
(1998) 03 AHC CK 0021

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 28958 of 1991

Umesh Kumar Gaur and Another

APPELLANT

Vs

U.P. State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 06-03-1998

Acts Referred:

Uttar Pradesh State Road Transport Corporation Employees (Other than Officers)
Service Regulations, 1981 — Regulation 20(5)

Citation : (1998) 3 UPLBEC 2085

Hon'ble Judges : Aloke Chakrabarty, J

Bench : Single Bench

Advocate : I.N. Singh and Ajay Yadav, for the Appellant; Samir Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Aloke Chakrabarti, J.—The factual background of the case as appears from the writ petition is that at the instance of the respondents a select list was prepared following an advertisement and selection process for the post of cleaner. The petitioner No. 1 is at Serial No. 141 in Trade Motor Mechanic and the name of petitioner No. 22 is at serial No. 5 in the list of Trade Wireman. As the petitioners did not receive appointment letters although several other candidates had been appointed in the select list, the petitioners approached the respondents and made representation; also for issuance of appointment letter. Thereafter, the petitioners were informed orally that the Government had imposed ban on new appointments and therefore the petitioners could not be appointed. As the petitioners were not successful in getting appointment letters and substantial time passed by the present writ petition was filed.

2. Respondents filed counter affidavit wherein the selection of the petitioner had been admitted but it was stated that the petitioners could not be appointed in view of the ban imposed by the Government and thereafter the life of the select list expired after one year in view of the specific provisions of Regulation 20 (5)

of U.P. State Road Transport Corporation Employees (Other than Officers) Services Regulation, 1981 effective from 19.6.1981.

3. The petitioners filed rejoinder affidavit.

4. Heard the learned Counsel for the petitioners as also Mr. Samir Sharma learned Counsel for the respondents.

5. The contention of the petitioners is that they acquired valuable rights when their names were included in the select list and thereafter they could not be deprived of appointment. In support of such contentions reference was made to the judgment of this Court dated 19.4.1991 in the case of Pradeep Kumar Mishra. and Ors. v. State Road Transport Corporation, Lucknow and Ors. , in writ petition No. 21348 of 1990. It has been contended relying on the law decided in the case of S. Govindaraju Vs. Karnataka S.R.T.C. and Another, . The aforesaid decision in the case of Pradeep Kumar (supra), was taken for the purpose of holding that once a candidate is selected in a particular trade in the manner prescribed by Regulation 20 of the said Regulation, he acquires a right to get appointment against the vacancies accumulating occurring during the period. The select list remains in animation under Regulation 20 (5) of the said Regulations.

6. Learned Counsel for the respondents contended that the case of S. Govinda Raju (supra), does not deal with the question involved herein. It is stated that in the case of Pradeep Kumar (supra), the right of a selected candidate has been accepted only against the vacancies accumulating/occurring during the period. Reliance was also placed on the Judgment in the case of Vijai Shankar Shukla and Ors. v. M/s. U.P. State Road Transport Corporation and Anr., in Civil Misc. Writ Petition No. 15384 of 1992 dated 17.8.1995 wherein it has been interpreted that if the vacancies do not arise during the life time of select list, no right accrues in favour of the candidates whose names were included in the select list. Reference was also made to the case of Shankarsan Dash Vs. Union of India, , for the purpose of contention that by mere inclusion of the names, candidates in the select list, no right accrues In their favour. It has further been contended that the same view has been reiterated by the Apex Court in the case of State of Bihar and Ors. v. M.D. Kalimuddin reported in 1996 (72) F.L.R 529.

7. Learned Counsel for the respondents also referred to the facts" mentioned in paragraph No. 3 (x) of the counter affidavit. It has been categorically stated that in the present case the candidates from the select list were appointed as Motor Diesel Mechanic and as Wireman against available vacancies but since no further vacancies was available, the petitioners could not be given appointment. It is stated that in view of the aforesaid factual position the petitioners are not entitled to any relief in accordance with the law decided in the case of Vijay Shanker Shukla (supra).

8. After considering the aforesaid contentions, it appears that the selections of the petitioners have not been disputed herein but the respondents have contended that when no vacancy arose the petitioners could not be appointed

and after expiry of life of select list they could not be appointed. The petitioners in paragraph No. 15 of the writ petition have contended as follows :-

"15. That the petitioners have come to know that several posts of Motor Mechanic cleaners and wireman cleaners are already in existence in U.P. State Road Transport Corporation, Allahabad Regional, in which the petitioners can be easily absorbed.

9. But. it has not been stated in the aforesaid paragraph that any vacancy actually existed or occurred at any relevant point of time. The respondents on the said other hand in the counter affidavit made out a clear case in paragraph No. 3 (x) thereof that the candidates from the select list were appointed against the available vacancies but since no further vacancy was available, the petitioners could not be given appointment. Further while dealing with the contentions made in paragraph No. 15 of the writ petition, the person respondent in paragraph No. 10 of the counter affidavit made out a categorical case that the select list having already expired, the petitioners cannot claim appointment against the vacancies which came into existence after the expiry of the select list. In the rejoinder affidavit, the petitioners did not deny the contentions of the respondents made in paragraph Nos. 3 and 10 of the counter affidavit except general denial.

10. In view of the aforesaid materials it is apparent that no material is available before the Court to show that there was any vacancy occurring during the life time the select list against which the petitioners could be appointed. In view of the aforesaid factual position the petitioners could not make out any case of accrual of any right on occurrence of any such vacancy. In such circumstances applying the law decided in the case of Vijay Sharikar Shukla (supra), the petitioners are not entitled to any relief.

11. With regard to law decided in the case of Pradeep Kumar (supra), it appears that the same was also considered in the case of Vijay Shankar Shukla (supra) and no contrary finding of any Larger Bench has been shown explaining the legal position to the contrary.

12. With regard to the case of S. Govinda Raju (supra), it appears that in the said case the question of termination of an employee appointed on temporary basis taking his name from the select list was being considered.

13. In view of the aforesaid findings, the petitioners are not entitled to any relief and therefore this writ petition is dismissed. There will no order as to costs dated 6.3.1998.