
(2006) 08 AHC CK 0063
In the Allahabad High Court

Nand Lal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 1 AWC 161

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

Bench : Single Bench

Judgement

D.P. Singh, J.—Heard counsel for the parties.

2. This petition is directed against an order dated 18.7.2006 by which the appointment/promotion of the petitioner has been cancelled.

3. The petitioners were appointed as Beldar and Pump Attendant on daily wages but subsequently were given regular appointment on probation for one year on the said post between 1997 and October, 2004. Copies are annexed as Annexures-11 and 12. It is stated that all the petitioners were given appointment as Junior Fitter and Turner on 6.11.2004. Since the appointment by direct recruitment had been banned, therefore in pursuance of a Government order dated 12/4/1988 and 9.5.1992 they being departmental candidates were appointed and given relaxation in age.

4. Counsel for the petitioner has urged that the appointments were in accordance with the rules and the Government orders, on probation for a period of one year and after its completion their services stood regularized and therefore the impugned order could not be passed without hearing them.

5. A joint perusal of the allegations made in the writ petition and the recruitment rules shows that the aforesaid appointments were made without following due procedure prescribed and in fact in a fraudulent manner in connivance with the then General Manager. When this fact came to the knowledge of the State Government, an enquiry was set up at the Government level which found the

allegations true and therefore by an order dated 30.6.2006, after finding that all the posts could only be filled by direct recruitment where the eligibility of minimum qualification and age was to be adhered to and even in spite of the ban for direct appointment, the said appointment/ absorption was done, was against the mandate of the rules and therefore it was decided to cancel all such appointments and recover the loss from the then General Manager. in pursuance thereof the impugned order has been passed.

6. The contention that the appointments were made in accordance with the rules is totally in correct. If a post is reserved for direct recruitment, the procedure of advertisement etc. has to be followed where, no doubt departmental candidates can take part in the selection, but direct recruitment only by the departmental candidates was against the spirit of the rules. The contention that since there was ban on direct recruitment, therefore, departmental candidates were appointed/absorbed, cannot be accepted. The said Government orders do not in any way relax the procedure for direct recruitment and even if they did, it would be illegal. The appointments which have been made are in the nature of regular appointments on probation and not on officiating basis, therefore they are de hors the rule. Such appointments which are against the mandate of law, no opportunities are required while cancelling it. However, the Court gave ample opportunity to demonstrate any enforceable right to the appointees, but they failed to justify it. The Apex Court in the case of State of U.P. Vs. Neeraj Awasthi and Others, though was considering the ad hoc appointment etc., but it held that such appointees as the petitioners do not have any enforceable right. Further, in Secretary, State of Karnataka and Others Vs. Umadevi and Others, the Apex Court has cautioned against individualizing justice, and it held that if the Courts were to interfere in such matter, it would be against the interest of all those candidates who could have applied had the recruitment procedure been followed.

7. For the reasons above, it is not a fit case for interference under Article 226 of the Constitution of India. Rejected.