

(2007) 03 AHC CK 0261
In the Allahabad High Court
Case No : Appeal No 130 of 2003

U.P. Public Service Commission, Allahabad and Another	APPELLANT
Vs	
State of U.P. and Another	RESPONDENT

Date of Decision : 08-03-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2007) 5 ADJ 280 : (2007) 6 AWC 6486

Hon'ble Judges : Sudhir Agarwal, J; S. Rafat Alam, J

Bench : Division Bench

Advocate : Bhoopendra Nath Singh and M.A. Qadeer, for the Appellant; Ashok Khare, Aditya Kumar Singh, P.N. Ojha and S.C., for the Respondent

Final Decision : Allowed

Judgement

1. This intra-court appeal, under the Rules of the Court arises from the judgment of the Hon'ble single Judge dated 24.1.2003 allowing Civil Misc. Writ Petition No. 38337 of 2000 of the Petitioner-Respondent (hereinafter referred to as the Petitioner).

2. The facts, in brief, are that the U.P. Public Service Commission, Allahabad (hereinafter referred to as the "Commission") published an advertisement dated 1.1.1998 for recruitment to Combined State/Upper Subordinate Services Examination, 1998 consisting of 13 services, namely, Dy. Collector, Dy. Superintendent of Police, Assistant Regional Transport Officer, Trade Tax Officer, Additional District Development Officer, Assistant District Inspector of Schools/ Basic Shiksha Adhikari and equivalent post, Treasury Officer/Account Officer, Executive Officer Gr. I/Assistant Nagar Vikas Adhikari, District Social Welfare Officer, District Audit Officer, District Saving Officer, Assistant Accounts Officer, Dy. Regional Marketing Officer and Trade Tax Officer-Grade-II. The preliminary examination was held on 24.5.1998. The Petitioner qualified the same and thereafter appeared in the Main Examination consisting of written test as well as interview and the final result thereof was declared on 24.12.1998. The Petitioner

was not shown selected in the final result since the last candidate selected in General Category secured 1020 marks while the Petitioner has secured 1017 marks only. The Commission sent its recommendations on 30.3.1999 to the State Government for appointment. Thereafter, the respective authorities issued letters of appointment to the selected candidates.

3. It appears when some candidates selected for different posts did not join, the State Government sent a letter dated 2.5.2000 to the Commission informing names of such seven candidates and requested to send seven more names from the waiting list. The Commission accordingly sent its recommendation dated 24.7.2000 forwarding seven more names from the waiting list and it appears that the said candidates thereafter were offered appointment to the respective services.

4. The Petitioner filed the present writ petition on 28.8.2000 whereupon this Court on 29.8.2000 directed the Respondents to file counter-affidavit. After exchange of the counter-affidavit filed on behalf of the State of the U.P. as well as the Commission and the rejoinder-affidavit, the writ petition was heard and finally allowed by the Hon''ble single Judge vide judgment under appeal directing the Commission to recommend four more candidates in their respective category for appointment to the post of Treasury Officer/Accounts Officer and one candidate for the post of Deputy Regional Marketing Officer from out of the select list, i.e., waiting list, in order of seniority within a period of six weeks from the date of receipt of the order and the State Government was directed to issue appointment order within four weeks thereafter.

5. Aggrieved by the aforesaid judgment the Commission has come up in this appeal.

6. Sri M. A. Qadeer, learned Counsel appearing for the Appellants-Commission contended that in view of Government order (hereinafter referred to as the G.O.) dated 31.1.1994, life of the select list was only one year. Since result was declared on 24.12.1998 and recommendation was made on 30.3.1999, therefore, no recommendation could have been made by the Commission, pursuant to the aforesaid selection after expiry of one year from 24.12.1998 or in any case from 30.3.1999. He further contended that in any case a candidate in a waiting list has no indefeasible right of appointment and, therefore, a writ of mandamus commanding Commission to recommend names from the wait list to the Government and a further mandamus for their appointment would not lie. Placing reliance on a Division Bench judgment of this Court in Civil Misc. Writ Petition No. 3447 of 2002, Arun Kumar Singh v. State of U.P. and Ors. it is contended that once the life of wait- list has expired, no appointment from such select list or wait list can be made and a policy decision taken by the State Government not to make any appointment after expiry of the aforesaid period cannot be faulted. He, therefore, submitted that the Hon''ble single Judge has erred in law in interpreting and applying the aforesaid G.O. otherwise.

7. Per contra, Sri Ashok Khare, learned senior advocate appearing for the Petitioner-Respondent contended that a large number of candidates of general category did not join pursuant to the aforesaid selection and recommendation made by the Commission, hence it was incumbent upon the authorities to make appointment in those vacancies from this very selection and the said unfilled vacancies could not have been carried forward to the next selection. Relying on *Trilok Nath Mishra and Others Vs. State of U.P. and Another, State of U.P. v. Ram Swarup Saroj* 2000 (2) AWC 1356 (SC); *Sheo Shyam and Others Vs. State of U.P. and Others*, *Ved Prakash Tripathi Vs. State of U.P. and others*, and *State of U.P. and others Vs. Ravindra Nath Rai and others*, it is contended that the candidates in the waiting list have a right to be appointed if the vacancies advertised remain unfilled due to non joining of the selected candidates and in such cases, a writ of mandamus can be pressed in service by the aggrieved candidates who are denied appointment. He, therefore, submitted that the judgment of the Hon"ble single Judge warrants no interference.

8. We have heard learned Counsel for the parties and perused the record of the appeal as well as the writ petition, the written submissions and the authorities relied upon by the learned Counsel for the parties.

9. The entire controversy revolves around the interpretation and effect of the G.O. dated 31.1.1994 as also the right of appointment of a candidate, whose name finds place in the waiting list.

10. However, before proceeding to consider rival submission, it would be appropriate to reproduce the aforesaid G.O., which is the sheet anchor of the submissions advanced by all the parties. A copy of the G.O. has been placed on record as Annexure-5 to the writ petition and also as Annexure-C.A. 1 to the counter-affidavit filed by the State of U.P. and reads as under:

11. A perusal of the aforesaid G.O. would show that in order to streamline the process of recruitment pursuant to combined competitive examination conducted by the Commission involving number of services, certain directions were issued from time to time. On the recommendation made by the Commission in respect to the selected candidates, the Government used to forward recommendation to the respective Departments wherefrom the appointment letters are issued by the competent authority to the selected candidates, whose names are recommended by the Commission after completing all other formalities, like character verification, police verification of antecedents and medical examination etc. However, sometimes candidates offered appointment failed to join service for various reasons and the vacancy remain unfilled. The concerned department informs the Government about non-joining of such selected candidates, who were issued letters offering appointment and thereafter only the Government used to seek further recommendation of the Commission from the waiting list, if any. Some times the entire process used to take lot of time and in the meantime the next recruitment process used to start causing a practical difficulty in making the said recruitment final. To mitigate it, the State Government issued G.O.

dated 31.1.1994 communicating its decision namely: (1) where the recommendation has been received from the Commission, the concerned department has to issue letter of appointment except where the department itself has been abolished or where the selection has been made by the Commission for single post or notified post and it has been abolished. (2) Such appointment letters shall be issued by the concerned department after receiving allotment within three months thereof and the candidates shall be offered one month's time to join extendable by one month for unavoidable circumstances. (3) Thereafter, the candidature, in case of non-joining, shall be cancelled and the copy of such order shall be sent to the Commission with the request to send names from the waiting list. (4) The waiting list shall not be published by the Commission but shall be kept by it in a sealed cover and required names shall be sent to the Government as and when requisitioned from it. (5) Such waiting list shall be valid for one year only where the recruitment process is to be held on annual basis or if it is a special selection. (6) However, in case where the requisition has been sent to the Commission against unfilled vacancies requesting to send additional names from waiting list within a period of one year, in such case, the life of wait list shall be treated to have been extended beyond one year, inasmuch as, the Commission may send recommendation even after expiry of one year. (7) Where no information has been received from the concerned department requisitioning any candidate from the wait list, the unfilled vacancies shall be carried forward and be filled in the next recruitment. Subsequently, a query was made as to whether a vacancy occurred during the validity of life time of the wait list due to resignation of a candidate who was appointed pursuant to the recommendation made by the Commission, would such a vacancy be filled in from the waiting list. By a G.O. No. 28/5/80-Ka-4-1997 dated 23rd December, 1997 the Government conveyed its decision that once a candidate, who has been offered appointment joins, the vacancy in the concerned recruitment comes to an end and if such a person subsequently resigns even within one year from the date of preparation of the select list, such vacancy being a fresh one occurring in a different recruitment year, shall not be filled in from the wait list.

12. It appears that the practice of filling in vacancy within one year from the waiting list pursuant to G.O. dated 31.1.1994 caused lot of litigation and other practical problems, inasmuch as, pursuant to the Combined State/Upper Subordinate Services Competitive Examination, 1992 held for 520 vacancies, the result of only 471 was declared by the Commission in April, 1996. Certain persons who were in the waiting list filed Civil Misc. Writ Petition No. 1204 of 1998, Arjun Prasad Pathak and Ors. v. State of Uttar Pradesh and Ors. seeking a mandamus commanding the Government to call for the names of the candidates from the waiting list and issue appointment letters to them. Similarly, in respect to Combined State/Upper Subordinate Services Competitive Examination, 1995 candidates in the waiting list approached this Court in Civil Misc. Writ Petition No. 24576 of 1998, Ram Krishna Pandey and Anr. v. Public Service Commission, U.P. Allahabad and Ors. and in Civil Misc. Writ Petition No 36283 of 1998, Ganesh

Shanker Tiwari v. State of U.P. and Ors. seeking a mandamus commanding the Commission to make recommendation from the waiting list and the State Government to appoint them against unfilled vacancies. In respect to the Combined State/Upper Subordinate Services Competitive Examination, 1994 Civil Misc. Writ Petition No. 41612 of 1998, Brij Mohan v. State of U.P. and Ors. and Civil Misc. Writ Petition No. 19374 of 1999, Prem Kumar Singh v. State of U.P. and Ors. were filed seeking a writ of mandamus for making recommendation from the waiting list and to appoint them accordingly. The petition of Arjun Prasad Pathak and Ors. (supra) was initially disposed of by a Division Bench on 10.5.1999 directing the Commission/State Government to ascertain the vacancy available due to non-joining of the candidate and forward the names from waiting list for appointment in order of merit within a period of two weeks. Similarly writ petitions of Ram Krishna Pandey and Anr. (supra), Ganesh Shanker Tewari (supra), Prem Kumar Singh (supra) and Brij Mohan (supra) were also disposed of on 11.5.1999 directing the Commission and the State Government to take appropriate steps for recruitment of those candidates who were selected and placed in the waiting list and to complete the said process within a period of two months. The State of Uttar Pradesh as well as the U.P. Public Service Commission aggrieved by the aforesaid judgments dated 10.5.1999 and 11.5.1999 filed various Special Leave Petitions before the Hon''ble Apex Court and after clubbing all the said appeals, the Hon''ble Apex Court decided the same by a common judgment dated 3.11.2000 setting aside the judgments of this Court and remanding all the cases to be decided a fresh after permitting the State of U.P. and the U.P. Public Service Commission to file counter-affidavit. After remand writ petitions of Arjun Prasad Pathak and Ors. (supra), Ram Krishna Pandey and Anr. (supra) and Ganesh Shanker Tewari were finally dismissed by a Division Bench consisting of Hon''ble G. P. Mathur (as his Lordship then was) and Hon''ble N. K. Mehrotra, JJ. vide judgment dated 31st October 2002 and writ petitions of Brij Mohan (supra) and Prem Kumar Singh (supra) were also dismissed by another Division Bench consisting of Hon''ble M. Katju (as his Lordship then was) and Hon''ble S. K. Singh, JJ. vide judgment dated 18.1.2002.

13. To complete the factual history, it would be appropriate to refer the G.O. dated 15.11.1999 which appears to have been issued by the State Government in the light of the experience, it had, faced in calling the names from the wait list, to adjust the inter se dispute between the candidates in respective services and also lot of litigation, some of which has been referred above and consequently it decided not to prepare any wait list at all and communicated such decision by G.O. dated 15.11.1999 to all the concerned authorities including the Commission. However, we are informed that the said Government order has been struck down by an Hon''ble single Judge vide judgment dated 17.7.2002 in Triloki Nath Mishra (supra) where against a special appeal is pending. We have referred to G.O. dated 15.11.1999 since it has been heavily relied by the Appellants. However, we find that the said G.O. has no application in this case. In

the case in hand, admittedly, the advertisement was published in January, 1998 and the final result itself was declared on 24.12.1998 whereafter the recommendation was made by the Commission to the Government on 30th March, 1999. In these circumstances, we are of the view that the subsequent G.O. dated 15.11.1999 would have no application and, therefore, it is not necessary for us to make any observation in respect to G.O. dated 15.11.1999 or the judgment of the Hon'ble single Judge whereby it has been held to be illegal since this matter is already subjudice in a separate appeal.

14. Thus, we are concerned here only with the G.O. dated 31.1.1994. It is admitted by the learned Counsel for the parties that the life of wait list prescribed therein is only one year. Learned Counsel for the Petitioner, however, submitted that if there is any delay in intra-departmental correspondence or there is any inaction on the part of the State Government or its authority in not communicating the unfilled vacancy to the Commission, the candidates in the wait list cannot be made to suffer for the inaction over which he has no control. The obligation of additional requisition from wait list as provided in G.O. dated 31.1.1994 has to be considered in the light of the fact whether despite the availability of the vacancy, the authorities have shown due diligence in sending information to the Commission asking for further names from the wait list and if there is any delay on the part of the State Government or its authority, on mere technical interpretation of G.O. dated 31.1.1994, and adhering to the period of one year prescribed therein, right of wait list candidate to get appointment cannot be defeated, else, such a candidate otherwise would stand discriminated and this action of the State Government would be illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India. He also contended that in respect to 7 vacancies, the State Government itself relaxed the rigour of the G.O. dated 31.1.1994 and, therefore, for other unfilled remaining vacancies also the same treatment should be extended. He lastly contended that any other view would render the aforesaid G.O. arbitrary and violative of Articles 14 and 16(1) of the Constitution of India.

15. We have given our anxious and in depth consideration to the submissions advanced on behalf of the parties. Certain facts between the parties are undisputed, namely, the recruitment in question became final and the result was declared by the Commission on 24.12.1998 and the recommendation of selected candidates sent to the Government on 30.3.1999. Therefore, in the light of the G.O. dated 31.1.1994 the period of one year would have expired either on 24th December, 1999 or 30th March 2000. In any eventuality other than that provided in G.O. dated 31.1.1994, it cannot be extended beyond that. However, if the Petitioner is correct in his submission that for delay in intra-departmental correspondence or inaction on the part of the Government, if requisition for additional names is not sent to the Commission within one year, in such cases, strict adherence to the time schedule under G.O. dated 31.1.1994 cannot be observed, in such cases the life of the select list would be extendable without any limitation whatsoever and this would result in a situation where such period may

be extended without any limitation and no hard and fast rule can be laid down in such circumstances. In our view, such an interpretation is neither warranted nor justified considering the nature of the interest or right of a wait list candidate. A wait list candidate does not have any indefeasible right to get appointment merely for the reason that his name finds place in the wait list. In *Sri Kant Tripathi and Others Vs. State of U.P. and Others*, it was held "An applicant, whose name appears in the wait list, does not get an enforceable right for being appointed to a post..." In *Surinder Singh and Others Vs. State of Punjab and Another*, the Court held "The candidates in the waiting list have no vested right to be appointed except to the limited extent that when a candidate selected against the existing vacancy does not join for some reason and the waiting list is still operative." Subsequently, in *State of Bihar and Others Vs. Amrendra Kumar Mishra*, after referring to various earlier judgments on the issue, the Hon"ble Apex Court held "The decisions noticed hereinbefore are authorities for the proposition that even the wait list must be acted upon having regard to the terms of the advertisement and in any event cannot remain operative beyond the prescribed period.

16. In *U.P. State Road Transport Corpn. and another Vs. Gobardhan and another*, while upholding the contention of the learned Counsel for the Corporation that the wait list candidate has no right, the Hon"ble Apex Court held "since the Corporation itself has taken decision to appoint a person from the wait list, such a wait list candidate is entitled to be appointed". This view has again been reiterated in *State of J and K and Ors. v. Sanjeev Kumar and Ors.* 2005 (1) SCC 148 and the Hon"ble Apex Court held "As it clearly spelt from the quoted portion, the Government can by a policy decision appoint people from the waiting list.

17. In *Bihar State Electricity Board Vs. Suresh Prasad and Others*, the Hon"ble Apex Court upheld non-preparation of any wait list where rules do not provide for preparation of a wait list and it was held that preparation of a wait list is not at all obligatory or mandatory unless the recruitment rules provide for preparation of a wait list in addition to the select list.

18. Thus whether a person in the wait list against the existing vacancy should be appointed or not and the period for which such a wait list shall be operative is a policy decision and is within the administrative authority of the Government. It is always open to the Government to take a policy decision in this regard.

19. Here, we find it useful to refer the Division Bench judgment in *Brij Mohan (supra)* decided on 18.1.2002 wherein considering the very G.O. dated 31.1.1994 this Court held as under:

We do not agree with this submission for the simple reason that the G.O. dated 31.1.1994 clearly mentions that the waiting list will only survive beyond one year if within that period of one year the concerned department requests to send the names from the waiting list. In the present case the concerned department

wanted 63 names from the waiting list and these were supplied by the Commission. No further intimation was sent by the concerned department within one year and hence the waiting list has been exhausted. In our opinion, the waiting list has come to an end after the expiry of one year and the same cannot be utilized now F.I.R. filling up more vacancies. These vacancies can now only be filled up by another examination held by the Commission.

20. Same view has been taken by this Court in Arjun Prasad Pathak and Ors. (supra) decided on 31st October 2002.

21. Thus, from the aforesaid decisions, it is evident that a wait list candidate can seek appointment only if such a provision has been made under the Rules or an executive order having force of law or the scheme of appointment enforced by the authorities provide for making appointment from the wait list, in case vacancy remains unfilled on account of non-joining of the selected candidates. However, it is neither obligatory, nor mandatory for the employer to prepare simultaneously a wait list or to keep a wait list intact as and when any selection is made besides the select list, unless a provision is made making it obligatory to prepare a wait list. It is always open to the employer not to prepare any wait list and after declaring the result of the selected candidates, to make appointment therefrom and in case any vacancy remained unfilled, to make a fresh selection instead of looking for a wait list. However, where the provision for wait list has been made, the same has to be observed strictly and within the four corners of such provision and not beyond that. The right of wait listed candidate is a kind of right which is not enforceable in the absence of any statutory provision conferring a right upon him to claim appointment, in case selected candidate failed to join. In other words the right of a wait-list candidate, thus, is a very weak kind of right and is not enforceable unless supported by a rule or executive order having force of law.

22. At this stage, we may also consider the circumstances in which the State Government sent letter dated 2nd May 2000 to the Commission asking for 7 names from the waiting-list as a result of non joining of 7 candidates pursuant to the selection in question. It appears that though the 7 candidates from the select list did not join in 1999 itself but no decision was taken in respect to cancellation of their candidature and consequently requisition was also not sent to the Commission. It resulted in Writ Petition No. 54131 of 1999, Devesh Kumar Tiwari v. State of U.P. and Ors. decided on 22.12.1999, wherein the State Government was directed to take a decision but compliance of the said judgment took time beyond 30th March, 1999. Since a judicial order was already passed by this Court within time and the delay occurred on the part of the Government, consequently, a decision was taken by the Government itself to extend the period upto 29th April 2000 and ultimately the persons whose candidature was cancelled upto 29th April 2000, in regard to those, the requisition was sent on 2nd May 2000 pursuant where to the Commission sent names of candidates from waiting-list after reshuffling. Thus, the aforesaid action was in order to give effect

to a judgment of this Court, which has attained finality and, hence, it cannot be said that it gives any cause of action to the Petitioners also, whose matter have come up for consideration subsequently before this Court.

23. So far as, the decision cited by the Petitioner in support of his submission are concerned, we find that in *State of U.P. and Ors. v. Ravindra Nath Rai and Ors.* (supra), a comparative merit list of the candidates was prepared and there was no executive rule or executive instruction limiting the life of the said list. This is apparent from the following:

But neither has it been nor it can be disputed that a comparative merit list of all the candidates was 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 the comparative merit list was treated to be surviving by the Appellants themselves...

24. Again the same thing was repeated in the penultimate paragraph of the judgment as under:

There being no statutory rule or executive instruction limiting the life of the comparative merit list, the list having not been treated by the Appellant as exhausted...

25. Thus, the aforesaid judgment does not help the Petitioner since it was decided in view of the fact that there was no provision limiting the life of the list, which was being acted upon by the appointing authority in respect to unfilled vacancies.

26. In *Ved Prakash Tripathi* (supra) a perusal of the entire judgment would show that the G.O. dated 31.1.1994 and its effect was not at all considered therein and instead the case was decided on its own facts, namely, seven candidates included in the select list dated 28.1.1999 had not joined but instead of cancelling the candidature of all the seven candidates, the State Government cancelled the candidature of only three candidates and sent its requisition to the Commission on 27.7.1999 calling for three additional names, which were forwarded by the Commission on 28.10.1999. Subsequently, the State Government cancelled candidature of four candidates and sent its requisition on 2.2.2000 requesting the Commission to send four additional names from the wait-list, which was declined by the Commission on the ground that the requisition was sent after one year. This Court in the peculiar facts and circumstances of the case, therefore, allowed the writ petition and directed the Commission to send additional four names from wait-list and distinguished the judgment of the Apex Court in *State of U.P. v. Rafiquddin*, as is apparent from the following:

In the peculiar facts and circumstances of the present case, therefore the ratio of *State of U.P. v. Rafiquddin and Ors.* (supra) as extracted above will have no application." (emphasis added) 27. In *State of U.P. v. Ram Swaroop*

Saroj(supra), it appears from the judgment that High Court decided the writ petition without entering into any other controversy by issuing a direction to the Government to fill in the vacancy available in the category of Scheduled Caste candidates in the order of merit from out of the waiting list by appointing one who was willing to join the post. Before the High Court, the State Government did not take any objection about the validity of the period of wait-list. For the first time, such a plea was taken before the Apex Court which observed in para 10 that firstly, such an objection is primarily a question depending on the facts and the plea ought to have been raised before the High Court and secondly the select list was published in November 1996 and the writ petition was filed in October 1997, i.e., before the expiry of one year from date of the list and since, the period of one year elapsed during the pendency of the litigation, thus, it was held that the Court cannot decline to grant relief on that account only. Therefore, the aforesaid judgment also does not help the Petitioner in any manner.

28. In Sheo Shyam and Ors. (supra), it appears that the recommendation of selected candidates was sent by the commission by various office memorandums and the last one was dated 26.7.2001. It was a consistent stand of the Government that the period of one year would run from the date of the last recommendation, which is made. In this view of the matter and considering the varying stands of the Commission and the Government, the direction was issued by the Apex Court for appointment of 11 candidates from the waiting-list and the said direction is also in the peculiar facts and circumstances of the case as is apparent from the following:

In the peculiar circumstances noted above, we direct that the Appellants shall be considered by the Commission and the State Government and they would be appointed if otherwise found suitable and eligible after verification of such credentials, documents and background as are necessary to be done for appointment.

29. Coming to the last authority cited by the Petitioners, we refrained ourselves from discussing the judgment of the Hon''ble single Judge in Trilok Nath Mishra (supra) since it is already under consideration before this Court separately in a special appeal.

30. Thus, the judgments cited and relied by the learned Counsel for the Petitioner does not help him in any manner.

31. Moreover, even in the case of a select list candidate, the law is well settled that such a candidate has no indefeasible right to claim appointment merely for the reason that his name is included in the select list as the State is under no legal duty to fill up all or any of the vacancy and it can always be left vacant or unfilled for a valid reason.

32. In Shankarsan Dash Vs. Union of India, a Constitution Bench of the Hon''ble Apex Court held "It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful

candidates acquire an indefeasible right to be appointed which cannot be legitimately denied.

33. The right of select list candidate whether enforceable by seeking a writ of mandamus, has also been considered in the case of State of U.P. and Others Vs. Rajkumar Sharma and Others, wherein it has been held "selectees cannot claim the appointment as a matter of right. Mere inclusion of candidates" name in the list does not confer any right to be appointed, even if some of the vacancies remained unfilled and the concerned candidates cannot claim that they have been given a hostile discrimination." In the case in hand, considering the aforesaid G.O. dated 31.1.1994 a Division Bench of this Court in Brij Mohan (supra) has already held that after one year no appointment can be claimed to be made from the wait list, if no requisition has been sent to the Commission by the Government and we are in respectful agreement with the said view.

34. At this stage learned Counsel for the Petitioner, however, relying on a judgment of the Hon"ble Apex Court in Jai Narain Ram Vs. State of U.P. and others, sought to argue that the Petitioner has a right to seek appointment to a post and it is a constitutional right to equality, The aforesaid judgment has been considered by the Hon"ble Apex Court itself subsequently in Bihar State Electricity Board v. Suresh Prasad and Ors. (supra) wherein also a similar argument was advanced relying on the aforesaid judgment and the Hon"ble Apex Court in para 8 of the judgment held as under:

Before concluding, we may refer to two judgments cited on behalf of the Respondents. In State of U.P. and others Vs. Ramashyraya Yadav and another, four out of fifteen posts were reserved for members of the scheduled castes. Four candidates were selected by the Public Service Commission. They did not join the service. As a consequence, four reserved posts fell vacant and they were required to be filled up by the reserved candidates alone. The P.S.C. had recommended the names of four candidates who did not join. The Appellant could not be recommended as there was no request by the Government for putting the Appellant in the waiting list. Therefore, the Appellant approached the High Court for a direction to the P.S.C. to recommend his name of appointment in the Accounts Service. The High Court dismissed the writ petition on the ground that the Appellant was not put in the select list and, therefore, no direction could be given to appoint him in the service. Being aggrieved, the Appellant came before this Court by way of special leave petition, in which he alleged that since the selected candidates did not join, the four reserved posts fell vacant and they were required to be filled up by the reserved candidates and since he was a reserved category candidate duly selected, he was entitled to be appointed. In the counter-affidavit, it was conceded by the Respondent before this Court that the reserved posts can be filled up by the candidates of the reserved categories only. In the circumstances, this Court took the view that in view of the admission made on behalf of the Respondent-Government that reserved posts can be filled up by the candidates of reserved categories only, the Government was directed

to issue an order of appointment to the Appellant. A bare reading of the judgment shows that the matter was concerning filing of a reversed post. Further, a concession was made in the counter-affidavit filed on behalf of the Respondent-Government that since the posts were reserved posts, they can only be filled up by the candidates of reserved categories. In the present case, we are not concerned with the appointment to reversed posts. Therefore, the judgment of this Court in *Jai Narain Ram v. State of U.P. and Ors.* (supra) has no application to the facts of the present case. *Jai Narain Ram Vs. State of U.P. and others*,

35. Thus, as observed by the Hon"ble Apex Court in *Bihar State Electricity Board v. Suresh Prasad and Ors.* (supra), since the post in question was of reserved category and a concession was made in the counter-affidavit on behalf of the Government, it was directed to be filled in but there is no general law laid down therein that a select list candidate has a right to seek appointment.

36. Earlier also the case of *Jai Narain Ram v. State of U.P. and Ors.* (supra) came up for consideration in *Ashwani Kumar Singh Vs. U.P. Public Service Commission and Others*, and there also the Hon"ble Apex Court held that the said judgment was rendered in a different factual and legal background and relating to non-appointment of persons belonging to reserved category. As would be evident from the following "it shall be necessary to consider whether *Jai Narain Ram* (supra) has application to the facts of the case. A bare reading of the judgment shows that it was rendered in a different factual and legal background, and related to non-appointment of persons belonging to reserved category. This is evident from even a cursory reading of paragraphs 6 and 7 of the judgment. It has not laid down as a rule of universal application that whenever vacancy exists persons who are in the merit list perforce have to be appointed.

37. Thus, the Hon"ble single Judge in allowing the writ petition by relying on *Jai Narain Ram* (supra) has erred in law and the judgment under appeal, therefore, cannot be sustained. Moreover, the Petitioner has also relied upon the directions issued by this Court in *Ganesh Shanker Tiwari v. State of U.P. and Ors.* (supra) on 11.5.1999, though subsequently, as we have already noticed, the judgment of this Court in the said case was set-aside by the Hon"ble Apex Court and ultimately the writ petition of *Ganesh Shanker Tiwari v. State of U.P. and Ors.* (supra) was dismissed on 31.10.2002.

38. This brings us to the question whether the G.O. dated 31.1.1994 is arbitrary. It lays down the policy that a vacancy remained unfilled from the select list candidate, would not be filled in from the wait list after expiry of one year if requisition for additional names from wait list is not sent to the Commission within one year and it cannot be said to be arbitrary or illegal for more than one reasons. Firstly, the validity of the G.O. dated 31.1.1994 is not under challenge. Secondly, there are various reasons for taking such decision, namely, when a combined examination for large number of services is taken by the Commission, the candidates apply by giving their preference to respective services in order of

their choice. Such choice is considered by the Commission on the basis of the merit position of the selected candidates. Where a candidate higher in merit failed to join and the candidate from the waiting list is allowed to join, if he is given appointment to a service where the candidates much higher in merit only have been allowed, it may cause injustice to the candidates, who are already in the select list though lower in merit but having joined and are not able to wait till a candidate higher in merit is available for join or not. This difficulty is adjusted by the Commission and the Government by resolving to the process of reshuffling of candidates in various services, and, in its wisdom it has found it expedient to complete this kind of exercise within one year only during which normally the candidates might be undergoing training etc. and no vested right has been created. A reasonable period of one year for requisitioning the names from the Commission, in our view, has been provided in the G.O. dated 31.1.1994. The said policy decision having been taken by the Government, it cannot be said that such decision of the Government not to fill in unfilled vacancy from the wait list after one year is not for legitimate or valid reasons.

39. Thus, a wait list candidate cannot seek a writ of mandamus enforcing his right to claim appointment by seeking a direction to the Commission to make recommendation of his name from the waiting list and the Government is not obliged to appoint him consequently unless it is substantiated by a statutory provision.

40. Applying the aforesaid legal principle, in the case in hand, we find that admittedly, result of the selection was declared by the Commission on 24.12.1998 and it sent its recommendation to the State Government on 30.3.1999. Pursuant thereto different departments issued letters of appointment to the selected candidates. However, since some of the selected candidates failed to join, a request was sent to the Commission by the State Government vide letter dated 2.5.2000 requisitioning seven more names from the waiting list in place of such seven candidates, who did not join. Accordingly, the Commission vide letter dated 24.7.2000 forwarded seven more names from the waiting list. Admittedly, the name of the Petitioner-Respondent was not forwarded by the Commission and it is not the case of the Petitioner that the name of any candidate having lesser marks than the Petitioner-Respondent, was forwarded by the Commission. However, the Petitioner-Respondent invoked the writ jurisdiction of this Court, as noticed above, for issuance of a writ of mandamus commanding the Appellants to forward more names to the State Government from the waiting list against unfilled vacancies. By the judgment under appeal, the Hon''ble single Judge directed the Commission to send four more candidates in the respective category for appointment to the post of Treasury Officer/Accounts Officer from the waiting list in order of seniority within a period of six weeks. In view of the discussions made above and also in view of the exposition of law, the Hon''ble single Judge fell in error in directing the Commission to recommend four more names from the waiting list after the wait list has lost its life. Therefore, we are clearly of the view that the Petitioner-Respondent has no right to seek a writ of

mandamus commanding the Appellants to send additional recommendation from the waiting list and the State of Uttar Pradesh is also under no obligation to make such appointment since the Petitioner-Respondent has no indefeasible right and the Hon''ble single Judge erred in law by issuing such a mandamus and allowing the writ petition.

41. In the result, the special appeal is allowed and the judgment dated 22.1.2003 passed by the Hon''ble single Judge is hereby set-aside. Since the Petitioner-Respondent is not entitled for any relief, the writ petition is, therefore, dismissed. Costs made easy.