

(1998) 02 AHC CK 0104
In the Allahabad High Court
Case No : C.M.W.P. No. 17885 of 1991

Sanjay Gupta and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 27-02-1998

Acts Referred:

Uttar Pradesh Subordinate Offices Ministerial Staff (Direct Recruitment) Rules, 1985 — Rule 22

Citation : (1998) 2 AWC 1145 : (1998) 2 UPLBEC 1386

Hon'ble Judges : Alope Chakrabarti, J

Bench : Single Bench

Advocate : R.N. Singh, S.N. Singh, R.K. Nigam, R.B. Singhal and Mahendra Pratap, for the Appellant; S.C. and S.N. Upadhyaya, for the Respondent

Final Decision : Disposed Of

Judgement

Alope Chakrabarti, J.—Petitioners came to this Court challenging the orders dated 27.5.1991 and 25.6.1991, terminating their services at Annexures-6 and 7 to the writ petition as also for quashing the advertisement dated 27.3.1991 at Annexure-5 to the writ petition and claimed regularisation of their services.

2. In the writ petition case made out is that the petitioner Nos. 1 to 7 were appointed on 4.10.1990 on daily wage basis, petitioner Nos. 8 to 10 were appointed on 20.2.1991 and the petitioner No. 11 was appointed in place of one Sri Surendra Kumar Gaur, who did not join the service. After the names of the petitioners were approved by the Selection Committee in its meeting held on 24.2.1991, the respondent No. 3 appointed the petitioners again on 18.4.1991 for three months. It has been stated that the respondent No. 2, published advertisement in the daily newspaper "Amrit Prabhat" dated 27.3.1991, whereunder applications were invited for appointment on the posts of registration clerks. The respondent No. 3 terminated the services of the petitioners by a circular dated 25.6.1991. Challenging such termination and claiming regularisation petitioners filed the present writ petition.

3. Counter-affidavit had been filed by the respondents and the petitioners had filed rejoinder-affidavit. The writ petition was finally disposed of by the order dated 8.2.1995, in terms of the Judgment and order of the same date passed in Civil Misc. Writ Petition Wo. 30582 of 1991, Hasnain Ahmad v. State of U. P. The matter went to Hon"ble Supreme Court in Civil Appeal No. 9136 of 1995, which was allowed by the Judgment dated 27.9.1995, setting aside the judgment and order of the High Court dated 8.2.1995 and remitting the writ petition to the High Court for consideration on merits as the petitioners contended that this case is different from the bunch of other cases as in this case the petitioners "had been duly selected by the Selection Committee constituted under the rules." In the said judgment of the Apex Court, the objection taken on behalf of the respondents before the Apex Court was also considered that the appointment of the appellants had been made without complying with the provisions of Rule 22, of the Subordinate Offices Ministerial Staff (Direct Recruitment), Rules, 1985.

4. After the matter came back to this Court, learned counsel for the petitioners contended that the aforesaid objection of the respondents is not tenable as there is no violation of the said Rule 22. Reference was made to U. P. Subordinate Offices Ministerial Staff, (Direct Recruitment), Rules. 1985. since amended and in particular Rule 22, which is as follows :

"22. Notification of vacancies to the Employment Exchange.--The appointing authority shall determine the number of vacancies to be filled during the course of the year as also the vacancies to be reserved under Rule 7. The vacancies shall be notified to the Employment Exchange. The appointing authority may also invite application directly from the persons who have their names registered in the Employment Exchange. For this purpose, the appointing authority shall issue an advertisement in a local daily newspaper besides pasting a notice for the same on the Notice Board. All such applications shall be placed before the Selection Committee."

The learned counsel for the petitioners contended that no advertisement in newspaper did not vitiate the appointment of the petitioners. It has been contended that the said rule does not make an advertisement compulsory as in the present case requisition was made from Employment Exchange already. It has further been contended that the Government also has since clarified that such advertisements in newspapers are not compulsorily intended and in support of such contention reliance was placed on the Annexures-S.A. 1 and S.A. 2, to the supplementary affidavit filed by the petitioners. Petitioners' contention is that the second part of Rule 22, is mere directory ; so omission to advertise did not affect appointment of the petitioners when it was made by the Selection Committee. Law was also relied on by the petitioners as decided in the case of Vivek Chand Jain v. U. P. Financial Corporation 1991 ALR 197 : Shiv Dhani Chaturvedi v. U. P. Secondary Education Service Commission 1988 (14) ALR 549 AIR 1937 27 (Privy Council) and Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., .

5. Learned counsel for the respondents contended that advertisement is compulsorily to be made whenever appointments are directly made from the persons who have their names registered in the Employment Exchange. It is stated that in such background the petitioners could not be appointed without advertisement in newspaper. Reference was also made by the learned counsel for the respondents to the law decided in various cases for the purpose of showing necessity of advertisement.

6. After considering the respective contentions of the parties, I find that the petitioners have made out a case that their names were registered in the Employment Exchange and they have been appointed directly. It is not the contention of the petitioners that their names were recommended by the Employment Exchange.

7. A perusal of the said Rule 22. Indicates clearly that such appointments were to be made by notifying the Employment Exchange. An additional mode has been provided enabling the appointing authority to invite applications directly from persons who have their names registered in the Employment Exchange, in respect of the said second mode, the appointing authority is required to issue an advertisement in newspaper. The use of the expression "shall" makes the intention of the Legislature clear that Issuance of advertisement was mandatory in case the appointing authority Invited applications directly.

8. In the present case, when admittedly the petitioners were not recommended by the Employment Exchange, their appointments were following the second additional mode provided for inviting applications directly from persons. Therefore, in such case advertisement in local newspaper was mandatory as also appears from expression "shall issue an advertisement" in the Rule and I am of the opinion that non-compliance of the same caused violation of the said Rule.

9. The second contention of the learned counsel for the petitioners is that even if appointments of the petitioners were irregular, their continuation in service initially by appointment and thereafter by continuation in terms of the interim order passed in this writ petition, a valuable right accrued in the petitioners. The very fact that the petitioners became overaged for such appointments by lapse of time made them entitled to a relief in the writ Court and in support of such contention reference was made to the case decided on 21.3.1996 of Kamlakant Gautam and others v. District Registrar/Addl. District Magistrate and others. 1996 AWC 927.

10. The learned counsel for the respondents contended that such continuation for a short period did not create any right in the petitioners in view of the nature of selection and the nature of appointment.

11. After considering the respective contentions, I find that in the background of findings hereinabove that the selection of the petitioners was not in accordance with rules, they are not entitled to make a claim of valid selection before such employment. The law decided in the aforesaid case of Kamlakant Gautam.

(supra), will not be applicable in the present case in view of the fact that selection was found to be valid and right regularisation was upheld. The law has been otherwise settled by the Hon''ble Supreme Court in various cases and reference can be made to one of such judgments in the case of Harpal Kaur Chahal (Smt) v. Director, Punjab Instructions, Punjab and another 1995 (4) SCC 706, wherein the appellant was found to be illegally appointed and, therefore, her claim for continuation was rejected although in the said case the appellant continued in employment for twenty three years and the termination order was upheld. Considering the long service of the employee concerned in the said case the Apex Court only granted liberty to make a representation to the Government to consider her case.

12. In view of the aforesaid findings, the petitioners are not entitled to any relief whatsoever but the contention of the petitioners relating to the relief in terms of the Judgment in the case of Commissioner of Income Tax, Jullundur Vs. Ajanta Electricals, Punjab, , is required to be considered on facts.

13. Therefore, the respondents will consider the case of the petitioners in the light of the judgment in the case of Khagesh Kumar (supra) and if the petitioners are found to be entitled to any relief in terms of the said Judgment, the respondents will pass appropriate order for the same.

14. With the above observation, the writ petition is disposed of. There will be no order as to costs.