
(1998) 02 AHC CK 0047
In the Allahabad High Court
Case No : C.M.W.P. No. 20716 of 1997

Smt. Shakuntala Shukla

APPELLANT

Vs

State of U. P. and others

RESPONDENT

Date of Decision : 20-02-1998

Acts Referred:

Constitution of India, 1950 — Article 16
Uttar Pradesh Police Regulations, 1948 — Regulation 438

Citation : (1998) 1 AWC 505 : (1998) 2 UPLBEC 1093

Hon'ble Judges : M. Katju, J

Bench : Single Bench

Judgement

M. Katju, J.—This writ petition and the connected writ petitions have been filed for a writ of certiorari praying for quashing the select list of 1996-97 of persons who had been selected for promotion from the post of Sub-Inspector of Police to the post of Inspector. A true copy of the select list is Annexure-4 to the writ petition.

2. In pursuance of an interim order dated 15.9.97 in Writ Petition No. 23137 of 1997, the selected candidates have been served notices through the D.I.G. (Karmik) in Police Headquarters. A large number of points have been raised by several counsel for the petitioners in this case as well as in the connected petitions. I have perused the petitions, counter-affidavit and rejoinder-affidavit and have heard submissions of the parties, in my opinion, this petition and the connected petitions deserve to be allowed on two of the points raised by the learned counsel for the petitioners, and I am not expressing any opinion on the other points (e.g., whether the Selection Committee was validly constituted) as that is unnecessary since the petitions are being allowed on the first two points.

3. Under Regulation 438 of the U. P. Police Regulations, promotion to the post of Inspector from the post of Sub-Inspector of Police should be made every year. In the present case, however, the facts disclose that there was no selection from 1991 to 1997 and instead by the impugned order, selections have been made for

vacancies which occurred from 1991 to 1997 by clubbing all these vacancies together. In my opinion, this is clearly illegal, and my view is supported by the decisions of the Supreme Court in *Union of India (UOI) and Others Vs. Vipinchandra Hiralal Shah*, and *Syed Khalid Rizvi and Others and Ramesh Prasad Singh and Others Vs. Union of India (UOI) and Others*, In both these decisions, it was held that selections should ordinarily be held every year, and the clubbing of the vacancies of several years in a combined select list is illegal.

4. In this connection it may also be mentioned that apart from Regulation 438, the Government Order dated 5.11.65 also gives the indication that ordinarily selections to the post of Inspector should be held every year. This is the logical inference from :

(1) Paragraph (A) of the said Government Order which states that Sub-inspectors who have put in not less than ten years service and are below 50 years of age on 1st January of the year in which selection is made are eligible for promotion. The Range D.I.G. has to send a list of eligible candidates to the Police Headquarters every year.

(2) The last sentence of para (A) which states that those who are on the approved list of an earlier year will rank above those selected in a later year.

This provision will be rendered nugatory if vacancies for several years are lumped together.

5. In my opinion, even if no selection had been held from 1991-97, the authorities should have taken the vacancies of each year separately, and should have considered the persons eligible in that particular year only, and they should not have clubbed all the vacancies together, otherwise the chances of selection of the senior persons get reduced (see in this connection para 13 of the writ petition). If clubbing of vacancies is done, then the senior persons who were eligible in a particular year have to be considered along with the junior persons who become eligible later on, and this naturally reduces the chances of selection of the former. This is clearly in violation of Regulation 438 and also of the aforesaid judgments of the Supreme Court, and is also violative of the Government Order dated 5.11.65 and Article 16 of the Constitution.

6. The second submission which appeals to me is that in the selection for the post of Inspector, 50% marks were given for the oral interview. The Supreme Court in *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, ; *Ashok alias Somanna Gowda and Another Vs. State of Karnataka by its Chief Secretary and Others*, and in *Madhukar Bakru Pingal u. Rajendra D. Gaikwad*. 1995 (6) SCO 42, has held that only 15% marks should be given in oral interview. No doubt that there are some decisions which appear to have taken a contrary view, but, in my opinion, in deciding whether fixing 50% marks for interview is valid or not, we have to see the service, the post which is being considered, the prevailing conditions in the State, etc.

7. It may be noted that the criterion for promotion mentioned in the Government Order dated 5.11.65 is merit. In my opinion, the main consideration for adjudging merit for selection for the post of Inspector should be the service record, while oral interview should not have more than 15% marks. This is because the person who is being selected by promotion must have put in about 20 years of service or so as Sub-Inspector or on a lower post, and it is not a case of direct recruitment. Hence, his service record would ordinarily indicate his merit. For seeing merit, oral interview is not very much important. In fact giving 50% marks for oral interview would result in selection on extraneous consideration like caste, politics, favouritism and other subjective and extraneous factors. We cannot overlook the fact that casteism and other extraneous factors are rampant in U. P.

8. In my opinion, we have to adopt a realistic approach and accordingly, in my opinion, giving 50% marks in the oral interview is wholly arbitrary. For the post of Inspector which is to be filled in by promotion from Sub-Inspector, the nature of the post and the service clearly indicate that the service record and seniority should be the main consideration.

9. I may mention here that though seniority has not been specifically mentioned in the Government Order dated 5.11.65, it is certainly a relevant consideration once it is accepted that selections should be held every year, or even if it is not held every year, the persons eligible in each year should be considered separately.

10. I make it clear that I do not lay down as an absolute proposition that for every post under the Government, only 15% marks should be given for oral interview. The nature of the post, the nature of the service, the chances of extraneous considerations, etc. have all to be seen in deciding whether awarding 50% marks for interview would be arbitrary and illegal. So far as promotion to the post of Inspector in the U. P. Police is concerned, I am certainly of the view that awarding 50% marks for oral interview is bound to lead to casteism, favouritism, etc. Thus, I hold that the selection criteria which has provided for 50% marks for oral interview for selection to the post of Inspector of Police is arbitrary and violative of Article 16 of the Constitution.

11. In several petitions, it has been mentioned that the interview was held in an arbitrary manner, and on several dates, hundreds of candidates were interviewed within three or four hours. In paras 40 to 43 of the Writ Petition No. 23137 of 1997, this averment has been made, but it has not been rebutted by filing any counter-affidavit. In several petitions (e.g., in Writ Petition No. 22250 of 1997), it has been alleged that on an average, an interview lasted only for a minute or so. In para 14 of the Writ Petition No. 20716 of 1997, it has been stated that 2600 persons were called for the interview, and this is not denied in the counter-affidavit. In my opinion, such interview could not be very meaningful in assessing merit. In my opinion, the impugned selection has caused great injustice to the senior Sub-Inspectors who had unblemished service record but were not selected while junior persons, many of whom even had adverse entries and unsatisfactory

record, have been selected. In this connection the averments in paras 50. 51 and 52 of Writ Petition No. 23137 of 1997, Lalta Prasad Tripathi and another v. State of U. P. and para 17 of Writ Petition No. 23589 of 1997, Kiranpal Singh v. State, which are unrebutted may be seen. In the present writ petition, it is alleged in para 6 that the petitioner has an unblemished record and has not received a single adverse entry, and on the other hand she has received 22 awards. These allegations are not denied in the counter-affidavit. It is, therefore, difficult to understand why she was not selected, while her juniors have been selected.

12. In view of the above discussion, it is not necessary for me to go into the other points raised by the learned counsel for the petitioners. Thus, this writ petition and the connected writ petitions are allowed and the impugned selection list which is Annexure-4 to the petition is quashed. The respondents are directed to hold fresh selection in the light of the observations made above.