
(2006) 03 AHC CK 0160

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19126 of 1999

Raj Kumar

APPELLANT

Vs

Food Corporation of India

RESPONDENT

Date of Decision : 07-03-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2006) 7 AWC 6925

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Advocate : Ashok Khare, R.N. Singh, Usha Kiran, S.P. Singh, G.K. Singh, V.K. Singh and I.P. Singh, for the Appellant; R.G. Padia, P. Padia and N.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Shishir Kumar, J.—The present writ petition has been filed for quashing the order-dated 28.2.1998 (Annexure 6 to the writ petition) passed by the respondent No. 2. Further issuing a writ in the nature of mandamus directing the respondents to appoint the petitioner on the basis of the judgment dated 12.9.1997.

2. The facts arising out of the writ petition are that in the year 1985, there were 175 vacancies in the posts of Assistant Grade III (Depot) in the U.P. Region in the Food Corporation of India. The posts of Assistant Grade III are in category III. The Food Corporation of India has also framed regulations for the appointment to category III posts. A photocopy of the Regulations 9 and 10 as well as the relevant portion of Appendix-1 of the Staff Regulations 1971 has been annexed as Annexure 1 to the writ petition.

3. It is clear from these regulations that normally procedure for appointment in category III is to call the names from the Employment Exchange and thereafter the appointments are made. In the present case also the names were asked from the Employment Exchange situated in Uttar Pradesh to send the name of the

candidates for filling up the posts by way of direct recruitment In the present case there were 175 vacancies of the aforesaid posts. Out of these posts, 87 were of general category and remaining posts were reserved for different categories. The petitioner applied for general category The petitioner was registered with the employment exchange in Bulandshahr The petitioner is a graduate and has minimum qualification for being appointed as Assistant Grade III (Depot) The name of the petitioner was sponsored by the Employment Exchange to be considered for the said post On 28.11.1985 the petitioner received a notice for appearance in the written examination. In pursuance of the aforesaid notice, the petitioner appeared in the written examination and he was qualified and called for interview The petitioner was interviewed on 9th July, 1986. To the Best knowledge of the petitioner, the petitioner's interview very well and he has all chances of success in the test and hoped to be appointed on the post of Assistant Grade III (Depot). All Shed Tallymen taken over from the Food Corporation Department have already been promoted to the Assistant Grade. The mode of recruitment for Assistant Grade III (Deport) is that 90% of the vacancies have to be filled upto by direct recruitment and 10% of the vacancies have to be filled up by the way of promotion. When the written test was held no person working in category IV with the Food Corporation of India appeared in the written test. The appointment by way of promotion from category IV to be done separately in the 10% quota.

4. The petitioner waited for the announcement of his result and when the result was not declared the petitioner moved a representation in the month of February 1987 for declaration of his result. Again an application was moved on 6th March 1987 On an enquiry the petitioner has been found that some persons from category IV who have already worked with the Food Corporation have already been appointed in the month of January, 1987 and their results have already been declared When the results of persons working in the corporation has been announced there appears to be no reason as to why the result in the case of direct recruitment has not been announced. Approximately, 2000 candidates have appeared in the written examination and 500 candidates were called for interview 400 were in the quota of direct recruitment and 100 candidates from category IV employees, who were working with the Corporation and who were supposed to be promoted in the 10% quota. As the result of the petitioner was not declared the petitioner along with two persons filed a writ petition No. 10225 of 1987 before this Court, which was finally disposed of by judgment and order dated 12.9.1997 and the writ petition was allowed and the respondents were directed to complete the selection process and to pass the appropriate orders in respect of appointment of petitioners. It has further been directed that the respondents will not consider the age bar, if any, in respect of the present petitioners in the matter of such appointment provided the petitioners have been selected in the said selection process and were duly qualified at the time of participation in selection process. In spite of the aforesaid order, when the respondents have not decided then the petitioner filed a Contempt petition

before this Court then on 28.2.1998 in compliance with the order of the High Court a letter was sent by the respondent No 2 to the petitioner that as the petitioner has been found unfit for appointment on the said post and he was not selected in the selection process against the written test/ interview held in the year 1985-86. It has further been stated that other petitioners namely Prem Prakash Sharma and Praveen Kumar Sharma who were impleaded in the writ petition had got their appointment in view of the judgment dated 12.9.1997 but the case of the petitioner has been rejected.

5. Aggrieved by the aforesaid order, the petitioner has approached this Court

6. The submission of the petitioner is that the action of the respondents is wholly illegal and without jurisdiction and contrary to the contention as the respondents has made a select list in which the petitioner is at Serial No. 107 and on the other hand the petitioner has been found unfit in the selection process. The respondents have illegally rejected the candidature of the petitioner as there was a clear direction by the High Court for following the procedure for direct recruitment as provided u/s 9 of the Regulation. As the respondents have violated the provisions of 1971 Staff Regulation whereby it has been provided that for appointment of Assistant Grade III (Depot), 70% of the existing post would be filled by direct recruitment and 30% of the post will be filled up by promotion. It has further been mentioned that procedure for direct recruitment for filling up the vacancies is entirely different from the procedure followed for filling up the vacancies for promotion. The respondents have filled up more than 90% of the existing vacancies by way of promotion, which is illegal and cannot be permitted. The select list has been prepared by the respondents in violation of the statutory provision, as such, the same is liable to be quashed.

7. Subsequently, a supplementary affidavit has been filed and detailed of vacancy position has been mentioned in the said supplementary affidavit. After the appearance in the written examination for direct recruitment on the said post in the meantime the respondents Headquarters on 18.8.1986 issued an administrative instruction that the direct recruitment quota would be filled up by recruitment as a special case from the existing strength of qualified category III and IV employee subject to the condition specified therein. It is also clear that none of the applicants, who applied for the direct recruitment were considered for the appointment on the said post, which is in clear violation of the judgment and order passed by this Court. From the perusal of the record in the common merit list prepared by the respondents including the departmental as well as the direct recruited candidates in which the petitioner was placed at Serial No. 107 and if the 51 candidates who were appointed by the respondents 30% of the departmental quota, if excluded from the said merit list then the petitioner will certainly get the appointment under the direct recruitment quota. It clearly goes to show that the respondents have deliberately not obeyed the order of this Court

8. As per Regulations 9 and 10 of the Staff Regulation, 1971, the cases of the departmental candidates as well as the outsiders for appointment will be

considered simultaneously and in the present case it is the admitted position that the respondents had conducted the written test as well the interview on different dates. The said action of the respondents is in own breach of the Staff Regulation. It is the admitted case of the respondents that they have exceeded the quota which is meant for departmental candidate that is 30% as per the counter affidavit filed on behalf of respondents in contempt proceedings. The quota meant for departmental candidates cannot be exceeded in view of the circular dated 18.8.1986, as such, there was no justification on the part of the respondents to appoint departmental candidates over and above 30%. As the respondents have themselves exceeded the departmental quota and have appointed 51 candidates over and above 30% which was not meant for departmental candidates. In case, the said 51 posts are excluded then the petitioner will be at serial No. 56 and the 70% quota which is meant for direct recruitment would come to 61 posts, hence the petitioner would automatically selected. In such circumstances, the petitioner submits that it is absolutely clear that the respondents in spite of the clear order passed by this Court have again reiterated their earlier stand and without considering the direction issued by this Court has come to the erroneous conclusion. In such a situation, the order passed by the respondents is liable to be quashed

9. On the other hand the counsel for the respondents Food Corporation of India has submitted that 175 vacancies regarding the post of Assistant Grade III (Depot) were advertised. Out of these 87 vacancies were to be filled by the general category and 88 from reserve category candidates. According to Regulation 75 the post are liable to be filled. In Regulation 9 the procedure for direct recruitment has been mentioned.

10. The counsel for the respondents has brought to the notice the aforesaid regulation The same is being reproduced below:

Procedure for direct recruitment:

The following procedure shall be followed in the case of direct recruitment to posts sanctioned for more than 3 months or to posts sanctioned initially for less than 3 months but extended beyond 3 months:

(a) Category III and IV Posts

The vacancies shall be notified to the Employment Exchange/ Exchange having jurisdiction over the unit of appointment. If the Employment Exchanges furnish a non-availability certificate, the appointing authority shall arrange for the issue of an advertisement in a prominent newspaper or newspapers circulating in the Region covered by the Unit of appointment.

All applications received shall be considered and promising candidates called for interview Final selection shall be made on the basis of an interview or after holding a test, wherever such a test is considered necessary or appropriate, having regard to the nature of the post.

* Provided that the employees serving under the Central/State Governments and Public Sector Undertakings whose applications are received through proper channel and the surplus employees of the Central/State Governments shall also be eligible to be considered for appointment against direct recruitment vacancies alongwith nominees of the Employment Exchange.

** Provided further that such of the employees who were recruited on daily-rate basis for periods of less than 3 months or on purely temporary basis and whose services have been retained after allowing periodical breaks, shall also be eligible to be considered for appointment against direct recruitment alongwith candidates sponsored by the respective Employment Exchanges.

***Provided further that any apprentice who has successfully completed the period of his apprenticeship training under the Apprentices Act, 1961 in the corporation shall also be eligible for regular appointment in accordance with the instructions issued by the Central Government from time to time.

****Provided further that the regular departmental labour workers of the Corporation, who fulfil the educational qualifications prescribed for direct recruitment to category III and IV posts, shall also be eligible to apply and be considered for appointment against direct recruitment vacancies alongwith the nominees of the Employment Exchange.

11. It has further been submitted that aforesaid criterion was inserted in the Regulation which is effective from 30.10.1973 (16th Amendment)

12. It is clear from the Regulation that certain amendments have been made which is apparent from the counter affidavit. From the perusal of the proviso 1 it clearly contained in Regulation 9 that the employees serving under the Central / State Government and Public Sector undertakings, whose applications are received through proper channel as and surplus employees of the Central/State Governments shall also be eligible to be considered for appointment against the direct recruitment vacancies along with nominees of the employment exchange. As the Food Corporation of India is the statutory corporation fully owned, controlled and governed, as such, the same is governed by the Food Corporation of India Act, 1964. The Statutory rules are also framed namely Staff Regulation 1971. A notification was issued in the year 1985 but the aforesaid notification does not indicated as to how and in what manner these vacancies are to be filled up. Meaning thereby the vacancies were to be filled up according to the Regulation 9. On the basis of the aforesaid notification in terms of first proviso of Regulation 9. the employees working in the Corporation also applied and participated in the written examination as well as in the interview and then the result was declared. In the meantime, the administrative instructions were issued that these posts would be filled up only from departmental candidates and not from outside. It has also been brought to the notice of the Court by the counsel for the respondents that this fact was not brought to the notice of the Court in the earlier writ petition regarding the relevant regulation which was amended on

30.10.1973 itself

13. In such a situation, it is important that in terms of first proviso Regulation 9 added in the Regulation in 1973, either there is any administrative instruction or not, the departmental candidates can very well appear in the examination, as in the present case. The earlier judgment will not help the petitioner as the said judgment is on the basis of non amended Regulation 9. In such situation, the counsel for the respondents submits that the earlier judgment on which the petitioner is trying to take the benefit, the same cannot be given and in view of the said judgment it could be declared as per in curium and has placed reliance upon a judgment reported in 2005 ACJ 1668 in Chairman, Uttar Pradesh Jal Nigam and Anr. v. State of U.P. and Anr. In terms of the directions issued by this Court the result of the petitioner has been declared and the petitioner has been informed accordingly.

14. It has further been informed on the basis of the perusal of the original record which was summoned by this Court and has been perused by the parties that although 87 vacancies pertaining to general class candidates were notified to be filled up. The result of 150 candidates was prepared. Similarly, the results of 91 candidates pertaining to scheduled caste and six candidates pertaining to physically handicapped category and six pertaining to ex service men category were declared In terms of the notification dated 31.7.1985, 87 vacancies were notified in so far as general class category candidates are concerned and 88 were notified for reserved category candidates. Subsequently the Corporation realized that it requires only 51 candidates in so far as general class candidates are concerned and 19 candidates out of reserved category candidates and although 87 vacancies were notified for general class candidates, only 51 candidates were given appointment letters from the list published to the extent of 150 candidates according to their merit list. As the two candidates namely Sri P.P Sharma and Sri P.K. Sharma come at Serial Nos. 20 and 21 respectively in the result declared by the Corporation they come within the preview of initial 51 candidates, as such, they have been given appointment. Meaning thereby, position is as on date that 87 vacancies were notified in so far as general class candidate are concerned, $51 + 2 = 53$ candidates have been given appointment. If the petitioner's serial number is accepted as 56 then he is not entitled for being appointed on the post in question. According to the petitioners case his name stands at serial No. 56 in the result which should have been prepared by the Corporation in the terms of the judgment delivered by this Hon"ble Court in earlier Writ Petition in the year 1997 Only 53 candidates have been issued appointment letters and as the petitioner is at serial No. 56, the petitioner has got no case and he is not entitled for any appointment.

15. The reliance has been placed by the judgment of this Court in Ludhiana Central Co-operative Bank Ltd. Vs. Amrik Singh and Others, is being reproduced below:

8. We have carefully considered the submissions on behalf of the parties on

either side, in the light of the materials placed on record. The conclusion that the functioning of the then Managing Director of the appellant Bank is neither appreciable nor can the so-called selections be given any credence of real/proper selections or can be said to have been made in accordance with law, becomes irresistible. The whole process appears to have been not only perfunctory but really a farce of selection vitiated by award of indiscriminate marks to boost up the candidates of choice and unreasonably put down others in utter disregard and derogation of the binding guidelines. Indisputably, the power to appoint is vested in the Board of Directors of the appellant Bank under the bye-laws and the constitution of a Committee for the selection of candidates by conducting tests and interviews cannot clothe the said Committee with powers also to finalize the same without the approval of the Board and/or either declare the results of selection on its own or appoint persons pursuant to such selections without reference to the Board. There is a serious claim by the appellant Bank, that the assessment of candidates appears to be in gross violation of the binding circular orders of the Registrar of Cooperative Societies dated 31.12.1991. The High Court while passing the order on 22.10.1997 allowing the writ petition, could not have ignored the directions of the Registrar on 9.1.1997 and 21.1.1997, the ban orders of the Government issued on 10.2.1997 and the final directions issued on 3.4.1997 by the Registrar as to what should be done in all pending as well as fresh matters to ensure transparency as well as to mete out real and effective justice to all the aspirants for the jobs in question, by finding a solution of its own without even looking into the records relating to the selection to satisfy itself as to the legality, propriety, regularity and reasonableness of the so-called selections and the process adopted by the Committee before directing action to be taken in implementation thereof. Even otherwise, it is well settled by now that a person whose name is said to find place in a select panel has no vested right to get appointed to the post in spite of vacancies existing. The appointing authority cannot afford to ignore individual claims at its whim or fancy, in operating such a panel or making appointments on the basis of the panel, by merely "pick and choose" of candidates. The High Court could not have directed the publication of results or to accord appointments as per such results, all the more in this case, in the teeth of and in derogation of the circular orders of the Registrar of Cooperative Societies dated 3.4.1997 which decision seems to have been taken as a matter of policy and for uniform application to all cases pending finalization as well as for any new proposals for recruitment of staff relating to all cooperative banks in the State. The High Court ought to have, at any rate, gone into all these relevant and vital aspects at least when serious irregularities have been brought to notice by filing a review petition, by calling for production of the relevant records. The cavalier fashion in which it seems to have been rejected cannot meet with our approval, at any rate on the peculiar facts and circumstances highlighted in this case.

16. In view of the aforesaid judgment, it has been submitted that now it is settled law that no mandamus can be issued for issuance of appointment letter.

The further objection has been raised by the respondents that now it is well settled that in such kind of litigation the effected person should also be impleaded as necessary party.

17. The reliance has been placed upon the relevant judgments. The same are being reproduced below-

(i) Bhagwanti and Ors. v. Subordinate Services Selection Board, Haryana and Anr., 1995 Supp (2) SCC 663,

(ii) Ishwar Singh v. Kuldip Singh

(iii) Sukhpal Singh and Others Vs. Punjab State Agri. Marketing Board and Others,

(iv) Ramrao and Others Vs. All India Backward Class Bank Employees Welfare Association and Others,

18. In such a situation, the counsel for the respondents submits that the writ petition is liable to be dismissed

19. I have heard learned Counsel for the petitioner and learned Counsel for respondents and have perused the recorded.

20. Admittedly, the selection is of 1985 and the judgment in the earlier writ petition has been pronounced without considering the amended Regulation 9 and on that basis the Hon'ble Court had directed to declare the result and to give an appointment. From the rerecord it is also clear that the proviso in Regulation 9 has been added in the year 1973 prior to the date of selection. From the contention raised on behalf of the petitioner itself and from the perusal of the original record it clearly goes to show that the petitioner come at serial No. 56 and it is also apparent from the record that only 53 candidates have issued appointments letters. The petitioner's contention would have been correct if the proviso to Regulation 9 would not have added in the Regulation in the year 1973. Admittedly there is no dispute to this effect that the administrative instruction cannot over right the regulation. The contention of the respondents appear to be correct that in terms of first proviso of Regulation 9 the employees working in the corporation has also applied and participated in the written examination as well as in the interview.

21. Now from the perusal of the record, it is clear that the said selection is of 1985 and as the present moment while deciding the writ petition it is not clear that what is the position of the vacancies. It has also been seen that about 21 years have been passed whether the select list is survives or not. In view of the various government orders, normally the life of select list is either one year or two years. It is now well settled legal position that filling up vacancies over and above would amount to filling up the future vacancies and violating the fundamental rights of candidate under Article 14 and 16 of the Constitution of India of those candidates who become eligible subsequent to the date of

advertisement. In *Union of India and Ors. v. Iswar Singh Khatri and Ors.* reported in 1992 Supp (3) SCC 84 , and in *Gujarat State Deputy Executive Engineers" Association v. State of Gujarat and Ors.* reported in *Gujarat State Dy. Executive Engineers" Association Vs. State of Gujarat and Others*, the Apex Court has taken a view that unless and until the fact regarding the vacancy is verified, no order can be passed.

22. In various cases the Apex Court has taken a view to this extent that even in case name of candidate is included in select list, cannot claim appointment as a matter of right. It is now well settled that employer cannot be directed by the Court to make an appointment unless and until the position is clarified. Even the Apex Court has stated that inclusion of candidate in merit list or select list does not convert any right to be selected even some of the vacancies remained unfilled, in such a situation the candidates cannot claim that he has been given a hostile discretion

23. In view of *Shankarsan Dash Vs. Union of India*, reported in 1996 AIR S.C. 2346 and *Hanuman Prasad and Others Vs. Union of India (UOI) and Another*, the Apex Court has taken a view that mere inclusion the name in the penal a select list candidate cannot claim any indefeasible right even against the existing vacancies, as State is under no obligation to fill up all or any of the vacancies.

24. So far as the present case relates in this case the order has been passed to this effect that the petitioner has not been selected in the selection process against the written test/interview held during 1985-86. In such a situation and in the facts and circumstances of the case as the petitioner has not been selected he has got no right to get an appointment.

25. The writ petition is devoid of merits and is hereby dismissed.

26. There shall be no order as to costs.