

(2010) 07 AHC CK 0072
In the Allahabad High Court
Case No : Service Single No. 393 of 2002

Satish Chandra Srivastava and Others	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Citation : (2010) 07 AHC CK 0072

Hon'ble Judges : Satyendra Singh Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Satyendra Singh Chauhan, J.—Heard learned Counsel for the Petitioners and the learned Standing Counsel.

2. The present petition has been filed challenging the order dated 29th August 2001 , contained in Annexure No. 1 to the writ petition, inter alia on the ground that the judgment passed by the apex Court in the Special Appeal No. 5699 of 1994 has not been considered in the correct perspective only on the contention that the vacancies are not available on which the Petitioners can be appointed from the select list.

3. Learned Counsel for the Petitioners drew attention of the Court that after remand of the matter from Hon''ble the Supreme Court and after dismissal of the SLP filed by the State of Uttar Pradesh, the opposite parties were required to have considered the case of the Petitioners finding that the District Magistrate has written a letter dated 22.4.1993 to the effect that 15 vacancies are available and they have concealed the correct fact s in the impugned order and have proceeded to reject the claim of the Petitioners arbitrarily and maliciously.

4. Learned Standing Counsel was granted time on 31.3.2010 in the following form:

Heard learned Counsel for the Petitioners and the learned Standing Counsel.

Counsel for the Petitioners has specifically made reference to Annexure No. 5 to the writ petition, wherein the opposite parties themselves have indicated that 15 posts fell vacant in the recruitment year 1987-88 on account of retirement of 15 incumbents. The opposite parties have given a vague and evasive reply in respect of the contention made in paragraph 10 of the supplementary affidavit filed by the Petitioners.

Since it is the own contention of the opposite parties that 15 posts fell vacant on account of retirement of regular incumbents, therefore, it has to be presumed that vacancies were lying on the date when the judgment and order was passed.

Learned Standing Counsel will seek instructions by the next date as to whether these vacancies were there or not. List in the week commencing 26th April, 2010.

5. Learned Standing Counsel again on 27.4.2010 was granted time to seek further instructions as he could not receive complete instructions and the matter was directed to be listed on 10.5.2010. On 10.5.2010 he was again granted time to seek complete instructions and case was directed to be listed on 24.5.2010. On 27.5.2010 learned Standing Counsel has filed supplementary counter affidavit but a vague reply was given and no specific reply came forward in respect of the vacancies contained in Annexure No. 5.

6. Learned Standing Counsel was also granted time to file second supplementary counter affidavit. Second supplementary counter affidavit was filed by the learned Standing Counsel but from the same also no plausible explanation has come in regard to the vacancies which have fallen vacant during the session 1987-88 according to the letter of the District Magistrate.

7. The selection pertains to the year 1987-88 and the vacancies have also been shown in the year 1987-88 on account of retirement of 15 incumbents, therefore, the judgment of apex Court is to be followed under law to consider the case of the Petitioners for appointment but the opposite parties have by passed by giving evasive reply.

8. Since the record reveals that the vacancies are available with the opposite parties as against the select list, they have committed gross illegality and have also denied justice to the Petitioners.

9. Looking to the availability to the vacancies which is evident from Annexure No. 5 to the writ petition, the opposite parties are directed to consider the case of the Petitioners for appointment as against these vacancies and give appointment in accordance with the select list on the basis of merit.

10. The writ petition is accordingly allowed and order dated 29.8.2001 is hereby set aside and the opposite parties are directed to consider the case of the Petitioners in accordance with merit appearing as against 15 vacancies ,if they have fallen vacant prior to the date of selection, which have indicated in Annexure No. 5 to the writ petition and which have fallen vacant during the session 1987-88.