
(2000) 09 AHC CK 0005
In the Allahabad High Court
Case No : C.M.W.P. No. 31876 of 1999

Vinay Kumar Srivastava and another

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 15-09-2000

Acts Referred:

Uttar Pradesh Procedure for Direct Recruitment for Group C Posts (Outside the Purview of the Uttar Pradesh Public Service Commission) Rules, 1998 — Rule 6
Uttar Pradesh Treasuries (Cash Branch) Ministerial Service Rules, 1987 — Rule 3, 4(2)

Citation : (2000) 4 AWC 3183 : (2000) 3 UPLBEC 2541

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : Tarun Varma, for the Appellant;

Judgement

S.R. Singh, J.—Petitioners in the instant petition were selected for appointment to the post of Assistant Accountant and Assistant Cashier respectively in Treasury Office, Sant Kabir Nagar. The selection was held on the basis of examination conducted on 13.12.1998 for filling up the various vacancies of Group "C" posts advertised on August 18, 1998, in Daily Newspaper "Rashtriya Sahara", it would transpire that vide Government Order No. 5-3-3287/10-97-93 (a)/97 dated 31.3.1998 and G.O. No. 5-3-3233/10-97/34-95 dated 30.3.1998, various posts were created for the newly established Treasury in Sant Kabir Nagar. The posts so created included four posts of Assistant Accountant, two posts of Assistant Cashier and one post of Junior Clerk falling in Group "C" which were advertised in August, 1998. Written examination was held as stated supra on 13.12.1998. A Selection Committee was constituted by the District Magistrate, Sant Kabir Nagar under the Chairmanship of Additional District Magistrate but on account of the transfer/leave of the Addl. District Magistrate, another selection committee came to be constituted vide order dated 25.2.1999 of the District Magistrate under the Chairmanship of Senior Treasury Officer, Sant Kabir Nagar. In the said Selection Committee members belonging to S.C. and O.B.C. were included. Interview was held by the Selection Committee on 6.3.1999 and on the basis of marks obtained

in the interview and the written examination, a merit list was prepared according to which the petitioner--Vinai Kumar Srivastava and three others, namely, Sri Yogendra Kumar. Mast Ram and Smt. Eram Mehfooz were selected for the posts of Assistant Accountant whereas the petitioner Satya Prakash and one J. B. Singh were selected for the post of Assistant Cashier while one Sri A. P. Singh was selected for the post of Junior Clerk. Certain candidates were kept in the waiting list. Admittedly, the select-list was prepared after following indexing procedure and after adding marks obtained by the candidates in the interview. The list was accorded approval by the District Magistrate vide his order dated 12.3.1999.

2. The Commissioner Basti Division Basti by his letter dated 21.3.1999 however, seems to have reported to the State Government about irregularities in the Selection/ Interview. The State Government vide orders dated 19.4.1999 and 18.6.1999 took a decision to get the already held interview cancelled and hold another interview in accordance with the procedure prescribed in the Uttar Pradesh Procedure for Direct Recruitment for Group "C" posts (Outside the Purview of the U. P. Public Service Commission) Rules, 1998 (hereinafter referred to as the "1998 Rules"). The Divisional Commissioner passed a consequential order dated July 5, 1999, asking the District Magistrate, Sant Kabir Nagar to ensure compliance with the order passed by the State Government in respect of the selection in question. These orders are the subject-matter of challenge in this petition.

3. Sri Tarun Verma began his arguments with the submission that the Selection Committee was properly constituted and the orders impugned herein are tainted with arbitrariness and are, therefore, liable to be quashed. The standing counsel, in opposition, tried to prop up the impugned orders on the premises that the constitution of the Selection Committee under the Chairmanship of Senior Treasury Officer was not in accordance with law and hence, no exception can be taken to the impugned orders. A perusal of the impugned order dated 19.4.1999 (Annexure-CA 1 to the counter-affidavit) would be eloquent of the fact that the already held interview was cancelled due to the reason that the Selection Committee headed by an officer other than the Ziladhikari/appointing authority, was not in accord with 1998 Rules. In the counter-affidavit, it has been stated in para 3(G) that the selection was cancelled on the ground that the Selection Committee "was not headed by the appointing authority and as such, the constitution of the Selection Committee under the Chairmanship of Senior Treasury Officer was held to be in accordance with law." It appears that due to typographical error, it has been mentioned that the "selection committee under the Chairmanship of Senior Treasury Officer was held to be in accordance with law." The stand intended, as submitted by the learned standing counsel, is that the Selection Committee should have been constituted under the Chairmanship of the District Magistrate who according to the learned standing counsel happens to be the "appointing authority". Rule 6 of the U. P. Procedure for Direct Recruitment for Group "C" Post (Outside the Purview of the U. P. Public Service Commission) Rules, 1998, which envisages constitution of the Selection

Committee, may be excerpted below :

"6. Constitution of Selection Committee.--Direct recruitment shall be made by a Selection Committee comprising :

(1) (i) Appointing authority. Chairman

(ii) An officer belonging to the Scheduled Tribes, an officer other than belonging to the Scheduled Castes or Scheduled Tribes or Other Backward Classes shall be nominated by the Chairman. Member

(iii) An officer belonging to the Other Backward Classes, shall be nominated by the Chairman, if the Chairman does not belong to the other. Member

(iv) An officer having adequate knowledge in the related field according to the requirements of the post for which recruitment is to be made shall be nominated by the Chairman. Member

(v) An officer nominated by the District Magistrate of the district concerned. Member

Note.--(1) If in a district there are more than one appointing authorities in a department then for that department there shall be constituted a single Selection Committee for the entire district, the seniormost appointing authority shall be the Chairman of the Selection Committee.

(2) If the appointing authority is the Head of the Department then in such case all the members of the Selection Committee shall be nominated by him. He may, on his behalf, nominate an officer senior to other members as Chairman of the Selection Committee.

"Appointing authority", in relation to the post of Assistant Cashier is the "District Officer of the district concerned" as provided in Rule 3(a) of the U. P. Treasuries (Cash Branch) Ministerial Service Rules, 1987. The term "District Officer" occurring in the rule aforesaid would, in my opinion, mean the "District Magistrate". No Rule has been brought to my notice in respect of the post of Assistant Accountant in the treasury office. Sri Tarun Verma, however, admits that the District Magistrate is the "appointing authority" even in respect of the post of Assistant Accountant in the Treasury Office. The term "appointing authority" as defined in Rule 3 fa) of the Uttar Pradesh Koshagar Lipik Varglye Seva Niyamawali. 1978, in relation to the post of Routine Grade Clerk. Senior Grade Clerk and Sahayak Koshagar Pradhan Lipik is the District Magistrate and Commissioner of the Division in relation to the post of Koshagar Pradhan Lipik and Upper Koshagar Pradhan Lipik. That being so, the nomination made by the District Magistrate of Senior Treasury Officer as Chairman of the Selection Committee militates against the U.P Procedure for Direct Recruitment for Group "C" post [Outside the Purview of the U. P. Public Service Commission) Rules, 1998, for the District Magistrate being not the Head of the Treasury Department was not justified in nominating the Senior Treasury Officer as Chairman of the

Selection Committee. The Note (2) appended to Rule 6 of the Rules aforesated is not attracted. In Treasury Rule 4(2), it is no doubt provided that the Treasuries shall be under the general charge of the Collector who may entrust the immediate executive control to a Treasury Officer subordinate to him, but may not divest himself of the administrative control. The Collector is responsible for the proper observance of the procedure prescribed by or under the Rules and for punctual submission of all returns required from the Treasury by the Government, the Board of Revenue, the Director of Treasuries and Accounts and the Directorate of Financial Statistic, the Accountant General and the Reserve Bank of India subject to the provisions of the Rules.

4. "Head of the Department" as defined in Paragraph 13 of the Financial Hand Book Vol. V means "an authority specially declared as such by the Government". Annexure to Para 13 contains a list of authorities who are declared to be heads of departments for the purpose of the Account Rules. At item No. 63 of the said list, the Director of Treasuries U. P. Lucknow, has been described as the "Head of the Department". Though in the Rule, the District Magistrate is the appointing authority, but the Head of the Department being the Director of Treasuries. Note (2) appended to Rule 16 of the Rules. 1998, is not invocable inasmuch as it is only when the appointing authority happens to be the Head of the Department, that recourse to nomination of any other officer as Chairman of the Selection Committee can be taken by virtue of Note (2) to Rule 6 of the Rules. Sri Tarun Verma placed reliance on Government Order being No. 10-3-2375/10-34 (68)/87 Vitya (Sevanye) Anubhag 3, Lucknow, dated September 8, 1998 (Annexure-RA 1) and urged that the Senior Treasury Officer is the "Head of the Department". The submission appears to be misconceived inasmuch as what is envisaged in the G.O. is that the Senior Treasury Officer will exercise the power of "Head of the Office" which according to Paragraph 12 (D) of Financial Hand Book Vol. V (Part I) means "the highest gazetted officer of an office". Note to Paragraph 12B visualises that the "Head of the Department" may if he so desires, delegate the powers to the "head of office" to any gazetted officer subordinate to him in that office. The Senior Treasury Officer or the District Magistrate may be "Head of an Office" as provided in paragraph 12B read with G.O. aforesated for purpose of exercise of powers of the "Head of Department", but merely, on that count, he will not become the "Head of Department" though for exercise of drawing powers, he has been given the status of "Karyaley Adhyaksha". The word "Karyaley Adhyaksha" is distinct from the word "Vibhaga-dhyaksha". The G.O. relied upon by Sri Tarun Verrna, therefore, is of no avail to the petitioner. In the fact situation of the case, therefore, no exception can be taken to the impugned orders.

5. As a result of foregoing discussion, the petition fails and is dismissed in limine.