
(2002) 12 AHC CK 0153

In the Allahabad High Court

Case No : C.M.W.P. No. 28192 of 2002 with other 4 writ petitions

Sheo Shyam and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-12-2002

Acts Referred:

Citation : (2003) 1 AWC 661 : (2003) 1 UPLBEC 700

Hon'ble Judges : Yatindra Singh, J;M. Katju, J

Bench : Division Bench

Advocate : Ashok Khare and A.K. Singh, for the Appellant; B.N. Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition and connected writ petitions are being disposed of by a common judgment.

2. Heard Sri Ashok Khare and Sri A. K. Singh for the petitioner and learned standing counsel and Sri B. N. Singh for the respondents.

3. The facts of the case are that the U. P. Public Service Commission issued an advertisement of filling the posts of Assistant Prosecuting Officer (A.P.O.). True copy of the said advertisement is Annexure-1 to the writ petition. By means of this advertisement a total of 218 posts of Assistant Prosecuting Officer were required to be filled in on the basis of the selection. The petitioner has alleged in paragraph 4 of the writ petition that they were eligible for being appointed being fully qualified. The petitioner Nos. 1 to 5 in Writ Petition No. 28192 of 2002 belong to general category while the petitioner No. 6 belongs to O.B.C. category. The result of the selection was published in the newspaper "Dainik Jagaran" dated 20.3.1999 vide Annexure-2 to the writ petition. The petitioners were not amongst the selected candidates.

4. It is alleged in paragraph 10 of the writ petition that on the basis of the recommendation of the U.P. Public Service Commission the appointments were

made by the State Government in three instalments, the first appointment orders being dated 20.8.2001. with stipulation for the selected candidates to join by 10.9.2001. True copy of the order dated 20.8.2001 with regard to one of the selected candidates is Annexure-3 to the writ petition. It is alleged in paragraph 10 of the writ petition that prior to 20.8.2001 not even a single appointment was made on the basis of the aforesaid selection.

Thereafter the appointments were made in two further instalments with stipulation for joining on 3.10.2001 and 20.4.2002.

5. In paragraph 12 of the writ petition it is alleged that a large number of selected candidates who were issued orders of appointment failed to join as they have been selected for some other service and are no longer interested to join as Assistant Prosecuting Officer. The number of candidates who have so failed to join is said to be 30 out of 218 recommended by the Public Service Commission.

6. In paragraph 14 of the writ petition it is stated that on 26.11.2001, the State Government sent a communication to the Controller of the Examination, U. P. Public Service Commission pointing out that the candidature of the seven candidates mentioned in the letter has been cancelled by the State Government on account of their refusal to join and accordingly the State Government called for seven additional names in order of merit from the Public Service Commission. True copy of the letter of the State Government dated 26.11.2001 is Annexure-4 to the writ petition.

7. In paragraph 15 of the writ petition it is stated that the letter dated 26.11.2001 did not take into, account that the posts remaining vacant on account of non-joining. Hence, the State Government ought to have called thirty additional names from the waiting list from the Public Service Commission.

8. In paragraph 16 of the writ petition it is mentioned that on 11.1.2001, the Controller of Examination, Public Service Commission has sent a communication to the State Government to the effect that under the Government order dated 31.1.1994, the names called for were time barred as the additional names were being called after two and a half years from the date of sending the recommendation by the Public Service Commission. True copy of the letter of the Controller, Examination dated 11.1 2001 is Annexure-5 to the writ petition. True copy of the Government order dated 31.1.1994, is Annexure-6 to the writ petition and the copy of the office order dated 15.11.1999, is Annexure-7 to the writ petition.

9. In paragraph 18 of the writ petition it is stated that the period of utilization of the waiting list should be computed from the date of receipt of the last recommendation. For this purpose the petitioner relied on Government order dated 14.1.1999, Annexure-8 to the writ petition. It is stated in paragraph 19 of the writ petition that the last recommendation has been sent by the Commission only on 23.7.2001 and as such the period of one year is required to be computed only from 23.7.2001 and not from an earlier date.

10. A counter-affidavit has been filed by the U. P. Public Service Commission. In paragraph 4 of the same it has been stated that the final result in question was declared on 20.3.1999 and finally selected candidates were recommended by the Public Service Commission by letter dated 10.5.1999 to the State Government for their appointment. After a long period the State Government demanded seven names from the waiting list due to non-joining of some of the selected and recommended candidates vide letter dated 26.11.2001. The Public Service Commission considered the proposal of the State Government and was of the view that in view of the Government order dated 31.1.1994 the proposal was not valid. According to the Public Service Commission the proposal of the State Government was time barred as it was received after the stipulated period of one year mentioned in Government order dated 31.1.1994. As regards the allegations in paragraph 18 of the writ petition it has been stated in paragraph 12 of the counter-affidavit that the letter dated 14.1.1999, Annexure-8 to the writ petition of the Special Secretary, U. P., was sent to the Secretariat, Administration Department in compliance of the order of the High Court in Writ Petition No. 32389 of 1997, Yogendra Kumar Pal v. State of U. P. and others, regarding the utilization of waiting list of U.D.A./ L.D.A., Examination, 1991. In the aforesaid examination, there is no provision of interview in accordance with the relevant rules, and hence the said letter cannot be applicable to the examination in question. In paragraph 17 of the counter-affidavit it is stated that the validity of the waiting list has expired and hence the names of the other candidates from the remaining waiting list cannot be recommended as proposed by the State Government as it is time barred.

11. A rejoinder-affidavit has been filed and in paragraph 3 of the same it is reiterated that the period of limitation of the waiting list should be computed from 26.7.2001. On 10.5.1999. the Public Service Commission had forwarded only a partial list of selected candidates comprising 162 names as against 218 which had been advertised. Subsequently, on 24.6.1999, 47 more candidates were recommended, on 6.9.1999 one candidate was further recommended and on 8.9.1999, four more candidates were recommended and on 5.11.1999, 28.2.2000 and 26.7.2001 one candidate each has been recommended. It is alleged that till date only 217 candidates have been recommended against 218 posts covered by the advertisement. It is alleged in para 3 that the Public Service Commission has taken conflicting stands in different writ petitions. The petitioner has relied on the Division Bench decision of this Court in Writ Petition No. 32077 of 2000, Ved Prakash Tripathi and Ors. v. State of U.P. and Ors., decided on 20.12.2000 vide Annexure-R.A. 2 to the rejoinder-affidavit.

12. We have carefully perused the judgment of the Division Bench in Ved Prakash Tripathi's case (supra) and find that there is no mention therein of the Government order dated 31.1.1994 copy of which is Annexure-6 to the writ petition. The Government order dated 31.1.1994 has been considered by another Division Bench of this Court in Writ Petition No. 16899 of 2001, Surendra Kumar Pandey and Anr. v. State of U. P. and Ors., decided on 1.3.2002. In that decision

it was held by this Court that according to Clause 5 of the Government order dated 31.1.1994 the waiting list cannot survive after one year of the result unless within the period of one year, the department concerned asks the Commission to send names from the waiting list.

13. In the present case, admittedly the result had been declared on 20.3.1999 vide Annexure-2 to the writ petition. Hence the waiting list is only valid till 20.3.2000 unless before 20.3.2000 the Government writes to the Commission to send further names. The decision in Suprendra Kumar Pandey's case (supra) has specifically considered the effect of the Government order dated 31.1.1994 and the aforesaid decision is binding on us.

14. Sri Ashok Khare, learned counsel for the petitioner submitted that it has not been specified in the office order dated 31.1.1994 as to what would be the starting point for computation of the one year period of the existence of the waiting list. He submitted that in the present case the date of receipt of the last recommendation by the State Government is 26.7.2001 and as such the waiting list could be utilized till 25.7.2002. He further submitted that the first appointment on the basis of the select list was issued only on 20.8.2001. though this time gap from 10.5.1999 to 20.5.2001 has been explained by the State Government as being on account of a stay order granted by the Lucknow Bench of the Allahabad High Court which stood vacated on 19.2.2000. Sri Khare submitted that the default/delay was on the part of the State Government and the petitioners cannot be denied appointment on that account.

15. We do not agree with this submission of Sri Khare. In our opinion, the period of commencement of one year of the existing of the waiting list has to be taken from the date of announcement of the result by the Public Service Commission, i.e., from 20.3.1999. If a contrary view is taken, then it will be uncertain as to when the one year period will expire because in that case, recommendations can continue to be made by the Public Service Commission to the State Government even several years after the announcement of the result and in this way, the waiting list would continue indefinitely. Hence, we are of the opinion that the waiting list shall only continue for one year from the announcement of the result.

16. As regards the letter of the Special Secretary, U. P., dated 14.1.1999. Annexure-8 to the writ petition that letter must be construed in the context of the Writ Petition No. 32319 of 1997 as stated in paragraph 12 of the counter-affidavit of the Commission. Hence, the same has no application to the present examination.

17. In our opinion, the intention of the Government order dated 31.1.1994, is salutary as the waiting list cannot be allowed to continue indefinitely. Thus, there is no merit in these petitions and they are dismissed accordingly.