
(1999) 02 AHC CK 0111
In the Allahabad High Court
Case No : Special Appeal No. 313 of 1998

State of U.P. and others

APPELLANT

Vs

Ravindra Nath Rai and others

RESPONDENT

Date of Decision : 03-02-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 16(4)

Citation : (1999) 2 AWC 1230 : (1999) 3 UPLBEC 132

Hon'ble Judges : D.S. Sinha, J;D.K. Sharma, J

Bench : Division Bench

Advocate : Kripa Shanker Singh, S.C. and Sabha Jeet Yadav, for the Appellant;
Ashok Khare, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Sinha, J.—Heard Sri Sabha Jeet Yadav, learned counsel representing the appellants and Sri Ashok Khare, learned counsel appearing for the respondents, at length and in detail.

2. Instant Special Appeal, under Rule 5 of Chapter VIII of the Rules of Court, 1952, is directed against the Judgment and order dated 28th May, 1997, rendered by his Lordship Hon"ble Markande Katju. J, in Ravindra Nath Rai and others v. State of U. P, and others. Civil Misc. Writ Petition No. 40495 of 1996, allowing the writ petition and giving to the appellants the following direction :

"The respondents are directed to prepare a waiting list in the said examination and consider and appoint the persons in the waiting list in accordance with merit to the extent of the number of candidates in the main select list who had not joined."

3. The acts and events constituting undisputed facts of the case, briefly stated, are as below :

"For the purposes of recruiting 525 Sub-Inspectors in Civil Police of the State, the

Deputy inspector General of Police (Karmik), Police Headquarters. Allahabad, the appellant No. 5, issued an advertisement on 4th. October, 1991. Later on by means of another advertisement dated 26th October, 1991 number of vacancies to be filled in by the recruitment was modified, increasing number of vacancies from 525 to 630."

4. On 28th June, 1992, a preliminary test was held. Physical test was held on 4th, 5th and 6th January. 1993. The result of the physical test was announced on 7th January, 1993. Written examination was conducted on 8th/9th January, 1993, and result was declared on 19th July, 1993. Thereupon, dates for the interview were fixed from 24th September, 1993 to 19th October, 1993 and some interviews took place. On 2nd October, 1993 a press-note was issued notifying that the remaining interviews were postponed and would commence from 1st December. 1993. On 29th November. 1993, Government issued notification notifying its decision to postpone the remaining selection process. Eventually on 9th June, 1994 entire selection process was cancelled.

5. The validity of the order canceling the entire selection process was challenged in this Court through Ram Das Rai and others v. State of U. P, and others. Civil Misc. Writ Petition No. 21994 of 1994. The petition was considered by a learned single Judge who by means of his judgment and order dated 23th May, 1995 allowed the petition and commanded the concerned authorities to declare the result.

The above judgment and order of the learned single Judge was challenged in special appeal which was decided on 19th November, 1996, in special appeal, the Judgment of the learned single Judge was modified to the extent that reservation for the O.B.C, candidates should be 15% instead of 27% as directed by the learned single Judge.

6. Finally, after lapse of interminable period of more than five years from the initiation of selection process, on 2nd December, 1996, a list of candidates chosen to fill up 630 vacancies was declared. On the same date, a communiqu? was issued from the Police Headquarters under the signature of the Deputy inspector General of Police (Karaite). Uttar Pradesh notifying that no waiting list had been prepared and it would not be possible to send any candidate for training from the waiting list. This order was duly notified by a separate press-note of the same date. The training course for the new recruits commenced on 7th January, 1997.

7. On 16th January, 1997, the authorities decided to fill up 86 newly created posts of Sub-Inspectors in Civil Police from the candidates who had participated in the recruitment process in pursuance to the advertisements dated 4th October, 1991, as modified by notification dated 16th November, 1991 and found eligible and qualified therefore. Thus, the total number of candidates selected for training leading to appointment on the post of Sub- inspectors were 716 (630 for vacancies advertised and 86 for newly created posts).

8. Out of 716 candidates 123 did not join and 13 dropped out of training course resulting in 136 vacancies.

9. The respondents who had participated in the recruitment approached this Court through Civil Misc. Writ Petition No. 40495 of 1996, praying for issuance of a writ of certiorari quashing the order dated 2nd December, 1996 and the communiqué notifying the order dated 2nd December, 1996 whereby it was notified that no waiting list had been prepared. Further prayer of the respondents was that by means of a writ of mandamus, the Deputy Inspector General of Police (Karmik), Police Headquarters, Allahabad, the respondent No. 5 in the writ petition, be directed to prepare a waiting list of selected candidates and if their names figured in the waiting list, they may be allowed to join the training for the purposes of filling up the remaining posts falling vacant on account of the candidates either not joining or dropping out. The learned single Judge allowed the writ petition and issued directions, extracted earlier. Hence, this special appeal.

10. Twin submissions made by the learned standing counsel, appearing for the appellants, before the learned single Judge as well as before this Court are :

(i) that the petitioners have no right to maintain petition ; and

(ii) that there is no provision, either statutory or otherwise, to prepare waiting list, and consider the candidature of candidates who figure therein.

11. First submission of the learned standing counsel regarding the maintainability of the writ petition, based on decision of the Hon'ble Supreme Court in *Shankarsan Dash Vs. Union of India*, , holding that the successful candidates have no indefeasible right to be appointed, was rejected by the learned single Judge by observing that the said decision itself states that although a person may not have indefeasible right to be appointed, yet this does not mean that the State has the licence for acting in an arbitrary manner, in support of instant appeal also, the learned standing counsel submits that as the petitioners have no indefeasible right to appointment, they could not maintain the writ petition.

12. In its decision rendered in the case of *Jai Narain Ram Vs. State of U.P. and others*, , the Hon'ble Supreme Court has held that right to seek appointment to a post under Article 14 read with Article 16(1) and (4) is a constitutional right to equality, in another decision rendered in the case of *R. S. Mittol v. Union of India* 1995 (2) SCO 230, the Hon'ble Supreme Court pointed out that it is "no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims". The respondents seek nothing more than consideration of their candidature for appointment. They have legally cognizable and judicially enforceable right therefore.

13. Thus, it cannot be held that the respondents had no locus standi at all to

maintain the petition. The learned Single Judge rightly rejected the contention of the appellants that the petitioners had no right to maintain the petition.

14. Second submission of the learned standing counsel that there is no provision, either statutory or otherwise, to prepare waiting list is correct, it may also be correct that no waiting list was prepared in terms of the expression "waiting list". But, neither has it been nor can it be disputed that a comparative merit list of all the candidates found eligible and qualified for appointment was prepared, that there is no statutory rule or executive instruction limiting the life of the said comparative merit list ; that the comparative merit list has not been nullified, and that the comparative merit list was treated to be surviving by the appellants themselves which is evident from the fact that for filling up 86 newly created posts, candidates were picked up from that very list from which the candidates for filling 630 advertised vacancies were selected, and out of 630 so selected candidates, 123 did not join and 13 dropped out which resulted in creation of 136 vacancies qua 630 advertised posts.

15. On one hand for filling unadvertised new posts, the appellants have picked up 86 candidates from the comparative merit list of all the candidates found eligible and qualified for appointment prepared during the selection process initiated for filling the 630 advertised posts and on the other for filling 136 advertised posts they have denied even the consideration of the candidature of those candidates who figure in the comparative merit list immediately next to those who have been appointed against 494 advertised posts. The appellants have not disclosed any justifiable reason for adopting such discriminatory and wholly arbitrary course resulting in gross violation of the inalienable guarantee enshrined in Articles 14 and 16 of the Constitution of India, it cannot be countenanced. The candidates whose names figure in the comparative merit list prepared for a particular selection held for the advertised posts do not have any right of consideration for future vacancies. But, certainly they have a right to be considered for appointment against the advertised vacant posts, and such right is a legally cognizable and Judicially enforceable constitutional right.

16. It may be noticed that the Deputy inspector General of Police (Karmik). Police Headquarters. Allahabad addressed a letter dated 21st June. 1997 to Special Secretary. State of Uttar Pradesh (Home). Police Department-10 suggesting that direction given by the learned single Judge in the impugned judgment may be complied with keeping in view the past precedent in that regard and seeking necessary direction in that regard.

17. Prior to selection in question, the selections had taken place in the years 1981 and 1982 also, and in those selections waiting lists had been prepared. In the year 1987 also, a waiting list was prepared, of course this time the waiting list was prepared in pursuance of the judgment and order of this Court dated 15th March. 1991 rendered in Civil Misc. Writ Petition No. 18930 of 1989, Santosh Kumar Singh v. State of U. P., and others, against which a SLP was filed before the Hon"ble Supreme Court of India and, it is not disputed, it was rejected.

18. In similar circumstances, in the case of A. V. Bhogeshwarudu v. A. P. Public Service Commission and another. 1989 (59) F&LR 749, the Hon''ble Supreme Court directed that existing vacancies be filled up from the comparative merit list of the candidates.

19. Approving the dictum that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to be appointed, the Hon''ble Supreme Court in its decision rendered in Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others, , observed that the -other aspect is the obligation of the Government to act fairly. The whole exercise cannot be reduced to a farce". The course adopted by the appellants in the instant case is not fair.

20. There being no statutory rule or executive instruction limiting life of the comparative merit list, the list having not been treated by the appellants as exhausted, and 136 vacancies against the advertised posts being available, and there being no Justifiable reason for not considering the candidature of the candidates figuring in the comparative merit list next below the last candidate absorbed, the appellants must consider the candidature of such candidates for filling up 136 advertised vacant posts. Rule of fair play, which has to be reflected in all actions of the State, demands so.

21. In the backdrop of what has been said above, the impugned judgment and order does not suffer from dissonance with any legal principle, Statute or judicial precedent, it is, substantially, sound and warrants no interference in exercise of intra-court appellate jurisdiction.

22. Thus, the Special Appeal fails and is dismissed- There is no order as to costs.