
(2011) 07 AHC CK 0296

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 57223 of 2005

Sharda Prasad Tripathi

APPELLANT

Vs

Selection Committee and Others

RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules,
1976 — Rule 14, 16, 18, 41, 45
Constitution of India, 1950 — Article 229

Citation : (2012) 4 ADJ 456 : (2013) 136 FLR 412

Hon'ble Judges : S.P. Mehrotra, J; Pankaj Mithal, J

Bench : Division Bench

Advocate : Akhilesh Kumar Singh, R.K. Ojha and Satyanshu Ojha, for the Appellant; K.R. Siorhi and Amit Sthelkar, S.C., for the Respondent

Final Decision : Dismissed

Judgement

1. Petitioner who retired as an employee of the Allahabad High Court on 31.3.1999 preferred this Writ Petition in the year 2005 for directing the respondents to provide revised pay scale and arrears of salary etc., treating him as Officer on Special Duty (in short OSD) with effect from the date when his juniors were promoted and appointed as OSD. Respondent Nos. 1, 2 and 3 have filed Counter-affidavit opposing the petition to which Rejoinder-Affidavit has been submitted by the petitioner.

2. Notices were not issued to the private respondent Nos. 4 and 5 and as such they have remained unrepresented.

3. We have heard Sri Akhilesh Kumar Singh holding brief of Sri R.K. Ojha, learned counsel appearing for the petitioner and Shri Amit Sthelkar, learned counsel for respondent Nos. 1, 2 and 3. They agree for final disposal of the Writ Petition at the admission stage on the basis of the pleadings already on record.

4. Shri Amit Sthelkar learned counsel for respondent Nos. 1, 2 and 3 has also

produced the original record which we have carefully perused.

5. High Court of Allahabad vide notice dated 4.5.1993 invited applications for the single post of OSD in the pay scale of Rs. 2,000-3,500 from amongst the permanent Upper Division Assistants (in short UDAs) of the Court who were Law Graduates. However, on its basis no selection process was initiated. Thereafter, another notice dated 16.7.1993 was issued by the High Court inviting applications for the aforesaid post of OSD from amongst the UDAs whether permanent or otherwise of the Court who were Law Graduates. In pursuance of this notice, 14 persons working as UDAs in the Court having degree of law including the petitioner applied. Respondent No. 4 was selected whereas respondent No. 5 was kept in the waiting list. The petitioner represented against the selection of respondent Nos. 4 and 5 and his non-selection but his representation was rejected. Therefore, he filed Writ Petition No. 3614 of 1994 but the same was dismissed by the Division Bench vide order dated 23.11.1994 after noting the contentions of the petitioner as the promotion/appointment of respondent No. 4 was said to be in accordance with the amended Rules i.e. Allahabad High Court Office and Staff (Conditions of Service and Conduct) Rules, 1976. The Court while dismissing the Writ Petition permitted the petitioner to make a representation in case there was any other vacant post of OSD available and directions were issued that if such a representation was made, it may be placed for consideration before the Chief Justice at the earliest for appropriate orders. A review application was also filed by the petitioner which was rejected on 22.11.1994. The petitioner was also unsuccessful in SLP before the Supreme Court. It appears that the petitioner could not get the amended Rules on the basis of which his Writ Petition came to be dismissed. Therefore, he filed another Writ Petition No. 14293 of 1994 for a direction to provide amended Rules. The petition was dismissed on 23.5.1995 with the direction to the Registrar to provide details of the amendment, if any application in this regard was moved by him.

6. This Writ Petition has been preferred by the petitioner much after his retirement in the above factual back-ground for the relief described above.

7. One of the submissions of the learned counsel for the petitioner is that once a notice dated 4.5.1993 was issued, it was not open for respondent Nos. 1, 2 and 3 to have ignored the same and to have issued a fresh notice dated 16.7.1993 with relaxed conditions of eligibility to favour the respondents No. 4 and 5 who were not permanent.

8. The above submission is devoid of merit. The appointing authority is competent enough to issue advertisement/ notice inviting applications and if considered necessary and proper, to discard the same and to proceed afresh later on. The appointing authority in its discretion rightly ignored the notice dated 4.5.1993 as in pursuance thereof only 5 persons applied who were not eligible.

9. The petitioner had not applied pursuant to the said notice, though, petitioner

contends that he did apply. This controversy is factual in nature and beyond adjudication in exercise of writ jurisdiction and therefore we refrain ourselves from entering into it.

10. In view of the fact that eligible candidates were not available, the then Acting Chief Justice directed to invite applications from all persons working as UDAs whether permanent or otherwise provided they possess degree of Law. In this way, the condition of eligibility provided for in earlier notice was relaxed. The said relaxation was granted by the then Acting Chief Justice in exercise of his power under Rule 16 (g) read with Rules 41 and 45 of the aforesaid Rules.

11. In *High Court of Judicature for Rajasthan Vs. Ramesh Chand Paliwal and Another*, , the Apex Court in view of Article 229 of the Constitution of India observed that Chief Justice of the High Court is the supreme authority in the matter of appointment of the High Court officers and servants. It also confers rule making power on the Chief Justice for regulating the conditions of service of officers and servants of the High Court subject to certain restrictions. Thus, no exception can be taken to the issuance of the 2nd notice and in relaxing the conditions of eligibility.

12. According to the record produced by respondent Nos. 1, 2 and 3 petitioner had not applied pursuant to the earlier notice dated 4.5.1993. He only applied against second notice dated 16.7.1993 and having participated in the selection process cannot be permitted to challenge the said notice on being unsuccessful on the ground that the said notice is bad and could not have been issued by relaxing the conditions of eligibility. It is settled legal position that an unsuccessful candidate who has participated in the selection process on being unsuccessful cannot turn around and challenge the advertisement/notice as laid down by the Apex Court in paragraph 12 of *Vijay Syal and Another Vs. State of Punjab and Others*, and *G. Sarana Vs. University of Lucknow and Others*, .

13. Accordingly, we are of the view that no illegality was committed by respondents Nos. 1, 2 and 3 in issuing a fresh notice dated 16.7.1993. The issuance of the said notice had not even caused any prejudice to the petitioner to entitle him to challenge the same, more so when he had participated in the selection process thereof.

14. The other argument of the learned counsel for the petitioner which remains is that respondent Nos. 4 and 5 who were selected as OSD were junior to him and could not have been selected. In this regard, it would be relevant and beneficial to point out Rules 14 and 18 of the aforesaid Rules. The said Rules at the relevant time provided that all promotions had to be made by a selection committee appointed by the Chief Justice and the criteria would be merit with due regard to seniority, though, in the present the aforesaid Rules as amended stipulates that it has to be on the basis of seniority subject to rejection of unfit. It means that seniority was one of the relevant criteria but merit was the primary and the necessary criteria for making the selection for the purposes of

promotion. The record reveals that out of 14 candidates which included the petitioner only 12 appeared for interview on the date fixed before the Committee of 3 Judges appointed by the Chief Justice. The said Committee submitted its report on 18.9.1993 and the same was accepted by the Chief Justice on 19.9.1993. The petitioner was not selected on merit though happened to be senior to the selected candidate. Seniority being secondary in nature, no illegality was committed in making the above selection. Seniority alone was not sufficient for the selection of the petitioner.

15. It is not the case of the petitioner that respondent Nos. 4 and 5 who were selected were not eligible or qualified on the relevant date and they were not meritorious. The petitioner is not claiming himself to be more meritorious or better than the selected candidates.

16. Accordingly, even this submission of the petitioner has no substance and fails.

17. The representation of the petitioner dated 26.11.1993 in this connection, was also rejected by the Chief Justice on 20.9.1994 which order was never challenged by the petitioner. The petitioner's further representation dated 8.4.2004 was rejected on 28.4.2005 on the ground that he had retired in the year 1999 and any claim in connection with the selection made in the year 1999 specially on his retirement cannot be entertained at such a belated stage. This order has also not been challenged. In view of the above orders on the representation of the petitioners, he is not entitled to any relief.

18. A careful reading of the relief claimed by the petitioner would reveal that in substance the prayer of the petitioner is for granting him notional promotion on the post of OSD from the date on which juniors i.e., respondent Nos. 4 and 5 have been promoted and to accord him all benefits thereof including arrears of salary.

19. The Writ Petition in respect of the aforesaid relief by the petitioner is virtually a second Writ Petition for the same cause of action which was denied to him in the previous Writ Petition No. 13614 of 1994 with liberty only to consider his representation in case of availability of any vacancy of the post of OSD. The petitioner having been denied the said relief in the earlier writ petition cannot maintain this writ petition, as successive writ petitions for the same cause of action cannot be entertained in view of the ratio of *Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others*, and *Ashok Kumar and Others Vs. Delhi Development Authority*, .

20. In view of the aforesaid facts and circumstances, we are of the opinion that the Writ Petition is totally misconceived and is an abuse of the process which deserves to be dismissed. Accordingly, we dismiss the Writ Petition however with no orders as to costs.