

(1993) 05 AHC CK 0006

In the Allahabad High Court

Case No : Special Appeal No's. 233, 235 and 263 of 1993

Sachida Nand Singh and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 19-05-1993

Acts Referred:

Subordinate Civil Courts Ministerial Establishment Rules, 1947 — Rule 14, 14(1), 14(3), 15, 15(2)

Citation : (1994) 2 AWC 1023

Hon'ble Judges : S.C. Mathur, Acting C.J.; R.A. Sharma, J

Bench : Division Bench

Advocate : Ramjit Misra and Ashok Khare, for the Appellant;

Final Decision : Dismissed

Judgement

S.C. Mathur, A.C.J.

1. These three special Appeals are directed against a common judgment whereby a learned Single judge dismissed the writ petitions of the Appellants. In the writ petitions, the appellants had sought a writ of mandamus to command the District Judge, Jaunpur to appoint them as Paid Apprentice in his judgeship and to forbear from holding further examination for preparation of a select list.

2. The facts giving rise to the writ petitions and the present Special Appeals may immediately be stated. In the year 1986, the District Judge, Jaunpur held examination for preparing a select list out of which appointments were to be made to the post of paid Apprentice. After holding written examination and interview a list of 61 candidates was published on 24th March 1986. In this list the names of the appellants Sachida Nand Singh, Hitendra Kumar Chaturvedi and Sanjay Kumar Upadhyaya (petitioners in writ Petition No. 9020 of 1989) appeared at Serial numbers 30, 31, and 37 respectively and Kailash Nath Maurya, Rais Ahmad, Om Prakash Srivastava and Mohammad Akhtar (petitioners in writ petition No. 7826 of 1989) at serial numbers 49, 51, 52 and 59 respectively.

Dharmendra Kumar Tewari (petitioner No. 4 in writ petition No. 7826 of 1989) claims that his name appeared at serial No. 55. Similarly, the name of Rajesh Kumar Singh, the sole petitioner in writ petition No. 13220 of 1989, found place at serial No. 38. In 1986 itself, persons whose names figured at serial numbers 1 to 23 were given appointment. In April-May, 1986, the appellants were appointed for short duration and paid salary for the period they worked. In December 1987, three persons, in 1988 seven persons and on 1-1-1989 one person were appointed out of the same list. The appellants did not get regular appointment and they represented their case to the District Judge. The District Judge by his order dated 15th April, 1989 rejected the representations and cancelled the list prepared in the year 1986. The appellants were aggrieved by the order of the District Judge and accordingly they filed the writ petitions which have given rise to the present appeals.

3. In the writ petitions, the case of the appellants was as follows:

The select list had been prepared under the provisions of Subordinate Civil Courts Ministerial Establishment Rules, 1947 (for short "the Rules"). Under Rule 14 of the Rules, the name of a candidate who failed to get appointment within one year from the date of recruitment gets automatically removed from the register of recruited candidates. Natural corollary of this was that the name of a candidate who got appointment within the said period of one year could not be removed from the said register. Since the appellants got appointment within the said period of one year, their names could not be removed. Therefore, the order of the District Judge cancelling the list is illegal so far it concerns the appellants. In support of their case, the appellants cited the decision of a Division Bench of this Court in the case of Bhagwan Das and Ors. v. District Judge Azamgarh and Ors. (writ petition No. 30407 of 1990 decided on 22nd March, 1992).

4. The writ petitions were contested by the District Judge, Jaunpur. The case of the District Judge was that there was no regular vacancy against which the appellants could be appointed. They manipulated vacancies by persuading 46 employees to go on leave for 35 days. Against these leave vacancies, the appellants were appointed for a period of 15 days only. The leave was subsequently cancelled and the employees were asked to join within 15 days. By obtaining appointment against the manipulated vacancies for a short period, the appellants cannot claim continuance of their names in the select list. The action of cancelling the 1986 list was in consonance with the provisions of the Rules, under which the select list remains valid for a period of one year only.

5. In the rejoinder affidavit, the appellants denied the allegation of manipulation of vacancies.

6. The learned Single Judge has accepted the plea of manipulation of vacancies raised on behalf of the District Judge. He has held that by the short-term appointment against the said vacancies the appellants did not acquire any right to claim continuance of their names in the register of the recruited candidates.

The learned Single Judge has further held that in view of Rule 9 of the Rules, recruitment is made to make appointment against vacancies likely to occur in the course of the year, and not to make appointment against vacancies occurring beyond the year. On this basis he had held that the appellants cannot claim appointment against the vacancies occurring after the expiry of the period of one year contemplated by the Rules. Cancellation of the list of 1986 has, therefore, been held to suffer from no infirmity. With these findings, the learned Single Judge dismissed the three petitions.

7. There is no dispute that the matter is governed by the Rules Rule 9 deals with the method of recruitment. It provides:

Early in each year, or as the circumstances may require each District Judge shall recruit as many candidates for his judgeship as are required for the vacancies likely to occur in the course of the year.

Emphasis supplied)

From the emphasised portion, it is clear that the recruitment is to be confined to the vacancies likely to occur in the course of the year. Thus, a list of candidates cannot be prepared to make appointment to posts falling vacant beyond one year. From the appellants' own allegations, it is apparent that the enlistment was far in excess of the vacancies likely to occur in the course of the year. As already mentioned, as many as 61 candidates were empanelled. In the year 1986 only 23 enlisted candidates were appointed. The remaining appointments were made in December, 1987, 1988 and 1989. These appointments were obviously made against vacancies occurring after the expiry of the period of one year contemplated by Rule 9. The appellants do not claim that the persons who were appointed in the years 1987, 1988 and 1989 were junior to them. If the appointment of these persons was not strictly in conformity with the Rules, the appellants cannot at this stage claim appointment on any post.

Rule 14(3) of the Rules reads as follows:

If any such candidates has not been given an appointment offered in strict order of seniority according to the list in the bound register prescribed under Sub-rule (1) within one year from the date of his: recruitment, his name shall be automatically removed from register of recruited candidates and he must then take his chance with others for recruitment again in a subsequent year.

Under this provision, protection is afforded to those candidates who get appointment within one year. Those who fail to get appointment within the said period go out of the list. The appellants admittedly had been appointed against leave vacancies before the expiry of the period of one year. The question for consideration is whether appointment against leave vacancy is also protected by the Rule 14(3).

8. The appointment referred to in Rule 14(3) is obviously referable to appointment in pursuance of enlistment under Rule 9. Rule 9 refers to the

vacancies likely to occur in the course of the year. Assessment of such vacancies is possible only in respect of substantive vacancies. At the beginning of the year it is not possible to make assessment of vacancies likely to occur on account of grant of leave. We are, therefore, of the opinion that Rule 14(3) does not protect appointments against short-term leave vacancies. Accordingly by their appointment against leave vacancies within one year of their empanelment the appellants acquired no right to claim continuance of their names on the list of recruited candidates. The learned Single Judge was, therefore, justified in dismissing the appellants writ petitions.

9. The view taken by us has the support of the decision of a Division Bench of this Court in *Pawan Singh v. District Judge Agra* 1987 AWC 604. In this case also, the number of empanelled candidates far exceeded the number of anticipated vacancies. In paragraph 7 of the report, it has been observed:

Thus, the intention is that recruitment has to be made every year, and only so many candidates are to be selected as may be sufficient to fill the vacancies of the following year. To repeat, we may say that it should first be determined as to how many vacancies would occur in the following year, and candidates sufficient to fill that number of vacancies should be selected.

The petitioners in this case had sought a writ of mandamus to command the District Judge to appoint them on the basis of their empanelment. In view of the fact that the number of empanelled candidates far exceeded the number of anticipated vacancies and the period of one year had already expired, the writ petition was dismissed. We are in respectful agreement with a view taken in this case.

10. The decision in *Pawan Singh's* case (*supra*) was followed by a learned Single Judge in *Subhash Chandra v. District Judge Meerut* HVD 1993 (1) All 197.

11. The learned Counsel for the appellants however relies upon the second proviso to Rule (15) of the Rules for submitting that even officiating chance entitles an empanelled candidate to have continuance in the panel. The proviso reads thus-

Provided also that nothing in these rules shall operate to the disadvantage of any person on the approved list of candidates who have already got an officiating chance and not otherwise disqualified at the time of these rules come into force whether such person has in fact been appointed or not.

(Emphasis supplied).

The emphasised portion of this proviso shows that the proviso has a limited life. It refers to the approved list which was operative on the date the rules were enforced. The approved list in the present case was prepared much after the enforcement of the Rules. Accordingly, the Proviso has no application to the facts of the present case. This is the view taken by the learned Single Judge in *Subhash Chandra's* case (*supra*). In paragraph 6 of the Report, after laying

emphasis on the words "at the time these rules come into force" it has. been observed:

It has not dealt with a case when the list was prepared after the enforcement of the Rules.

12. The learned Counsel for the appellants places reliance upon another Division Bench decision of this Court in Satendra Prasad Sharma v. District Judge Ghazipur 1987 AWC 167. In this case, a panel prepared more than a year earlier was saved with reference to the second proviso to Rule 15(2). The Division Bench failed to take notice of the words "at the time these rules come into force" Accordingly the judgment of the Division Bench is per incuriam.

13. In view of the foregoing discussion, the Special Appeal lack merit and are hereby dismissed. However, there shall be no orders as to costs.