

(2008) 10 AHC CK 0075

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 26731 of 1995

Parwaz Uloom

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 13-10-2008

Acts Referred:

Citation : (2008) 10 AHC CK 0075

Hon'ble Judges : Sanjay Misra, J

Final Decision : Dismissed

Judgement

Sanjay Misra, J.

1. Heard Sri Parwaz Uloom (the petitioner) in person. On an earlier occasion, the petitioner had taken a stand that he is not seeking employment under the State but he wishes to argue the matter as a public interest litigation. Such submission is recorded in the order dated 23.04.2008 (order sheet). However, today he states that he shall address the court on the reliefs claimed in this writ petition and not as a public interest litigation.

2. By means of this writ petition he seeks quashing of the order dated 15.04.1995 (annexure 12 to the writ petition) passed by the Deputy Director of Consolidation, Allahabad and further a direction in the nature of mandamus to appoint the petitioner on the post of Urdu Translator in pursuance of the merit list dated 18.02.1995 as also upon the recommendation of the Commissioner, Allahabad Division, Allahabad and make payment of salary to the petitioner by maintaining his seniority in accordance with the merit list.

3. The petitioner who has appeared in person has referred to a letter (annexure 3 to the writ petition) dated 28.02.1995 which has been written by the Commissioner, Allahabad Division, Allahabad requiring the Deputy Director of Consolidation, Allahabad to issue appointment letter to the petitioner in his office as an Urdu Translator after verifying his character certificate, education qualification and other necessary requirements. He has stated that the

Commissioner, Allahabad Division, Allahabad has clearly recorded in his letter dated 28.02.1995 that a post of Urdu Translator has been created and approved in the office of the Deputy Director of Consolidation, Allahabad and in case such post exists or there is a vacancy on another equivalent post, it must be filled by the selected persons as Urdu Translators. He has referred to various government orders filed as annexures to the writ petition to demonstrate that in each of the departments of the State including in the department of the Deputy Director of Consolidation, Allahabad, posts of Urdu Translator had been created and sanctioned and therefore, when the Deputy Director of Consolidation, Allahabad by his letter dated 15.04.1995 (annexure 12 to the writ petition) has refused to give appointment to the petitioner on the ground that there is no post of Urdu Translator or Junior Clerk in his office, he has committed an illegality and hence such order dated 15.04.1995 passed by the Deputy Director of Consolidation, Allahabad requires to be set aside.

4. The other submission of the petitioner is based upon an amendment application filed by him wherein he has stated that he was given appointment on temporary post as an Urdu Translator in the Trade Tax Department on 26.12.1995, however, it was subsequently terminated on 12.04.1996. The order dated 12.04.1996 is available as annexure 9 to the amendment application which indicates that the engagement of the petitioner was terminated by virtue of an order passed in a writ petition no. 272 (SS) of 1995 Manish Kumar Srivastava vs. State of U.P. and others. According to the petitioner who has appeared in person, the aforesaid writ petition has been dismissed in default.

5. Having considered the submissions made by the petitioner in person and perused the counter affidavit filed by the State respondents, it appears that the dispute raised by the petitioner in this writ petition is with regard to his entitlement for being given appointment as an Urdu Translator under the Deputy Director of Consolidation, Allahabad. The State respondents have in paragraph 3 averred that there is no post of Urdu Translator or equivalent post of Junior Clerk in the office of the Deputy Director of Consolidation, Allahabad and hence, the recommendation of the Commissioner, Allahabad Division, Allahabad to give appointment to the petitioner could not be complied with. From the aforesaid facts, the stand of the petitioner is clear that he seeks appointment as an Urdu Translator by virtue of an alleged selection dated 18.02.1995 and a recommendation of the Commissioner, Allahabad Division, Allahabad as a result of the said selection. The proceedings of the selection dated 18.02.1995 are not available on record of this writ petition. However, the recommendation of the Commissioner has been filed as annexure 2 to the writ petition. The State respondents have contested the claim of the petitioner mainly on the ground that there is no post of Urdu Translator or equivalent post of Junior Clerk in the office of the Deputy Director of Consolidation, Allahabad. It is therefore quite apparent that the petitioner claims to be given appointment by virtue of his selection claimed by him.

6. It is settled law that inclusion of the name of a candidate in the select list cannot entitle a candidate to claim appointment as of right. It is also settled law that even if there is a vacancy available and a candidate claims appointment on such vacancy by virtue of his being placed in the select list, he cannot claim the same as of right and such claim can be rejected by the respondents for valid reasons. In the present case, the petitioner alleges to be placed in the select list. No such select list is available on record. The recommendation has been made in favour of the petitioner by the Commissioner, Allahabad Division, Allahabad. The respondents have come up with a case that there is no post of Urdu Translator or an equivalent post of Junior Clerk sanctioned or created in the office of the Deputy Director of Consolidation, Allahabad. They have refused to give appointment to the petitioner on the aforesaid ground. As has been held by Hon''ble Supreme Court, a claim to appointment of a candidate in the select list even upon availability of a vacancy can be refused for valid reasons. In the present case, it appears that there was no post in the office of the Deputy Director of Consolidation, Allahabad and therefore, the refusal to give appointment to the petitioner was on a valid ground.

7. The Hon''ble Supreme Court in the case of *S. Renuka and others vs. State of A.P.* and another 2002 5 SCC 195 as also in the case of *State of Andhra Pradesh and others vs. D. Dastagiri and others* 2003 2 UPLBEC 1697 has clearly held that mere selection does not give right of appointment. In *N. Mohanan vs. State of Kerala* AIR 1997 SC 1896 the Hon''ble Supreme Court held that the inclusion of name of a candidate in a select list does not give him a legally enforceable right to claim appointment. Similarly, in the case of *Ludhiana Central Cooperative Bank Ltd. vs. Amrik Singh and others* 2003 98 IFLR 1186 the Hon''ble Supreme Court held that the court exercising jurisdiction under Article 226 of the Constitution of India cannot issue a writ of mandamus for giving an appointment when such right of appointment is not an enforceable right. In the case of *Union of India vs. Kali Dass Batish* 2006 AIR SC 789 it has been laid down by the Hon''ble Supreme Court that inclusion of name in the select list does not give any right to a candidate to seek appointment. It is also settled law that a select list once prepared cannot operate as a perpetual reservoir in order to confer right of appointment to a selected candidate for vacancies which existed or which would occur in future. The aforesaid law was laid down in the case of *State of U.P. and others vs. Rajkumar Sharma and others* 2006 3 SCC 330 as also in the case of *State of U.P. vs. Rafiquddin* AIR 1988 SC 162.

8. In view of the settled position of law laid down by the Hon''ble Supreme Court, it appears from the facts of the present case that the petitioner is seeking a right to be appointed by virtue of a selection and recommendation made by the Commissioner, Allahabad Division, Allahabad. Admittedly, such a right is not possessed by the petitioner by a mere selection. Consequently, the relief claimed by the petitioner in the writ petition cannot be granted to him. The impugned order does not suffer from any error in law and hence requires no interference by this court.

9. Insofar as the amendment application is concerned, it appears from the averments made therein that the petitioner was subsequently engaged as an Urdu Translator in the Sales Tax Department and his services were terminated by the order dated 15.04.1996 primarily on the basis that an order preventing such appointment had been passed in the writ petition of Manish Kumar Srivastava (supra). According to the petitioner, such writ petition has been dismissed in default. It has been averred that against the order passed in the writ petition of Manish Kumar Srivastava (supra), a Special Appeal No. 83(S/B) of 1996 was filed and certain directions were issued. The order dated 19.04.1996 passed in the special appeal is available as annexure 10 to the affidavit. It clearly records that the writ petitions of similar nature being writ petitions no. 8585 of 1994; 5278 of 1994 and 897 of 1995 are posted for hearing and hearing is in progress. The petitioner has not brought on record the result of the bunch of writ petitions and has only referred to the dismissal in default of one writ petition no. 272 (SS) of 1995. As such, in the absence on record of the orders passed in the bunch of writ petitions, particularly when the special appeal bench provided that the interim order will not be given effect to till disposal of the cases or until further orders of the learned Single Judge. Therefore, in the absence of the orders passed in the bunch of writ petitions, the petitioner has not made out a case for quashing the order dated 12.04.1996 assailed by him in the amendment application filed in this writ petition. For the aforesaid reasons, no relief can be granted to the petitioner. The writ petition has no force. It is accordingly dismissed.

10. No order is passed as to costs.