

(2006) 07 AHC CK 0135

In the Allahabad High Court

Case No : Special Appeal No.127 (S/B) of 1998 (with Special Appeal No.128 (S/B) of 1998)

State of U.P.and Others

APPELLANT

Vs

Raj Kumar and Others

RESPONDENT

Date of Decision : 28-07-2006

Acts Referred:

Citation : (2006) 07 AHC CK 0135

Hon'ble Judges : Pradeep Kant, J and B.B.Agarwal, J

Final Decision : Dismissed

Judgement

1. These are two special appeals arising out of a common judgment, therefore, we are deciding the same by a common order.

2. Heard Sri Alok Sinha, learned Addl. Chief Standing Counsel, for the appellants and Sri Ramesh Kumar Srivastava, for the respondents.

3. These special appeals have been filed against the order passed by the learned Single Judge dated 11.2.1998, by means of which respondents' writ petitions were allowed and a writ in the nature of mandamus was issued to the appellants to ensure the appointment of the petitioners (private respondents in these appeals) on Class III post. In the said order it was also provided that in case of any difficulty, the concerned department may contact the District Magistrate who shall issue necessary directions. The entire process was directed to be completed within six weeks from the date the certified copy of the judgment was produced before the District Magistrate, Faizabad. The learned Single Judge also took notice of the indifferent and casual attitude of the State Government in dealing with the said matter and not filing counter affidavit, despite ample opportunity being afforded and cost of Rs.2000/ being also imposed. In the absence of the counter affidavit, the pleadings of the respondents were taken as correct and the petitions were allowed.

4. The necessary facts which brought the respondents to this Court claiming

relief under Article 226 of the Constitution, were that in a selection made under the provisions of U.P. Subordinate Officer, Ministerial Staff (Direct Recruitment), for Class III posts, the respondents stood finally selected but they were not issued the appointment orders though persons who could find place below them in the list of finally selected candidates, were offered appointment and were appointed. This very fact stood corroborated by the own action of the State, namely, order issued by the Karmik Vibhag dated 26.11.92, wherein it was provided that pursuant to a selection test conducted on 8.5.86, about 12 persons have not been appointed. The reasons recorded in the said letter was that there might not be any vacancy available for the said year but after considering the factual position that juniors have been appointed and 12 persons have been ignored, the Secretary, Karmik, issued the aforesaid Government order addressed to the District Magistrate, Faizabad that every effort should be made to appoint these persons against existing vacancies for the year 198586 and if the vacancies are not available then they be adjusted against the current vacancies and if there were no vacancies at the relevant time then in future vacancies. This Government order was followed by another letter dated 5.5.1987 which was issued by the District Magistrate, Faizabad to all the district offices referring to the aforesaid letter and directions issued by the State Government directing them to absorb the aforesaid 12 persons against Class III post in any of the offices.

5. The learned Single Judge, on careful consideration of the entire material on record including the aforesaid orders/letter and also the fact that undisputedly and undenyingly the respondents were the persons who were placed higher in merit of the finally selected candidates and, therefore, they had a right to be appointed even prior to the appointment orders being issued to the persons, who were placed below them, issued necessary mandamus for giving appointment to those persons. We are informed that in pursuance of the aforesaid directives, all the respondents have been given appointment and they are working as such since the year 1998.

6. In the special appeals, there is no denial of the fact that the persons junior to the respondents, namely, those who were placed below them in the list of finally selected candidates of the same selection, were given appointment, ignoring the claim of the respondents. The plea, which has been raised, is only to the effect that the respondents' placement in the select list could not give them any enforceable right for seeking appointment.

7. The second plea is that the list of finally selected candidates stood expired on the expiry of one year from the date of selection.

8. A half hearted plea has also been taken in respect of the petition filed by Smt. Geeta Pathak that since the vacancy in question stood filled in by transfer, which fact was communicated to the Selection Committee and even then selection was made, therefore, no relief can be granted.

9. The pleas raised by the State in these appeals do not persuade us to take a different view as against the view taken by the learned Single Judge.

10. The question of enforceable right of a candidate whose name finds place in the list of finally selected candidates, would only arise if the select list has not been acted upon by the State Government for any reason whatsoever and, of course, such an action also could not be arbitrary and in no case discriminatory. There may be a case where the State Government in its wisdom on some reasonable ground or criteria and for some valid consideration finds that the selection so made, cannot be given effect to, and in that situation, a person whose name finds place in the select list may not be in a position to challenge the said action and consequently may not claim his appointment under the said list but in a case where the State Government itself implements the said select list and makes appointment, it does not have liberty to deviate from the select list prepared for the selection and to make appointment by adopting criteria of pick and choose.

11. The period of validity of the select list of one year having expired would also not come in the way, in the case of respondents for the simple reason that by mere lapse of time the discrimination met to them and the illegalities and arbitrariness committed by the State would not be cured and the right of the respondents for appointment cannot be taken away simply because the State though prepared the select list in accordance with law but acted arbitrarily in appointing the candidates from the select list.

12. In respect of the case of Smt. Geeta Pathak, suffice it to mention that we are in special appeal and the State despite having full opportunity did not file any counter affidavit in the writ petition and this fact was never brought before the learned Single Judge. Further she also having been given appointment in the year 1998 in pursuance to the order passed by the learned Single Judge, we do not find any reason to delve upon the question that whether this fact was correct or not thus, reject this plea also.

13. The appeals are dismissed.

14. Before parting we would like to put on record that the State's action firstly in not giving the appointment to the respondents, who were higher in merit in the list of finally selected candidates and secondly in not filing counter affidavit in writ petition despite ample opportunity and even cost being imposed and then again choosing not to file counter affidavit and thereby not paying the cost, which was directed to be paid by the Court, and thereafter filing special appeals challenging the order passed by the learned Single Judge cannot be appreciated. In the special appeal, they did not get any interim order and after giving appointment to all the respondents in compliance of the order passed by the High Court, the State obtained an interim order from the Court on 17.10.2003 i.e. after more than five years of the appointment of the respondents, without disclosing the fact that the orders stand complied with and thus dragged the

respondents to this litigation right from the year 1998 till date, which conduct calls for special costs to be awarded to the respondents.

15. It is not believable that the State was not aware of the fact that they have already given appointment to the respondents but without disclosing this fact, they obtained an interim order from this Court.

16. In the absence of any counter affidavit being filed controverting the placement of the respondents in the select list and in the presence of the Government order issued by the Karmik Vibhag showing the discrepancy and discriminatory treatment meted to these persons, the State could have allowed them to join instead of compelling them to contest the appeals knowing fully well that it was a case where persons who were selected and were higher in merit, have not been given appointment. We cannot appreciate such conduct of the State, which call for special cost.

17. While assessing cost, we also take note of the fact that the learned Single Judge imposed a cost of Rs.2000/ but the State did not honour the said order and in fact avoided to deposit that cost. This conduct also cannot be appreciated.

18. The observation made by the learned Single Judge in this regard is as under:

?The question of noncompliance of the directions of this Court dated 12.3.1997 has to be taken note of. It is shocking that in spite of the Court's direction to file a counter affidavit, subject to payment of Rs.2000/ within the specified period, no attention has been paid by the State Government. I am, therefore, of the view that the opposite party No.1 i.e. the Chief Secretary should look into the matter and pass appropriate orders with order to erring officers. Since the cost of Rs.2000/ has not been paid, I, therefore, direct that Rs.2000/ as costs be paid to each petitioner within the aforesaid period of six weeks.?

19. Asking for time to file counter affidavit and then when time is granted on payment of cost, State's action in not filing counter affidavit and not paying the cost amounts to disobedience of the order of the Court. The case is adjourned when such orders are passed and the litigation is delayed.

20. We accordingly impose special cost of Rs.5000/ each to be paid to all the respondents. This cost shall be paid within one month.

21. With the aforesaid observations, the appeals are dismissed.

(Appeal dismissed)