

(2020) 07 UK CK 0026

In the Uttarakhand High Court

Case No : Writ Petition No. 715 Of 2020 (S/S)

Sagar Saini

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 22-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 07 UK CK 0026

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : C.S. Rawat, Anil Anthwal, Rajesh Sharma

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

(Via Video Conferencing)

1. The brief facts, which had emerged for consideration in the present Writ Petition, are that, the respondents had published an advertisement for

resorting to the process of filling 118 vacant posts of Topo Trainee Type-1, in the Office of Survey of India GDCs/ Directorate office. As per the

terms of the advertisement thus issued, (which is undated), the last date for filling the application form for the vacancy as notified therein, was 21st

February, 2015. On conclusion of the process of selection as against the aforesaid posts, which were notified, the petitioner contends that since he

fulfilled all the eligible criteria, and since he wanted himself to be considered for selection, he submitted his application, the same was scrutinized by

the respondents, and after the scrutiny, and being satisfied with the same, the petitioner was issued with Roll No. 273, calling upon him to participate in

the screening test, which was scheduled to be held on 10th May, 2015.

2. The said call letter further stipulated that only those candidates who have been screened by the Committee on 10th May, 2015, would be called for participating in the main examination to be held for the aforesaid posts.

3. As per the records, and even as per the admitted case of the petitioner also, he participated in the screening test, he was called for to participate in the main examination, which was scheduled to be held on 11th May, 2015. The result was declared on the same date itself and the candidates thus declared qualified in the main examination of 11th May, 2015, were expected to participate in the interview, which was scheduled to be held on the next day fixed, i.e. 12th May, 2015.

4. The contention of the learned counsel for the petitioner is that he extended his candidature to be considered for the aforesaid selection on the post of Topo Trainee Type-A, by extending his candidature as a candidate belonging to an OBC category. Immediately after the culmination of the interview process on 12th May, 2015, the result was declared and the same was pasted on the notice board of the Department and in the result thus declared, it was respondent No. 5, herein, who was declared as a successful candidate for the aforesaid post of Topo Trainee Type-A, as a candidate belonging to the OBC category.

5. Its ever since the appointment of respondent No. 5 as made as back as in May, 2015, the petitioner had acceded to the result and had never raised any grievance in any manner whatsoever before any competent forum by either, challenging the process of selection or challenging the appointment of responder No. 5, itself. All of a sudden, the petitioner contends that it was much thereafter, that he gathered the information that the certificate of the OBC category granted to the respondent No. 5, was not valid and he as such, could not have been appointed; as against the post which was reserved for an OBC category candidate and the same deserved to be rejected. This realisation, which has been made by the petitioner happens to be much beyond the period as prescribed, and much after the declaration of result, which was made on 12th May, 2015, even much thereafter. He submits that he, got the cause of action to file the Writ Petition, when he on receiving the information, he had moved an application under Right to Information Act on 18th June, 2019, before respondent No. 3, and it was then only when the

respondent had provided the select list, as declared on 12th May, 2015, he contends that it is then only he could learn that the select list thus declared by them in 2015, according to his perception, was not in accordance with law because no subsequent wait list was published or prepared by the respondent No. 1.

6. However, the document, annexure No.3 to the Writ Petition, which he contends that it was an information, which was received by him from the Office of the respondent, under Right to Information Act, this Court is apprehensive to accept that argument, for the reason being that there is no supporting documents filed by the petitioner to show that the said select list, which was provided to him, was as a consequence of the procurement made by him under Right to Information Act, on an application moved by him under the Act.

7. The grievances raised by the petitioner is that the act of the respondents of not preparing the select list, along with the waitlist by including the name of the petitioner in the wait list would be bad for the reason being that according to his placement in the merit, he would be falling as to be at S.No. 1 in the waitlist to be considered, in an eventuality, if the appointment of respondent No. 5, is turned down on account of there being no valid OBC certificate available with him or validly issued in his favour. Hence, he contends that after rejecting the candidature of respondent No. 5, since his certificate was not found satisfactory, since he would be a candidate falling at S.No.1 of the waitlist, an offer of appointment ought to have been given to him.

8. As per the averments made in the Writ Petition, it is an admitted case of the petitioner, that after the declaration of result on 12th May, 2015, the petitioner had, for the first time, represented his grievance though not a statutory representation for the first time on 11th June, 2019, and lastly being that of 25th June, 2020, meaning thereby i.e. admittedly almost after 4 years from the date of the selection and its culmination, after the recruitment of respondent No. 5.

9. The grievance of the petitioner is that the representation of the petitioner, was considered by the respondent No. 2 and the respondent No. 2 has passed an order No. 4731/1011-TTTâ??Aâ?? dated 19th June, 2020, and has rejected the claim and on the consideration made on the representation

of the petitioner on the ground that since selection happens to be of 2015 and the life of the select list happens to be of one year only, no interference

could be made on the representation of the petitioner after the expiry of life of select list and the same was rejected.

10. The petitioner submits that on account of a wrongful act or a wrongful preparation of the select list, which he claims that was supplied to him as

annexure-3, under the Right to Information Act, since being a wrongful act, contrary to the law from the perspective of his argument that the select

list ought to have been prepared 25% in excess to the number of vacancies, which was notified to be filled; his case is that, had the said list been

prepared, the petitioner who claims himself to be in the waitlist, he would have been included and as a consequence of setting aside of the selection of

respondent No. 5, as an OBC candidate, he could have availed an opportunity to be appointed, as being the candidate ranked at S.No.1, in the waitlist.

11. The contention of the learned counsel for the petitioner is that the waitlist was mandatorily required to be prepared by the respondents because

under the Statutes, (though not placed before the Court), the said waitlist was necessarily under law, was required to be made in order to enable the

petitioner to avail his opportunity to be appointed in an event of cancellation of an appointment of respondent No.5.

12. This Court is not in agreement with the tenacity of arguments of the learned counsel for the petitioner for the reason being:

1. Admittedly, the selection culminated with the declaration of the result on 12th May, 2015,

2. Respondent No. 5, has already been appointed as against the OBC seat, reserved for the said category.

3. It is the contention raised by the petitioner in para 8 of the Writ Petition, that respondent No. 5's candidature was scrutinized by the respondents

and subsequently, no appointment letter was issued to respondent No 5 and the seat remained unfilled.

13. Rejection of the candidature of respondent No. 5, on account of the so-called contention of the petitioner of wrongful furnishing of the OBC

certificate by him is altogether a different aspect. Because, at this stage, this Court cannot scrutinized about the validity of the candidature of

respondent No. 5; because that is not a subject matter of a challenge and that too when the quashing of the result has been sought at a highly belated

stage, approximately after more than five years of culmination of the process of selection.

14. Since sufficient period has elapsed, hence there could not be any direction or justification as of now for the rectification of the result of 2015; for

the reason being that the petitioner himself has not questioned the appointment or the inclusion of the name of respondent No. 5, in the select list,

which was published on 12th May, 2015, nor any relief, to the said effect has been sought, even in the Writ Petition.

15. No relief as such prayed for in the Writ Petition could be granted at this belated stage for the reason being that it was expected that the petitioner

ought to have been vigilant, with regard to his candidature for being considered for selection as against the said post which was advertised on

21.02.2015. The petitioner had voluntarily accepted the result, accepted the selection process and made no efforts as such whatsoever to question the

selection or the selection of respondent No. 5, within a reasonable time or within the time when the life of select list existed and survived in the eyes of

law, because a select list issued after conclusion of the process of selection remains valid only for a period of one year and after the lapse of the

aforesaid period, it will lapse and no revival of the said process, which stood exhausted, after the lapse of one year w.e.f. 12th May, 2015, could be

directed on the basis of the present Writ Petition. Hence, this Writ Petition is hopelessly barred by laches and no excavation to the process of

selection, which ultimately stood culminated in May, 2015, could be made by the Writ Courts under Article 226 of the constitution of India, in a Writ

Petition filed on 17.07.2020, after more than five years of selection.

16. The learned counsel for the petitioner has harped upon the fact that the waitlist was mandatorily required to be prepared. He has not produced any

provision or any such condition of the advertisement, which contemplated the mandatory requirement of preparation of the waitlist as per the prevalent

law.

17. In order to substantiate his argument regarding the necessity of preparation of the waitlist, the learned counsel for the petitioner has drawn the

attention of this Court to the two judgements, on which, he places reliance, the one, which is reported in (2006) 8 SCC 330, Andhra Pradesh Public

Service Commission Vs. P. Chandra Mouleesware Reddy and others., Particularly,

he has made reference to para 7 of the said judgement which is quoted hereunder:-

7. The Tribunal, therefore, opined that mistake on the part of the State being admitted, the applicants were entitled to the reliefs prayed

for. It was furthermore observed that the State before issuing the direction to the Commission should have consulted the Director General of

Police and, thus, its decision was arbitrary. In regard to the stand of the Appellant, the Tribunal observed:

Though the APPSC was acting at the specific instance of the first respondent i.e. Government, and it is not its own fault that not filling

up the 19 vacancies occurred, still the action itself has to be declared as arbitrary and illegal on account of the basis of the action.

In the facts and circumstances of the case, it is declared that the APPSC ought to have selected 19 candidates strictly following the rule of

reservation instead of 10 candidates. It is also further declared that the first and second respondents ought to have selected 19 candidates

as against 10 candidates actually by following the rule of reservation.

18. The facts of the said case entirely distinct. In the said case, the situation was that where the selection process, which was being resorted to was

as against the 10 posts, which were notified by the State requiring to be filled by the Andhra Pradesh Public Service Commission. The probable

candidates raised the question before Andhra Pradesh State Administrative Tribunal, contending thereof that the recommendation made for filling up

10 posts would be arbitrary because there exists 19 vacancies, which were available to be filled by the Commission. The Tribunal decided the issue in

favour of the candidate aspiring to apply directing to fill all 19 existing vacancies. But however, in compliance of the Tribunal's direction, the

Andhra Pradesh Service Commission, still proceeded to make the recruitment on 10 posts only, which were recommended by the State Government.

In the said case there was no dispute, that there were nine vacancies are existing. There was no dispute that the Tribunal has decided the matter in

favour of the candidates applying, to fill in all the existing vacancies. In such an eventuality, where the litigation remained pending before the

competent Tribunal and before the Courts of Law and when despite of order passed by the Tribunal, the available vacancies were not filled in, the

Honorable Apex Court has held that the embargo of one year period would not create any bar in resorting to the process of selection because the

period of one year lapsed in the Court proceedings and too when the matter stood settled as per the directives of the Tribunal. A reference may be

had to para 9, 11 and 13 of the judgment, which are quoted hereunder

â??9. Submission of Mr. G. Prabhakar, learned Counsel appearing on behalf of the Commission before us is that as the selection process

having been completed on 20.8.2000 the Tribunal should not have directed filling up of nine vacancies in September, 2003 as in terms of

Rule 6 of the Public Service Commission Rules, the remaining vacancies were to be filled up only in the next year. It was submitted that if the

direction is to be carried out, the same will have a cascading effect.

11. Indisputably, by reason of Advertisement No. 5 of 1998, nineteen posts of Deputy Superintendent of Police Category-2 in Police Service

in the pay scale of Rs.3880-8140 were notified. Selection process ensued in furtherance thereof. The State of Andhra Pradesh by a letter

dated 2.6.1999, however, asked the Commission to send recommendation for only ten vacancies in the said category for the purpose of

direct recruitment, stating:

â??According to the orders issued in Govt. Memo No. 1946/Ser.A/90-1, Dt.18.12.90, 1/3 of the vacancies in respect of retirements in a

particular year of recruitment in respect of the posts which are within the purview of A.P.P.S.C. for making direct recruitment, shall be

notified A.P.P.S.C.; and not on the basis of the total No. of substantive vacancies in the Dept. from its inception. Accordingly the D.G. &

I.G.P. has been requested to send revised proposals and his proposals were awaited. As the matter stood thus, it is not clear as to how the

estimate of 19 posts of D.Ss.P. were cleared by Fin. & Plg. Dept. and advertised by A.P.P.S.C. later, as stated in the letter third cited,

without the confirmation by this Dept.

Subsequently, A.P.P.S.C. has also called for estimate of vacancies upto 31.8.1998 in the letter second cited. Govt. have furnished the

estimate i.e. 10 vacancies, keeping in view the instructions issued in Govt. Memo 1946/Ser.A/90-1, Dt.18.12.90 are also taking into

consideration the vacancies arose upto 31.8.1998.â??.

13. The State of Andhra Pradesh, we may notice, did not question the order of the Tribunal. The Commission was required to carry out fresh

exercise in compliance of the directions of the Tribunal. For the said purpose, no fresh selection process was to be undertaken. If the State

did not have any objection to fill up the said posts realizing the mistake committed by it; we fail to see any reason as to why the Commission

should have felt aggrieved by the order of the Tribunal.â??

19. The reason for passing the order of eradicating or giving away to the embargo of one year of life of the selection was diluted in view of the

reasoning given in para 13 of the said judgement, because the order of the Tribunal directing for making recruitment on all 19 available vacancies, was

not questioned by the State Government directing to fill in all 19 vacancies, because in pursuance to it, the Service Commission was required to carry

out the fresh recruitment process and hence, the Apex Court has held that the petitioner cannot be made to suffer on account of mistake on the part

of the State Government, and accordingly, the finding was recorded in para 15 of the said judgement which is quoted hereunder :-

â??15. The candidates, therefore, in our opinion, should not suffer owing to a mistake on the part of the State. The Tribunal, we have

noticed hereinbefore, directed the Commission to notify the remaining nine candidates in the merit order following the 'Rule of Reservation'.

It was categorically stated that those who would be appointed in terms thereof would be able to claim any right only with prospective effect,

i.e., from the date of their actual joining of service. It, therefore, cannot be said that the order of the Tribunal was in any manner

unjustified, arbitrary or unreasonable. The High Court, thus, in our opinion, rightly refused to exercise its jurisdiction under Article 226 of

the Constitution of India.â??

20. These facts are entirely different and not involved in the present case. The Apex Court has directed the consideration because the deprivation was

caused despite of the fact that the issue stood settled by the adjudication made by the Tribunal, which remained un-assailed by the State.

21. Another judgement, on which, reliance has been placed by the learned counsel for the petitioner is that as reported in 1999 (10) Supreme, 474,

Purushottam Vs. Chairman M.S.E.B. & Another. The said case too was factually

entirely different, because there the petitioner, who has approached the Court was under a situation where his candidature as a reserved candidate was wrongfully rejected and later on when he challenged the same in the High Court in Writ Petition, the High Court decided the matter in his favour and decided that he was holding a valid caste certificate and he has been illegally kept out of employment. Since it was an adjudication made by the Writ Courts holding that the candidature of the petitioner therein, to be valid, hence, the approach of the candidate after an adjudication made by the Courts and then the act of the authorities of not proceeding to give an appointment, the bar of select list survives for only one year would not be attracted because it was an adjudication made by the constitutional Courts and there was a dereliction on the part of the respondents to consider the candidature of the petitioner therein, despite of being declared as a reserved candidate by Writ Courts, and due to denial in that case, it was a deprivation caused to the candidate due to the contemptuous act of the Authorities there.

22. The reasoning has been assigned by the Honorable Apex Court in para 4 of the said judgement, which is quoted hereunder:-

“4. In view of the rival submission the question that arises for consideration is whether a duly-selected person for being appointed and illegally kept out of employment on account of untenable decision on the part of the employer, can be denied the said appointment on the ground that the panel has expired in the meantime. We find sufficient force in the contention of Mr. Deshpande appearing for the appellant inasmuch as there is no dispute that the appellant was duly selected and was entitled to be appointed to the post but for the illegal decision of the screening committee which decision in the meantime has been reversed by the High Court and that decision of the High Court has reached its finality. The right of the appellant to be appointed against the post to which he has been selected cannot be taken away on the pretext that the said panel has in the meantime expired and the post has already been filled up by somebody else. Usurpation of the post by somebody else is not on account of any defect on the part of the appellant, but on the erroneous decision of the employer himself. In that view of the matter, the appellant's right to be appointed to the post has been

illegally taken away by the employer. We, therefore, set aside

the impugned order and judgment of the High Court and direct the Maharashtra State Electricity Board to appoint the appellant to the post

for which he was duly selected within two months from today. We make it clear that appointment would be prospective in nature.â??

23. In both the cases, the deprivation of consideration of candidate has been on account of dereliction of the authorities despite of there being an

adjudication made by the Courts of law in favour of the candidate, who were the petitioner therein and their candidature was deprived to be

considered. Here it is not so. Here the selection after due participation of the petitioner stood culminated on 12th May, 2015. The petitioner had kept

silent without approaching the Court within the appropriate time. Hence, the denial made by the impugned order dated 12th June, 2020, on the ground

that the life of the select list has expired after one year is absolutely justified and there cannot be a revival of a selection process, which has been laid

to rest by filing of belated Writ Petition that too after 5 years of the culmination of the process of selection.

24. Hence, the Writ Petition lacks merit and the same is accordingly dismissed.