
(2015) 08 AHC CK 0233
In the Allahabad High Court
Case No : Special Appeal No. 556 of 2015

Krishna Mohan Singh and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 14-08-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1)

Citation : (2015) 9 ADJ 206 : (2015) 5 AWC 5111

Hon'ble Judges : D.Y. Chandrachud, C.J. and Yashwant Varma, J.

Bench : Division Bench

Advocate : Ashok Khare and Siddharth Khare, for the Appellant; Ayank Mishra, for the Respondent

Final Decision : Dismissed

Judgement

1. This special appeal has arisen from a judgment and order of the learned Single Judge dated 21 July 2015. On 19 April 2006, an advertisement was issued by the Electricity Service Commission by which 309 posts were reserved for OBC candidates out of a total 1021 posts of Junior Engineer (Apprentice-Electrical). Selections were made in pursuance of the advertisement. There were 70 unfilled vacancies including 55 from the OBC category. On 20 August 2007, a special recruitment drive was initiated for filling up the unfilled backlog posts. Out of a total of 70 posts, 55 were reserved for the OBC category. The 13 appellants applied in pursuance of the special recruitment drive. The select list was published on 1 September 2008. The names of the appellants were from serial No. 55 and below. The first 54 candidates were selected together with a candidate at serial No. 71 (who came to be selected under the horizontal reservation for freedom fighters). The selection of the candidate at serial No. 71 is not in question. Since the appellants ranked in the select list below serial No. 54, they were admittedly not selected. A third advertisement was issued on 26 February 2011. The advertisement of 2011 inter alia provided for a reservation of 50 seats for the OBC category.

2. In pursuance of the first advertisement issued on 19 April 2006, letters of appointment came to be issued. The process in pursuance of that advertisement continued until 10 February 2008 when it was concluded. Twenty one candidates from the OBC category did not join. Having been unsuccessful in the 2007 recruitment, the appellants filed a writ petition seeking a direction that 21 posts from the advertisement dated 26 February 2011 should be excluded on the ground that they were the subject-matter of the earlier advertisement of 19 April, 2006 which had remained vacant on account of the selected candidates not having joined. The appellants sought a mandamus for appointing them on the post of Junior Engineer on the basis of their merit position and in pursuance of the advertisement dated 20 August 2007.

3. The learned Single Judge held that the appellants were not entitled to succeed in their claim for the following reasons:

4. In the recruitment process which had commenced on 19 April 2006, 309 posts for the OBC category had been advertised. The recruitment process was completed only on 10 February 2008. During the course of the recruitment process of 2006, 21 posts for the OBC category remained unfilled. When the special recruitment drive was initiated in 2007, the number of vacancies which had remained unfilled in the 2006 recruitment were still to be crystallized since it was only upon the completion of the first process on 10 February 2008 that it was finally determined that 21 vacancies remained unfilled. The appellants applied in pursuance of the recruitment drive of 2007; participated in the selection but were unable to secure appointment since they were below the number of vacancies for which appointments had been advertised and which were actually filled up. The learned Single Judge has relied upon the judgment of the Supreme Court in *Rakhi Ray and Others Vs. The High Court of Delhi and Others*, to the effect that no appointment can be made beyond the number of vacancies advertised since this should be violative of Article 14 and Article 16(1) of the Constitution. In the present case, it has been held that the backlog vacancies of 2006 were not the subject-matter of the recruitment drive of 2007 since the backlog vacancies of the previous year were in fact not known when the advertisement for 2007 was issued on 20 August 2007.

5. Learned counsel appearing on behalf of the appellants has relied upon the provisions of Section 3(2) of the U.P. Public Services Commission (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act 1994 and upon a judgment of the Supreme Court in *Jai Narain Ram Vs. State of U.P. and others*, . Now Section 3(2) provides that if in respect of any year of recruitment any vacancy which is reserved under sub-section (1), remains unfilled such vacancy shall be carried forward either in that very year or in a succeeding year or years of recruitment as a separate class of vacancies. Admittedly, when the special recruitment drive of 2007 was initiated on 20 August 2007, that was for 70 posts, of which 55 were for OBC candidates. The fact that there were 21 unfilled vacancies in the general recruitment of 2006 for

the OBC category was evidently not crystallized when the advertisement was issued on 20 August 2007 for the special recruitment drive. The fact that some of the candidates of the general recruitment drive of 2006 did not join and that vacancies had remained came to be crystallized only on 10 February 2008 when the selection process of 2006 was concluded. The appellants applied in pursuance of the recruitment process which was conducted in 2007 and were unable to secure appointment. The learned Single Judge was justified in taking a view that consistent with the provisions of Article 14 and Article 16(1) of the Constitution, it would be impermissible to allow vacancies beyond number which were advertised to be filled up. More so, the appellants cannot assert a vested or indefeasible right for appointment by claiming that though the number of vacancies advertised for 2007 was 55 for OBC candidates nonetheless that number should be increased so as to accommodate them.

6. The judgment of the Supreme Court in *Jai Narain Ram (supra)* has been since considered in a subsequent judgment in *State of U.P. v. Bibhakar Dwivedi and others*, (2003) 12 SCC 62. The basic principle is that once the number of vacancies is duly advertised, the recruitment process cannot be extended beyond the number of posts which are advertised. Otherwise, that would seriously infringe the rights of candidates who may have subsequently become eligible and who would lose out from an equality of opportunity to apply for those posts in a subsequent recruitment.

7. The appellants have sought appointment in the special recruitment drive of 2007 and have been unsuccessful. Hence it is not open to them to seek an exclusion of those vacancies from the advertisement of 2011 or to seek a mandamus that they should be appointed. For these reasons, we see no error in the judgment and order of the learned Single Judge. The special appeal is, accordingly, dismissed. There shall be no order as to costs.