

(1999) 03 AHC CK 0057
In the Allahabad High Court
Case No : C.M.W.P. No. 32743 of 1993

Rakesh Kumar

APPELLANT

Vs

Deputy Director, Government Photo Litho Press, Roorkee,
Haridwar and another

RESPONDENT

Date of Decision : 10-03-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1999) 2 AWC 1362 : (1999) 82 FLR 146 : (1999) 3 UPLBEC 133

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Ravindra Rai, Shyam Lal Mishra and Shasi Nandan, for the Appellant;
K.R. Singh and Vinay Malaveya and S.C., for the Respondent

Judgement

D.K. Seth, J.—A select list was prepared on 24.1.1989 against four posts of machine assistant. Vacancy against three posts was already in existence. The fourth vacancy was anticipated on account of imminent promotion of one of the machine assistants to the post of rotary machine operator. Machine Assistant Nasir Ahmad was promoted to the post of rotary machine operator by an order dated 29.8.1989. But he Joined the said post on 3.11.1989. It is on this post the petitioner was to be accommodated having been selected at the fourth place of the select list. But by reason of a ban imposed on 26.2.1989, the petitioner was informed through letter dated 21.12.1989 being Annexure-C.A. 1 to the counter-affidavit, that he could not be appointed because of the ban imposed on direct recruitment, but he will be given appointment as soon the ban is lifted. The ban was admittedly lifted in 1993. But no appointment was given to the petitioner. Therefore, the petitioner had came up with this writ petition.

2. It was alleged on behalf of the respondents that even after the ban was lifted, the petitioner could not be given appointment since the post was not available to a general category candidate but was reserved for scheduled caste/scheduled tribe candidate. It was also alleged that the select list stood expired after one

year after it was so prepared.

3. Mr. Jai Krishna Tiwari, learned counsel for the petitioner, contended that the assurance given through the letter dated 21.12.1989 had induced the petitioner to wait till the ban was lifted, and, therefore, after the ban was lifted, the respondents cannot retrace from the promise on the principle of promissory estoppel as indicated in Annexure-C.A. 1. On account of the ban, the petitioner had waited till the ban was lifted which explains the delay in moving this writ petition in 1993. According to the learned counsel, the writ petition deserves to be allowed.

4. Mr. K. R. Singh, learned standing counsel, on the other hand, contended that no select list could remain valid beyond one year even if there was a ban imposed. Imposition of the ban cannot have any impact on the life of the select list. He further contended that there cannot be any selection against an anticipated vacancy. He also contended that inclusion of the name in the waiting list does not confer any right. According to him, the post having been reserved for scheduled caste/ scheduled tribe candidate, the petitioner could not be accommodated in violation of the rules regarding such reservation even if he was so included in the select list.

5. I have heard both Mr. Tiwari and Mr. K. R. Singh at length. Mr. Tiwari had relied on certain decisions, on which reference will be made at the appropriate stage.

6. The fact remains that the petitioner was placed at serial No. 4 in the select list prepared for filling up four vacancies in the post of machine assistant. Admittedly one of the posts was against an anticipated vacancy by reason of imminent promotion of one of the machine assistants to the higher post. The said promotion was materialised through order dated 29.8.1989 and the promotee had joined the promotional post on 3.11.1989. Thus, in fact the vacancy resulted on 3.11.1989, which date is within one year from the date of preparation of the select list, namely, 24.1.1989. It was not alleged by the respondents that the petitioner's name was included by mistake or wrongly in the select list against anticipated vacancy. On the other hand, it was intimated to the petitioner through letter dated 21.12.1989 being Annexure-C.A. 1 to the counter-affidavit, that because of the ban imposed on 26.2.1989, the petitioner could not be accommodated in the 4th vacancy and that he will be given appointment as soon the ban would be lifted. In paragraph Nos. 8 and 10 of the counter-affidavit, it has been so pleaded by the respondents. The assurance given through Annexure-C.A. 1 to the counter-affidavit as it appears from the said letter, appears to be a sufficient inducement to the petitioner to wait for lifting of the ban. Therefore, he had approached this Court as soon he was denied appointment after the ban was lifted in 1993. Therefore, it cannot be said that there was any delay or laches or absence of diligence on the part of the petitioner. At the same time, the appointment having been assured after lifting of the ban through Annexure-C.A. 1 to the counter affidavit, the same binds the respondents on account of doctrine

of promissory estoppel. By reason of the letter (Annexure-C.A. 1). the petitioner had changed his position and had waited on account of being induced by such assurance attracting the doctrine of promissory estoppel because of actions on the part of the respondents. The respondents had induced the petitioner to change his own position. After having selected the petitioner for the fourth vacancy and keeping his name in the select list and there having been a vacancy within one year before expiry of the select list, it was not open to the respondents to deny appointment to him on the ground that the post ought to have been reserved for scheduled caste/scheduled tribe candidate. Though such a plea has been taken in paragraph 10 of the writ petition, but nothing has been shown in the form of roster to indicate that the said post was really to be reserved for scheduled caste/scheduled tribe candidate. In the absence of any such material, it is not possible to accept the contention of the respondents conclusively to the extent that the post was reserved for reserved category candidate.

7. In the case of *Vijay Kumar Gupta v. U. P. State Road Transport Corporation, Lucknow and others* 1996 (3) UPLBEC 1944, this Court in an identical situation had held that petitioner in that case was entitled to appointment after lifting of the ban so imposed and had granted relief, but however, without creating any precedent.

8. This Court in the case of *Pradeep Kumar Mishra and others v. U.P.S.T.T.C. and others*, 1991 (2) UPLBEC 796, relying on the decision in the case of *S. Govindaraju Vs. Karnataka S.R.T.C. and Another*, . in similar circumstances had held that a person who was selected, is entitled for appointment as soon the ban is lifted. While dealing with the said case, learned single Judge of this Court had quoted the observation made in the case of *S. Govinda Raju (supra)*, to the extent that once a candidate is selected and his name is included in the select list for appointment in accordance with the regulations, he gets a right to be considered for appointment as and when vacancy arise. In the present case, the selection was made against an anticipated vacancy, that occurred within one year of the preparation of the select list but the appointment was denied on account of imposition of the ban on 26.2.1989. Having regard to the dates as mentioned above, it shows that the ban was imposed after the select list was prepared, and therefore, the said ban could not have any effect on the select list so prepared before the ban was imposed. Ban so imposed would be operative only on the date it was so imposed and its operation shall be prospective and not retrospective. Even though the vacancy might have occurred afterwards, but the select list having been prepared before the ban was imposed, the right of the petitioner to be considered cannot be curtailed or taken away since it was a right that stood accrued already. A right that has been accrued, cannot be taken away except by operation of law. The ban was purely an administrative action and was not through any enactment or anything having the force of law, therefore, the same cannot have the effect of taking away the right of the petitioner that had already accrued by virtue of his selection and inclusion of his name in the select

list.

9. In the case of Bhim Singh and Others Vs. State of Haryana and Others, , the Apex Court had observed that when certain assurances are given by State-respondents, the same is treated to be a specific promise and inducement to the person to change his position and in such circumstances, the right to be considered that had accrued by virtue of such promise or inducement cannot be defeated by subsequent action on the part of the respondents or changing on its position since it has already crystallised into a right to be considered by reason of doctrine of promissory estoppel and as such it was not open to the State to retrace its step and wipe out the right that had accrued on the petitioner.

10. Thus, in the facts and circumstances of the case, it appears that the petitioner is entitled to be appointed in the post that fell vacant on 3.11.1989 in terms of his selection.

11. Accordingly, this writ petition is allowed. Let a writ of mandamus issue accordingly commanding the respondents to give appointment to the petitioner in the post of machine assistant that fell vacant on 3.11.1989, within a period of four months from the date a copy of this order is produced before the concerned respondent. The petitioner's service shall be deemed to have commenced after one month from the date when he had approached this Court, namely, 14th September, 1993 and the said period shall be counted towards his service. If the petitioner has crossed age limit in the meantime, the same should be overlooked since he had become eligible for appointment on 3.11.1989. But, however, the petitioner may not be entitled to any payment of salary for the period till the date of his appointment pursuant to this order. In case, the petitioner's appointment is made beyond the period of four months as directed above, in that event, the petitioner shall be entitled to payment of salary immediately after expiry of four months from the date a copy of this order is produced before the concerned respondent.

12. The writ petition thus stands allowed to the extent indicated above. There shall be no order as to costs.