
(2007) 02 AHC CK 0138
In the Allahabad High Court

Rajesh Kumar Pandey

APPELLANT

Vs

The U.P. Subordinate Service Commission, The State of Uttar Pradesh, Government of Uttar Pradesh and The Consolidation Commissioner

RESPONDENT

Date of Decision : 13-02-2007

Acts Referred:

Citation : (2007) 4 ADJ 671

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—A wait listed candidate of a competitive examination conducted by the U.P. Subordinate Service Commission, for the post of Assistant Consolidation Officer can as a matter of right claim appointment and compel the State Government to appoint him on the ground that some of the posts according to him are lying vacant, is the question mooted in the present writ petition. The ancillary question is whether the controversy involved in the present case is squarely covered by a decision of this Court in writ petition No. 24758 of 2000: Lal Singh v. State of U.P. and Anr. decided on 24th of January, 2005.

2. The facts of the case are not much in dispute. The petitioner, in pursuance of an advertisement issued for the posts of Assistant Consolidation Office and other posts appeared in the examination held by U.P. Subordinate Service Commission (hereinafter called as Commission). A combined examination was held for different posts such as Deputy Jailor, Naib Tehsildar, Assistant Consolidation Officer etc. In the result declared on 19th of March, 1997 the name of the petitioner was not included in the select list, but according to him he was a wait listed candidate. By means of the present writ petition a writ in the nature of Mandamus directing the respondents No. 2 and 3 to call for the names of the candidates including the petitioner selected in accordance with the merit for the

post of Assistant Consolidation Officer from U.P. Public Service Commission, Lucknow after 140 general category candidates as against vacant posts from the same selection and further direct the respondent No. 1 to send the name from the merit list of the next candidates has been claimed. Certain other reliefs have also been claimed in the petition.

3. The petitioner is a general category candidate and claims that a select list of 282 candidates for the posts of Assistant Consolidation Officer was issued. Out of them 140 names were shown against the general category candidates. Only 126 candidates joined the post. According to the petitioner it was incumbent on the State of U.P., respondent No. 2 and the Consolidation Commissioner, respondent No. 3, to have asked the Commission to send 14 candidates in accordance with the merit and their failure gives right to the petitioner to claim necessary direction by way of writ of Mandamus for the same. In para 13 of the petition, the further averment is that the name of the petitioner is "at serial No. 8" in the merit list after 140 selected candidates in general category, whose names were declared by the Commission. His case is that if 14 further names from the general category candidates are called, the petitioner's name is bound to be forwarded by the Commission for the post of Assistant Consolidation Officer. In para 16 of the writ petition it has been stated that about 30 persons from the list of general category candidates have not joined the post of Assistant Consolidation Officer and after the selection in question no further selection has been made by the Commission for filling the vacant posts of Assistant Consolidation Officer and several posts pertaining to the year 1995 are still vacant which are required to be filled by the Commission from the candidates next in the merit list.

4. In the counter affidavit filed on behalf of the respondent No. 2 it has been stated that power to declare the result of the examination which vested in the erstwhile Commission cannot be exercised now by the State government in view of the fact that the U.P. Subordinate Service Commission which was constituted in 1998 under Act No. 7 of 1988 has been dissolved by the U.P. Subordinate Service Commission (Repeal Act No. 5 of 1998) as notified and Special Secretary Karmik Vibhag U.P. Shasan has been appointed as Administrator of the dissolved Commission. It has been further stated that the Commission had recommended to the Consolidation Commissioner, U.P. the names of 140 selected candidates for appointment on the post of Assistant Consolidation Officer and the Consolidation Commissioner vide his letter dated 21st of November, 1998 had only informed about nonjoining of 42 candidates of different categories but he did not call for fresh names from the waiting list. Therefore, the defence of the respondents is that in absence of any requisition by the Consolidation Commissioner for fresh names, the names of other candidates beyond the 140 names already sent of general category was not sent by them and as such the petitioner has no case against them.

5. Along with the supplementary affidavit certain documents have been annexed

therein and attempt has been made to show that the last candidate who was selected had obtained 682 marks and the petitioner, a wait listed candidate has also obtained same marks i.e. 682, besides copies of the judgments delivered in Writ Petition No. 24758 of 2000: Lal Singh v. State of U.P. and in Writ Petition No. 23037 of 1999; Basu Deo and Anr. v. State of U.P. and Anr. dated 18th of February, 2000.

6. Shri Anil Bhushan, the learned Counsel for the petitioner strenuously submitted that the petitioner has obtained 682 marks and Lal Singh who is the last selected candidate had also obtained the same marks. It is not in dispute, according to him, that the names of 140 candidates of general category were included in the select list and out of them only 126 candidates gave their joining. The further case is that some other persons have also not reported on the posts and therefore, according to the petitioner the posts are lying vacant and necessary direction be issued directing the respondents to issue appointment letter to the petitioner as per merit list.

7. In contra, Ms. Suman Sirohi, the learned standing counsel submitted that indisputably name of the petitioner was not included in the merit list of 140 successful candidates in the examination of general category. Elaborating the argument she submitted that at the most the petitioner was a wait listed candidate and such a candidate has no right to compel the State Government to offer him appointment even if certain posts are lying vacant.

8. I have given careful consideration to the respective submissions of the learned Counsel for the parties. From the record it appears that facts are not much in dispute. It is not in dispute that out of 140 general category candidates only 126 candidates reported for verification and even some of them subsequently failed to give their joining. It is apparent from the counter affidavit that the Consolidation Officer informed that 42 persons failed to give their joining on the post of Assistant Consolidation Officer. The question now falls for determination is whether in the facts and circumstances of the case the petitioner, a wait listed candidate, can claim his appointment on the post by obtaining a writ of mandamus.

9. The controversy involved in the present writ petition is not res integra.

10. Shankarsan Dash Vs. Union of India, a Constitution Bench Judgment, is an authority for the proposition that if a number of vacancies are notified for appointment and the adequate number of candidates are found fit, the successful candidates acquired a 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 indicates, 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 up 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. This legal position has been consistently followed by the Apex Court. The decisions in *The State of Haryana Vs. Subash Chander Marwaha and Others*, *Miss Neelima Shangla, Ph. D. Candidate Vs. State of Haryana and Others*, or *Jatinder Kumar and Others Vs. State of Punjab and Others*, do not lay down law otherwise.

11. In *Sri Sanjoy Bhattacharjee v. Union of India and Ors.* 1997 (3) SCC 736 it has been held that the appellant therein has not got any vested right to any appointment merely because his names has been put up in waiting list of recruitment. It has been held that the appellant therein has no right to seek directions and it has been observed that merely because the petitioner has been put in the waiting list, he does not got any vested right in the appointment. It has been further stated that it is not his case that any one below his ranking in the waiting list has been appointed which could give him cause for grievance.

12. In *Gujarat State Dy. Executive Engineers' Association v. The State of Gujarat and Ors.* 1994 (69) FLR 159 it has been held that waiting list is not source of recruitment for future orders except in very exceptional cases.

13. To the same effect are other cases such as *A.P. Aggarwal Vs. Govt. of N.C.T. of Delhi and Another*, *All India SC and ST Employees Assn. and Another etc. Vs. A. Arthur Jeen and Others etc.*, and *Secretary, A.P. Public Service Commission Vs. B. Swapna and Others*, . It has been finally established that a wait listed candidate has no right to claim appointment and the State is under no legal obligation or duty to fill all or any vacancy. Thus, the legal position is firmly established that a wait listed candidate has no legal right to claim appointment and therefore I find no merit in the contention of the learned Counsel for the petitioner. Then it was submitted that since the respondents have not held any examination for the subsequent years, the right of the petitioner cannot be denied. No material was placed before the Court in support of the above submission.

14. The learned Counsel for the petitioner places heavy reliance on a decision of Learned Single Judge of this Court dated 24th of January, 2005 in *Lal Singh's* case (supra). On a careful reading of this judgment, it is clear that it was decided on a different set of facts. Name of Lal Singh was found included in the select list of the examination for the post of Deputy Jailor. The Additional Inspector General informed the Commission that Lal Singh could not be appointed as Deputy Jailor as his height was less than minimum prescribed. In this factual background, this Court ordered that post of Assistant Consolidation Officer be offered to Lal Singh whose name was included in the select list. It is evident that the principle laid down in the case of Lal Singh is distinguishable and distinct in as much as in the present case the name of the petitioner is not included in the merit list but is a wait listed candidate.

15. The other decision of this Court in the case of Basu Deo and Anr. v. State of U.P. and Anr. in Civil Misc. Writ Petition No. 23073 of 1999, the petitioners were duly selected and their names were included in the select list and were sent by the Commission to the State Government. The petitioners were subsequently not allocated any duty nor paid salary and then they approached the Court through the writ petition. This Court found that the appointment letters were issued to them and it is unbelievable that the person will not join a post even after receiving appointment, particularly when he is unemployed. It is axiomatic that the question what are the rights of a wait listed candidate was not the subject matter of the decision in either of the aforesaid writ petitions. The learned standing counsel has rightly pointed out the law as laid down by the Supreme Court; in the case of State of Haryana and Others Vs. AGM Management Services Ltd., wherein the Supreme Court has held that the court should not place reliance on decision without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Each case depends on its own fact and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive. Keeping the above dictum of the Apex Court in mind, it is but obvious that the aforesaid two decision relied upon by the petitioner do not advance his case.

16. Apart from the above, it was not disputed that the life of waiting list is one year. The said period having been expired, the petitioner cannot derive any benefit from the fact that his name was included in the waiting list, although as a matter of fact it has been categorically stated that no waiting list was prepared separately for the post of Assistant Consolidation Officer.

17. The argument of the petitioner that he has secured 682 marks equivalent to the marks secured by Lal Singh whose name has been included in the select list although is attracted but no benefit can be extended to the petitioner in as much as unfortunately for him his name was not included in the select list. It has not been pleaded by the petitioner that his name was not included in the said select list wrongly and non inclusion of his name in the select list is due to any arbitrary or illegal action of the respondents.

18. The argument of the learned standing counsel that the Consolidation Commissioner has not called fresh names from the select list and therefore, there was no occasion for the Commission to send further names also deserves consideration and has sufficient force. In the absence of requisition by the Consolidation Commissioner, the Commission could not have sent the names of the wait listed candidates on its own accord.

19. In the written argument filed on behalf of the petitioner two points have been raised in support of the petition. Firstly that the case of the petitioner is parallel

to the case of Shri Lal Singh who had also obtained 682 marks and was petitioner in the writ petition No. 24758 of 2000 which was allowed by the judgment and order dated 24th of January, 2005. However, as noticed above, this Court is of the view that it is not so and no benefit can be derived by the present petitioner from the judgment given in the writ petition filed by Lal Singh. Besides the above, it has been stated that admittedly waiting list expires after expiry of one year and the question is when the period of one year would start running. According to the petitioner the period of one year should be counted from the last requisition and in this connection reliance has been placed on Sheo Shyam and Others Vs. State of U.P. and Others, This question as a matter of fact does not arise in the case in hand for the reasons given above as the State Government has not given appointment to any wait listed candidate. Lal Singh was aggrieved by certain action of the State Government and then he filed the writ petition. The contention of Lal Singh was accepted and it was held that since his name was included in the merit list, he was entitled for appointment though on a different post. The other aspect of the case is that the State Government has not made any requisition from the Commission and as such the question of start of period of one year would not arise. The Apex Court in the case of Sheo Shyam on the facts of that case held that it would be proper to recount the period from the last date when the recommendation was made. It is taken note of the fact that the State Government itself had requisitioned for 56 posts including the unfilled posts of previous selection and examinations are stated to have been already held. The facts in the present case are not so. It has been categorically stated by the respondents which have not been controverted in the rejoinder affidavit that the, Commissioner of Consolidation has not made requisition of any candidate even for a single post which were left unfilled due to non joining of certain successful candidates of the merit list.

20. Viewed from any angle, I find no merit in the writ petition. The writ petition is dismissed accordingly.