

(2008) 08 AHC CK 0131
In the Allahabad High Court

Shiv Gopal Singh, Bhaskar Pandey, Atul Kumar Mishra and
Karunesh Singh

APPELLANT

Vs

The Uttar Pradesh Public Service Commissioner and Others

RESPONDENT

Date of Decision : 05-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 3 UPLBEC 2530

Hon'ble Judges : Ashok Bhushan, J;Arun Tandon, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ashok Bhushan and Arun Tandon, JJ.—This Special Appeal has been filed by four appellants who were not party to the writ proceedings. On an application made by them for leave to file the Special Appeal a Division Bench of this Court vide order dated 13.03.2007 granted the said permission and after hearing the parties the appeal was admitted and was directed to be listed for hearing. Accordingly the Special Appeal has been placed before us for final hearing.

2. This Special Appeal is directed against the judgment and order of the Hon'ble Single Judge dated 23.03.2004 passed in Civil Misc. Writ Petition No. 38335 of 1999 connected with Writ Petition No. 8146 of 1994.

3. The facts relevant for deciding the Special Appeal are as follows:

An advertisement was published by the Public Service Commission on 26.12.1987 for the post of Upper Division Assistant in the U.P. Secretariat. The total number of vacancies so advertised were subsequently increased to 167 as per the letter of the State Government dated 19.12.1988. The vacancies were also bifurcated and ear-marked for various categories. There is no dispute in that regard. The written examination in respect of the said advertisement took place in the year 1989 and the select list was notified by the Commission after the said examinations containing name of 149 persons.

4. Thereafter under a letter dated 08.08.1991, the Commission further recommended the name of 9 persons. The total number of candidates recommended by the Commission thus totalled to 154 selectees only. Seventeen candidates who were offered appointment by the State Government out of 154 recomendees did not join. Similarly there were other 13 candidates whose names were not recommended by the Commission due to the reason that their papers were not complete. The State Government vide letter dated 23.12.1991 informed the Commission that another vacancy has been caused due to one person having resigned after joining the post. By means of another letter dated 16.01.1992 the State Government forwarded the details of other candidates who did not join even after being offered appointment from the list of 154 selectees.

5. The Commission is stated to have recommended 41 names in pursuance to the letters received from the State Government. Against one post which was earmarked for Scheduled Tribe no name was recommended. After appointment was offered to the candidates whose name was included in the list of 41 selectees, there still remained 07 vacancies because of non joining of the selected candidates. In between the State Government forwarded another letter dated 04.03.1993 requesting the Commission to hold selections by direct recruitment for the batch of 1991 including the 8 vacancies with reference to the Advertisement of 1987 which were to be carried forward.

6. After the aforesaid proceedings had taken place, one Prem Shankar Rai approached this Court by means of Writ Petitions No. 8146 of 1994 seeking appointment on the post on the plea that his name was included in the wait list. While the said writ petition was pending before this Court, one Brijesh Kumar Singh and another filed Writ Petition No. 937 (SS) of 1997 before the Lucknow Bench of this Court claiming identical relief as had been prayed for in the writ petition of Prem Shankar Rai namely that their name was included in the wait list and since vacancies were available within one year of the notification of the select list the petitioner should be offered appointment.

7. Writ petition No. 937 (S/S) of 1997 was disposed of with liberty to Brijesh Kumar Singh and another to file a representation before the State Government vide judgment and order dated 31.01.1997. The representation so made by Brijesh Kumar Singh was rejected by the State Government vide order dated 11.03.1997.

8. Not being satisfied by the order of the State Government Brijesh Kumar Singh and one Om Prakash Sharma filed Writ Petition No. 38335 of 1999 before this Court. The writ petition filed by Brijesh Kumar Singh and other was clubbed with Writ Petition No. 8146 of 1994 filed by Prem Shankar Rai. They have been decided by the Hon'ble Single Judge by means of a common judgment. The learned Single Judge has been pleased to issue a writ of mandamus commanding the State respondents to requisition the name of the writ-petitioners from the Commission and to offer appointment to the petitioners as Upper Division Assistant in terms of the advertisement published in the year 1987.

9. Feeling aggrieved by the aforesaid direction, the appellants before this Court who had been selected and appointed as Upper Division Assistant in pursuance to the advertisement made in the year 1991 have filed this Special Appeal.

10. On behalf of the appellants, it is contended that the appointment of writ-petitioner as directed under the order of the Hon''ble Single Judge would have the effect of upsetting the seniority of the appellants inasmuch as appellants have been selected and appointed in pursuance to a subsequent selection with reference to the selection in respect of which appointment of writ-petitioners has been directed under the judgment and order of the Hon''ble Single Judge.

11. On merits of the directions issued by the Hon''ble Single Judge, it is contended that the select list which was notified in the year 1991 and last date on which further names whereof were called for from the wait list was in the year 1992, the wait list lost its life by efflux of time i e. after expiry of one year, from the date it was notified and in any case from the date last candidate was recommended by the Commission for appointment on the basis of list so prepared. In any view of the matter having regard to the subsequent selection which took place in pursuance to the Advertisement of the year 1991, the left over vacancies as per the Advertisement of 1987 ceased to exist in the eyes of law.

12. It is, therefore, contended that the direction issued by the Hon''ble Single Judge requiring the State Government to call for the name from the Commission and to offer appointment to the writ-petitioner with reference to Advertisement of 1987 is illegal and uncalled for.

13. The contention so raised on behalf of the appellant is opposed by Shri A.K. Singh, Advocate on the ground that the vacancies in question have been caused within one year of the notification of the wart list and, therefore, such vacancies can be filled from the wait list which was notified by the Commission irrespective of the fact that the list had lost its life by efflux of time. Reliance has been placed upon the Division Bench judgment of this Court dated 07.04.2004 passed in Civil Misc. Writ Petition No. 10090 of 1990 Ram Awadh v. State of U.P. and Ors. The judgment is stated to have approved by the Hon''ble Supreme Court with the dismissal of SLP No. 2506 of 2005 vide judgment and order dated 25.07.2007.

14. Lastly it has been contended that two other persons namely Avinash Chandra Shukla and Rajeev Pradhan had been offered appointment in the year 1996 on the basis of the same wait list and, therefore, if the select list had not lost its life qua those candidates, it cannot be said to have lost its life qua the petitioners.

15. We have heard Shri G.K. Singh, and Shri G.K. Malviya, learned Counsel for the appellants and Shri A.K. Singh on behalf of writ petitioners and Standing Counsel for the State respondents and have gone through the records of the present Special Appeal.

16. From the facts as they exist on record it is apparent that selections for the

post of Upper Division Assistant took place in pursuance to the advertisement of 1987 and a merit list as well as the wait list was prepared. It is also not in dispute that the select list/wait list for appointment on the post of Upper Division Assistant in pursuance to the selection was notified in the year 1991. The merit list as well as the wait list prepared by the Commission would lose its life after one year of the expiry of the date of its notification as per Government Order dated 25.03.1985 Reference State of Rajasthan and Ors. v. Jagdish Chopra in Civil Appeal No. 3987 of 2007 and in any case from the date on which the last candidate was recommended against the advertised post. Reference Judgement of the Hon'ble Supreme Court in Civil Appeal No. 1035 of 2004; Sheo Shyam and Ors. v. State of U.P. and Ors. wherein it has been held as follows:

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 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.

The writ-petitioners had approached this Court for the first time in the year 1994 and 1997 respectively seeking a writ of mandamus commanding the State authorities to offer appointment to the writ-petitioners as Upper Division Assistant on the basis of the aforesaid wait list. From the records we are satisfied that on the date the writ petitioners approached this Court the wait list had lost its life inasmuch as more than one year had elapsed from the date the list was notified and in any case from the date the last candidate was recommended against the advertised post.

17. The Hon'ble Supreme Court in the case of State of U. P. and others Vs. Harish Chandra and others, has specifically held as follows:

Under the constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which is contrary to law. This being the position and in view of the Statutory Rules contained in Rule 26 of the Recruitment Rules we really fail to understand how the High Court could issue the impugned direction to recruit the respondents who were included the select list prepared on 04.04.1987 and the list no longer survived after one year and the rights, if any, of persons included in the list did not subsist. In the course of hearing the learned Counsel for the respondents, no doubt have pointed out some materials which indicate that the Administrative Authorities have made the appointments from a list beyond the period of one year from its preparation. The learned Counsel appearing for the appellants submitted that in some cases

pursuance to the direction of the Court some appointments have been made but in some other cases it might have been done by the Appointing Authority. Even though we are persuaded to accept the submission of the learned Counsel for the respondents that on some occasion appointments have been made by the Appointing Authority from a select list even after the expiry of one year from the date of selection but such illegal action of the Appointing Authority does not confer a right on an applicant to be enforced by a Court under Article 226 of the Constitution.

18. We may further record that the vacancies which remained unfilled from the select list as well as the wait list prepared qua the Advertisement of 1987, had been carried forwarded in the advertisement of the year 1991, the examination whereof took place in the year 1992. By no stretch of imagination the select list prepared in terms of the Advertisement in the year 1987 could remain in force subsequent to the expiry of one year and the vacancies being carried forward in the fresh Advertisement. No relief could have been granted to the petitioners-appellants as has been done under the impugned judgment of the Hon''ble Single Judge.

19. We may further record that the State Government for the purposes of compliance of the direction issued by the Hon''ble single Judge referred to above, forwarded a letter dated 23.03.2004 requesting the Commission to forward the name of the writ petitioners for appointment in pursuance to the wait list prepared qua the advertisement of 1967.

20. The Commission vide its letter dated 19.05.2006 has informed the State Government that the name of the candidates asked for cannot be recommended as the list has lost its life and after 15 years of the notification of the main list as well as the wait list. On record is an another order of Controller Examination, Public Service Commission, which records that there are large number of candidates above the petitioners in the wait list and, therefore, recommendation, if any, has to be made in favour of candidates whose names are mentioned above in the wait list.

21. In the totality of the facts and circumstances of this case, we are of the considered opinion that the select list as well as the wait list which was notified qua Advertisement of 1987 does not survive in the eyes of law so as to provide opportunity to the writ-petitioners to claim appointment. The said wait list cannot be made a perennial source for offering appointment.

22. We are, therefore, of the firm opinion that the directions as issued by the learned Single Judge under the impugned judgment are legally not warranted and, therefore, we have no hesitation to record that the judgment and order of the Learned Single Judge is unsustainable in the eyes of law.

23. SO far as the unreported judgement of the Division Bench of this Court passed in the case of Ram Awadh (Supra) relied upon by the counsel for the writ petitioners is concerned, suffice it to point out that in the facts of the said case

amongst other it has specifically recorded that not only vacancy was caused within the validity period of the select list, the appointing authority had also requested the Commission within the currency of the wait list for more names being forwarded for appointment. The Commission in the said case failed to act on the request of the Government made during the valid period of the wait list. Therefore, the Court held that the action on the part of the Commission was illegal. The facts in the present case are clearly distinguishable inasmuch as the case in hand, no request was made by the State Government for fresh names within the validity period of the wait list, on the contrary a decision was taken to carry forward the remaining vacancies in the next selections, for which even an advertisement was made in the year 1991. Petitioners had approached the Court after 03 and 06 years of the subsequent Advertisement of 1991. The impugned judgment has been passed after 13 years of the subsequent Advertisement of 1991.

24. As far as the plea of parity with Avinash Chandra Shukla and Rajeev Pradhan is concerned, suffice it to refer to the order of the State Government dated 11.03.1997 wherein it has been specifically stated that the names of the aforesaid two candidates were asked for by the State Government from the Commission within the validity period of the wait list. The Commission had taken time to recommend the name and thereafter time was taken in obtaining consent of the Karmik Vibhag of the State because of which some delay has taken place. The said facts as stated in the order of the State Government have not been disputed by the writ petitioner.

25. It is, therefore, an admitted position that the names of the aforesaid two candidates namely Avinash Chandra Shukla and Rajeev Pradhan were asked for by the State Government well within the validity period of the wait list.

26. However the Commission had taken time to recommend the name and it is in this background that the delay had occurred in the appointment of the aforesaid two candidates. We may record that the Division Bench of this Court in the case of Ram Awadh v. State of U.P. in Writ Petition No. 10090 of 1990 decided on 07.04.2004 and Ram Dutta v. State of U.P. and Ors. in Writ Petition No. 8842 of 1989 decided on 11.04.2002 had taken a view that if the name from the wait list are called for by the State Government from the Commission in respect of the vacancies which become available during the subsistence of the wait list and the request in that regard is made within the validity period of the wait list, the Commission is legally obliged to forward the names asked for.

27. In the facts and circumstances of the present case, it is admitted that the names of the petitioners were not called for by the State Government within the validity period of the wait list and, therefore no parity can be claimed by the writ petitions with Avinash Chandra Shukla and Rajeev Pradhan nor the Division judgment in the case of Ram Awadh v. State of U.P. & Ram Dutta v. State of U.P. and Ors. (Supra) help the petitioners in any manner.

28. In view of the aforesaid Special Appeal is allowed. The judgement and order of the learned Single Judge dated 23.03.2004 is hereby set aside. Writ petitions giving rise to this Special Appeal are dismissed.