
(2009) 04 UK CK 0012
In the Uttarakhand High Court

Naresh Kumar Kashyap, Gopal Dutt Tiwari, Ajay Pal Singh
and Manoj Srivastava

APPELLANT

Vs

District Judge

RESPONDENT

Date of Decision : 23-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 1 UD 569

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dharam Veer, J.—This writ petition moved under Article 226 of the Constitution of India, has been filed by the petitioners with the following prayers:

- i. Issue Writ, Order or Direction in the nature of mandamus directing the respondents to appoint/absorb the petitioners out of the select list-2003 dated 14.7.2003 issued by their judgeship Hardwar vide Annexure -P/3 in terms of the statutory provisions enshrined under Rule 12 of the Uttar Pradesh Subordinate Civil Courts Inferior Establishment Rules, 1955 and in view of the fact that there are 21 more substantive vacancies as per the advertisement dated 27.9.2008; in which 16 out of 34 have already been given appointment. And
 - ii. Issue Writ, Order or Direction in the nature of mandamus to keep in abeyance further appointments till select list is exhausted Or
 - iii. Pass such other order or orders as this Hon''ble Court may deem fit and proper in the facts and circumstances of the present case;
2. Heard Sri Mukesh Kumar Giri with Sri Jitendra Chaudhary, learned Counsel for the petitioners, Sri Arvind Vashisth, learned Counsel for the respondent and perused the entire material available on record.
3. In brief, the facts of the case are that in April, 2003, an advertisement was

issued in a daily Hindi Newspaper whereby the applications were invited from eligible candidates for ten Class IV posts and two posts of Drivers in District Court, Hardwar in the pay scale of Rs. 2550-3200 and Rs. 3050-4590 respectively. In the said advertisement, it was specifically mentioned that the vacancies could be increased or decreased. After completing of selection process, the final result was declared and a list of Selected Candidates was prepared on 14.7.2003 in which 34 candidates (including the petitioners) were selected. It is the admitted case of the parties that out of those 34 candidates, 16 candidates were given appointment and rest of the 18 candidates were kept in waiting list. The names of the petitioners find place in the aforesaid waiting list at Sl. Nos. 19, 25, 28 and 29 respectively. It would also not be out of place to mention that the services of the petitioners were governed by the U.P. Subordinate Civil Courts Inferior Establishment Rules, 1955, as applicable to the State of Uttarakhand. Thereafter, on 16.3.2004, the then District Judge gave temporary appointment to the remaining 18 candidates (including the petitioners). However, on record only the appointment letter of petitioner No. 1-Naresh Kumar Kashyap has been brought. In the last sentence of para 2 of the said appointment letter, it has been specifically mentioned that:

blds vykok bl nkSjku Hkh vkidh Isok;sa fdlh Hkh le; fcuk uksfVI ,oa fcuk dkj.k crk;s lekIr dh tk ldrh gSa

4. Thereafter, on 25.9.2004, the services of the petitioners were terminated by the then District Judge, Hardwar on the ground that "Services are no more required" and said termination letter reads as under:

Your services are no more required in the Judgeship. Hence, you are hereby ceased to act as employee of this Judgeship, with immediate effect.

5. Against the aforesaid termination order dated 25.9.2004, a writ petition was preferred before this Court which was decided by learned Single Judge of this Court on 6.10.2004 dismissing the writ petition in limine. Then the petitioners also preferred a review petition before this Court which too was rejected by learned Single Judge of this Court per order dated 13.10.2004. Being aggrieved with the judgment and order dated 6.10.2004, the petitioners preferred Special Appeals before this Court. After a thorough examination, the Division Bench of this Court per judgment and order dated 4.1.2006 also dismissed the special appeals and it was held by the Division Bench that the termination of services of the writ petitioners was not vitiated by any illegality and that the orders impugned in the writ petitions were not liable to be quashed. Subsequently thereafter the petitioners preferred SLP before Hon"ble Supreme Court of India. The Hon"ble Supreme Court per judgment and order dated 28.4.2006 also dismissed the said SLP in limine. Afterwards, on 13.8.2008, the petitioners made a representation to District Judge, Hardwar with a prayer that they may be appointed as Process Server i.e. a Class-IV employee out of the Select List/Waiting List dated 14.7.2003. Subsequently thereafter, on 25.9.2008, District Judge, Hardwar issued an advertisement inviting applications for 21 posts in the

pay scale of Rs. 2550-3200 which was published in the daily newspaper on 27.9.2008. Now, the petitioners have come up in this petition with a prayer to direct the respondents to appoint/absorb them out of the select list dated 14.7.2003.

6. A counter affidavit has been filed on behalf of the respondent in which it has been stated that after the dismissal of the writ petition by learned Single Judge of this Court, the order whereof was affirmed by the Division Bench of this Court as well as by the Hon'ble Supreme Court, the matter has attained finality and the present writ petition is barred by the principle of Res-judicata and is not maintainable and liable to be dismissed. It is further submitted that the entire process adopted by the answering respondent is in accordance with law and no prejudice is caused to the petitioners by the procedure adopted and by issuing the advertisement notifying the vacancies on 27.9.2008. It is further submitted that Rule 12 of the U.P. Subordinate Civil Courts Inferior Establishment Rules, 1955 provides for waiting list of candidates for appointment to Class IV posts in judgeship. The expression "reasonable dimension" under Rule 12 of the aforesaid Rules 1955 signifies that the waiting list should be a moderate one containing that number of candidates which was not less than or much excess of the vacancy which might be available in the year of recruitment or the year succeeding thereto and this list should be in reasonable proportion to the notified vacancies. This waiting list should not be immoderate or excessive and must be co-related to the number of vacancies either available in the year of recruitment or likely to become available in the succeeding year and the proportion qua the existing and anticipated vacancies. It may be emphasized that it is only in order to obviate the possibility of the waiting list becoming vitiated on account of the vice of arbitrariness or illegal discrimination that the provision contains the Rules specifically provides for maintaining a waiting list of a reasonable dimension. Thus a waiting list of candidates contemplated under Rule 12 of the aforesaid Rules cannot be deemed to be subsisting for a period beyond the filling up of the notified vacancies for the filling whereof the list has to be prepared and maintained. It cannot be deemed to be subsisting or operative for an indefinite period and be utilized for filling up the vacancies which have not been notified before the preparation of such a list. Such list will get exhausted, having served its purpose, once the notified vacancies are filled up by candidates taken in order of merit from that list. It is further submitted that the said advertisement dated 27.9.2008 was notified after waiting list exhausted and has served its purpose. It has further been stated that the claim of the petitioners to appoint them on the basis of waiting list prepared in the year 2003 is absolutely wrong and illegal. The vacancies were notified only (10 in Class IV and of 2 drivers) in the year 2003 for filling up which were lying in the year 2003. Since all the advertised vacancies were filled up there is no justification to fill up more than the notified vacancies as it includes the then existing as well as vacancies likely to occur in the course of the year. Once all vacancies were filled up, the selection process stood exhausted. It is further submitted that the State Government issued an

Office Memorandum No. 1760-A/47-A/4-93-28-5-1980 dated 31.1.1994 in which it has been provided that the waiting list should be valid only for one year.

7. In reply to the contents of the counter affidavit, the petitioners have filed rejoinder affidavit in which it has been stated that the petitioners are entitled to be dealt with as per the procedure established by law i.e. as per Rule 12 of U.P. Subordinate Civil Courts Inferior Establishment Rules, 1955. It is further submitted that the construction of Rule 12 as per interpretation of the Statute would be that its life is not limited for a particular year. The Rule is very specific and unambiguous. It has further been stated that it is wrong to say that dismissal of the petition is barred by resjudicata. It has further been submitted that the waiting list gets exhausted only when all duly selected candidates are given appointments. It is further stated that the appointing authority cannot be permitted to ignore the select list of 2003 issued by their judgeship on 14.7.2003. The respondent cannot be permitted to deny the appointment ignoring part of the select list indirectly that is to say by giving temporary appointment and thereby admitting their judgeship's mistake of appointment in absence of sanctioned strength which the appointing authority could not take directly.

8. Sri Mukesh Kumar Giri, learned Counsel for the petitioners argued that the waiting list prepared under Rule 12 of the aforesaid Rules U.P. Subordinate Civil Courts Inferior Establishment Rules, 1955 could not be said to be cancelled in this manner and that once a waiting list had been prepared it only comes to an end when the list gets exhausted. It was further submitted that so long as the waiting list was not exhausted, a fresh list could not be prepared under Rule 12 of the aforesaid Rules. It was further submitted that the process initiated by the respondent for advertising the fresh posts and canceling the waiting list is wholly illegal and against the provisions of the Rules.

9. The submissions made by learned Counsel for the petitioners are wholly misconceived and not sustainable in the view of the settled legal position. The U.P. Subordinate Civil Courts Inferior Establishment Rules, 1955 provides for the recruitment and conditions of services of persons appointed in the Civil Court in the State. Rule 12 of the aforesaid Rules contemplates that a waiting list of the candidates shall be maintained in the Civil Court for the post of Process Servers, Orderlies, Officer Peons and Farrashes. Rule 12 of the aforesaid Rules is relevant to mention here which reads as under:

12. Waiting List - (i) A waiting list of candidates shall be maintained for each Judgeship for the posts of Process-servers, Orderlies, Office Peons and Farrashes.

No waiting list shall be maintained for chaukidars, malis, sweepers and waterman.

(ii) The waiting list should be of reasonable dimensions and be revised from time to time with a view to removing therefrom the names of :

(a) all such candidates as are not likely to receive appointments before attaining

the maximum age prescribed in Rule 8, and

(b) such candidates as are found guilty of insubordination, misbehavior or dishonesty in the discharge of their duties in temporary or officiating vacancies, after giving them necessary opportunities to explain their conduct.

Note- The order of names in the waiting list shall be in the order in which the candidates are admitted to it but the District Judge may at the time of appointment, choose from the list the most suitable of all the candidates for reasons to be recorded in writing.

10. The aforesaid rule contemplates that the posts of Process-Server, Orderlies, Office Peon and Farrashes have to be filled up by the appointment of the candidates, whose names are found in the waiting list prepared under Rule 12 of the aforesaid Rules. This Rule further contemplates that the waiting list should be of "reasonable dimensions and be revised from time to time with a view to remove therefrom the names of" of such candidates who are found guilty of insubordination, misbehavior or dishonesty in the discharge of their duties in temporary or officiating vacancies. The expression "reasonable dimension" under Rule 12 of the aforesaid Rules signifies that the waiting list should be a moderate one containing that number of candidates which is not less than or much in excess of the vacancy which might be available in the year of recruitment or the year succeeding thereto and this list should be in reasonable proportion to the notified vacancies. To be more precise, this waiting list should not be immoderate or excessive and must be co-related to the number of vacancies either available in the year of recruitment or likely to become available in the succeeding year and the proportion qua the existing and anticipated vacancies. It may be emphasized that it is only in order to obviate the possibility of the waiting list becoming vitiated on account of the vice of arbitrariness or illegal discrimination that the provision contains the Rules specifically provides for maintaining a waiting list of a reasonable dimension. The word "dimension" has to be understood to emphasise the proportion qua the vacancies which are sought to be filled up. Thus a waiting list of candidates contemplated under Rule 12 of the aforesaid Rules cannot be deemed to be subsisting for a period beyond the filling up of the notified vacancies for the filling whereof the list has to be prepared and maintained. It cannot be deemed to be subsisting or operative for an indefinite period and be utilized for filling up the vacancies which have not been notified before the preparation of such a list. Such list will get exhausted, having served its purpose, once the notified vacancies are filled up by candidates taken in order of merit from that list. Thus, it is clear that the said advertisement dated 27.9.2008 was notified after waiting list had exhausted and had served its purpose. Therefore, the waiting list shall cease to be operative and stand exhausted on the filling up of the last notified vacancy. The above view also gets fortified with the verdict given by learned Single Judge of Allahabad High Court in the case of Ram Babu and Anr. v. District Judge, Banda reported in 1996 AWC 516 and also with a verdict given by learned Single Judge of the same Allahabad

High Court in the case of Narpat Singh and Ors. v. Registrar, High Court of Judicature at Allahabad and Anr. reported in (2004) 3 UPLBEC 2723.

11. Apart from the above, even in the present case 10 vacancies of Class IV posts were notified and a list of 34 selected candidates was prepared. Out of the said list, Candidates from Serial Nos. 1 to 16 (10 existing and 6 anticipated vacancies) were filled up and therefore, the notified vacancies came to an end. Accordingly, the waiting list stood exhausted the moment the notified vacancies are filled up by the selected candidates. As such, after when the waiting list got exhausted, the petitioners have got no right for their appointment/ absorption out of the said select list dated 14.7.2003 towards the 21 substantive vacancies issued by way of advertisement dated 27.9.2008. Therefore, the mandamus as prayed by the petitioners cannot be issued by this Court.

12. In view of the foregoing facts and circumstances of the case, the mandamus, as sought by the petitioners, cannot be issued to the respondent to appoint/ absorb the petitioners out of the select list-2003 dated 14.7.2003. As such, the petition is devoid of merits and is hereby dismissed but without any order as to costs.