
(2003) 08 AHC CK 0121

In the Allahabad High Court

Case No : Writ Petition No's. 5407 and 5406 (SS) of 2001 and Writ Petition No's. 153 and 154 (SS) of 2002

Shiv Pujan Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-08-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2003) 4 AWC 3085

Hon'ble Judges : Bhanwar Singh, J

Bench : Single Bench

Advocate : A.P. Singh, for the Appellant; C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Bhanwar Singh, J.—All these petitions having issues of common interest are taken-up together for decision.

2. All the petitioners have prayed for a writ in the nature of mandamus commanding the respondents to appoint them in Group "D" services on the posts of Peon and Tracer in accordance with their options. The Government orders (Annexures-1 and 2) whereby restrictions on fresh appointments was imposed, are sought to be quashed by virtue of a writ of certiorari and similarly the order (Annexure-3) issued by the Consolidation Commissioner has also been sought to be annulled.

3. The petitioners applied for the posts of Peon and Tracer and in the selection process, they appeared for interview before the Selection Board. Whereas the petitioners No. 1 to 4 of Writ Petition No. 5407 (SS) of 2001, petitioners No. 1 and 2 of Writ Petition No. 153 (SS) of 2002 and the sole petitioner of Writ Petition No. 154 (SS) of 2002 opted for the post of Tracer, the remaining petitioners applied for their appointment on the post of Peon. The selection process was complete in the year 1997 itself but pronouncement of the result

was held-up without any rhyme and reason. However, in some cases of the same selection exercise, result was declared and some appointments were made--of course, under orders of the High Court. Some of the petitioners earlier filed Writ Petition No. 5468 (SS) of 2000 and prayed for redressal of their grievance. The High Court vide its order of October 31, 2000 directed the respondents to appoint the petitioners, who had been declared successful and selected but such orders did not yield any result. The authorities pleaded in their defence that the Government had imposed a ban on fresh appointments. Several other writ petitions were filed before this Court and interim directions were issued. Large number of vacancies in Group "D" services are still available. The Government and its authorities are arbitrarily and illegally withholding the issuance of appointment letters. Although no reference to the Government or any approval for appointment of the petitioners was required, yet the Consolidation Commissioner unnecessarily made a reference to the Government seeking permission for Issuing appointment letters. The petitioners moved a representation to the Consolidation Commissioner requesting him for their appointment but the latter has not yet paid any heed to their request. Their representation is still pending. It was in these compelling circumstances that the petitioners were obliged to file these petitions seeking Issuance of writs of mandamus and certiorari as indicated earlier.

4. The respondents filed a common counter-affidavit of one Sri Aditya Kumar, the Consolidation Officer, Pooranpur, Pilibhit. He conceded that the petitioners had appeared in the examination held for the selection of Group "D" posts in the Department of Consolidation and their result was declared in compliance of the Court's Orders but since the State Government had imposed a ban in respect of any fresh recruitment, no appointment orders could be Issued. The Consolidation Commissioner, however, despatched a letter in December, 2001 soliciting necessary directions from the Government in the matter of appointments. The Government orders are still awaited and if permitted, appointment letters would be issued to the petitioners. In this way, the authorities of the Consolidation Department are not to be blamed for the delay, as the respondents have no intention to create any hurdle or cause any discrimination in issuing appointment letters to the petitioners. The appointment letters will be issued soon after obtaining orders from the Administrative Department of the Government. So far as the validity of the Annexures-1 to 3 is concerned, the Consolidation Officer asserted that the guidelines contained in the said letters are just, legal and valid and based on fair play and good conscience. Therefore, question of breach of the provisions of Articles 14 and 16 of the Constitution of India does not arise. The petitioners before filing these petitions moved their representations with a view to create a ground justifying Institution of the writ petitions. However, no representation was received in the office of the answering respondents. As a matter of fact, the grounds raised by the petitioners in their representations are wholly misconceived, untenable and without any force. On the basis of these pleas, Mr. Aditya Kumar prayed for dismissal of all the writ petitions.

5. Dr. Suresh Sagar, Consolidation Officer of Pilibhit filed a supplementary counter-affidavit and reiterating the assertions of Mr. Aditya Kumar supplemented further that the posts of Peon and Lekhpal fell in category "D" employees, while the post of Tracer was placed in Group "C". However, it was on account of the ban Imposed by the State Government that fresh recruitment on any post could not be made.

6. Yet another supplementary counter-affidavit of Dr. Suresh Sagar was brought on record on 30th October, 2002, in which, altogether different averments were made. Dr. Sagar this time brought before the Court the theory of alleged Irregularities and illegalities alleged to have been committed in the conduct of selection process by the authorities concerned. It is noteworthy that the Government while insisting for compliance of the High Court Orders issued orders for appointment of some successful candidates, who had filed several writ petitions, thought it appropriate to call for the records relating to the selection process from the Settlement Officer (Consolidation), Pilibhit and an Officer of the Government, who scrutinized the records, submitted a report pointing out various Irregularities, such as ; written test was not held, candidates of Employment Exchange were not informed of the interview date and all candidates did not appear before all members of the Selection Committee.

7. On the basis of the above mentioned irregularities and illegalities, a disciplinary enquiry has been ordered against the Settlement Officer (Consolidation), Pilibhit.

8. A rejoinder to the aforesaid counter-affidavit was filed by Syeda Rabia Hyder, the Petitioner No. 1 of Writ Petition No. 153 (SS) of 2002. According to her, an advertisement was issued in more than one daily newspaper Inviting applications for appointment of various posts including that of Peon, Tracer, Driver, Lekhpal and other Group "D" posts. The selection was held in accordance with the Rules. As a matter of fact, the High Court Issued a writ in the nature of mandamus in a writ petition filed by Krishna Beharl, Chanan Singh and others commanding the respondents to declare the result of the said writ petitioners and to proceed in accordance with Rules. The respondents willfully disobeyed the judgment and orders passed by the High Court. With the result that contempt Jurisdiction of this Court was invoked and as a result of the said proceedings, some appointments were made. Subsequently, a number of petitions of the same selection were filed, which were admitted and interim orders were issued by this Court. But again the respondents willfully disobeyed such orders, as a consequence, contempt proceedings were drawn. In all those petitions and the proceedings, the respondents simply pleaded for the Government's ban on fresh recruitments on Group "D" posts but assured to issue appointment letters if they were permitted by the Government to do so. In the contempt proceedings, the then Principal Secretary of the Consolidation Department appeared before the Court with an afterthought plea of irregularities in the selection. The Consolidation Officer, who was the Chairman of the Selection Committee, sent a

detailed report to the Consolidation Commissioner controverting the allegations of irregularities or illegalities ; rather, he submitted that the selection had taken place in all fairness and since the candidates were required, as per practice, to appear before all the individual Members of the Committee, only those candidates were marked "present" who appeared before the respective Members. However, if some candidate failed to appear before one Member, it was quite natural for the latter to have marked him absent. It was not necessary, as per practice, nor there was any direction in this regard, for a candidate to appear before all the individual Members. Further, it was alleged that after the High Court issued mandatory directions, large number of candidates were appointed in November, 2002 and thereafter. In this way, double standard cannot be permitted to be adopted by the respondents. The petitioners' selection does not suffer from any infirmity or illegality. They have legal right for consideration of their names for appointment on the posts they have opted for. As a matter of fact, according to the Government's Circular, average of the marks given by the Members in the interview was taken into consideration and those who did not appear before the other Members, were not awarded any marks and they were shown absent. The allegation of irregularities in the conduct of selection process is an afterthought idea of the respondents, which has been raised with a view to resist the petitioners' genuine demand for their appointment on the basis of result of selection process.

9. As is evident from the pleadings of parties, the main grounds on the basis of which the petitions have been filed are that the respondents have without any rhyme and reason refused to Issue appointment letters to the petitioners despite that they are successful candidates and their names figure in the select list. Further, the respondents have discriminated the case of the petitioners by pleading Irregularities in the conduct of selection process although numerous candidates have been appointed on the basis of the same selection. As a matter of fact, the decision of respondents to withhold the appointment of the petitioners is arbitrary and unreasonable but the respondents for some ulterior motive and by finding an alleged fault in the conduct of selection have refused to consider the recruitment of the petitioners.

10. Having scrutinized the merits of the claims and counter-claims of the parties, it may be observed that a notification was issued in June, 1997 inviting applications for recruitment on various class III and IV vacancies. In response to the said notification, hundreds of applications were received in the office of Consolidation Officer, Pilibhit. As per directions of the Government, an intimation was also sent to the Employment Exchange, Pilibhit. requesting for forwarding applications of the eligible candidates. Separate lists for separate posts were received from the Employment Exchange. The change of dates of submitting applications and interview was also duly intimated to the Employment Exchange and also to the general public by means of an advertisement in the newspaper. Interviews were held on the changed notified date. However, the result could not be declared by the end of August, 1997 and even thereafter upto a ban was

levied by the Government on fresh recruitment. It was precisely under these circumstances that numerous writ petitions were filed in addition to the four in hand. Some of those writ petitions were finally disposed of and as is apparent from record, some selected candidates were allowed to join. In some cases, the appointments were subject to the final orders of the Court. However, others are still waiting for their appointment letters to be Issued and a few of such candidates are writ petitioners before this Court. The first and foremost reason for resisting the appointments advanced by the respondents for consideration before this Court is that the ban imposed by the Government on recruitment of Group "D" posts is still in vogue and the Government cannot be compelled to appoint even the selected candidates. In this context, it may be observed that the Government levied a restriction on fresh recruitment of Group "C" and "D" posts vide its letter of November 3, 1997 (Annexure-1). However, this ban was partially lifted in July, 1998 when the Government issued a letter vide Annexure-2 thereby recalling letter (Annexure-1) so far as it related to the recruitment of Group "C" category employees. However, it was clarified that the restriction upon recruitment of Group "D" employees shall continue as before. Despite this restriction, the Consolidation Department has permitted with the permission of the Government some selected candidates in whose favour this Court had issued mandatory orders. Some of such petitions have been finally disposed of by this Court and others might still be pending but exact details are not available for perusal of this Court. However, the petitions in which requests for declaration of result was made have been finally disposed of, as a result of which the result pertaining to the selection process of Peons and Tracers has been declared. In pursuance of the declaration of result and further directions of the Court, some appointments have been made on the posts of Tracer and Peon and as conceded by the learned Additional Chief Standing Counsel appearing for the respondents, 8 posts of Tracer are still vacant. So far as the case of Peons is concerned, 8 selected candidates have been appointed and the remaining 17 posts are still lying vacant. Learned counsel for the State has contended that the Joining of 8 Peons and one Tracer was permitted with a view to comply with the orders of the Court and to escape a final decision in the contempt proceedings against the Principal Secretary of the Consolidation Department. Be that as it may, the fact is that some appointments have been made and the cases of those appointees are not at present before this Court. As a matter of fact, it would have been better, had all those petitions and these four petitions tn hand would have been consolidated and disposed of together so as to avoid a conflict of decisions. It is not clear from the record or even from the oral submissions made by learned counsel for both the sides as to whether those writ petitions in which mandatory orders appointing the said writ petitioners were issued have been finally disposed of or not. In these circumstances, the existence or restrictions on the appointment of Group "D" employees particularly of the same batch is likely to result in a conflict as some selected candidates of the same batch have joined while others would be facing the operation of the ban, which has now been lifted.

11. By virtue of its Order No. 22@43@82&dk&2@2002 of July 16, 2002, the Government has permitted all departmental authorities to fill-up of "backlog vacancies" of Group "D" posts. Since the petitioners have claimed their appointment on the basis of their performance in the interview and the result thereof on the vacancies which were advertised on June 21, 1997, this Government order would be deemed to have relaxed the ban levied for recruitment on Group "D" posts. In other words, the vacancies sought to be filled up with the appointment of the writ petitioners would come within the ambit of "backlog vacancies". In this way, there being no hurdle now in issuing appointment letters to the petitioners neither there is any necessity of seeking approval from the Government nor it is obligatory for the appointing authority to seek any instructions. This is all the more necessary to obviate the subsisting situation of discrimination between the writ petitioners and those of their batch mates, who have already been given appointment. The afterthought and calculatively developed tricky administrative theory of there being irregularities in conducting the selection would be dealt with hereinafter. But it is very important to note that about 60 candidates on the post of Lekhpal out of the select list of the same selection process through which the petitioners have undergone, have been appointed without there being any order of any court. It follows from these appointments that only the petitioners' interest is being jeopardized because they dared to file these petitions. Such an approach of curtailing their right as a measure of punishment is undemocratic besides being unfair and unreasonable.

12. Much emphasis was laid on behalf of the Government and the Consolidation Department upon the irregularities alleged to have been committed in conduct of the selection. The letter of October 8, 2002, i.e., written by the Government after five years of the selection conveyed to the Consolidation Commissioner that it was not possible to appoint Peons and Tracers whose names were there in the select list on the basis of Selection Board constituted in June/July, 1997 because of some irregularities. The contents of this letter were based on a report dated 7.10.2001 submitted by the Joint Consolidation, Chakbandi Headquarters. In all the writ petitions, a copy of the said report has also been filed. Precisely, these irregularities were enumerated as follows :

(i) Although a list of candidates was solicited from the Employment Exchange, yet the candidates, whose names were despatched by the Employment Exchange, were not informed of the date of Interviews.

(ii) The selection to the post of Tracer was made without any competitive examination.

(iii) All members of the Selection Board have not interviewed every candidate and there were instances that one candidate was shown to be absent by a Member of the Board while the same candidate was shown to be present before another Member. This created a suspicion on the fair selection of the candidates,

13. As regards the first alleged irregularity, it may be observed that the Employment Exchange from which names of the eligible candidates were solicited, was informed of the date fixed for, interviews but on account of expeditious steps directed to be taken by the Government, the date was preponed and even the preponed date was communicated to the Employment Exchange with the request to inform all the candidates to attend the interview on the date which was rescheduled. Even in the Enquiry Report, it is conceded that an Intimation regarding change in the date of interview was conveyed to the Employment Exchange. If there was any lapse on the part of the authorities of the Employment Exchange, the appointment authority or the interview board is not to blame for the omission. It was not at the local level that the date of interview was changed from 4th and 5th August, 1997 to 26th July, 1997 but it was the Consolidation Commissioner, who had orally instructed to expedite the process of selection so that the vacant posts might be filled as early as possible. A notification about the change of Interview date was not only sent to the Employment Exchange but it was also published in the "Amar Ujala" newspaper, which was in a wider circulation in that area. Moreover not even one candidate came forward to protest or lodge a complaint that he had not received information about the date of Interview. It was wrong on the part of the Enquiry Officer, who was junior to the Consolidation Commissioner to observe in his report that the interviews were unnecessarily preponed. It is a principle of official decorum and discipline that a junior officer should never comment on the functioning of a senior. The Consolidation Commissioner was fully competent to have issued Instructions for expeditious selection process and if the date for interview was changed and proponed, such a decision is not open to challenge after lapse of 5 years. Therefore, it may be held that the Enquiry Report is nothing but a sham exercise undertaken with a view to thwart the legitimate claim of the selected candidates. Such an objection is, therefore, rejected outrightly.

14. The other irregularity taken as a shield to resist the appointments pertains to the breach of rules. It is alleged that the selection to the post of a Lekhpal would be conducted by means of competitive examination and similarly, the selection to the post of Tracer was required to be done on the basis of a competitive test and not by interview alone. This sort of objection is contrary to the instructions of the department itself. In this context, a reference can be made to the letter No. 2352/ G-1279/2001, dated 25.8.2001 issued by the directorate of Consolidation. A perusal of this letter leaves no room for doubt that the post of Tracer falls within the category of Group "D" employees. It is further relevant to note that in the year 1995 also, appointments were made on the post of Tracers and the selection conducted in that year based only on the exercise of interviews. In other words, it may be observed that the department or the Government did not follow the procedure of competitive test to hold the selection for Tracers. The Government has not denied this fact nor has replied as to how selection was made in the year 1995 through the process of interview alone. It is thus, obvious

that it was for the sake of bringing out a case of irregularities that this plea was pressed into service and thus, an endeavour was made to create a suspicion about the veracity of the selection. As a matter of fact, neither there was any irregularity on the point nor this kind of objection has any merit. Accordingly, this has to be rejected.

15. The Commissioner (Consolidation) explaining the point on the procedure adopted by the Selection Committee stated in his report that the candidates were asked to appear before all the Members of the Committee and since the number of candidates was large, the Members of the Committee decided to hold individual interviews with a view to comply with the headquarters' instructions to finalise the result expeditiously. However, the candidates could not be compelled to appear before every Members of the Committee. The candidates, who appeared before the individual Members of the Committee, were marked "present" but if they did not appear before other Members of the Committee, they were shown to be "absent". But this did not have any adverse bearing upon the merit or performance of any candidate as in accordance with the guidelines issued by the Directorate of Consolidation the average marks were awarded by dividing the marks given by the Members before whom the candidates appeared by the total number of Members of the Committee. In this way, no irregularity had been committed. In this context, it would be relevant to observe that the Members of the Selection Committee interviewed only those candidates, who appeared before them and since a formula of dividing the marks by the total number of Committee Members, was adopted for rating the average performance, nobody can be said to have been prejudiced nor there was any deviation of any rule. The Selection Committee by evolving the aforesaid formula did not commit breach of any rule or norm or practice, it is further significant to mention that 60 Lekhpals, who were interviewed by the same Selection Committee and to whom the marks were awarded on the same formula, as referred to above, have been given appointments without raising any objection about the procedure adopted for their selection. The opposite parties have not been able to disclose any kind of disadvantage if any candidate might have suffered by the aforesaid procedure. Unless some prejudice was shown to have been caused to any candidate or some advantage was said to have been derived by a selected candidate, the procedure of interviewing candidates by individual Members of the Selection Committee cannot be assailed to be as Irregular, This Court held in Writ Petition No, 42286 of 2001 Kavindra Kumar and others v. Deputy Inspector General of Police, Moradabad Range, Moradabad and Ors. and many other petitions that it is not physically possible for all Members of the Board to sit together for assessing the performance of each candidate. In such a case, they should have taken months together to examine standards of candidate appearing in the test. In that case also, Members of the Selection Board held interview of different groups of the candidates as allocated by the higher police authorities and the Court was satisfied on scrutiny of the reports that by adopting the said procedure possibility of mala fides and partiality were

ruled out. In the case in hand, although different groups were not allotted to some Members but the candidates were given choice to appear before all the Members for the test of their merit. If they failed to appear before one or two but were interviewed by some of the members, it was their choice and as said above, the formula of dividing the marks awarded to candidates by one or more members by the total number of Members of the Selection Committee was fair, just and reasonable. No one was likely to suffer out of this procedure. After the result was prepared, it was signed by all the Members of the Committee. Accordingly, I am of the view that the alleged irregularity in following the procedure does not provide any basis to cancel the selection particularly when almost all selected candidates except the petitioners have been allowed to join even without interference of the Court.

16. As said above, it was inappropriate on the part of the Government to have appointed a Joint Director (Consolidation) to hold the enquiry after the Commissioner (Consolidation) had submitted a detailed report to the effect that in the matter of selection fairness, uprightness and propriety were the factors on the basis of which the entire selection was made. Further, it is important to note that the petitioners are still duly selected candidates and their selection is still valid. Therefore, it would be violative of the provisions of Articles 14 and 16 of the Constitution of India, if they are denied of their legitimate right to be appointed.

17. Considering all aspects of the matter in view, I hold that all these writ petitions succeed and accordingly are hereby allowed. A writ of mandamus is issued commanding the opposite-parties to issue appointment letters to the petitioners for the post they have been selected ignoring the ban on recruitment, which was levied in the year 1997 and which has now been lifted in respect of the "backlog vacancies".