srivastava and Shri Ghanshyam appeared in the selections in pursuance to the Advertisement No. A-5 E-1/1997-98 issued by the Public Service Commission, U.P., for selection on the post of Asstt. Prosecuting Officers in the Asstt. Prosecuting Officers Examination, 1997 held u/s 15 of the U.P. Prosecuting Officer Service Rules, 1991. The advertisement was made for total 218 posts of APO to which reservation was applied in accordance with the U.P. Public Services (Reservation for Scheduled Castes/Scheduled Tribes/Other Backward Classes) Act, 1994.

2. Shri Sheo Shyam and 5 others filed Writ Petition No. 28192 of 2002 alleging that the appointments were made in pursuance to the selection by the State Government on three dates. A large number of selected candidates failed to join. The number of these candidates was found to be 30 out of 218 recommended by the Public Service Commission. The High court found that the result was declared on 20.3.1999, and that even if the appointments were given on different dates, waiting list was valid only for a period of one year upto 20.3.2000, and in view of the decision of the Division Bench in Surendra Kumar Pandey v. State of U.P. in Writ Petition No. 16899 of 2001 decided on 1.3.2002, the waiting list was no longer valid and operative to be used for making appointments.

3. The petitioners challenged the judgment in the Supreme Court in SLP (Civil) No. 6505 of 2003, which was converted into Civil Appeal No. 1035 of 2004. The

Supreme Court found that the appointments were given on different dates from 10.5.1999 to 26.7.2001. It posed a question to itself as to whether the period of validity of the waiting list has to be one year from the date of the first recommendation made by the Commission, or from the date of the last of the recommendations. In view the peculiar nature of the fact situation, the Supreme Court allowed the Special Appeal with directions that the appellants shall be considered by the Commission and the State Government for appointment and that they will be appointed, if otherwise found suitable and eligible after verification of such credentials, documents and background as are necessary to be done for appointment. The last four paragraph of the judgment of the Supreme Court are quoted as below:

In the aforesaid background, in a case of this nature and in view of the peculiar nature of the first situation noted above, it would be inequitable and unjust to compute the one year period form the date when the first recommendation was made by the Commission. Undisputedly, appointments were made till the end of 2001. Therefore, it would be proper to reckon the period from the last date when the recommendation was made. But another situation has developed subsequently. The state Government itself had requisitioned for 56 posts including the unfilled posts of the previous selection and examinations are stated to have been already held. The fate of present 11 appellants has suffered a set back on account of the action of both the Commission and the State Government. If the Commission's stand is that the validity period of the waiting list is one year, it should have sought for clarification from State Government as to why unfilled posts were included in the requisition, when its specific stand in the office memorandums referred to above was to the contrary. AT the same time, the State Government having taken a positive stand all through that the date of reckoning would be the last date on which the recommendation was made, it should not have included the unfilled posts in its requisition. The career of 11 candidates cannot be jeopardized in this battle of inconsistent and varying stands taken and moves adopted by the State Government and the Commission at different stages for different purposes.

Had the Commission on receipt of the office memorandum dated 14.1.1999 pointed out to the State Government that its view was not in line with the Commission's view that would have sorted out the areas of differences. Interestingly, in a particular case referred top by the appellants, commission accepted that the period was to be from the last date of recommendation. Though there cannot be any estoppels in law, yet a statutory body like the commission cannot blow hot and cold at the same breath. There has to be consistency in its view. To rule out unfortunate situations like the present one being allowed to recur again, both the State Government and the Commission are required to be more vigilant and constructive in their approach. When dealing with the careers of large number of candidates, their stands have to be consistent and not varying to avoid giving room for unsavory suspicions and ensuring the systems to work more transparently to add to its reputation an d

strength.

In the peculiar circumstances noted above, we direct that the appellants shall be considered by the Commission and the State Government and they would be appointed if otherwise found suitable, and eligible after verification of such credentials, documents and background as are necessary to be done for appointment.

The appeals are allowed to the aforesaid extent without any order as to costs.

Sd/- (Doraiswamy Raju) Sd/ (Arijit Pasayat)

4. By letter dated 28th December, 2004 the Special Secretary, Government of U.P. informed the Secretary of the Public Service Commission that the Commission has made available a list of 7 persons in its letter dated 30.6.2004 and further list of 17 persons with its letter dated 3.11.2004, as wait list. Out of these only 8 persons were appellants in the Supreme Court. The names of three persons were not made available. The State Government in pursuance of the direction of the Supreme Court dated 16.2.2004 decided that the appointments is to be given to 11 persons, if they are found eligible after verification. The 11 persons, who were appellants before the Supreme Court were thus given appointments.

5. The five writ petitions namely Writ Petition Nos.28192 of 2002; 39796 of 2002; 29793 of 2002, 28840 of 2002 and 34081 of 2002 were dismissed by the High Court vide its judgment dated 18.12.2002. The Supreme Court allowed the Civil Appeal No. 1035 of 2004 by its judgment and order dated 16.2.2004. In the said judgment and order of the Hon"ble Supreme Court the writ petitions filed by Smt. Kamla Srivastava in the year 2002 was also disposed of vide judgment and order dated 2.12.2005 and similar directions were issued in her favour. The State Government vide order dated 30.1.2006 refused to consider her claim for appointment on the ground that judgment and order of Hon"ble Supreme Court was limited to 11 appellants, who had filed special leave petition. Shri Ghanshyam-petitioner No. 2 in this writ petition was also similarly placed and his writ petition was also decided by judgment dated 2.12.2005. The State Government by its order dated 30.1.2006 refused to consider the claim of the petitioners on the ground that the judgment of the Supreme Court was limited only to 11 appellants, who had filed special leave petition. Aggrieved the petitioners filed Writ Petition No. 24190 of 2006 and Writ Petition No. 20176 of 2007. Both these writ petitions were allowed with following directions:

We have heard Counsel for the parties and gone through the records of the present petition.

The petitioner had approached this Court in the year 2002 itself, for reasons beyond the control of the petitioner her writ petition could not be decided by this Court. While petitions filed by other similarly situate candidates were dismissed under the judgment and order dated 18.12.2002, giving rise to Special Leave to

Appeal being filed before the Hon''ble Supreme Court. The Special Leave to Appeal has been allowed vide judgment and order dated 16.2.2004 with the direction as noticed hereinabove. The Division Bench of this Court, therefore, following the judgment and order of the Hon''ble Supreme Court dated 16.2.2004 disposed of the writ petition filed by the present petitioner in the year 2005 on similar terms and directions.

In our opinion, the petitioner who has been vigilant and has been contesting before this Court with due diligence cannot be permitted to suffer because of the fact that this Court could not decide her writ petition within reasonable time.

It is settled law that no party is to suffer because of the act of the Court. In any view of the matter, once the Division Bench has issued directions under its judgment and order dated 2.12.2005 following the judgment and order of the Hon''ble Supreme Court referred to above, the State Authorities are bound to carry out the said directions with all promptness and due diligence. They cannot be permitted to refuse the consideration of the claim of the petitioner on the ground that the petitioner had not approached the Hon''ble Supreme Court. As already noticed hereinabove, there was no occasion for the petitioner to approach the Hon''ble Supreme Court as her petition remained pending before this Court itself.

In view of the aforesaid, we are satisfied that the order passed by the State Government dated 30.1.2006 is illegal and cannot be sustained. The order impugned is hereby quashed. The writ petition succeeds and is allowed. The respondents are directed to consider the claim of the petitioner for appointment strictly in accordance with law in the light of the Division Bench judgment and order dated 2.12.2005, subject however to the condition that the vacancies which were subject matter of advertisement in the year 1997, within the category to which the petitioner belongs is still available and no person over and above the petitioner in the merit list still remains to be offered appointment.

6. The petitioners, thereafter, made representations to the State Government, which have been rejected by the impugned order dated 13th October, 2008 by the Principal Secretary (Home), Government of U.P. giving rise to this writ petition.

7. The State Government has rejected the representation on the grounds that there were 24 vacancies, which could not be filled up in the Asstt. Public Prosecuting Officer Examination, 1997. The Commission has made available the wait list of 24 persons out of which 10 persons have been given appointment and that there are still 14 vacancies available to be filled up from the examination held for direct recruitment in the year 1997. The petitioners, however, cannot be given appointment, as their names are not included in the wait list. Thus it is clear that the persons available in the wait list are higher in merit than the petitioners.

8. Shri Ashok Khare assisted by Shri Siddharth Khare would submit that the

petitioner's name were included in the wait list. The High Court while deciding the writ petitions on 28.2.2008 gave the petitioners same benefit, which was given by the Supreme Court with two conditions namely that the vacancies, which were subject matter of the advertisement in the year 1997 within the category to which the petitioners belong are still available, and that no person over and above the petitioners in the merits list still remains to be offered appointment.

9. Shri Ashok Khare would submit that the petitioners' names were included in the wait list. The Commission committed an error in failing to send their names to the State Government for appointment and that the condition put by the High Court that no person over and above the petitioners in the merit list still remains to be offered appointment, has to be read in the context of the facts of the case in which no one was offered appointment, or that no one has come forward to be appointed in pursuance of the selections and placement in the wait list.

10. Shri P.S. Baghel appearing on behalf of the Commission would submit that though there is provision under Rule 15(4) of the Rules of 1991, to prepare wait list not larger by more than 25% of the candidates in order of merit, on the basis of marks secured in the written examination and interviews, the Commission continuing with its past practice of preparing wait list of 50% of the advertised vacancies actually prepared wait list in which name of petitioner No. 1 were included at Sl. No. 106 with 297 marks. Shri Ghanshyam with 289 marks, and Shri Girija Shankar Pandey was at Sl. No. 310 in OBC category with 283 marks. He would submit that the person with same marks were arranged in merit list and wait list in accordance with date of birth. Since there are number of persons in the wait list, who were not offered appointment by the State Government, the condition No. 2 put by the High Court was not satisfied.

11. We have examined the original record and find that the Commission prepared a combined merit list for each category according to reservation and that on the same day on 20.3.1999 the wait list were also prepared in which name of Kamla Srivastava is included in the general category and name of Ghanshyam was included in OBC category. The wait list in general category starts from 298 marks, whereas Kamla Srivastava secured 297 marks and wait list in the category of OBC starts with 291 marks, where as the petitioner Ghanshyam has secured 289.

12. The averments in paragraph 4 of the counter affidavit clearly admit that the Commission had prepared the wait list and thus the stand taken by the Commission and the State Government that the wait list was not prepared is not correct. We are not called upon in this case to decide whether both the petitioners could be included within the wait list prepared under the Rules, as the wait list prepared by the Commission included their name and that under the orders of the Supreme Court and the High Court in the case of petitioners, which have become final, the petitioners could be given appointment subject to satisfying with two conditions.

13. After perusing the record, we are of the opinion that since the petitioners pursuing their writ petitions bonafide for appointment and were placed in the waiting list, they were entitled to be appointed against 14 vacancies, which could not be filled up in the selections of examination held in the year 1997. The judgment of the Supreme Court and the High Court clearly shows that the benefit has to be given only to those persons, who were diligently agitating the matter. It is not denied that though there were some persons available over and above the petitioner in wait list on merit, they were not given appointment, as they did not agitate the matter in the High Court. The petitioners were the only two persons, who had filed the writ petition claiming appointment from the waiting list on the unfilled vacancies.

14. The petitioners are graduates in law and are eligible for the post. They competed and were placed in the waiting list. They are, therefore, entitled to be appointed, on the vacant post of APOs, which could not be filled up in the year 1997 and that there is no statement of fact come from the Commission or the State Government that these 14 vacancies were offered subsequently and were filled up in any subsequent recruitment.

15. The writ petition is allowed with directions to the respondents to offer appointment to the petitioners within a period of six weeks. The Commission will forward their names within three weeks and that the appointment letters will be issued to the petitioners by the State Government within three weeks, thereafter.

16. The petitioners will not be entitled to salary for the period they could not be appointed and have not worked. The question of their seniority with the batch of the selectees of 1997 will, however, be decided by the State Government, after they are appointed.