

(2006) 04 AHC CK 0197

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 13220 of 2006

Suresh Ram

APPELLANT

Vs

State of U.P. and Regional Manager, U.P.S.R.T.C.

RESPONDENT

Date of Decision : 24-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh State Road Transport Corporation Employees (Other than Officers)
Service Regulations, 1981 — Regulation 12, 19, 25

Citation : (2006) 6 AWC 6090

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Yogesh Agarwal, for the Appellant; R.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—This writ petition is directed against the order dated 29.9.2005 passed by the Regional Manager, U.P. State Road Transport Corporation rejecting the representation of the petitioner for giving effect to the resolution for selection of drivers and further to appoint the petitioner.

2. The brief facts of the case are that the petitioner belongs to Scheduled Caste community. The U.P. State Road Transport Corporation (hereinafter referred to as the Corporation) advertised 10 vacancies for the posts of drivers vide advertisement dated 8.6.2003. In pursuance of the advertisement, the petitioner applied for the post of driver. It is alleged that he was selected on the post for Azamgarh region vide select list published on 27.6.2003 appended as Annexure 3 to the writ petition in which the name of the petitioner finds place at serial No. 16.

3. The contention of the learned Counsel for the petitioner is that out of 20 selected candidates, 10 have been permitted to join the post but the petitioner has not been permitted to join the same. He has submitted that selection process was held for filling up 20 vacancies of bus drivers, but appointment

letters were issued only to 10 of the candidates and rest of the candidates have not been issued appointment letters compelling the petitioner to file Writ Petition No. 37152 of 2005 before this Court.

4. The writ petition was decided by judgment dated 5.5.2005 directing that the representation of the petitioner be decided by the Regional Manager of the Corporation at Azamgarh preferably within a period of two months from the date of filing of the certified copy of the judgment dated 5.5.2005 after giving opportunity to hearing to the petitioner.

5. Consequently, the petitioner submitted his representation dated 24.5.2005 but instead of complying with the aforesaid judgment the Regional Manager again advertised the vacancies for the posts of Drivers for Azamgarh region by advertisement dated 18.5.2005. The petitioner has appended a copy of the advertisement dated 18.5.2005 as Annexure 6 to the writ petition.

6. The learned Counsel for the petitioner has urged that the respondents were bent upon to disobey the Court's order which compelled him to file Contempt Petition No. 3387 of 2005 against the Regional Manager of the Corporation at Azamgarh. The representation of the petitioner was thereafter decided by order dated 29.9.2005 which is impugned in this writ petition.

7. It is submitted that the order dated 29.9.2005 is the result of malice harboured by the Regional Manager against him due to issuance of notice of contempt petition to him by the High Court as a consequence of which he has rejected the representation of the petitioner.

8. The learned Counsel for the petitioner contends that it is incumbent upon the Corporation to fill up 21% vacancies from the candidates belonging to Scheduled Caste in accordance with the G.Os. issued from time to time by the State Government. It is also submitted that the appointment of the drivers in the Corporation is to be made under the provisions of the U.P. Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 (hereinafter referred to as the Regulations). Regulation 12 of the Regulations provides for reservation for the candidates belonging to Scheduled Caste in accordance with the G.Os. issued from time to time by the State Government. He further submits that Regulation 19 provides for determination of vacancies for which selection is to be made and it is not open to the Corporation authorities to keep the vacancies unfilled up or withheld and that there should be valid reasons to keep the vacancies unfilled.

9. The order dated 29.9.2005 rejecting the representation of the petitioner is passed on the ground that when even the persons senior to the petitioner or occupying higher position in the merit list have not been given appointment what to say persons junior to the petitioner, the question to give appointment to the petitioner does not arise, hence the claim of the petitioner has no legs to stand.

10. According to the learned Counsel for the petitioner, the grounds taken in the

impugned order dated 29.9.2005 by the Regional Manager for rejecting the representation of the petitioner are no valid reasons, as the respondents cannot keep the vacancies unfilled up arbitrarily as a selected candidate has legitimate expectation for being given appointment which can only be defeated on reasonable consideration. He further urges that the respondents have kept the select list pending arbitrarily without giving appointment hence they cannot say that the select list has become time barred.

11. It is pointed out that the provisions of Regulation 25 provides that on occurrence of regular vacancies the appointing authority shall make appointments by taking the names of the candidates in order in which they stand in the select list and it is mandatory on the appointing authority to make appointments from the select list on occurrence of vacancy and in spite of vacancy it is not open to the appointing authority not to make appointment from the select list in infringement of the intention and object of Regulation 25.

12. The learned Counsel for the petitioner has relied upon the decisions of the Hon"ble Supreme Court rendered in State of Uttaranchal and Others Vs. Sidharth Srivastava and Others, and in Punjab State Electricity Board and Others Vs. Malkiat Singh,

13. The learned Counsel for the respondents has urged that the petitioner has also filed Writ Petition No. 37152 of 2005 for the same relief and the Court after considering the case of the petitioner passed the following order dated 5.5.2005:

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Having heard counsel for the parties and considering the facts and circumstances of this case, this writ petition is finally disposed of with a direction that in case if with regard to his grievances made in this writ petition, the petitioner files a fresh comprehensive representation before respondent No. 2, the Regional Manager, U.P. State Road Transport Corporation, Azamgarh along with a certified copy of this order, the same shall be considered and decided by the said respondent in accordance with law after giving opportunity of hearing to the petitioner and other concerned parties, if there be any, expeditiously, preferably within a period of two months from the date of filing of the same.

With the aforesaid observations/directions, this writ petition is finally disposed of. No order as to costs.

Sd/- Vineet Saran, J.

14. It is stated that in pursuance of the aforesaid order the representation submitted by the petitioner was considered and rejected by a reasoned/speaking order. He has also drawn the attention of the Court to Annexure 2 to the writ petition which is the advertisement dated 8.6.2003 and submits that it is apparent from the aforesaid advertisement that total 242 posts of drivers were advertised out of which 10 posts were reserved for Azamgarh Region and that the petitioner had appeared in Trade Tests but the posts for Azamgarh- Region

were filled up by the candidates from the select list according to the merit in the select list by persons who were higher in merit list than the petitioner. He has also drawn the attention of the Court to the fact that the petitioner has not arrayed any of the candidates from S. No. 11 to S. No. 15 as party though all of them are higher in merit than the petitioner and has filed this writ petition by misrepresentation of facts that there were 20 vacancies.

15. I have heard the learned Counsel for the parties and perused the record.

16. It appears that only 10 posts of drivers for Azamgarh Region were advertised which were duly filled up by the respondents according to merit. The select list thereafter stood exhausted after one year as all the selected candidates had joined their posts and none of them left the services. If fresh vacancies of drivers occurred thereafter the petitioner cannot claim that he should be given appointment on the basis of the earlier select list and he has to again compete with other candidates.

17. The contention of the learned Counsel for the petitioner is that no valid reason has been given for rejecting the representation of the petitioner. According to him the ground for rejection of the representation that there was no discrimination with the petitioner as no person lower to him in the select list has not been appointed is no reason. No other person has been appointed in excess to the number of vacancies advertised, i.e., 10 posts for Azamgarh Region. There were at least five candidates much higher to him in the merit list which have neither been appointed by the respondents nor have been arrayed as party in the writ petition. In fact the rights of candidates higher in merit list than the petitioner would be affected in case relief is granted to the petitioner without hearing them. The writ petition is, therefore, also liable to be dismissed on the ground of non-joinder of necessary parties. The petitioner has no right to claim appointment until and unless an appointment letter is issued to him. He cannot claim any lien against the fresh vacancies on the basis of earlier select list which had been exhausted as all the 10 vacancies advertised were filled up from the said list and it had also lost its life after one year. A selected candidate has no indefeasible right to be appointed much less a candidate from earlier selection in the circumstances of the case.

18. In the case of State of Uttaranchal (Supra) it has been held in para 22: -

A person placed in the merit list of selected candidates has no indefeasible right to be appointed. No doubt, there cannot be an arbitrary refusal to appoint a selected candidate.

19. The same view has been taken by the Hon''ble Supreme Court in the case of Sri Kant Tripathi and Others Vs. State of U.P. and Others, of which it has been held: -

No wait-listed candidate could be appointed to those posts. A wait-listed candidate has no vested right to be appointed except when a selected candidate

does not join while the waiting list is still operative.

20. In Punjab State Electricity Board (supra) the Hon''ble Supreme Court has held: -

Mere inclusion of name of a candidate in the select list does not confer upon any vested right to get appointment.

21. The aforesaid decisions of the Hon''ble Supreme Court cited by the petitioner in fact lay down proposition of law to the contrary as argued by the petitioner.

22. There is no illegality or infirmity in the impugned order requiring interference under Article 226 of the Constitution.

23. For the aforesaid reasons the writ petition is dismissed. No order as to costs.