

(2001) 05 AHC CK 0018

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No's. 2223 and 19900 of 2000

Rajendra Prasad and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-05-2001

Acts Referred:

Citation : (2001) 2 UPLBEC 1794

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : Ashok Khare and V.K. Shukla, for the Appellant; Kripa Shankar Singh, S.C., for the Respondent

Final Decision : Allowed

Judgement

S.R. Singh, J.—Both the petitions are inter-knit by common questions of law and fact and being amenable to disposal by a Composite order, the petitions were taken up together with the consent of the learned Counsel, for the parties.

2. The dispute relates to appointment on posts of Sub-Inspector of Police and the facts concisely stated are that the petitioners had put form their candidatures for appointment pursuant to an advertisement published in Newspaper on 10.10.91. The petitioners in writ petition No. 2223 of 2000 are backward class candidates whereas the petitioners in writ petition No. 19900 of 2000 belong to general category.

3. The gravamen of the petitioners is that despite direction given by this Court to fill up the unfilled and dropped vacancies, the waiting list was wrongly abbreviated to 25% of the main list. It appears that in the course of interview, the State Government cancelled the entire selection vide notification dated 9th June, 1994 but the Government decision to cancel the selection process came to be quashed by the High Court vide judgment and order dated 23rd May, 1995 rendered in Civil Misc. Writ Petition No. 21994 of 1994, Ram Das Rai and Ors. v. State of U.P. and Ors. The result was ultimately declared on 22nd December,

1996 to fill up 630 vacancies. Subsequently on 16.1.97, the Government decided to initially advertise newly created posts also out of the candidate who had participated in the selection. However, it appears that when the result was declared, no waiting list was prepared and accordingly a writ petition being Civil Misc. Writ Petition No. 40495 of 1996, Ravindra Nath and Ors. v. State of U.P. and Ors., was filed in this Court which culminated in decision vide judgment and order dated 28.5.97 attended with the directions to the respondents therein to prepare a waiting list and consider the appointment of the persons in the waiting list in accordance with the merit equal to the number of candidates in the main select list who did not join. State of U.P. filed Special Appeal it being Special Appeal No. 313 of 1998 against the judgment dated 28.5.97 Reported in 1999 (2) ESC 1255 . The Special Appeal came to be dismissed vide judgment and order dated 3.2.99. Reported in 1999 (2) ESC 1255 holding that there being no justifiable reason for not considering the candidatures of the candidates figuring in the comparative merit list next below the list of candidates absorbed. The appellant, it was observed, must consider the candidature of such candidates for filling up 136 advertised vacant posts. SLP filed against the judgment of the Division Bench came to be dismissed by the Supreme Court vide judgment and order dated 26.7.99. On the basis of the directions given by the Court, a waiting list was drawn but, it appears, it was confined to 25% of the main list. The petitioners could not secure a place in the waiting list so prepared and accordingly, the waiting lists dated 12.10.99 and 2.1.2000 are sought to be quashed in Civil Misc. Writ Petition No. 2223 of 2000.

4. I have heard Sri Ashok Khare and Sri V.K. Shukla, for the petitioners and Sri Kripa Shanker Singh, Standing Counsel appearing, for the State authorities. The total number of vacancies that were sought to be filled in by means of the selection held pursuant advertisement issued in 1991 was 716 out of which 630 were existing vacancies and 86 were newly created vacancies. It appears that out of 716 candidates selected for recruitment to the posts of Sub-Inspectors 123 did not join, and 13 candidates dropped out mid-way in the course of training resulting in 136 vacancies unfilled. The Division Bench of this Court in Special Appeal aforesaid has luminously held that "136 vacancies against the advertised posts being available, and there being no justifiable reasons in not considering the candidatures of the candidates in the comparative merit list next below the list of candidates absorbed, the respondents must consider the candidatures of such candidates for filling up 136 advertised vacant posts." From a perusal of the counter-affidavit filed by Sri V. R. Pant, D.I.G. (Estt), Police Headquarters, U.P., Alld., it would transpire that 8 candidates selected on the basis of their merits belonging to O.B.C. were included in the list of successful candidates in the O.B.C. category. They were transposed in the list of successful candidates belonging to general category because of their position in the merit-list and as per stipulation contained in the U.P. Public Services (Reservation for Scheduled Caste, Scheduled Tribe and Other Backward Classes) Act, 1994 (hereinafter referred to as the U.P. Act No. 4 of 1994). Accordingly, eight

vacancies occurred in O.B.C. category. From the averments made in para 5 of the counter-affidavit, out of 31. remaining vacancies in the quota of O.B.C. 25 candidates were taken from the waiting list and the remaining are said to have been carried forward to the next recruitment on the premises that the waiting list could not go beyond 25% of the main list. This stand taken in the counter-affidavit, cannot be countenanced in view of the judgment of this Court dated 3.2.99 wherein the direction was issued to the respondents to consider the candidatures of the candidates to the extent of 136 posts from amongst the candidates figuring in the merit list next below the list of candidates absorbed. The petitioners are not in the waiting list because the waiting list prepared by the respondent has been limited to the extent of 25% of the main list. Thus, in my opinion was not permissible in view of the directions given by the Division Bench of this Court in the earlier case.

5. The next question that begs consideration is whether the respondents be directed to appoint the petitioners who have approached the Court or to offer appointment to the candidates just below the list of candidates appointed in the general category and O.B.C. category as the case may be. It has been submitted by the learned Counsel that those who have not approached the Court, should not be considered for appointment. Reliance has been placed on *Ashok alias Somanna Gowda and Another Vs. State of Karnataka* by its Chief Secretary and Others, , in which it has been held that the case of other candidates cannot be considered as they never approached for redress within reasonable time. The Apex Court had made this observation in the case aforesaid in the backdrop of the fact that the appointments were made as far back as in 1987 and the appellants therein were perhaps placed in the waiting list. In the present case, it is not clear whether the petitioners have been able to secure the minimum qualifying marks, if any. In the circumstances, I am of the view that it would not be proper to issue a blanket direction to the respondents to appoint the petitioners irrespective of whether they had secured the minimum qualifying marks if any.

6. In the result, therefore, the petition succeeds and is allowed. The respondents are directed to offer appointment to the petitioners against the unfilled vacancies in the respective categories provided they have secured the minimum qualifying marks, if any. In case, minimum qualifying marks, were not prescribed, then appointments will not be denied.