
(2003) 05 AHC CK 0249
In the Allahabad High Court
Case No : C.M.W.P. No. 24252 of 1996

Yogendra Nath Tripathi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-05-2003

Acts Referred:

Constitution of India, 1950 — Article 16(1), 226

Citation : (2003) 6 AWC 4718

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : D.B. Kauser and Rollie Kauser, for the Appellant; V.K. Birla and S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—In this petition, initial prayers were made directing the Respondents Chairman/Managing Director, U.P. Industrial Co-operative Association Ltd., "UPICA BHAWAN" Kanpur to effect the appointment of the Petitioners as Salesman in the existing pay scale of Rs. 950-1500 on the basis of select list finalised by the Chairman, U.P. Co-operative Institutional Service Board. Further prayer has been made commanding the Respondents to fill all the vacancies in permanent and temporary posts of salesman in the UPICA as per 85% direct recruitment quota and not to fill a single post of Salesman against the 85% direct recruitment quota. Further amended prayers were made to quash the order dated 20.6.1996 and quashing the appointment of 38 salesman made by the Managing Director, UPICA, Kanpur by order dated 18.2.1991 as their continued appointment and retention in service since February, 1991.

2. Heard Mrs. Rollie Kauser counsel for the Petitioners and Sri Vivek Kumar Birla counsel for the UPICA.

3. The case of the Petitioners is that U.P. Industrial Co-operative Association (UPICA) sent a requisition dated 18th March, 1986 to the U.P. Co-operative

Institutional Service Board, Lucknow (in short the Service Board) for selecting 100 persons for the post of Salesman. The posts were advertised on 18th December, 1986. It has been further claimed that the Service Board took written test on 16th July, 1989 and the interviews were held from 27th November, 1989 to 2nd December, 1989. Ultimately a select list dated 11th December, 1989 (Annexure-1 to the writ petition) of 91 selectees was prepared and forwarded to UPICA. When UPICA failed to issue appointment letters in pursuance to the aforesaid select list, the Petitioner filed a Writ Petition No. 10004 of 1990 Alok Kumar Dixit and Ors. v. U.P. Co-operative Institutional Service Board and others, which was disposed of by this Court vide order dated 7th April, 1996 (Annexure-5 to the writ petition) with a direction to UPICA to issue appointment letters and in case they are not willing to issue the same they will pass a reasoned order for not doing so. The Managing Director rejected the representation of the Petitioner giving valid reasons for not issuing appointment letter vide order dated 29th June, 1996 (Annexure-7 to the writ petition).

4. The recruitment in UPICA is covered by the U.P. Co-operative Societies Employees Service Regulations, 1975.

5. Learned Counsel for the Petitioner has submitted following questions of law for determination of the writ petition:

(a) Whether ad hoc appointments becoming ineffective after a lapse of six months period must have come to an end automatically, when candidates duly selected by the Services Board came to join service ;

Or the ad hoc employees could, at the caprice of Managing Director, UPICA, remain at the job on extraneous considerations for over a decade de hors the mandatory provision of "Proviso to Regulation 5" of the Service Regulation 1975?

(Poonam Srivastava v. UPICA, Kanpur 1997 (1) AWC 246 : 1997 ALJ 563 (Paras 6, 8, 22 and 23).

(b) Whether candidates found eligible, selected through open market competition and recommended also for appointment to the post of Salesman by the Services Board, could be by-passed or denied their right to appointment simply to allow "back door entry" of daily wagers and ad hoc employees and also their unhindered continuance for long sixteen years?

Or

the latter had to yield place to the candidates duly selected by the Services Board?

(E. Ramakrishanan v. State of Kerala 1997 SCC 331 and P. Ravindran v. U. T. of Pondicherry 1997 SCC 731.

(c) If the appointment to the post of Salesman is within the exclusive purview of Services Board, then on what authority of law the mandarins of UPICA, Kanpur retained the services of 38 persons for about 7 years i.e., from 1st October, 1983

to the dates of issue of "undisclosed to the High Court" Notification No. 3170/12-C-2-600 (159)-89, dated 20th July, 1990 providing for their appointment in the pay scale of Rs. 950-1500 from 18th February, 1991 bereft of regularisation till date (for want of requisite approval from the Services Board, Lucknow)?

(S. K. Verma v. State of Bihar 1997 SCC 751 para 5).

(d) Whether the daily waged salesman borne on the "contingent establishment" and paid "wages" debitable to "office contingencies" (as distinguished from salaried staff borne on the Office Establishment) have any entitlement to regularisation on the post of Salesman?

(State of Uttar Pradesh v. Ajay Kumar 1997 (3) AWC 1656 : 1997 SCC 902 para 3).

(e) Whether persons appointed on ad hoc/temporary basis as "salesman" de hors the Service Regulations, 1975 have a right to the post? Or they were bound to give place to the duly selected candidates, as per the "Select List" dated 5th December, 1989?

(Kishore v. State of Maharashtra 1997 SCC 779 para 2).

(f) Whether the U.P. Government Notification dated 30th July, 1985, ushering the Regularisation Regulation, 1985 was a deliberate, pre-emptive, and pre-meditated sinister move hatched jointly in close collaboration of Managing Director, UPICA, Kanpur to take out 67% posts from the purview of the Services Board (leaving to the latter bare 100 posts of Salesman to be recruited against Requisition No. C-2/86 dated 18th March, 1986 which too did not fructify owing to plethora of obstacles on the part of Respondent Nos. 3 and 4)?

(g) Whether the subsequent U.P. Government Notification No. 3170/12-C-2-200 (159)-89 dated 20th July, 1990 spelling out 1st October, 1986 as the "new" cut off date (as per para No. 6 of UPCISB's counter-affidavit) tenta-mounting to give new lease of life to the Regularisation Regulation, 1985-that had otherwise become extant on 24th July, 1987 as per Annexure-III to the writ petition-was just a routine affair to give legitimacy to unauthorised continuance of ad hoc Salesman on the job from 25.7.1987 onwards with the mala fide intention to bury the selection process contemplated in Service Regulations, 1975?

(Ram Sakhi Devi v. State of U.P. 1997 SCC 963).

(h) Whether it all could be disputed that the constitutional rights under the sacrosanct provisions of Article 16(1) of the Constitution of India stood seriously eroded owing to:

(a) Wanton denial of appointment as salesman to 91 candidates selected by Respondent No. 5 ;

(b) advertant soiling of the recruitment process as per mischief of respondent Nos. 1 and 4 in systematically allowing usurpation of bulk of vacancies in the

cadre of Salesman by the daily-wager/ad hoc employees via notification dated 30th July, 1985 and 20th July, 1990, *ibid* ;

(c) false stand of extra financial burden which was to remain at the same level irrespective of whether the occupant of post in Rs. 950-1500 scale was a daily wage/or ad hoc employee/or a regularly selected person ; and (d) the endemic spectacle of not placing "Requisition" for advertisement of posts (prior to November, 1985 and post to March, 1986) with the unexpressed "policy decision" to render the Selection Board practically defunct and a non-entity?

6. On behalf of the Petitioners, following submission has also been made:

(a) All along ten year period from 1983 to 1992 both Respondent Nos. 1 and 4 "acted in a highly arbitrary manner" in letting all the vacancies in the post of Salesman being filled by persons other than candidates selected by the Services Board (with the exception of 14 candidates selected by the latter in the year 1986) via Notifications dated 30.7.1985 and 24th July, 1990 cited earlier ;

(b) The decision of Respondent Nos. 3 and 4 not to fill up the vacancies from select list of 91 candidates furnished by the Services Board on 5.12.1989 (as per Annexure-1 to the writ petition) was patently inappropriate ; actuated by mala fides and soiled by extraneous considerations to accommodate Muster roll borne daily wagers borne on "Contingent Establishment" (not coming within the definition of "Employee" vide Regulation 4 of Regularisation Regulations, 1985) and ad hoc Salesman who were illegally retained on the job for years together uninterruptedly even though their service warranted cessation automatically after expiry of six months vide proviso to Regulation 5 of the Service Regulations, 1975.

(c) Managing Director, UPICA, Kanpur discriminatingly picked up S/Sri A. Kumar, D. K. Srivastava, I. B. Shukla and M. Wasim from the Select List dated 5.12.1989 and also one Mr. Matloob Ahmad in permitting them the regular pay scale of Rs. 950-1500 from 18.2.1991 and August, 1992 (as detailed in paragraph Nos. 29 and 30 above) in flagrant disregard of the comparative merit of the candidates spelled out in Annexure-1 to the writ petition.

(d) The Managing Director, UPICA, Kanpur (Respondent No. 5) in none of three counter-affidavit filed in this case have made any averment to demonstrate that:

"daily-waged Salesman" and ad hoc Salesman possessed "indefeasible right" to be appointed in the regular pay scale of Rs. 950-1500 ;

91 candidates, as per Select List dated 5.12.1989 forwarded by the Services Board, were legitimately denied appointment because of the overriding claims of ad hoc Salesman/daily wage Salesman.

(e) In the context of appointment of 38 persons as per order dated 18.2.1991 (Annexure-IV to the writ petition) the Managing Director, UPICA, Kanpur stands precluded from taking the stand that consequent to receipt of Select List dated

5.12.1989 none came to be appointed against the 100 vacancies notified by the Services Board (against UPICA's requisition dated 18.3.1986) ; and

(f) The Supreme Court in *Shankarsan Dash v. Union of India*, (1991) 3 SCC 45, "upheld the decision to adopt a different policy with respect to Reserved Vacancies" as a justifiable cause for halting further appointments from the panel of select list, whereas such is not the case in the instant writ petition.

7. The case of the Respondents/ UPICA is that the Petitioners are selectees only and as such they have no right to appointment as per 5 Judges Constitutional Bench decision of the Hon'ble Supreme Court in *Shankarsan Dash v. Union of India*, (1991) 3 SCC 45 (paragraphs 7, 8 and 9), which had considered earlier decisions and is being consistently followed till date. Admittedly, the Petitioners are the selectees only, thus they have no right to appointment.

8. It is the well settled law that even when select list is alive, the employer/appointing authority has a right to refuse appointment to selectees for valid reasons. In the present case, the requisition was sent to the Service Board on 18th March, 1986 (Annexure-C.A. 2 at page 41). Since the Service Board was not taking proper care and was not giving due attention to various requisitions sent by the UPICA, a request was made to the State Government vide letter dated 13th August, 1986 (Annexure-CA. 3 at page 43) to exempt UPICA from the purview of the Service Board. Subsequently, the requisition dated 18th March, 1986 was withdrawn by UPICA vide letter dated 13th January, 1987 (Annexure C.A. 4 at p. 47). Reminders in this regard were also sent on 25th August, 1987 (mentioned at p. 50) and 22nd September, 1988 (Annexure-C.A. 5 at p. 49). Thus the process of recruitment undertaken by the Service Board i.e., written test on 16th July, 1989 (at p. 20 of RA) and interviews held on 27th November, 1989 to 2nd December, 1989 was without jurisdiction, illegal, non-est and mala fide.

9. The reason of bad financial condition as given in letter dated 22nd September, 1988 (Annexure-C.A. 5 at p. 50) and resolution dated 9th March, 1990 (Annexure-C.A. 6 at p. 52, a typed copy whereof is Annexure-S.A. 1 to S.A. 3 of Shri Balram Singh Chandel) and as given in paragraph 14 of the counter-affidavit. The bad financial condition was further explained in supplementary counter-affidavit-1 (wrongly mentioned as supplementary affidavit on behalf of the Respondent Nos. 3 and 4) of Sri I. A. Khan dated 30th September, 1999. Thus, although the requisition itself was withdrawn but still the UPICA had a valid reason for not granting the appointments.

10. It is also settled law that the select list cannot be stretched beyond its life and by any standard beyond a reasonable time. Certainly, the same cannot be extended for an indefinite period. In this regard, a reference may be made to the Regulation 5 (iv) (quoted at p. 5 of the writ petition) would disclose that the vacancies are to be communicated to the Service Board by the 31st December every year. This clearly shows that the intention of the Legislature is that the

entire selection process i.e., submission of requisition recruitment, select list and appointment cannot travel beyond one year, although the same had not been specifically provided.

11. Regulation 5 (5) (vii) (quoted at p. 5 of the writ petition) shows that power to change requisition before advertisement is absolute, however no change shall ordinarily be made by the society in requisition after the advertisement has been sent for publication. Thus, in other words, the UPICA had power to withdraw/modify requisition for valid reasons. The valid reason of bad financial condition was existing and was duly intimated to the Service Board. Thus, there was no occasion for the Service Board to go ahead with the recruitment process on 16th July, 1989 (written test) and interviews (from 27th November, 1989 to 2nd December, 1989) after a gap of 3-1/4 years from the date of requisition i.e., 18th March, 1986 and after a gap of 2-1/2 years from the date of advertisement on 28th December, 1986 specially when withdrawal of requisition was made giving valid reasons. Thus, the entire selection process undertaken by the Service Board was without jurisdiction, illegal, non-est and mala fide.

12. In paragraph 31 of the writ petition, names of three persons having been given claiming that only three persons have been appointed out of the entire select list and thus the UPICA had acted arbitrarily and had discriminated the Petitioners. A reply of the same is paragraph 19 of the counter-affidavit that these persons have been regularised on ad hoc and temporary basis as they were working prior to 1st October, 1986 and thus were entitled for regularisation. They have not been given appointment out of the select list dated 11th December, 1989. Thus, their case is distinguishable.

13. An effort has also been made to show that UPICA had acted illegally by keeping the ad hoc and daily wagers appointed earlier and thus not granting appointment of to the selectees. This fact had been disputed. However, as contended by the Respondents even assuming though not admitted, the earlier illegal action cannot form the basis of seeking mandamus if Petitioners have no right on their own as settled by the Hon'ble Supreme Court in Chandigarh Administration v. Jagjit Singh, (1996) 1 SCC 745(paragraph 8).

14. The present writ petition was filed after passing of the reasoned order dated 28th June, 1996 passed by the Managing Director rejecting the representation of the Petitioners. The said order was initially not challenged. However, on objections raised during the course of arguments, the writ was amended including the prayer for quashing of the same. However, no grounds have been given or made out pointing out the defect or illegality in the order, which is extremely elaborate and reasoned. Thus, once that order is upheld, entire case of the Petitioners is struck down.

15. Although the Counsel for the Petitioners had made a statement for not pressing the prayer (d), however, in any view of the matter, since those persons have not been made party to the writ petition, the same cannot be allowed

without affording them an opportunity of hearing.

16. The Petitioner has also submitted that:

State of Bihar v. M. Kalimuddin, 1996 SCC 389.

In this case there were 160 vacancies. The "Select List dated 19.1.1991" comprised 273 persons ; 91 joined services ; 7 denied appointment ; and remaining 175 persons came to be placed in the "waiting list". But owing to controversy/rethinking over the issue of "reservation" for SC/ST none was offered appointment thereafter and the panel was allowed to lapse on 18.1.1992, on the contrary in Petitioner's case the Select List of 5.12.1989 comprised only 91 persons, nine short of the 100 vacancies notified, hence there lay no occasion for preparation of a Waiting List. In fact Service Regulations, 1975 contain no provision for waiting list or its extinction after one year's time ; and the UPCISB, Lucknow would neither have invited applications, nor conducted written test for 1317 candidates had "requisition" dated 18.3.1986 been "cancelled" or "withdrawn" before the advertisement for 100 vacancies appeared in the Times of India dated 28th December, 1986.

K. Ramulu v. Dr. S. S. Rao, 1997 SCC 625.

In the above case the controversy pertained to the grievance about "omission" to prepare and operate panel for promotion" vis-a-vis the conscious 1988 decision of Andhra Pradesh Government not to fill up any vacancy till amendment of 1977 Rules. On the contrary in our case barring 5% of the total requirement for regular posts of Salesman (for its 121 Sales-Centres-cum-Showrooms) met through recruitment by UPCISB, Lucknow against, "Requisition" No. C-2/85-owing to an unpious deal between Respondent Nos. 1 and 4-quite above half a battalion strength ad hoc appointees/ Muster Roll borne daily wagers were made to fill the vacant slots through (a) Notification dated 30th July, 1985 ushering Regularisation Regulations, 1986 issued prior to "Requisition" dated 18.3.1986 for 100 vacancies placed with UPCISB, Lucknow, and (b) another Notification dated 24th July, 1990 leading to unlawful induction of 38 persons vide order dated 18.2.1991 who are on job to date without approval from UPCISB.

Union of India v. N. R. Banerjee, 1997 SCC 1194.

The above case relates to non-adherence to the Government of India, "Guidelines" relating to the procedures for timely action for preparation of the panel for promotion, sittings of the Departmental Promotion Committee on regular intervals for considering cases of eligible candidates within the "Zone of consideration", hence the judgment in this case has no-applicability to the case of the Petitioners in the instant writ petition.

Vice Chancellor, Allahabad University v. Dr. A. P. Mishra, 1997 SCC 1265.

The above judgment is not attracted at all as the controversy in the case relates to the enforcement of Selection process through "Interview" as per the 1994 Act

given retrospective application from 11.12.1993 in the interest of providing "reservation" to SC/ST/OBC category persons in contra-distinction to the "Screening Process" obtaining upto 10.12.1993. It appears that the Respondent No. 4, in vain, trying to be "choosy" by projecting paragraph 10 of the judgment in their favour, conveniently for getting that in the ultimate analysis neither the "appointments" (made in object violation of several provisions of the Service Regulations, 1975 as obtaining on 5th December, 1985) ; nor the "regularisation" carried out by UPCISB, Lucknow at the behest of Respondent No. 1 contained in Notification dated 30th July, 1985 ; nor the impermissible "backdoor appointment" of 38 persons on 18.2.1991 (on the strength of their illegal continuance on the job from 1st October, 1983) could be sustained in the eye of law even for a moment by this Court.

Rani Laxmibai Kshetriya Gramin v. C. B. Kapoor, 1998 SCC 1824.

In the above case the Apex Court upheld that the validity of the "Select List Panel" could not depend on the basis of "agreement reached with the Appellant Bank on 16.10.1985", because as per the Rural Banks Act, 1976, the Regional Rural Banks were bound to respect the instructions of the Ministry of Finance Department of Economic Affairs (Banking Division) that restricted the validity of the Select List/Panel for a limited period on the contrary in the instant writ petition, our stand is that had UPICA, Kanpur been substituting Mr. "A" by Mr. "B" and so on and so forth where no one served as ad hoc Salesman continuously in the excess of 180 days limit (as per Service Regulations, 1975), there would have no occasion for issuance of Regularisation Regulation, 1986 (with cut off date of 1st May, 1983) or for issuance of 24th July, 1990 notification (offering another cut off date of 1st October, 1986) for forced induction of ad hoc Salesman through UPICA and later without its approval vide order dated 18.2.1991.

Dr. J. Shashidhara Prasad v. Governor of Karnataka, 1999 SCC 229.

The above judgment of Apex Court refers to "denial of opportunity of show cause" to Dr. J. S. Prasad whose name was struck down the Select List on the very next day following Times of India report about his involvement in a criminal case, although he was subsequently acquitted. This case has no applicability to the instant writ petition filed by the Petitioner that altogether stands on a different footing.

17. The case of the Petitioners based on the select list dated 11.12.1989 has no basis and is liable to be dismissed in reference to the decisions given by the Supreme Court as well as from the High Courts given as below:

- (i) Vinodan T. and Others Vs. University of Calicut and Others,
- (ii) Tamil Nadu Administrative Service Officers Association and Another Vs. Union of India and Others,
- (iii) Dr. J. Shashidhara Prasad Vs. Governor of Karnataka and Another,

- (iv) Rani Laxmibai Kshetriya Vs. Chand Behari Kapoor and Others,
- (v) Vice-Chancellor, University of Allahabad and Others Vs. Dr Anand Prakash Mishra and Others,
- (vi) Union of India and others Vs. N.R. Banerjee and others,
- (vii) Dr. Ramulu and another, etc. Vs. Dr. S. Suryaprakash Rao and others,
- (viii) N. Mohanan Vs. State of Kerala and Others,
- (ix) State of Bihar and others Vs. Md. Kalimuddin and others,
- (x) Chandigarh Administration and another Vs. Jagjit Singh and another,
- (xi) State of Bihar and others Vs. The Secretariat Assistant Successful Examinees Union 1986 and others,
- (xii) Shankarsan Dash Vs. Union of India,
- (xiii) Jai Shankar Tripathi Vs. Commandant, Railway Protection Force and Others,

18. I have heard learned Counsel for the parties and perused the documents. It is well settled that even when select list cannot be stretched for indefinite period, i.e., requisition, recruitment, select list and appointment cannot travel beyond one year and in the facts and circumstances, the Respondent UPICA had power to withdraw/modify requisition for valid reasons of the financial condition. The order of rejection of representation by Managing Director was not challenged initially and was subsequently by way of amendment application was challenged without any pleadings or grounds for the purpose. In these circumstances, there is no occasion to interfere in the order dated 20th June, 1996, which is a detailed and reasoned order and the Petitioners are not entitled for any appointment or selection. For the reasons and analysis indicated above, the Petitioners have no legal claim of selection and get appointments. In the present facts and circumstances, this Court is not inclined to invoke its extraordinary and discretionary jurisdiction under Article 226 of the Constitution, therefore, writ petition is dismissed.