

(1998) 09 AHC CK 0079
In the Allahabad High Court
Case No : C.M.W.P. No. 11566 of 1998

Mohd. Islam Siddiqui and another

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 07-09-1998

Acts Referred:

Constitution of India, 1950 — Article 235, 309
Government of India Act, 1935 — Section 241
Subordinate Civil Courts Ministerial Establishment Rules, 1947 — Rule 11, 12, 15
Uttar Pradesh Rules for Recruitment of Ministerial Staff of the Subordinate Offices
Rules, 1950 — Rule 4, 5, 7

Citation : (1999) 1 AWC 225 : (1998) 3 UPLBEC 2071

Hon'ble Judges : M. Katju, J

Bench : Single Bench

Advocate : Ashok Khare, for the Appellant;

Final Decision : Allowed

Judgement

M. Katju, J.—Heard Sri Ashok Khare, learned counsel for the petitioner and Sri Sunil Ambwani appearing for the High Court and for the District Judge, Mainpuri.

2. This writ petition has been filed for a mandamus directing the respondents to declare the result of the selection held on 24.3.1995 for the post of Hindi Stenographer in the District Judgeship of Mainpuri. It appears that the District Judge, Mainpuri Issued an advertisement which was published in the newspapers inviting applications for filling up the post of Hindi Stenographers in the Judgeship of Mainpuri. On 24.3.1995 the selection test for Hindi Stenographer was conducted and the petitioners participated in the same. However, it appears that the result of this selection was not declared by the District Judge, Mainpuri. In paragraph 7 of the writ petition, it is stated that the reason for not declaring the result was that on 23.3.1995 some circular letter from the High Court was received by the District Judge placing some restraint on the District Judge. As yet the process of the selection held on 24.3.1995 has not been complete. Aggrieved this petition has been filed.

3. A counter-affidavit has been filed and in paragraph 7 of the same, it is stated that" the High Court by letter dated 14.3.1995 directed the District Judges of the State not to hold any examination for recruitment of Class III employees till further orders. This letter was received in the District Judgeship of Mainpuri on 22.3.1995 and hence the result of the examination held on 24,3,1995 was not declared. True copy of the recommendation of the Selection Committee dated 30.3.1995 is Annexure-2 to the counter-affidavit. True copy of the circular letter of the High Court dated 14.3.1995 is Annexure-3 to the counter-affidavit. Subsequently, it appears that the High Court cancelled the examination held on 24.3.1995 and directed to readvertise the posts for fresh selection. True copy of the letter of High Court dated 30.8.1997 is Annexure-5 to the counter-affidavit.

4. There are two sets of rules which are relevant in this case. These are : (i) The Subordinate Civil Courts Ministerial Establishment Rules, 1947, and (ii) The Uttar Pradesh Rules for the Recruitment of Ministerial Staff of the Subordinate Offices in Uttar Pradesh. 1950. Both the set of rules have been considered by the Supreme Court in Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, This Supreme Court held that both these Rules are complementary and were applicable to the selection for ministerial post in the District Judgeship. Rule 15 of the 1947 Rules states :

"15. Appointment.--All appointments to the ministerial establishment shall be made by the District Judge. Except in the case of stenographer, first appointment shall, subject to the provisions of Rule 12 be made to the lowest posts (other posts being filled in my promotion) from amongst the candidates recruited under Rule 11 in order of merit.

(2) In filling the posts of stenographers preference shall be given to officials possessing the prescribed qualifications who are already working in the Judgeship in which vacancy has occurred :

Provided that any person aggrieved by any order or appointment made otherwise than in accordance with these rules shall have a right of appeal to the High Court or the Chief Court as the case may be :

Provided also that nothing in these rules shall operate to the disadvantage of any person on the approved list of candidates who have already got an officiating chance and not otherwise disqualified at the time these rules come into force, whether such person has in fact been appointed or not."

5. A perusal of Rule 15 shows that appointments of ministerial establishment in the District Judgeships have to be made by the District Judge and, in my opinion, in view of Rule 15. the High Court has no jurisdiction to Issue any direction regarding the selection and appointment of ministerial posts in the District Judgeships and it is the exclusive jurisdiction of the District Judge under the 1947 Rules.

6. This view is further supported by Rules 4, 5 and 7 of 1950 Rules which state

that the head of the subordinate office shall hold a competitive test for recruitment to ministerial posts. These are quoted below :

"4. Calculation of vacancies.--The head of the subordinate office shall ascertain the probable number of vacancies, if any, in his office during the course of the year and shall if necessary take steps to make the fact generally known.

5. Test to be held annually. --The competitive tests shall be held at least once a year and at the time specified in the Schedule by each head of a subordinate office for posts not requiring technical knowledge e.g.. Stenography :

Provided that if the strength of any office does not warrant annual recruitment in a particular year, a competitive test shall be held whenever it becomes necessary to recruit a ministerial servant to the office.

7. Selection of candidates.--(1) On the results of the test, the head of the subordinate office shall select a number of candidates sufficient to fill the number of vacancies as ascertained in Rule 4 and offer to them appointment as and when the vacancies occur according to the order of merit disclosed at the test.

(2) No one who has not been selected in accordance with sub-rule (1) shall be appointed to any vacancy unless the list of selected candidates is exhausted.

(3) Casual vacancies may be filled up by appointing persons who have not taken the test, but their further retention shall depend on their taking the next test and being selected in it."

7. In the present case, the head of the subordinate office is the District Judge and hence in my opinion, the District Judge alone can hold selections for ministerial posts in the District Judgeship.

8. My attention has been invited to various circulars of the High Court regarding recruitment and selection of Class III employees in the District Judgeship. By the circular dated 24.5.1996 issued by the Registrar of the High Court (which has been placed before me by the Registrar pursuant to my order dated 9.9.1998, and which shall form part of the record), the procedure for holding examinations for filling up the ministerial posts in the District Judgeships has been laid down in great detail. In my opinion, this circular is wholly illegal and ultra vires of Rules 4, 5 and 7 of the 1950 Rules. Every authority in the country has to act in accordance with law. and hence even the High Court has to act in accordance with law. When the entire jurisdiction of holding selections and making recruitments on ministerial posts in District Judgeships is vested in the District Judge alone under the 1947 and 1950 Rules, I fail to understand how the High Court can issue such a circular dated 24.5.1996.

9. It appears that the High Court issued the said circular in view of certain malpractices in the District Judgeships. In my opinion, if there is any malpractice, then the proper course is for the High Court to take appropriate action in accordance with law against the persons concerned, but the High Court cannot

assume jurisdiction which it does not have for making selections for ministerial posts in the District Judgeships. A perusal of the circular dated 24.5.1996 shows that for holding of examination for recruitment of Class III employees in the District Judgeships, the High Court divided the whole of the State of Uttar Pradesh in three zones : "A", "B" and "C". If the examination is held in zone "A", then the District shown in "B" and "C" shall be the zones for preparing the question papers and examining the answer books. Similarly, if the examination is held in zone "B", then preparation of the question papers and examination of answer books shall be done by the districts of zone "A" and "C". This circular further states that a separate cell headed by an Hon"ble Judge of the High Court is created for the supervision of the examinations. This cell shall perform the job of selecting the districts In different zones for preparing the examination paper and for examination of answer books. It is not necessary for me to go into further details mentioned in the said circular. The thrust of the circular is that the District Judge of the concerned Judgeship shall not hold the examination but this role shall be performed by the High Court. The answer copies are also sent to some other district as directed by the High Court. Thus, the District Judge of the concerned Judgeship has been totally denuded of his power and debarred from making selection or recruitment. In my opinion, a perusal of Rules 4, 5 and 7 of the 1950 Rules clearly show that it is the District Judge alone who can conduct the examination and make the selections for Ministerial posts in his Judgeship. If the District Judge is committing any irregularity, the Hon"ble Inspecting Judge of the said district or the Administrative Committee of the High Court can take appropriate action on the administrative side, but this does not mean that the High Court can assume the powers of the District Judge mentioned in the 1947 and 1950 Rules. In this country, every body has to follow the law, and even the High Court has to follow the law. It is pertinent here to refer to the decision of the Supreme Court in H.C. Puttaswamy and others Vs. The Hon"ble Chief Justice of Karnataka High Court, Bangalore and others, . In this decision, the Supreme Court criticised the action of the Chief Justice of Karnataka High Court of making appointments on ministerial posts in subordinate courts in violation of the relevant rules. In my opinion, this decision is fully applicable to this case. The Rule of law prevails in this country, and every one including the High Court must follow the law. As observed above, only the District Judge can hold examinations and make selections and appointments on ministerial posts In the District Judgeship. Hence the circular dated 24.5.1996 is wholly illegal and ultra vires and I declare it to be so.

10. No doubt Article 235 vests in the High Court the power of supervision and control over the subordinate judiciary, but as held by the Full Bench of the Kerala High Court In N. Srinivasan, Additional District and Sessions Judge and another v. State of Kerala AIR 1968 Ker 158 and the Full Bench of the Patna High Court in Madan Mohan Prasad and Others Vs. Government of Bihar and Others, the said power under Article 235 cannot be exercised in violation of the rules framed under Article 309 of the Constitution. The 1950 Rules have been made by the

Governor in exercise of the Constitutional power conferred by Article 309 of the Constitution, and the 1947 Rules have been made u/s 241 of the Government of India Act, 1935. Hence the power under Article 235 cannot be exercised in violation of the Rules made under Article 309. This view finds supports from the decision of the Supreme Court in H. C. Puttuswamy's case (supra), where the Supreme Court criticised the Chief Justice of the Karnataka High Court for violating the Rules in making appointments. It also finds support from the decision of the Supreme Court in B.S. Yadav and Others Vs. State of Haryana and Others, .

11. In view of the above discussion, the circular dated 24.5.1996 as well as the circular dated 14.3.1995 are declared illegal and are hereby quashed. In the circumstance, I direct that the process of selection held on 24.3.1995 be completed by the District Judge, Mainpuri, in accordance with law within two months of production of a certified copy of this order before him. The petition is allowed. However, taking practical view of the matter, I direct that any appointments already made in pursuance of the circular dated 24.5.1996 shall not be invalidated, but no appointment in accordance with the said circular shall be made after the date of this judgment. The Registrar of this Court is directed to send copies of this judgment to all District Judges in U. P.