

(2005) 01 AHC CK 0138

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 24766 of 2000

Lal Singh

APPELLANT

Vs

State of U.P. and Administrator for Abolished Uttar Pradesh
Sub-Ordinate Service Selection Commission

RESPONDENT

Date of Decision : 24-01-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 5 AWC 4252 : (2005) 2 ESC 1108

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Advocate : Ram Sheel Sharma, G.S. Bhatt, P.K. Bhatt, S.P. Pandey, S.K. Mishra and Somesh Khare, for the Appellant;

Final Decision : Allowed

Judgement

D.P. Singh, J.—Pleadings are complete and the counsels for the parties agree that the petition may be finally disposed off under the Rules of the Court.

2. In pursuance of an advertisement, the petitioner applied in Subordinates Service Examination, 1995 held by Uttar Pradesh Subordinates Selection Commission (here-in-after referred to as Commission). The said examination was held for nine posts and the candidates were to give three preferences wherein the petitioner gave his preference to the post of Deputy Jailor, Naib Tehsildar and Assistant Consolidation Officer, in that order. The results of the examination were declared on 19.3.1997 and in consonance with the marks obtained by the petitioner, he was recommended by the Commission for appointment to the post of Deputy Jailor, However, during the medical examination, the petitioner was found lacking in height, therefore, vide letter dated 9.7.1997. the Additional Inspector General (Prison) informed the Commission and the petitioner that he could not be appointed due to the aforesaid reason and returned the papers to the Commission. Before the Commission could recommend his name for the next post for which he was qualified, viz. Assistant Consolidation Officer, the

Commission itself was abolished with effect from 28.12.1997 vide U.P. Ordinance no. 16 of 1997 (which later became an Act). Though 291 persons had been recommended for the post of Assistant Consolidation Officer but at least 42 out of the aforesaid recommendees, did not report for joining and thus, the petitioner had been making several representations to the Administrator appointed to look after the work of the Commission and also to the State Government, but in vain. As his case was not being considered, having no other avenue left, he filed this petition under Article 226 of the Constitution of India, originally for a writ of mandamus to direct the respondents to consider his case for appointment on the post of Assistant Consolidation Officer.

3. This petition was taken up by the court on 22.5.2000 when the Standing Counsel was granted time for filing counter affidavit and it was directed to come up alongwith the connected writ petition No. 20807 of 2000 (J.S. Jha v. State). The court further directed the respondents to decide the representation of the petitioner which was pending with them. A counter affidavit has been filed annexing therein a copy of order dated 27.9.2002 passed in pursuance of the order of this Court dated 22.5.2000, rejecting the representation of the petitioner on two grounds. Firstly, since the Commission has been dissolved and the Act repealed, no further action could be taken as there was no recommending body and, secondly, that validity of the merit/waiting list was only one year and which period has long expired, therefore, the applicant could not be appointed. This very objection has also been taken in the counter affidavit. After filing of the counter affidavit, an amendment application challenging the order dated 27.9.2002 has been filed which has been allowed.

4. Learned counsel for the petitioner has urged that the repeal of the Commission Act and abolishing of the Commission is immaterial so far as the petitioner is concerned because his rights had been crystallized prior to its abolition and therefore the State Government or the Administrator appointed to look after the affairs of the Commission are duty bound to appoint the petitioner. There is force in the contention of the learned counsel for the petitioner.

5. From the record it is evident that the Additional Inspector General had informed the Commission on 9.7.1.997 that the petitioner could not be appointed as Deputy Jailor as his height was less than the minimum prescribed. In the counter affidavit it is alleged that the Consolidation Department did not inform the Commission that 42 selectees had not joined before the Commission was dissolved with effect from 28.12.1997. In my view, lethargy or casual inaction on behalf of the Government or its officers cannot be taken as a ground for denying an actionable right of the petitioner. According to the General Clauses Act, even repeal of the Commission Act would be immaterial as the right of the petitioner had been crystallized prior to its repeal.

6. Even if the Commission has been dissolved or abolished, the State Government will still have an obligation to consider the appointment of the petitioner if he is otherwise eligible according to the marks obtained by him.

7. In my opinion, the argument of the counsel for the petitioner is bound to be accepted.

8. The petitioner has then urged that existence of vacancy within one year is sine quo non with regard to the validity period of the merit or the select list and since 42 selectees had admittedly not joined on the post of Assistant Consolidation Officer, non-intimation by the department cannot be taken as a ground not to consider him for appointment. The respondents have not denied in their counter affidavit or in the impugned order that 42 selectees did not report for joining on the post, therefore, the vacancy which was advertised did not cease to exist and therefore the petitioner should have been considered for appointment on the said post.

9. From the counter affidavit, it is clear that the petitioner had obtained 682 marks and the last candidate to be recommended for appointment on the post of Assistant Consolidation Officer had also obtained 682 marks. Therefore, even according to the respondent, the petitioner was entitled to be appointed on the said post,

10. There is yet another facet to this issue. In an identical matter with regard to the same examination, several writ petitions were filed which were connected together with writ petition No. 23073 of 1999 and was decided by a learned Single Judge of this Court vide judgment and order dated 18.2.2000, which judgment is also annexed with the supplementary affidavit. The learned Single Judge considered these very objections which have been raised in this petition and found that the stand of the respondents cannot be countenanced and directed that the petitioner should be appointed. The learned Standing Counsel has failed to point out any distinguishing feature in the aforesaid case.

11. For the reasons given hereinabove, this petition succeeds and is allowed and the impugned order dated 27.9.2002 is hereby quashed and the respondents are directed to appoint the petitioner on the post of Assistant Consolidation Officer and grant him the seniority alongwith candidates appointed in pursuance of Subordinate Service Examination, 1995. No order as to cost.