

(2012) 09 AHC CK 0106

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13312 of 2011

Neeraj Chaurasia and Another

APPELLANT

Vs

Uttar Pradesh Power Corporation Ltd. and Another

RESPONDENT

Date of Decision : 21-09-2012

Acts Referred:

Citation : (2012) 10 ADJ 246 : (2013) 1 ALJ 599 : (2013) 3 AWC 2925 : (2013) 136 FLR 806

Hon'ble Judges : Virendra Vikram Singh, J; Vineet Saran, J

Bench : Division Bench

Advocate : Saurabh Basu, U.N. Sharma and Vishal Singh, for the Appellant;
Sandeep Kumar Srivastava and Dharendra Vaish, for the Respondent

Judgement

Hon'ble Virendra Vikram Singh, J.—The petitioners, by filing the present petition, have prayed for issue of mandamus for cancellation of the resolution and approval thereof, whereby the select list including the name of the petitioners for the appointment of the Accounts Officer in the respondent's department was cancelled. The petitioners applied for the appointment on the post of Accounts Officer, in response to the advertisement Annexure 1 dated 12.11.2004, made by the respondents, for 31 posts of Accounts Officer. The petitioners applied for their appointment and after the test and the interview held by the respondents, they were declared successful and their name found place in the select list, Annexure 2 published on 19.10.2005. The petitioners thereafter waited for the appointment letter for a reasonable time and when they did not receive any response, they filed a writ petition No. 65306 of 2006 before this Court. This writ petition was finally disposed of with a direction to the respondents to decide the representation within a period of three months in the matter of issuance of appointment letter. Despite the direction of this Court the representation of the petitioners was not decided within the stipulated period. The petitioners then filed the contempt petition No. 3543 of 2007, which was decided in terms of the compliance affidavit on behalf of the respondents that, "the appointment to the post of accounts officer is under administrative consideration and the candidates

will be intimated accordingly in due course." The petitioners thereafter approached the respondents by way of seeking information under the right of information. After a strenuous exercise they were informed that by way of the resolution of the respondent board, the entire examination and the select list has been cancelled. By way of the present writ petition the petitioners have prayed for quashing the resolution of the respondent board canceling the examination and for the issuance of appointment letters to the petitioners. On behalf of the respondents vide the counter-affidavit, dated 27.9.2011, it was put forth that the respondent Board has got unfettered powers to vary the number of appointments and under the exercise of such powers they have cancelled the examination and the select list. No ground for the cancellation of the examination or the select list was at all required to be mentioned. This Court having observed such a situation, on 14.2.2012 passed following order,

Though the petitioners do not have indefeasible right for appointment in pursuance of the select list, the respondent corporation must disclose valid reasons for which selection was cancelled.

2. With this observation the Court granted time to the respondents to file counter-affidavit giving the reasons for the cancellation of selection while annexing the resolution of the Board. In compliance to the orders of the Court the respondents have filed the supplementary counter-affidavit annexing the resolution of the board dated 3rd November 2008, alongwith its approval dated 29.12.2008. It has also been mentioned that the information about the cancellation of the examination was widely published in the newspapers and the same was also available on the website of the respondents. However no ground for the cancellation of the selection and the select list was mentioned in this supplementary counter-affidavit. On behalf of the petitioners the affidavits of the respondents have been controverted.

3. Heard learned counsels of the parties and perused the record.

4. The contention of the respondent corporation is that merely because the name of a candidate appears in the select list, he would not become entitled to appointment gathers force, but whether such powers are unfettered has been considered by the Apex Court in the case of Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others, , while holding as follows:

It is true that mere inclusion in the select list does not confer upon the candidate included therein an indefeasible right to appointment but that is only one aspect of the matter. The other aspect is the obligation of the Government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the commission to select a particular number of candidates for a particular category, in pursuance of which the commission issues a notification, holds a written test, conducts interviews, prepares a select list and communicates to the Government--the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when

they complain that they have no legal right to appointment. We do not think that any Government can adopt such a stand without any justification today.

5. This aspect has also been dealt with by the Constitutional Bench of the Apex Court in the case of *Shankarsan Dash Vs. Union of India*, . The following observation of the Apex Court need be quoted:

It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidate acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.

6. Thus the argument on behalf of the respondents that they have unfettered right to cancel the selection prima facie appears to be unfounded. Such right could only have been exercised if there existed sufficient grounds for the same and the respondents before this Court were bound to disclose such grounds.

7. It is evident from the counter-affidavit of the respondents that no reason was put forward on their behalf for the cancellation of the selection. This is also evident from the orders of this Court dated 14.2.2012, referred to above. After the orders of the Court the supplementary counter-affidavit was filed alongwith the copy of the resolutions of the Board. By way of the supplementary counter-affidavit as well, no reason for the cancellation of the selection could be put forward. The learned counsel for the respondents also failed to mention any good reason for the cancellation of the selection. The resolution of the board numbered as Seventy five(24)/08 dated 3rd November, 2008 shows in the left column the proposal for the cancellation of the selection in question alongwith the start of new selection and on the right side column the recommendation of the board has been mentioned. In either of the two columns no ground for the cancellation of the selection has been given. The other letter dated 29.12.2008 simply bears the approval of the recommendation that too without showing any ground at all. Thus from the affidavits of the respondents as also from the perusal of the resolutions of the board it is quite evident that the selection in question has been turned down by the board without there being any ground in existence for the same. There is no mention at all that the selected candidates including the petitioners had any fault or fraud on their part or that the petitioners or any of the selected candidate did not have the requisite qualification for their appointment to the post of Accounts Officer in the Board of the respondents. Thus there was no illegality or irregularity in the selection

process nor was there any wrong act on the part of the petitioners. Under the prevailing circumstances it is evident that the respondent Board has cancelled the select list without any reason or rhyme in an arbitrary manner. The only question now remains to be decided is, whether the respondents have unfettered right to cancel the selection, without even disclosing the grounds therefor?

8. In the case of Union of India (UOI) and Others Vs. Rajesh P.U., Puthuvalnikathu and Another, , the Apex Court held that where it was possible to weed out the beneficiaries of the irregularities or the illegalities from amongst the selected candidates whose selection was not vitiated in any manner. The Supreme Court further held that in such a case," the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of canceling the entire selection, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational." With this finding the order was passed for giving appointments.

9. Again in the case of Purushottam Vs. Chairman, M.S.E.B. and Another, , the Apex Court while replying the question that whether a duly selected person for being appointed and illegally kept out of employment on account of untenable decision on the part of the employer, can be denied the said appointment, held that,

The right of the appellant to be appointed against the post to which he has been selected cannot be taken away on the pretext that the said panel in the meantime expired and the post has already been filled up by some body else.

10. This proposition applies to the present case wherein the respondents have utterly failed to mention any ground for the cancellation of the selection.

11. With the discussion made above we hold that the recommendation of the respondent Board for the cancellation of selection dated 3rd November 2008 and its approval dated 29.12.2008 were totally unwarranted without there being any reason at all for the cancellation of the selection in question. The Court considers it just and necessary to issue mandamus to cancel these resolutions as also the decision of the Board for the cancellation of the selection. The writ petition is hereby allowed. The resolution of the respondent Board dated 3rd November 2008 and its approval dated 29.12.2008, are hereby quashed. The respondents are hereby issued a writ of mandamus to grant appointment to the petitioners for the post of Accounts Officer within a period of three months. It is being made clear that the appointments so made shall be given effect prospectively.