

(2015) 11 AHC CK 0095
In the Allahabad High Court
Case No : Special Appeal No. 533 of 2015

Prabhakar Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-11-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1), 16(4)

Citation : (2015) 11 AHC CK 0095

Hon'ble Judges : D.Y. Chandrachud, C.J. and S.N. Shukla, J.

Bench : Division Bench

Advocate : Santosh Kumar Misra, for the Appellant

Final Decision : Disposed Off

Judgement

Dr. D.Y. Chandrachud, C.J.

1. The special appeal has arisen from a judgment and order of the learned Single Judge dated 29 September 2015 by which a writ petition¹ filed by the appellant was dismissed.

2. An advertisement was issued inviting applications for appointment on fifty posts of Gram Vikas Adhikari for Faizabad district. In pursuance of the advertisement, a written examination was held on 13 December 1998, the result of which was declared in February 1999. Interviews were held on 7-8 March 1999. The results so declared contained roll numbers of twenty five candidates belonging to the general category. Six candidates of the general category were placed in the waiting list. Thirteen candidates belonging to the Other Backward Classes² were selected while three candidates were placed in the waiting list. Eleven candidates from the Scheduled Castes and one from the Scheduled Tribes were selected.

3. The appellant appeared in the examination and was placed at serial number two in the waiting list for the general category. In pursuance of a direction which was issued on 20 July 1999 by the Commissioner, Rural Development, fifty

candidates comprised from all categories were assigned for pre-appointment training of a duration of fifteen days with the Regional Rural Development Institute, Pratapgarh. One candidate who was placed at serial number twenty one among the twenty five selected candidates from the general category did not report for training. Accordingly, on 28 June 2001, a communication was issued from the office of the Chief Development Officer, Faizabad to the wait listed candidate at serial number one of the general category to join the post which had fallen vacant, and to report for training. The said candidate did not report for training upon which the authorities decided to fill up the vacant post by offering it to the candidate at serial number two of the waiting list prepared for the general category candidates. A direction was issued from the office of the Commissioner, Rural Development on 20 September 2001 in pursuance of which an order of appointment was issued to the appellant on 26 September 2001.

4. On 15 November 1999, a Government Order was issued by the State by which the procedure to prepare a waiting list was abrogated. Subsequently, on 30 June 2000, a Government Order was issued specifically for the purpose of dealing with appointments on the post of Gram Vikas Adhikari which stipulated that the provisions contained in the Government Order dated 15 November 1999 shall not be applicable to such selections in which the results of selection had been declared and recommendations were made available to the concerned departments prior to the issuance of the Government Order.

5. At this stage, it would be necessary to note that prior to the issuance of the Government Order dated 15 November 1999, there was in force a Government Order dated 31 January 1994. The Government Order dated 31 January 1994 stipulated that (i) the life of a waiting list would be of only one year; and (ii) if the requisition for forwarding the names of candidates in the waiting list was made within a period of one year but the names were not provided by the selecting agency within the said period of one year but thereafter, candidates on the waiting list could be given appointment after the period of one year.

6. The Government Order dated 31 January 1994 was considered by the Supreme Court in *State of U.P. v. Bibhakar Dwivedi* (2003) 12 SCC 62 where it was held as follows:

"The general principle of law as has been established and followed repeatedly by this Court is that even those candidates whose names are included in the merit list do not have a vested right to be appointed. (See *Shankarsan Dash Vs. Union of India*,). The decision relied upon by the High Court and which has been cited before us, namely, *Jai Narain Ram Vs. State of U.P. and others*, had been rendered in connection with the case of Scheduled Caste candidates. It was held in that case that Scheduled Caste candidates who were in the waiting list could be directed to be appointed against the reserved category when vacancies were created in such reserved category by reason of the successful candidates not joining the post. The reasoning is based upon Article 14 read with Articles 16(1) and (4) of the Constitution. The Court held in paragraph 7 of the Report that

given these constitutional rights

"the State failed to perform its constitutional duty to requisition the Public Service Commission to recommend the next qualified persons to the posts reserved for Scheduled Castes". (SCC p. 334)

12. This decision has no application to the facts of this case. A special right was recognised as far as Scheduled Caste candidates were concerned. The correctness of that judgment is not in question before us but we would not seek to extend the principle as enunciated to persons who are not within the ambit of Article 16 (4) of the Constitution."

7. In the present case, from the record, it appears that a direction was issued on 10 August 2004 by the State Government to the Commissioner, Rural Development to the effect that by the Government Order dated 15 November 1999, the provision for the preparation of a waiting list had been dispensed with. Hence, it was directed that steps should be taken for the termination of appointments of persons who had been recruited from the waiting list. This was communicated by the Commissioner, Rural Development to the District Development Officers on 4 September 2004, placing reliance on the communication dated 10 August 2004 and the Government Order dated 15 November 1999. A notice to show cause was issued to the appellant on 18 September 2004, upon which his services were terminated by an order dated 25 January 2005. That gave rise to the filing the writ petition.

8. The learned Single Judge held that "admittedly" the Government Order dated 15 November 1999 would have no application in the present case. However, the learned Single Judge was of the view that the prior Government Order dated 31 January 1994 held the field. In terms of the said Government Order, it was held that the waiting list would have been valid only for a period of one year and the appellant as a wait listed candidate had no legal right to claim appointment. In view of the aforesaid position of law, the petition was dismissed since the appellant was held to have no legal or statutory right to enforce.

9. The submission which has been urged on behalf of the appellant is that once it was held that the Government Order dated 15 January 1999 had no application, the writ petition ought to have been allowed, leaving it open to the State to initiate appropriate steps in accordance with law. This submission was urged on the basis that the communication of the State Government to the Commissioner, Rural Development dated 10 August 2004 placed reliance only on the Government Order dated 15 November 1999. It was urged that the notice to show cause issued to the appellant on 18 September 2004 was also founded only on the aforesaid Government Order dated 15 November 1999. In the circumstances, it was submitted that the learned Single Judge has erred in relying upon the earlier Government Order dated 31 January 1994 which was not the subject matter of the notice to show cause and upon which the order of termination was passed on 25 January 2005. In the alternative, it was urged that

even otherwise, the Government Order dated 31 January 1994 would apply only to selections to be made by the Uttar Pradesh Public Service Commission³ and would have no application to a situation such as the present where the selection was outside the purview of the Commission.

10. We find from the record that the learned Single Judge, having held that the Government Order 15 November 1999 would have no application, proceeded to dismiss the writ petition on the basis of the earlier Government Order dated 31 January 1994 which, in the view of the learned Single Judge, restricted the operation of the waiting list only for a period of one year. On this basis, it was held that the appointment of the appellant was made after the term of the waiting list had expired.

11. The appellant has urged that *ex facie* a reading of the Government Order dated 31 January 1994 would indicate that it would have no application in selections outside the purview of the Commission.

12. On the other hand, it appears from a reading of the counter affidavit that was filed by the State in the proceedings before the learned Single Judge that reliance was placed on the judgment of the Supreme Court in *Bibhakar Dwivedi* (*supra*) as well as on the Government Order which was subsequently issued on 30 June 2000. The said Government Order dated 30 June 2000 had provided specifically, in relation to appointments on the post of Gram Vikas Adhikari, that the provisions of the Government Order dated 15 November 1999 shall not be applicable to such selections in which the results were declared and recommendations were made available to the concerned departments prior to the issuance of the Government Order. Hence, it is urged that selections in which results were declared and recommendations were made available to the concerned department prior to 15 November 1999 would be governed by the earlier Government Order dated 31 January 1994 and not by the Government Order dated 15 November 1999. In the present case, it has been stated that prior to the offer of appointment to the appellant who was a wait listed candidate for the general category, on 28 June 2001 and 26 September 2001, both the Government Orders dated 15 November 1999 as well as the Government Order dated 30 June 2000 had come into force.

13. Having duly considered the submissions which have been urged on behalf of the appellant, we are of the view that it would have been appropriate and proper for the learned Single Judge to look at the entirety of the matter particularly having regard to the fact that the Government Order dated 15 November 1999 was subsequently clarified on 30 June 2000. The decision of the Supreme Court in *Bibhakar Dwivedi*'s case would have a direct bearing on the construction of the Government Order dated 15 November 1999. We also find from the impugned judgment and order of the learned Single Judge that the issue as to whether the earlier Government Order dated 31 January 1994 would apply to selections outside the purview of the Commission has not been analysed.

14. In this view of the matter, we are of the view that it would be appropriate and proper to allow the special appeal, set aside the impugned judgment and order of the learned Single Judge and, having regard to the circumstance which we have referred to above, restore the writ petition to the file of the learned Single Judge for disposal afresh. The impugned judgment and order of the learned Single Judge dated 29 September 2015 is accordingly set aside and the writ petition (Service Single No. 1575 of 2005) is restored to the file of the learned Single Judge for disposal afresh.

15. We clarify that all the rights and contentions of the parties are kept open for being addressed before the learned Single Judge. We have not entered any conclusion or finding thereon, in view of the order of remand.

16. The special appeal is accordingly disposed of. There shall be no order as to costs.

1Service Single No 1575 of 2005

2OBC

3Commission