
(2000) 05 AHC CK 0036
In the Allahabad High Court
Case No : Special Appeal No. 145 of 2000

Lal Pratap Singh and others	Vs	APPELLANT
State of U.P. and others		RESPONDENT

Date of Decision : 20-05-2000

Acts Referred:

Uttar Pradesh Palika (Centralised) Service Rules, 1966 — Rule 21, 31

Citation : (2000) 3 AWC 2232 : (2000) AWC 2232 : (2000) 3 UPLBEC 2475

Hon'ble Judges : Shitla Prasad Srivastava, J;G.P. Mathur, J

Bench : Division Bench

Advocate : Shashi Nandan, for the Appellant; S.C. and S.K. Singh, for the Respondent

Judgement

G.P. Mathur, J.—This special appeal has been preferred by 28 persons against the judgment and order dated 21.2.2000 of a learned single Judge in Civil Misc. Writ Petition No. 1955. of 1999. The appellants were not party to the writ petition and consequently, they have preferred this appeal with the leave of the Court, which was granted on 2.3.2000.

2. Ashok Kumar Yadav and 5 others filed Writ Petition No. 1995 of 1999 against (1) State of U. P. and (2) U. P. Public Service Commission, praying that a writ of mandamus be issued commanding the respondents to issue appointment letters to the petitioners for the post of Junior Engineer (Civil) in the Municipal Corporations (Centralised Services). U. P. and to accord all other consequential benefits. The case setup by the writ petitioners was that an advertisement was published on 19/25 September. 1992. inviting applications for 153 posts of Junior Engineer (Civil), for Municipal Corporations in the State. The petitioners made applications for the said post and after interview, the result was declared on 4.6.1997 in which their names were shown at serial Nos. 6. 26. 38. 51. 86 and 89. respectively in the merit list. They were issued letters to appear before Chief Medical Officer for medical examination, which was done by them. However, inspite of waiting for a long period, no appointment order was issued in their

favour. A counter-affidavit on behalf of the State was filed by Under Secretary, Nagar Vikas, Government of U. P. wherein, it was stated that in the year 1991, 153 posts of Junior Engineers were lying vacant for which requisition was sent to the Commission and the process for selection was started. There were many ad hoc/daily wage Junior Engineers, who were working in stopgap arrangement in the local bodies since before 1991. who filed writ petitions both at Allahabad and at Lucknow Bench, wherein, stay orders were granted directing that no appointment shall be made in pursuance of advertisement issued in September. 1992, in view of the said orders, the State Government vide order dated 29.10.1996 wrote a letter to the Commission not to proceed with the selection in pursuance of advertisement published in Employment News between 19th and 28th September. 1992. However, inspite of the request of the State Government, the Commission proceeded with the selection and declared a select list. On account of non-availability of vacant posts as a result of stay orders passed by the High Court in the writ petitions filed by ad hoc/daily wage Junior Engineers, the State Government was not in a position to appoint the candidates selected by the Commission and, therefore, no appointment orders were issued in their favour. In paragraphs 4 and 6. It has been averred that the State Government had already withdrawn the requisition from the Commission vide letter dated 29.10.1996.

3. The learned single Judge after noticing the contention of the writ petitioners that they have been selected by the Commission and consequently those working on daily wage basis could not be allowed to continue in service allowed the petition and the relevant part of the order reads as follows :

"If the names of the duly selected candidates have been recommended by the Government, let the appointment letters be issued within ten days from the date of production of a certified copy of this order. Therefore, it is provided that in case even after appointment of 153 Junior Engineers some work is available, the daily wagers may be allowed to continue as they have worked for considerable long time."

4. The case set up by the appellants in this appeal is that the advertisement issued by the Commission was challenged by 55 Junior Engineers including the 28 appellants in this appeal by filing Writ Petition No. 36602 of 1992. wherein, an interim order was passed on 30.9.1992 restraining the State of U. P. from making any appointment in pursuance of advertisement dated 18th September, 1992. issued by the Commission, on the posts on which the writ petitioners of the said writ petition were working. Similar stay order was passed by the Lucknow Bench on 15.10.1992 in Writ Petition No. 4201 of 1992 and in several other petitions. The State Government, keeping in view the fact that a large number of persons were working as Junior Engineers on daily wage/ contract basis, took a policy decision of absorbing some of these persons on ad hoc basis in accordance with Rule 31 of U. P. Palika (Centralised) Services Rules, 1966. Thereafter, the Government passed an order on 7.3.1995 appointing 60 persons,

including the appellants in this appeal, on ad hoc basis. The case of the appellants further is that the requisition sent to the Commission for making selection of 153 Junior Engineers was withdrawn by the State Government on 24.10.1996. The appellants moved an application for impleadment in the writ petition giving rise to this appeal (Writ Petition No. 1955 of 1999) on 24.5.1999 bringing on record the entire facts. On 7.9.1999. the writ petition was heard by a learned single Judge, who passed the following order :

"As prayed for by the learned counsel for the parties passed over for the day and list in the next cause list. On the next date, the learned standing counsel shall produce the letter/order of the State Government by which requisition sent to the Public Service Commission was withdrawn by the State Government."

5. It is specifically averred in para 20 of the affidavit that the appellants were not working on dally wage basis but had been appointed on ad hoc basis by the State Government and they are continuing as such since 1995.

6. A counter-affidavit on behalf of State of U. P. has been filed by Under Secretary. Nagar Vikas, Government of U. P.. in this appeal wherein. it is averred that a number of Junior Engineers were engaged on dally wage/contract basis by various Nagar Pallkas and Nagar Nigams. Subsequently. 60 such Junior Engineers were appointed on ad hoc basis under Rule 31 of U. P. Pallka (Centralised) Services Rules by the State Government on 7.3.1995. A requisition had been sent to the Commission on 23.12.1991 for making selection on 153 posts of Junior Engineers and the post was advertised on 19.9.1992. The said advertisement and selection was challenged by the daily wage Junior Engineers by filing several writ petitions both at Allahabad and Lucknow Bench in which interim orders were passed to the effect that no appointment shall be made in pursuance to the above selection. On 29.10.1996. a letter was sent by the Government to the Commission not to hold selection and to treat the earlier requisition sent in this regard as cancelled. The Commission was requested to hold selection for 132 posts.

7. The pleadings of the parties show that large number of Junior Engineers had been appointed by various Nagar Palikas and Nagar Nigams on dally wage/contract basis. The post of Junior Engineers falls within the purview of U. P. Palfka (Centralised) Services Rules. 1966, and under the said Rules, the appointing authority for the post is the State Government vide Rule 21. Rule 31 of the Rules provides that notwithstanding anything contained in Rule 21, the State Government may also make ad hoc appointment or temporary officiating arrangement for the post falling vacant substantively or temporarily. The State in its counter-affidavit has admitted that in all 60 persons including the 28 appellants were given ad hoc appointment by the State Government on 7.3.1995. The appellants have, therefore, been appointed as Junior Engineer by the competent authority, namely, the State Government in accordance with rules though their appointment is only ad hoc in nature. The appellants have, therefore, acquired some sort of a right to hold the post of Junior Engineer by

virtue of the order passed by the State Government on 7.3.1995. May be that their appointment is not a substantive appointment but still it is not de hors the rules. The appointment of the appellants is on the same posts over which the writ petitioners have laid a claim to be appointed. The record shows that the appellants moved an impleadment application in the writ petition on 24.5.1999. However, the said application, which was placed on record of the writ petition by the order of the Court dated 25.5.1999, was neither disposed of nor was considered while disposing of the writ petition. In our opinion, in the facts and circumstances of the case, it was necessary to hear and decide the application or to have at least considered the plea of the appellants while deciding the writ petition. The non-adjudication of the application has resulted in miscarriage of justice and, therefore, the order passed by the learned single Judge deserves to be set-aside.

8. It is the specific case of the appellants that the requisition sent to the Commission had been cancelled vide letter dated 29.10.1996 and a request was made not to proceed any further on the basis of the aforesaid requisition. This plea is admitted in the counter-affidavit filed by the State and also in Paragraph-2 (c), of the counter-affidavit filed by the Commission, Sri S. K. Singh. learned counsel for the Commission has submitted that as the selection process was on the verge of completion, the requisition could not be treated to be pending and, therefore, the Commission did not act upon the letter sent by the State Government. Sri V. K. Shukla, who has appeared for the writ petitioners (respondents 3 to 8 in the appeal) has also submitted that the requisition was not pending and, therefore, the Commission was within its right not to stop the selection process on the basis of the letter of the State Government dated 29.10.1996. It is difficult to accept the contention of the learned counsel for the Commission that the requisition was not pending or it had exhausted as the selection process was on the verge of completion when the letter dated 29.10.1996 was received. The result was declared by the Commission on 4.6.1997 and the notification issued by the Commission, a copy of which has been filed as Annexure-4 to the affidavit of the appellants, shows that the interview process commenced on 9th December, 1996 and was completed on 20th March, 1997. This conclusively establishes that long before the commencement of the interview, the letter of the State Government had been received. It is possible that initial screening of the candidates who had to be called for interview had been done prior to the receipt of the letter of the State Government but the process of interview had not begun. At any rate, it is fully established that the Commission commenced the interview process more than a month after the receipt of the letter of the State Government by which it was requested to treat the earlier requisition as having been cancelled.

9. Sri Shukla has urged that once a requisition has been sent to the Commission and the Commission has started the process of selection, it is not competent for the Government to withdraw the requisition. In support of his contention, he has placed reliance on a judgment of Supreme Court in Dr. P.K. Jaiswal Vs. Ms. Debi

Mukherjee and others, In our opinion, the authority cited instead of supporting him supports the contention of the appellant as the ratio of the decision is that it is not open to the Commission to ignore the communication of the Government in that behalf and proceed to set the selection process in motion. In *Jai Singh Dalal and Others Vs. State of Haryana and Another*, it has been held as follows in para 7 of the reports :

".....Therefore, the law is settled that even candidates selected for appointment have no right to appointment and it is open to the State Government at a subsequent date not to fill up the posts or to resort to fresh selection according to revised criteria. In the present case, the selection was yet to be made by the HPSC. Therefore, the petitioners cannot even claim that they were selected for appointment by the HPSC. The selection process had not been completed and before it could be completed the State Government reviewed its earlier decision and decided to revise the eligibility criteria for appointment. It is, therefore, clear from the settled position that the petitioners had no right to claim that the selection process once started must be completed and the Government cannot refuse to make appointments of candidates duly selected by the HPSC."

10. The question whether the Commission was competent to proceed with the selection in spite of the letter of the State Government dated 29.10.1996 and whether the candidates who have been selected by the Commission in spite of such a letter having been received from the State Government have acquired any right to be appointed requires serious consideration in the case. If the Commission was not competent to proceed further with the selection, the very selection process, which is the foundation of the claim of the writ petitioners, would get vitiated and the writ petitioners can claim absolutely no right to be appointed on the post of Junior Engineers on the basis of the aforesaid selection, With profound respects to the learned single Judge, we are constrained to observe that the aforesaid vital question, which requires consideration, has not at all been dealt with in the impugned judgment and order.

11. In view of the discussion made above, we are clearly of the opinion that the judgment and order of the learned single Judge cannot be sustained and has to be set-aside.

12. In the result, the appeal succeeds and is hereby allowed. The impugned judgment and order dated 21.2.2000 of the learned single Judge is set-aside and the writ petition is restored to its original number. The writ petition shall be listed for admission before the appropriate Court on 4.7.2000.

13. It is made clear that any observation made in this order is only for the purpose of deciding the appeal and shall not be construed as an expression of opinion regarding the merits of the claim made by the parties.