
(2008) 02 AHC CK 0227
In the Allahabad High Court

Kaumudi Mishra and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-02-2008

Acts Referred:

Citation : (2008) 02 AHC CK 0227

Hon'ble Judges : Sudhir Agarwal, J;Anjani Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The petitioners had appeared in U.P. Judicial Services Civil Judge (Junior Division), Preliminary Examination, 2003 conducted by the U.P. Public Service Commission (hereinafter referred to as the "Commission") pursuant to Advertisement No. A-2/E-1/2003 dated 22-28.11.2003. The preliminary examination was held in March, 2004 wherein the petitioners qualified and thereafter they appeared in the main examination held for recruitment to the post of Civil Judge (Junior Division). The final result was declared on 02.05.2005 wherein the petitioners were declared successful. However, there was some controversy with respect to the cut off date for the purpose of age which came up for consideration before this Court in Dinesh Pratap Singh and Ors. v. State of U.P. and Ors. 2005(4) ESC 2645 (DB) wherein this Court held that the candidates who were within the upper age limit on 01.07.2003 would be eligible to appear in the said recruitment but those who has crossed upper age limit on 30.06.2003/01.07.2003 will not be eligible. The Apex Court in Malik Mazhar Sultan and Another Vs. U.P. Public Service Commission and Others, however, took a view that the candidates who were eligible on 01.07.2002 in respect to upper age limit would be entitled to appear on the said selection but those who were ineligible on the said date would not have been considered. In view of the Apex Court decision in Malik Mazhar Sultan (Supra) the Commission revised the final result and published in the daily news paper Amar Ujala wherein the petitioners could not find place since others, who were eligible on account of cut

off date as held by Apex Court, stood selected.

2. The grievance of the petitioners is that they have suffered a mental shock on account of exclusion of their names from merit list. However, they have come to know that there are some vacancies which are lying unfilled due to resignation of some candidates who joined earlier or due to non joining of certain candidates, therefore, a mandamus can be issued to the respondents to send further names from the merit list so that the petitioners may be considered for appointment on the post of Civil Judge (Junior Division) against the said vacancies. Reliance is also placed to certain orders passed in Civil Misc. Writ Petition No. 25664 of 2006 Krishna Kumar and Ors. v. State of U.P. and Ors. decided on 04.09.2006 (Annexure-5 to the writ petition) and in Civil Misc. Writ Petition No. 51386 of 2006 Sunaina Tripathi v. State of U.P. and Ors. decided on 15.09.2006 wherein this Court has issued similar directions to the respondents.

3. On the contrary learned Standing Counsel vehemently opposed the writ petition and submitted that the petitioners having not been selected in the final revised merit list, have no right to seek a writ of mandamus commanding the respondents to consider them for appointment on the post of Civil Judge (Junior Division) against the vacancies, if any, remain unfilled due to resignation of candidates who have already joined or due to non joining of certain candidates. He submitted that at the best the petitioners can be said to find a place in the wait list and since wait list candidate has no right to seek a writ of mandamus for his appointment, the present writ petition is not maintainable at the instance of the petitioners. Reliance is placed on a Division Bench decision of this Court in Special Appeal No. 130 of 2003 U.P. Public Service Commission, Allahabad and Anr. v. State of U.P. and Anr. decided on 08.03.2007.

4. We have heard learned Counsel for the parties and perused the record.

5. It is not disputed that the result as it stands today did not declare the petitioners as successful in the said selection and, therefore, the petitioners names are not mentioned in the merit list. There is no averment in the writ petition that the respondents have prepared any wait list at all. In the absence of any preparation of wait list, it cannot be said that the petitioners can claim any right to be considered for appointment if any vacancy remain unfilled due to non joining of a selected candidate. Moreover, even a candidate in a select list has no indefeasible right of appointment and, therefore, the petitioners, who are not even selected, cannot claim such a right. In State of U.P. and Others Vs. Rajkumar Sharma and Others, the Apex Court held:

Selectees cannot claim the appointment as a matter of right. Mere inclusion of candidates' name in the list does not confer any right to be appointed, even if some of the vacancies remained unfilled and the concerned candidates cannot claim that they have been given a hostile discrimination.

6. Moreover, a Division Bench of this Court [in which one of us (Hon''ble Sudhir Agarwal, J.) was a member] in U.P. Public Service Commission (Supra) after

considering various authorities of the Apex Court has held:

Thus, a wait list candidate cannot seek a writ of mandamus enforcing his right to claim appointment by seeking a direction to the Commission to make recommendation of his name from the waiting list and the Government is not obliged to appoint him consequently unless it is substantiated by a statutory provision.

7. So far as the judgements which have been relied by the petitioners are concerned, we do not find that any principle of law has been laid down therein that a mandamus, as prayed for by the petitioners, can be prayed by a wait list candidate or a candidate who is not selected. The order passed in Krishna Kumar (Supra) shows that the Court took the view that if the select list is still alive and there are some vacancy available due to non joining, the Commission shall make recommendation to the State in accordance with law which shows that the said mandamus was confined only to a candidate whose name find mention in the select list and the said order would not help a candidate who was not declared successful and whose name did not find place in the select list.

8. Similarly in Sunaina Tripathi (Supra), it is clear that this Court has not issued any mandamus to the respondents to make any such recommendation and on the contrary it has only observed that if the State Government requisites additional names from Commission against unfilled vacancies from the selection of 2003, the Commission shall send names in accordance with law if the select list is still alive and the unfilled vacancies, if any, be filled up in accordance with law. Moreover, the said orders appears to be based on the admission of learned Standing Counsel in the said case, therefore, cannot be said to be a binding precedent with respect to exposition of law which has been argued by learned Standing Counsel in the present case regarding the right of petitioners to maintain this writ petition.

9. In the result, we do not find any merit in this writ petition. It is accordingly dismissed. No order as to costs.