
(1996) 09 AHC CK 0046

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 21858 of 1996

Sri Vijay Kumar Gupta

APPELLANT

Vs

U.P.State Road Transport Corporation, Lucknow, through its
Chairman and others

RESPONDENT

Date of Decision : 09-09-1996

Acts Referred:

Citation : (1996) 09 AHC CK 0046

Hon'ble Judges : Paritosh K.Mukhrerjee, J

Final Decision : Allowed

Judgement

1. This writ petition filed by the writ petitioner Vijay Kumar Gupta was taken up for hearing by this Court on September 4, 1996 and heard at length in the presence of Sri P. N. Ojha and Sri Somesh Khare, learned counsel appearing for the petitioner, However, since Sri V. M. Sahai, learned counsel appearing for the respondents was not present on that date, the hearing of the writ petition could not be concluded, and this Court directed learned counsel for the petitioner to give notice of the hearing of this writ petition before this Court to Sri V. M. Sahai, learned counsel for the respondents.

2. Today, upon notice given by the learned counsel for the petitioner Sri M.M. Sahai, learned counsel holding the brief of Sri V.M. Sahai, learned counsel for the respondents appeared before this Court and argued the case.

3. Earlier a joint writ petition was moved on behalf of thirteen writ petitioners, inter alia, praying for issue of appointment letter on the basis of selection that has taken place in the year 1989. The present writ petitioner was numbered as serial number 8 in the said writ petition. The said writ petition came up for final hearing in the presence of Sri V. M. Sahai, learned standing counsel for the respondents before Hon'ble Sudhir Narain, J. on November 30, 1995 and the learned judge was pleased to observe, inter alia, follows :

"The version of the petitioner is that an advertisement was issued on 20.5.89 in

the daily newspaper Dainik Jagran by respondent No. 2 inviting applications for 50 vacancies under different trades for the post of cleaners for appointment under U.P. Rajya Sarak air Parivahan Nigam, Kanpur. The petitioners applied for appointment. They were called for interview and the petitioners appeared for interview. They were declared successful on 15.11.1989. The petitioners have given the details about their positions in the list in para 7 of the writ petition. Petitioners were not given appointment. On the other hand a newspaper Dainik Jagran on 12.9.1992 notifying that there was 66 existing vacancies for the post of cleaners in seven trades. The claim of the petitioners is that they have already been selected in the year 1989 and there is no justification for not giving them appointment on the existing vacancies. A counter affidavit has been filed on behalf of the respondent. It is not denied that 50 temporary vacancies were existing in the year 1989 and the applications were invited for appointment on those 50 temporary vacancies in the year 1989. In para, 4 of the counter affidavit it has been stated that the select list could not be given effect to nor any appointment could be made in view of the ban imposed by the State Government. Petitioners were selected but they could not be considered for appointment. The second objection is that the select list was to continue only for one year and the period of one year having expired the select list which was prepared in the year 1989 could not be given effect to. Learned counsel for the respondents has placed reliance upon Regulation 20(5) of the U.P. Road Transport Employees (Other than officers) Service Regulation which reads as under :

"The list prepared under Subregulation (4) shall remain alive for one year from the date it is finalised by the selection committee or till the next selection whichever be earlier."

4. Learned judge has further observed that "it is not denied that the petitioners were selected in 1989 for the vacancies. Their rights cannot be defeated merely because ban was imposed."

5. It may be stated at this stage that the said ban which was imposed earlier by the Uttar Pradesh Government has already been quashed by Hon''ble S.R. Singh, J.

6. As such in my view the said ban cannot stand in the way of the present writ petitioner, Vijay Kumar Gupta, and he is entitled to get appointment as if there was no ban in the relevant year, i.e., in the year 1989, on the basis of his selection, as one of the suitable candidates along with others.

7. Hon''ble Sudhir Narain, J. also observed in the aforesaid judgment that the ban has been lifted because of the order passed by Hon''ble S.R. Singh, J. and ultimately without passing any specific direction to give the appointment to the petitioners, left the matter on the discretion of the respondent authorities by giving leave to the petitioners of filing proper representation before the respondent authorities.

8. In pursuance to the said leave, representation has been filed, but it has been improperly rejected by order dated 19.2.1996, passed by the Service Manager, U.P. State Road Transport Corporation, Kanpur, being respondent no. 4, contained in Annexure 10 to the writ petition.

9. In the aforesaid cryptic rejection order, the respondent no. 4 has only observed that since the persons working on the post of cleaner are above the actual strength, as such, the representation of the petitioner could not be considered, and the same was rejected.

10. In my view the said reason in support of the order of rejection is extraneous, and cannot be supported by any reason, because of the facts that since the petitioner was selected rightly on the basis of proper selection held in the year 1989, there was vacancy and there was no extra appointment at the relevant period of time in the year 1989, and the ban which was imposed by the State Government was subsequently quashed by the judgment passed by Hon''ble S.R. Singh, J. of this Court. As such the petitioner has a right to get appointment even if the period of one year of the existence of panel is over.

11. The petitioner's case may be singled out with other twelve persons, who have not come along with the present petitioner. The case of the present petitioner stands on different footings.

12. Further more, this Court is of the view that in view of selection, a right has been accrued in favour of the petitioner, and such right cannot be set at naught by so called ban imposed by the State Government, which has been subsequently quashed by the judgment of this Court, referred to herein above.

13 Accordingly, I direct the respondents to issue a letter of appointment in favour of the petitioner "as a special case", not having been animated by the fact that the panel was only for one year, as because of the respondents' inaction and illegal imposition of the ban, the petitioner could not get appointment in the year 1989.

14. Such appointment has to be given within a period of one month from the date of production of a certified copy of this order, and the petitioner will be entitled to get his salary from the date of joining and not from the year 1989 since he was selected.

15. It is further made clear that if the respondent authorities are not in position to accommodate the petitioner by giving appointment, the said authorities are directed to create a supernumerary post, specially for the petitioner to accommodate him, in view of the circumstances stated herein above.

16. The writ petition is allowed to the extent indicated above.

17. Let a writ in the nature of mandamus be issued accordingly. ,

18. There shall be no order as to costs.

(Petition allowed)