

(2010) 10 AHC CK 0087

In the Allahabad High Court

Case No : Special Appeal No's. 270, 271 and 272 of 2006

State of U.P. and Others

APPELLANT

Vs

Gyanendra Kumar Shukla and Others

RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:

Subordinate Officers Ministerial Staff (District Recruitment) Rules, 1975 — Rule 22
Subordinate Offices Ministerial Staff (Direct Recruitment) Rules, 1985 — Rule 22, 7

Citation : (2011) 2 AWC 1921 : (2011) 1 UPLBEC 186

Hon'ble Judges : Sunil Ambwani, J;Kashinath Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani and Kashi Nath Pandey, JJ.—We have heard Shri J.K. Tiwari, learned Standing Counsel for State of UP-the Appellants. Shri Nikhil Kumar appears for the Respondent.

2. In these Special Appeals arising out of judgment of learned Single Judge dated 26.11.1998 after the matter was remanded by the Supreme Court in Civil Appeal No. 9135 of 1995 decided on 27.9.1995, learned Single Judge has found that there was substantial compliance of Rule 22 of the Subordinate Offices Ministerial Staff (Direct Recruitment) Rules, 1985, and the appointments of the Petitioners namely, Promod Kumar Yadav in Writ Petition No. 17836 of 1991; Gyanendra Kumar Shukla in Writ Petition No. 17837 of 1991, and Prashant Kumar in Writ Petition No. 17884 of 1991, were made after complying with the Rules. The writ petitions were allowed and the impugned orders terminating their services dated 15.6.1991, were set aside. Learned Single Judge also held that prior to the selections the vacancies were determined and that the appointing authority had notified them to the Employment Exchange. The failure to advertise the vacancies in the newspapers, would, therefore, not by itself invalidate the appointments.

3. Brief facts, giving rise to the writ petition, are stated in the judgment of

Supreme Court in Civil Appeal No. 9135 of 1995 decided on 27.9.1995, as follows:

The Appellant was initially appointed as Registration Clerk on daily wage basis by the District Registrar, District Jhansi, by order dated September 27, 1990. While the Appellant was working as Registration Clerk, the District Registrar, District Jhansi, issued a notice/ advertisement for filling up six posts of Registration Clerks on regular basis. Out of six posts five posts were to be filled up from and amongst the general candidates and the sixth post was reserved for Scheduled Caste candidate. The District Registrar, District Jhansi constituted a Selection Committee for the said appointment. The Appellant appeared before the said Selection Committee on February 24, 1991 and was selected. He was appointed on the post of Registration Clerk on the basis of said selection and he joined as Registration Clerk on February 25, 1991, but by order dated June 15, 1991 his services were terminated. The Appellant filed a writ petition (Writ Petition No. 17883/91) in the Allahabad High Court which was heard along with special appeals and writ petitions of other Registration Clerks employed on daily wage basis and the same was dismissed by common judgment and order dated February 8, 1995.

It has been urged on behalf of the Appellant that his case differs from other cases dealt with by the High Court inasmuch as he had been selected for regular appointment by a duly constituted Selection Committee in accordance with the rules and the High Court has not considered this aspect of the matter. In the counter affidavit thus has been filed on behalf of the Respondents before this Court, it has not been disputed that the Selection Committee was duly constituted by the District Registrar, District Jhansi on February 24, 1991 but it was asserted that while doing so the District Registrar, District Jhansi, did not comply with the mandatory provisions of Rule 22 of the Subordinate Officers Ministerial Staff (District Recruitment) Rules, 1975 which had been replaced by the Subordinate Offices Ministerial Staff (Direct Recruitment) Rules, 1985 as amended upto date and thus there was defect in the procedure of the said selection and the selection was void. This questions has not been gone into by the High Court while dismissing the writ petition of the Appellant. It is a question which should have been considered by the High Court before dismissing the writ petition of the Appellant.

4. The findings of learned Single Judge in the judgment under challenge after quoting Rule 22, are reproduced as follows:

On merits there is no substance in the submission that the procedure laid down in Rule 22 was not followed. In order to appreciate the submission it would be apt to quote Rule 22 as under:

Rule 22.: That the appointing Authority shall determine the number of vacancies to be filled during the course of the year as also the vacancies to be reserved under Rule 7. The vacancies shall be notified to employment exchange. The

appointing authority may also invite application directly from persons who have their names registered in the employment exchange. For this purpose, appointing authority shall ensure advertisement in a local daily newspaper besides pasting a notice on the Notice Board. All such applications shall be placed before selection Committee.

The District Registrar was admittedly the appointing authority prior to 20.3.1991 with effect from which date the rules were amended and I.G. Registration was made "appointing authority". From the averments made in the counter affidavit filed by Dewaki Nandan Dwivedi, the then Sub Registrar, Jhansi and the observations made by the Apex Court in its judgment dated 27.9.1995 it would be abundantly clear that the Petitioners were selected for regular appointment by a duly constituted Selection Committee in accordance with the Rules. The only controversy that was to be decided by this Court as per direction given by the Apex Court in its judgment dated 27.9.1995 was whether the provisions under Rule 22 of the Rules aforesaid were followed. Sri M.D. Singh Counsel for the Petitioner submitted that after determining the vacancies the appointing authority notified them to the Employment Exchange as required by Rule 22 of the Rules as it then stood. This fact has not been disputed by Sri S.N. Upadhyay, learned Counsel appearing for the Respondent. Concededly the vacancies were notified to the Employment Exchange as visualized by the first part of Rule 22 of the Rules. The second part of Rule 22 in my opinion gives a discretion to the appointing authority to invite applications from the persons whose names are entered in the Employment Exchange by advertising the vacancies in newspapers. Failure to issue advertisement in the newspaper as required by in the second part of Rule 22, in the circumstances of the present case, would not vitiate the appointments which were made by the appointing authority on the recommendation made by a duly constituted Selection Committee after notifying the vacancies to the Employment Exchange.

In view of the foregoing discussion the petitions succeed and are allowed. Impugned orders are quashed. Petitioners shall be entitled to full back salary and continuity in service. Respondents are directed to act accordingly.

5. Learned Standing Counsel submits that out of six appointees in the selections, five were already working as daily wage clerks in the department. Only one of them namely Shri Santosh Kumar Chaudhari, who was son of Shri Kashi Prasad, Member of Legislative Assembly from Charkhari, and whose application was forwarded by the Joint Director to the Chief Minister, was selected as the 6th candidate. He would submit that Shri Vishram Singh Yadav, the then District Registrar, by his letter dated April 3, 1991, had submitted a report to the Inspector General, Stamps & Registration, U.P. Allahabad, questioning the selection of the Selection Committee on 24.2.1991. The Selection Committee, in its proceedings annexed as Annexure No. 6 to the stay application, referred to requisition made from the Employment Exchange. The Committee also considered the names of the persons, who were already working on adhoc basis,

and on daily wages and the applications, which were received from the Inspector General, Stamps & Registration or from the State Government. A total number of 87 candidates were called for interviews, of which 20 belong to Scheduled Caste/ Scheduled Tribe. A total of 51 candidates had appeared in the interviews, out of which 49 candidates were interviewed as two of them did not produce their certificates. The Selection Committee, consisting of Additional District Magistrate (Finance & Revenue), & the District Registrar, Jhansi as Chairman; the Awas Vikas Adhikari; the Special Land Acquisition Officer, and the Deputy Director (Fisheries) as Members to the Committee, selected six persons including the Petitioners, and Shri Atul Kumar Nigam for appointment, and prepared a waiting list of 11 persons.

6. It is contended by Shri Nikhil Yadav appearing for Respondents that in the case of Atul Kumar Nigam after the remand learned Single Judge dismissed the writ petition. Shri Atul Kumar Nigam and Shri Sanjay Gupta filed Special Appeal Nos. 253 of 1998 and 254 of 1998 respectively. Both the Special Appeals were allowed by the Division Bench on 09.9.1999, with following observations as follows:

The requirement of the Rule that the vacancies shall be notified to Employment Exchange is, in our opinion, mandatory. It is not disputed that the vacancies in the instant case were in fact notified to Employment Exchange. In so far as the second part of Rule 22 of the Rules which requires that the "appointing authority may invite applications directly from the persons who have their names registered in the Employment Exchange" is concerned, the same is directory. The appointing authority has been given discretion to invite applications directly from the persons who have their names registered in the Employment Exchange in addition to the vacancies being notified to the Employment Exchange and consider their candidature along with the candidates sponsored by the Employment Exchange. It is only when the appointing authority decides to invite applications directly from persons who have their names registered in the Employment Exchange that it would be necessary to issue an advertisement for that purpose in a local daily news paper. Since the appointing authority did not invite applications directly from the candidates who had their names registered in the Employment Exchange, the question of issuing an advertisement in a local daily newspaper besides pasting a notice for the same on the notice board did not arise. Since the vacancies were notified to the Employment Exchange, Rule 22 in substance stood complied with and the services of the Appellants were not liable to be terminated, and in no case without affording opportunity of hearing to the Appellants, merely because they had applied for appointment directly and were not sponsored by the Employment Exchange. The Rule does not, in our opinion, inhibit persons registered with the Employment Exchange to directly apply for appointment nor does it prohibit the appointing authority to consider such applications notwithstanding the fact their names were not sponsored by the Employment Exchange. In the fact situation of the case, appointments in question were not liable to be terminated and in no case without affording an

opportunity to the Appellant. The judgment of the learned Single Judge is liable to be set aside and the orders impugned in the writ petitions are liable to be quashed. In such view of the matter the question of issuing a direction to the concerned authority to consider the case of the Appellants for regularization in accordance with the judgment of the Apex Court in Khagesh Kumar (supra) does not arise.

In view of the above discussion the appeals succeed and are allowed. The judgments under challenge are set aside and the orders impugned in the writ petitions are quashed. The Respondents are directed to give consequential benefits to the Appellants. Parties shall bear their own costs.

September 9, 1999.

7. Shri Nikhil Yadav also informs us and that Standing Counsel has not disputed that the SLP against the judgment of the Division Bench in Special Appeal No. 253 of 1998 Atul Kumar Nigam v. State of U.P. and Ors. was dismissed by the Supreme Court. One of the candidates in the same selection, thus has succeeded upto Supreme Court. It is stated that the selections of other selectees in the same selection should not be cancelled on different grounds.

8. Learned Standing Counsel has placed reliance upon judgments in State of Bihar Vs. Upendra Narayan Singh and Others, Union of India (UOI) and Another Vs. Kartick Chandra Mondal and Another, and Bhakra Beas Management Board Vs. Krishan Kumar Vij and Another, in submitting that entries by the side door should be discouraged, and that even if a person has succeeded in the same selection upto Supreme Court, the matter can be again looked into by the High Court on the grounds raised by the State Government. He submits that out of six selectees, five were already working in the department as daily wage clerk and one was nominee of Hon"ble Chief Minister. The vacancies were not advertised in the newspapers and thus entire selections suffer from favouritism and nepotism.

9. Apart from the fact, that selection of Shri Atul Kumar Nigam in the same selections has been upheld and his termination of the same date on the same ground was set aside by the Division Bench and SLP has been dismissed, we find that under Rule 22 in respect of notification to the Employment Exchange the word "shall" has been used. In the next sentence of the rule, the appointing authority has been given discretion by using the word "may" to invite applications directly from the persons, who have their names registered in the Employment Exchange, and for that purpose the appointing authority has to issue an advertisement in a local newspaper, besides pasting a notice for the same on the notice board. In both the cases the names have to be referred by the Employment Exchange. The object of the rule is to consider those persons, who are registered with the Employment Exchange, and for that purpose apart from inviting applications notifying the vacancies to the Employment Exchange the appointing authority may also invite applications directly from the persons whose names have been registered in the Employment Exchange. The

advertisement is for the purpose of notice to such persons whose names are registered with the Employment Exchange. It is not denied that in the present case the vacancies were notified to the Employment Exchange and all those persons, who had applied and were also working as adhoc or on daily wage in the same department as well as applications received from the Inspector General, Stamp & Registration or through the State Government were considered. The selection was wide and open. For six posts, 49 persons were interviewed.

10. We further find that no one has challenged the selections and that no complaint was received from any one who was eligible and did not get information of the selections. The complaint was made from within the department alleging that there was a ban on appointments subsequent to the selections and that only those persons, who are already working or were recommended, was selected.

11. On the aforesaid facts and circumstances, we do not find any good ground to interfere with the impugned judgment. The Special Appeals are dismissed.