
(2001) 08 AHC CK 0119
In the Allahabad High Court
Case No : C.M.W.P. No. 7677 of 1994

Kshatradhari Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 17-08-2001

Acts Referred:

Constitution of India, 1950 — Article 233, 309

Uttar Pradesh Higher Judicial Service Rules, 1975 — Rule 16, 18, 18(1), 18(2), 5

Citation : (2001) 4 AWC 2501 : (2002) 1 UPLBEC 195

Hon'ble Judges : U.S. Tripathi, J;G.P. Mathur, J

Bench : Division Bench

Advocate : R.N. Singh and V.K. Chandel, for the Appellant; Sudhir Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—This writ petition under Article 226 of the Constitution was filed on 2.3.1994 but its hearing was adjourned on the request of the learned counsel for the petitioner on the ground that a similar controversy was pending in an appeal before the Hon'ble Supreme Court. The writ petition was listed several times for admission but every time its hearing was adjourned on the aforesaid ground. When the petition was listed on 23.7.2001. Sri Ram Niwas Singh, learned counsel for the petitioner made a statement that he wanted to argue the writ petition on merits and thereafter the petition was heard on 24.7.2001.

2. The petitioner is a practising lawyer of Varanasi. The respondents in the writ petition are (1) State of Uttar Pradesh. (2) Governor of Uttar Pradesh, (3) High Court of Judicature at Allahabad and (4) Selection Committee, Uttar Pradesh Higher Judicial Services. The petitioner has sought several reliefs but the principal reliefs are (A) and (B) which are being reproduced below :

"(A) issue a writ, order or direction in the nature of writ of mandamus commanding the respondent Nos. 3 and 4 to make recommendations in light of the directions given by Supreme Court in its judgment in O.P. Garg's case and

make recommendation of petitioner for his appointment on the post of U.P.H.J.S. and the candidates of such list be appointed in future vacancies till next selection and recommendation is made and in the alternative issue writ, order or direction commanding the respondent to produce the record of the U.P.H.J.S. Examination, 1988 and quash the impugned select list dated 25.7.1992 and 6.4.1991 (Annexures-X and XI) and also the recommendation of the High Court by resolution of full court dated 25.7.1992 ;

(B) issue a writ, order or direction in the nature of writ of mandamus commanding the respondent Nos. 3 and 4 to redetermine the vacancy of U.P.H.J.S. Examination. 1988, in accordance with law and to fill the 5 vacancies out of 29 vacancies which has not been filled by direct recruitment and which is recommended to be filled by promotion from Nyaylk Sewa."

3. An advertisement was issued by the Joint Registrar of the High Court inviting applications for making recruitment to U. P. Higher Judicial Service. It was mentioned in the advertisement that a competitive examination was likely to be held sometime in December. 1989 and the last date for submission of the application form was 16.8.1989. The case of the petitioner is that he was a practising advocate of more than 7 years of standing and he accordingly applied for the post and appeared in the written examination. He was called for interview by the letter dated 15.10.1990 and, therefore, no further intimation was given to him. Obviously, the petitioner was not selected as the result of the said examination was declared soon after the interviews were held.

4. The advertisement, copy of which has been filed as Annexure-1 to the writ petition mentioned that total number of vacancies are 5 and that there may be variation in the number of vacancies without prior notice. Sri Sudhir Agrawal, learned counsel for respondents 3 and 4 has made a statement that after the result had been declared, the full court passed a resolution on 6.4.1991 by which some more names were recommended for being given appointment. However, in the meantime, the Apex Court delivered judgment in the case of Shri O. P. Garg and the State Government requested the High Court to redetermine the number of vacancies. Thereafter, the selection committee reconsidered the matter and 25 persons were selected. Out of these 25 persons. 1 person died and 24 persons were given appointment in pursuance of resolution of the Full Court dated 24.7.1992.

5. Sri Ram Niwas Singh. learned counsel for the petitioner has submitted that the determination of number of vacancies done by the High Court was incorrect and in fact, the actual number of vacancies to be filled in by direct recruits in Higher Judicial Service was much more than the vacancies determined and for which, recommendation was made by the Full Court. Learned counsel has further submitted that if a correct determination of vacancies had been made, the number would have been much more and the petitioner would have got a chance to be selected. It is difficult to accept the contention of the petitioner. An applicant for a post has no legal right at all to claim that the number of vacancies

advertised or the number of posts for which selection is made is not correct and they ought to be more. It is well-settled that even a person who has been selected in a competitive examination held for making recruitment to a post has no legal right to claim appointment. It is for the appointing authority to decide how many appointments should be made, the only restriction being that the appointing authority cannot pick and choose but must make appointment strictly in accordance to the rank in the merit list. Therefore, the contention that the selection for greater number of posts ought to have been made is wholly untenable in law.

6. Learned counsel has next submitted that the Higher Judicial Service being a superior service, reservation for members of Scheduled Castes, Scheduled Tribes and Backward Classes cannot be made and as in the recruitment made, there was a reservation for these category of persons, the selection process was completely vitiated. In support of this submission, learned counsel has placed reliance upon *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.,* and *State of Bihar and Another Vs. Bal Mukund Sah and Others,*

7. The U. P. Higher Judicial Service Rules have been framed in consultation with the High Court. The statement of object and reasons mentions that the Governor had made the Rules in exercise of powers conferred by the proviso to Article 309 read With Article 233 of the Constitution. Rule 7 of the Rules reads as under :

"7. Reservation of posts for Scheduled Castes, etc.--Reservation to posts in the service for members of the Scheduled Castes, Scheduled Tribes, and others shall be in accordance with the orders of the Government for reservation in force at the time of recruitment."

8. In advertisement also, it was mentioned that the reservation for the categories of Scheduled Castes/ Scheduled Tribes and others shall be in accordance with the Government orders for reservation in force at the time of recruitment. The Rules, therefore, clearly provide for reservation for members of the Scheduled Castes/ Scheduled Tribes and others.

9. Sri Singh has next submitted that the written examination consisted of 300 marks and the interview consisted of 100 marks which showed that 25 per cent marks had been allocated to viva voce which was contrary to the dictum of the Supreme Court in *Ashok Kumar Yadav and Others Vs. State of Haryana and Others, .* wherein it was held that marks allocated for interview should not exceed 15 per cent of the total marks. The procedure of selection is given in Rule 18 and Sub-rules (1) and (2) thereof reads as under :

18. Procedure of selection.--(1) The selection committee referred to in Rule 16 shall scrutinize the applications received and may thereafter hold such examination, as it may consider necessary for judging the suitability of the candidates. The committee may call for interview such of the applicants who in its opinion have qualified for interview after scrutiny and examination.

(2) In assessing the merits of a candidate, the selection committee shall have due regard to his professional ability, character, personality and health."

10. Sub-rule (2) clearly provides that in assessing the merits of a candidate, the selection committee shall have due regard to his professional ability and personality besides character and health. Rule 5 provides that the applicant must be an advocate/pleader of not less than 7 years standing on the 1st day of January next following the year in which the notice inviting the applications is published. Thus, the selection made for direct recruitment to Higher Judicial Service is of a different type. This is not a case of fresh recruits but only experienced lawyers are eligible. For judging the professional ability and personality of an advocate, which is required to be assessed under Sub-rule (2) of Rule 18, an interview is not only essential but is also of considerable importance. The dictum of the Supreme Court that more than 15 per cent marks should not be allocated to interview applies in a case where a fresh recruitment is being made of those who have just completed their education. This principle does not apply where the recruitment is being made from amongst experienced people for their appointment in higher echelons of service. The contention of the petitioner is, therefore, wholly misconceived and cannot be accepted.

11. Lastly, Sri Singh has urged that the number of candidates called for interview was less than what it should have been. We fail to understand as to how the petitioner has been prejudiced by not calling of sufficient number of candidates for the purpose of interview. It is averred in para 5 of the writ petition that the writ petitioner had been called for interview and, therefore, calling of lesser number of candidates went to his advantage as he had to compete amongst lesser number of candidates.

12. For the reasons discussed above, we find no merit in the writ petition, which is hereby dismissed at the admission stage.