

(2012) 11 AHC CK 0140
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 58551 of 2012

Ram Adhar Rao and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 21-11-2012

Acts Referred:

Citation : (2013) 1 UPLBEC 136

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : V.K. Singh and Sri. G.K. Singh, for the Appellant; V.P. Mathur and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—Heard Sri V.K. Singh, the learned Counsel for the petitioners, Sri Vivek Prasad Mathur, the learned Counsel for the respondent No. 3 and the learned standing Counsel for the respondent Nos. 1 and 2. Since no factual controversy is involved; this writ petition is being decided at the fresh stage itself.

2. The petitioners are aggrieved by the declaration of the result on the post of Health Education Officer. The facts leading to the filing of the present writ petition is, that the Public Service Commission U.P., Allahabad issued an advertisement No. 2 of 2006, dated 2.7.2005 inviting applications for filling up 546 posts of Health Education Officer in the department of Family Welfare.

3. The advertisement indicated 256 posts for General category, 158 posts for O.B.C. Category, 121 posts for Scheduled Caste category and 11 posts for Scheduled Tribes category.

4. The petitioners belonged to the Scheduled Caste category and applied for the said post and appeared in the written examination in which they were declared successful. The petitioners were called for the interview in which they participated. Before the declaration of the result, the Public Service Commission issued a corrigendum dated 31.3.2008, which was published in the newspaper

Amar Ujala, in which it was indicated that for various categories the posts were being reduced. In so far as the case of the petitioners are concerned, 121 posts were advertised for the post of Scheduled Caste categories, which was reduced to 115 by the corrigendum. Consequently, there was a reduction by six posts. Similar reductions of the posts were made in other categories for which we are not concerned in the present writ petition.

5. Various writ petitions were filed. In Ajai Kumar Naik and Others v. State of U.P. and Others, in Writ Petition No. 7735 of 2008, the corrigendum dated 30.1.2008 was challenged with regard to the reduction of the post in the Scheduled Tribes category. This writ petition was allowed by judgment dated 18.5.2009. The operative portion of the judgment is extracted herein.

The writ petition is allowed. The corrigendum dated 30.1.2008 issued by the Secretary, Public Service Commission as published in "Amar Ujala" dated 31.1.2008 (Annexure 7 to the writ petition) is quashed. The U.P. Public Service Commission will declare the result for the post of Health Education Officer after taking into account the reservation of 11 posts for Scheduled Tribe category in consonance with the Advertisement No. 2 of 2005-06 as originally issued by the Public Service Commission, U.P., Allahabad ignoring the corrigendum dated 30.1.2008 and that the State Government will appoint the selected Scheduled Tribe candidates accordingly.

6. The Court quashed the corrigendum dated 31.1.2008 and directed the Public Service Commission to declare the result for the post of Health Education Officer in consonance with the advertisement No. 2 of 2005-2006 ignoring the corrigendum dated 31.1.2008.

7. Another Writ Petition No. 23338 of 2008, Prafful Kumar and Another v. State of U.P. and Others, was also decided by an order dated 8.4.2011. The operative portion of the said order is extracted hereunder:

In my opinion, there is no occasion to take a different view. In such circumstances, writ petition is also allowed in the same terms and directions and respondents are directed to consider the case of the petitioners accordingly. The decision should be taken within three months from the date of certified copy is produced before them.

8. The petitioners also filed Writ Petition No. 14134 of 2008, which was disposed of in terms of the order passed in the case of Prafful Kumar (supra). For the facility, the said order dated 20.5.2011 is extracted hereunder:

In view of the order passed in Writ Petition No. 23338 of 2008, decided on 8.4.2011, this writ petition is also decided in terms of the directions issued in that writ petition.

9. Based on the judgment of the Court dated 18.5.2009 in the matter of Ajai Kumar Naik and Others (supra), the Public Service Commission was required to declare the result and when the results were not declared, the petitioners filed a

contempt application No. 3532 of 2012 and, during its pendency, the Public Service Commission declared the results by publishing the same in the daily newspaper Amar Ujala on 6.10.2012 in which the respondent Nos. 4 to 10 have been selected for the post of Health Education Officer. The petitioner, being aggrieved, by the selection of these respondents on the post of Health Education Officer has filed the present writ petition.

10. The submission of the learned Counsel for the petitioner is only limited to the extent that the claim of the petitioner alone should have been considered since they approached the Writ Court and that the claim of the respondent Nos. 4 to 10, who had not approached the Writ Court could not be considered nor could they be given an appointment on the post, since the said respondents were not vigilant and had not challenged the selection process. In support of his submission, the learned Counsel has placed reliance upon a decision of the Supreme Court in the case of Ashok alias Somanna Gowda and Another Vs. State of Karnataka by its Chief Secretary and Others, , in which the Supreme Court held that the relief granted by the Supreme Court was only confined to the appellants, who were vigilant and approached the Tribunal and that other candidates were not eligible to be given the relief. The Supreme Court held-

Learned Counsel appearing on behalf of the State of Karnataka pointed out that there are many other candidates who had secured much higher marks than the appellants in case the above criteria is applied for selection. In view of the fact that appointments under the impugned Rules were made as back as in 1987 and only the present appellants had approached the Tribunal for relief, the case of other candidates cannot be considered as they never approached for redress within reasonable time. We are thus inclined to grant relief only to the present appellants who were vigilant in making grievance and approaching the Tribunal in time.

11. In Chairman, U.P. Jal Nigam and Another Vs. Jaswant Singh and Another, , certain employees of the U.P. Jal Nigam were retired at the age of 58 years, who filed writ petition contending that they have wrongly been retired and that they should be allowed to continue till the age of 60 years. The Supreme Court eventually held that the said petitioner should be allowed to continue till the age of 60 years. Based on the said decision, other employees who had retired long ago filed Writ Petition in the High Court claiming similar relief. These writ petitions were disposed of in the light of the judgment of the Supreme Court. The matter went up to the Supreme Court and the Supreme Court held, that these employees who had filed the subsequent writ petitions and who had not challenged the retirement age at the time when they had retired were not entitled to the same relief. The Supreme Court held, that the benefits that was granted to those persons who had filed writ petitions before their retirement could not be granted to those persons who had retired longtime ago and that they could not take advantage of the decision of the Supreme Court.

12. In Sanjay Singh and Another Vs. U.P. Public Service Commission, Allahabad

and Another, , the Supreme Court in the operative portion held, that the relief would be available only to such of the petitioners who have approached the High Court before 31.8.2005.

13. In the light of the aforesaid judgment, the learned Counsel submitted that since the petitioners were vigilant and had approached the Court, they alone should be given a preferential treatment and that their case alone should be considered and since the respondent Nos. 4 to 10 had never approached the Court, no such relief could be granted to them, coupled with the fact that the direction of the Court to consider the claim of the petitioners was not considered by the respondents.

14. Having heard the learned Counsel for the parties at some length, the Court is of the opinion that the decisions relied upon by the learned Counsel for the petitioners has no application whatsoever to the present facts of the case. The cases cited are distinguishable and are not binding precedents to the facts and circumstances of the given case. The decisions so cited were applicable to the facts and circumstances of that case and the relief was confined to those petitioners/appellants. The reason is not far to see. In the said decisions, so cited aforesaid, the Court finds that the results had been declared pursuant to which the selected candidates had joined. The Court while allowing the relief, observed, that if the criteria given in the decision is applied, the appointments of those persons who have less marks would be set aside and therefore, confined the relief only to the petitioners who were before the Court.

15. In the present case, the facts are distinguishable. Before the results could be declared, the corrigendum by which the posts were reduced was challenged, as a result of which, the results were not declared and, eventually, when the writ petition was allowed, the Public Service Commission was directed to declare the results. The writ petition of the petitioner was allowed after two years of the earlier decision in which it was directed that the claim of the petitioner would also be considered. The Court while disposing of the writ petition of the petitioners did not mean that only the claim of the petitioners would be considered. When the results were declared, the claim of the petitioners was also considered and since they were not in the eligible list, they were not given the appointment. The Court does not find that the directions of the Court was not considered by the U.P. Public Service Commission while declaring the results. The Court also observes that the decisions cited (supra) are not applicable. In the light of the aforesaid, the Court does not find any merit in the writ petition and is dismissed.