

(2004) 02 SC CK 0080

In the Supreme Court Of India

Case No : Civil Appeal No. 1035 of 2004 (Arising out of SLP (C) No. 6505 of 2003) , Civil Appeal No. 1036 of 2004 (Arising out of SLP (C) 9984 of 2003) and Civil Appeal No's. 1037-39 of 2004 (Arising out of SLP (C) No's. 9985-9987 of 2003)

Sheo Shyam and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-02-2004

Acts Referred:

Citation : AIR 2004 SC 1938 : (2004) AIRSCW 1559 : (2004) 101 FLR 444 : (2004) 2 JT 467 : (2004) 2 SCALE 475 : (2005) 10 SCC 314 : (2005) SCC(L&S) 579 : (2004) 2 SCR 406 : (2004) 2 SLJ 402 : (2004) 2 Supreme 124 : (2004) 1 UPLBEC 959

Hon'ble Judges : Doraiswamy Raju, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : Rakesh Dwivedi, K.K. Mohan, Dhan Singh Nagar, Barun Kumar Sinha, Manoj Kumar, Udai Prakash Sharma and B.K. Satija, for the Appellant; Ravi Prakash Mehrotra, Garvesh Kabra, Shail Kumar Dwivedi and G.V. Rao, for the Respondent

Final Decision : Dismissed

Judgement

Arijit Pasayat, J.—Leave granted.

2. These appeals are directed against the judgment of the Allahabad High Court rejecting writ petitions filed by the appellants. The only question which falls for consideration in these appeals is the date from which the period of validity of the waiting list is to be reckoned. According to the Union Public Service Commission (hereinafter referred to as the 'Commission') it is from the first date on which the recommendation was made by the Commission. The appellants took the stand that the recommendations were done piece-meal, and therefore, it has to be from the date on which the last recommendation was made. The State of U.P. endorses the stand of the appellants. It has to be noted that there is no statutory rule governing the situation.

3. Background facts are as follows:-

The Commission issued an advertisement for filling up 218 posts of Assistant Prosecuting Officer (in short the 'APO'). The appellants applied for appointment. On the basis of recommendations made by the Commission, appointments were made by the State Government in installments since the Commission itself appears to have been sending proposals also in installments, after due verification of the credentials and fitness of candidates. The first batch of appointment orders was issued on 20.8.2001 requiring selected candidates to join by 10.9.2001. Thereafter, appointments were made in two further batches and the joining dates were indicated to be 3.10.2001 and 20.4.2002. It is undisputed that about 30 candidates who were selected did not join.

4. On 26.11.2001, the State Government sent communication to the Commission pointing out that the candidatures of 7 candidates have been cancelled as they had refused to join and a request was made for seven additional names. Grievance of the writ petitioners (appellants herein) was that when 30 posts were vacant and the period of currency of the waiting list was not over, the State Government should have required the Commission to send 30 names.

5. Response of the Commission to the letter of the State Government was that the additional names called for were not to be sent, as two and half years had elapsed from the date when the first recommendation was sent by the Commission. Writ petitions were filed questioning the view taken by the Commission. The High Court by the impugned judgment held that the period of validity of the waiting list was over.

6. In support of the appeals, Mr. Rakesh Dwivedi, learned senior counsel submitted that the stand taken by the Commission is contrary to the clear stipulations made by the State Government in several orders. Particular reference has been made to two Office Memorandums dated 31.1.1994 and 14.1.1999. In the first office memo. It was indicated that problems arose when names were not indicated by the Commission within a period of one year and when the Commission did not make available the names of the candidates within the prescribed period. The waiting list in such cases shall be valid even after one year and if the waiting list is not utilized within the prescribed period, the left over vacancies shall be presumed to be carried forward to the next year. The office memorandum dated 14.1.1999 was categorical to the effect that period of one year was to be reckoned from the last date of taking names from the waiting list.

7. In response, learned counsel for the State Government adopted the stand of the appellants and submitted that the correct position has been highlighted by the appellants. But learned counsel for the Commission submitted that if the plea of the appellants is accepted it will create a totally chaotic situation. It would lead to uncertainty. Though in some cases, the Commission has accepted the stand now presently taken by the appellants to be correct, yet that cannot act as an

estoppel against the Commission on the facts of the present case. Subsequently, the State Government itself has requisitioned for 56 posts including the unfilled posts to which the present disputes relate and the examinations were held on 9.11.2003. The vacancies have been carried forward. It was unavoidable on the part of the Commission even as per the stand taken for it to send recommendations in batches because verifications of the antecedents of the selected candidates were to be done and that took long time.

8. It is accepted by learned counsel for the parties that there is no statutory rule governing the field. It appears from the records that the date of receipt of the last recommendation by the State Government is 23.7.2001. Even though the results were declared on 20.3.1999, the first batch of appointment orders of the select list was issued on 20.8.2001. It is submitted by learned counsel for the State Government that there was an order of stay operating pursuant to the order passed by the Lucknow Bench of Allahabad High Court from 10.5.1999 till 20.5.2001. It is of significance to note that the stay order granted by the Lucknow Bench was vacated on 19.12.2000. The list of selected candidates was sent in the following manner:

9. It also appears that after the stay order was vacated by the High Court, the verification of the entire select list was done afresh on account of expiry of six months period in respect of verification done earlier. After afresh verification, the list of selected candidates was received by the Government on 28.4.2001. Subsequently, on 4.5.2001 and 6.6.2001 verification lists of 24 and 21 selected candidates were received and finally on 25.6.2001 verification report in respect of 18 selected candidates was received by State Government. Thereafter, various verifications were received piece-meal.

10. In the aforesaid background, in a case of this nature and in view of the peculiar nature of the fact situation noted above, it would be inequitable and unjust to compute the one year period from the date when the first recommendation was made by the Commission. Undisputedly, appointments were made till the end of 2001. Therefore, it would be proper to reckon the period from the last date when the recommendation was made. But another situation has developed subsequently. The State Government itself had requisitioned for 56 posts including the unfilled posts of the previous selection and examinations are stated to have been already held. The fate of present 11 appellants has suffered a set back on account of the action of both the Commission and the State Government. If the Commission's stand is that the validity period of the waiting list is one year, it should have sought for clarification from State Government as to why unfilled posts were included in the requisition, when its specific stand in the office memorandums referred to above was to the contrary. At the same time, the State Government having taken a positive stand all through that the date of reckoning would be the last date on which the recommendation was made, it should not have included the unfilled posts in its requisition. The career of 11 candidates cannot be jeopardized in this

battle of inconsistent and varying stands taken and moves adopted by the State Government and the Commission at different stages for different purposes.

11. Had the Commission on receipt of the office memorandum dated 14.1.1999 pointed out to the State Government that its view was not in line with the Commission's view that would have sorted out the areas of differences. Interestingly, in a particular case referred to by the appellants, Commission accepted that the period was to be from the last date of recommendation. Though there cannot be any estoppel in law, yet a statutory body like the Commission cannot blow hot and cold at the same breath. There has to be consistency in its view. To rule out unfortunate situations like the present one being allowed to recur again, both the State Government and the Commission are required to be more vigilant and constructive in their approach. When dealing with the careers of large number of candidates, their stands have to be consistent and not varying to avoid giving room for unsavoury suspicions and ensuring the systems to work more transparently to add to its reputation and strength.

12. In the peculiar circumstances noted above, we direct that the appellants shall be considered by the Commission and the State Government and they would be appointed if otherwise found suitable, and eligible after verification of such credentials, documents and background as are necessary to be done for appointment.

13. The appeals are allowed to the aforesaid extent without any order as to costs.