

(2016) 01 AHC CK 0179

In the Allahabad High Court

Case No : Special Appeal Defective No. 18 of 2016

State of U.P. and Others

APPELLANT

Vs

Basant Lal Maurya and Others

RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2016) 2 ADJ 746 : (2016) 2 AILLJ 677 : (2016) 2 AllWC 1740 :
(2016) 1 UPLBEC 737

Hon'ble Judges : Dr. D.Y. Chandrachud, C.J. and Yashwant Varma, J.

Bench : Division Bench

Advocate : Vivek Shandilya, for the Appellant; Suresh Chandra, for the Respondent

Final Decision : Allowed

Judgement

Yashwant Varma, J.—1. The State in appeal questions the judgment rendered by the learned Single Judge on 21 September 2015 allowing the writ petition preferred by the respondents 1 to 18. The petition preferred by the respondent, it may be noted, assailed the validity of an order passed by the appellant on 31 March 2014 recording the decision of the State Government not to proceed with the selection process for Safai Karmis. The order further referred to the decision of the State Government as embodied in two Government Orders dated 8 September 2010 and 15 March 2012 to the effect that no further appointments to the Class-IV cadre in the State Government would be made and that future exigencies would be met through the process of "outsourcing". The learned Single Judge has proceeded to allow the writ petition, setting aside the order dated 21 September 2015 and passed further directions commanding the State Government to comply with the order dated 29 October 2013 passed upon Writ Petition No. 8964 of 2013 (Basant Lal Maurya and others v. State of U.P. and others) within a period of two months. The genesis of the dispute itself arises from a decision of the State Government to fill up 1,08,848 posts of Safai Karmis

in terms of a Government Order dated 1 March 2008. The terms of the aforementioned Government order were sought to be implemented with the appellant No. 4 issuing an advertisement on 16 June 2008 inviting applications for filling up 1264 posts of Safai Karmis in district Sant Ravidas Nagar. It appears that the selection process undertaken pursuant to the above came to be tainted by various allegations of lack of transparency and fairness and ultimately led to the State Government cancelling the entire process of selection on 5 November 2008. Pursuant to this order of the State Government dated 5 November 2008 the appellant No. 4 re-advertised the vacancies on 3 December 2008. In the meanwhile, a writ petition ((Writ Petition No. 68871 of 2008; (Ajai Kumar Mishra and others v. State of U.P. and others) came to be preferred in this Court seeking to question the validity of the order of the State Government annulling the selection process by its order dated 5 November 2008. This petition came to be dismissed by a learned Single Judge on 30 July 2009.

2. On 17 May 2010, the State Government issued directions to the appellant No. 2 to complete the selection process which had been initiated subsequent to the passing of the Government order on 5 November 2008. It appears from the record that despite the issuance of the above directive on 17 May 2010 the selection process was not completed. This led to the respondent preferring another writ petition (Writ Petition No. 8964 of 2013; (Basant Lal Maurya and others v. State of U.P. and others). The State responding to the petition, filed its Counter-affidavit in the writ proceedings and amongst various pleas taken therein asserted that pursuant to the ban on fresh appointments to Class-IV posts having been imposed by the State Government by virtue of Government Orders dated 8 September 2010 and 15 March 2012, the selection process could not be carried forwarded and concluded. This petition ultimately came to be disposed of on 29 October 2013 by a learned Single Judge with a direction to finalize the selection within a period of three months. The above direction, as the judgment would indicate, came to be passed upon the learned Single Judge holding that the State would be clearly unjustified in keeping the selection process pending for years together. Significantly it may be noted, the following observations were made in the judgment rendered by the learned Single Judge on 29 October 2013:

"7. However, it is made clear that this order shall not preclude the competent authority to consider the expediency of selection in question to continue or to cancel the same, but for the that purpose, a specific order, giving just and cogent reasons, shall be passed."

3. The order of 31 March 2014 came to be made pursuant to the direction issued by the learned Single Judge on 29 October 2013.

4. As we read the judgment impugned before us, we find that the learned Single Judge in some detail has proceeded to note the history of the dispute. The challenge in the writ petition to the order of 31 March 2014 has however found acceptance in the judgment rendered based solely upon the following findings:

"13. It is apparent from the record that after exchange of affidavits, the Court disposed of the Writ Petition No. 8964 of 2013 on 29.10.2013 with a direction to the Competent Authority to finalise the aforesaid selection within three months. It is admitted situation that against the aforesaid order dated 29.10.2013 the respondents did not file any application to review/recall the order and the order has attained finality.

14. In the facts and circumstances of the case, this Court is of the view that the order impugned cannot sustain, and is accordingly, set aside. The respondents are directed to comply with the order dated 29.10.2013 passed in Civil Misc. Writ Petition No. 8964 of 2013 (Basant Lal Maurya and others v. State of U.P. and others) within a period of two months from the date of production of a certified copy of the order."

5. We find ourselves unable to subscribe to the view that the judgment rendered in Basant Lal Maurya restrained the appellants from treading any course except to proceed with and conclude the selection process which stood initiated subsequent to the passing of the Government Order dated 5 November 2008 and vacancies being re-advertised on 3 December 2008. This finding returned by the learned Single Judge is clearly rendered unsustainable when one views and takes into consideration what was recorded in paragraph 7 of the judgment rendered in Basant Lal Maurya. As one reads paragraph 7 of the said judgment, it is apparent that nothing precluded or restrained the State from considering the expediency of concluding the selection process commenced or taking a decision to cancel the same. The learned Single Judge only recorded that if in case such a decision is taken by the State it would be obliged to pass a specific order recording just and cogent reasons. This is exactly what the State did while passing the order dated 31 March 2014. The order of 31 March 2014 embodies a conscious decision taken by the State not to proceed with the selection process which stood initiated post 5 November 2008. The State, we may note, had given an indication of its impending decision in the writ proceedings itself when it averred that in terms of the Government Orders dated 8 September 2010 and 15 March 2012 a policy decision had been taken not to make any fresh appointments on Class-IV posts and to meet future exigencies only through the process of outsourcing. These two Government orders, it is significant to note, did not form subject-matter of challenge in the writ petition.

6. The issue as to whether a selection process once initiated is liable to be taken to its logical conclusion or for that matter being abandoned for just and valid reasons is, in our opinion, also in the nature of a policy question. Of course, the reasons which impel the State Government to cancel the process of selection already initiated like all other policy decisions would be liable to be tested on the anvil of Article 14 of the Constitution. Although, there was an absence of challenge to the Government Orders dated 8 September 2010 and 15 March 2012 in the writ petition we may note that the order of 31 March 2014 represented a conscious deliberation by the appellants on the issue of whether

the selection process was liable to be continued and concluded. This deliberation was a direct outcome of the liberty accorded to the State in *Basant Lal Maurya*. The learned Single Judge in unambiguous terms gave liberty to the appellants to revisit the issue of concluding the selection process as also to consider whether the same was liable to be abandoned in which case a specific order was to be passed. The appellants took a conscious decision and assigned valid reasons for not continuing with the selection process. We find no error in the decision taken by the appellants. For the aforesaid reasons, we are of the view that the judgment of the learned Single Judge is rendered unsustainable.

7. Accordingly and for the reasons noted above, the State succeeds in the present special appeal and the same is consequently allowed. The writ petition preferred by the respondents 1 to 18 shall consequently stand dismissed.