

**Devendra Kumar Pandey Vs. State of U.P. and Another**

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**Court :** Allahabad

**Decided On :** Sep-23-1997

**Reported in :** 1999(1)AWC104

**Judge :** D.K. Sethi, J.

**Acts :** Allahabad High Court Rules, 1952 - Rule 7; [Constitution of India](#) - Article 226

**Appeal No. :** C.M.W.P. No. 31554 of 1997

**Appellant :** Devendra Kumar Pandey

**Respondent :** State of U.P. and Another

**Advocate for Def. :** S.C.

**Advocate for Pet/Ap. :** K.K. Shangloo, Adv.

**Judgement :**

**D.K. Seth, J.**

1. The petitioner has made the following prayer In the present writ petition :

(a) Issue a writ of mandamus directing the respondent No. 2 to forthwith declare the result of the petitioner for the post of Titter Instructor' in persuance of the advertisement No. 3/94-95 of the respondent No. 2 within three weeks from the

date of the order of this Court positively.

(b) To issue any other writ direction or order as this Hon'ble Court may deem lit and proper in the circumstances of the case.'

2. It is averred in the present writ petition that he had moved Writ Petition No. 3012 (SS) of 1996 before the Lucknow Bench on which an interim order was passed on 7.6.1996, a copy whereof is filed as Annexure-1 to the writ petition. Subsequently, an application for declaring the result was made before Lucknow Bench in the said writ petition which is Annexure-3 to the writ petition. It appears that the said application was dated 12.8.96. Learned counsel for the petitioner Shri Shangloo contends that an order was passed on the said application on 24.9.96 which is Annexure-4 to the writ petition. The said order runs as follows :

'Four weeks time as prayed by learned standing counsel is allowed to file counter-affidavit. Since interim order was not extended earlier and has expired on 10.7.1996 the same is not being extended.'

3. Learned counsel for the petitioner submits that in the earlier writ petition, the following prayers were made :

'Where for it is most respectfully prayed that :

(a) a writ, direction or order in the nature of mandamus be issued calling upon and directing the opposite party No. 2 to allow and permit the petitioner to appear before the interview/Selection Board scheduled for 10th of June. 1996.

(b) Any other writ direction or order be also issued as this Hon'ble Court deems fit in the circumstances of the case.

(c) Cost of the petition be also awarded to the petitioner.'

4. Therefore, according to Shri Shangloo the said writ petition has in fact by reason of the interim order stands disposed of and the relief sought has already been granted. Therefore there is nothing more which can be achieved by means of the said writ petition. According to him since 15 months have been lapsed in the in same time the result should have been declared. It is not known as to what

prevented the respondents from declaring the result of the petitioner. The petitioner has also made a representation which has also not been considered. Since the petitioner has been allowed to appear in the examination, therefore at least his representation may be considered. In the last, he contends that in case the relief sought for herein are not acceptable, the matter may be released and be sent to Lucknow Bench for listing with the earlier writ petition.

5. On the other hand learned standing counsel contends that in view of the Chapter XXII, Rule 7 of the Allahabad High Court Rules, 1952, second writ petition is not maintainable on the same cause of action. Shri Shangloo, however, disputed the said contention and contends that this is fresh cause of action which was not involved in the earlier writ petition. There was no prayer for declaration of result therefore the present relief was not included in the earlier writ petition and therefore, Chapter XXII, Rule 7 of the aforesaid Rule does not apply here in the facts and circumstances of the case.

6. A plain reading of the prayer of the earlier writ petition shows that the petitioner prayed for a direction to the respondent No. 2 for permitting the petitioner to appear in the interview/Selection on Board or pass such order which may deem fit. It cannot be conferred that the petitioner's whole purpose was to appear only in the Interview or Selection Board but without the declaration of result as a whole. Therefore, the contention of Shri Shangloo cannot be accepted that the relief sought for in the said writ petition was simply for grant of Interim order to appear in the said interview. The petitioner must have made certain cases on the basis whereof the interim order was passed. Such cases must have been made that the petitioner is eligible and should be considered for selection and therefore he should be permitted to appear in the interview/ selection but at the same time a prayer was included that such other direction as may deem fit and proper be granted. While exercising the writ Jurisdiction even when adequate prayers are not there, Court has a right to mould the prayer according to the relief that may be granted. So far the writ jurisdiction in India is concerned, it not only includes specific writs but it also includes the writs in nature thereof. The Court has never been technical, it may grant such prayer as is necessary. Therefore, the points raised by Shri Shangloo cannot be accepted to the extent that question of

declaration of result was not involved in the writ petition. Inasmuch as the purpose was not to appear in the interview only. The purpose was to achieve the result through the interview. It would be preposterous to argue that the purpose was only to appear in the interview without the declaration of result. Though curbed in such a prayer yet it was the relief to be considered for selection through the interview which can only be achieved when the result is declared. Interview is one of the stage of the process of selection. It is the selection in which he sought to be considered.

7. In the order dated 7.6.96, an interim order was there that the respondents shall consider the candidature of the petitioner for appointment on the post of fitter but the result of the petitioner shall not be declared till the next date of listing ; which means that declaration of the result was subject to the result of the writ petition. Admittedly, the writ petition is still pending. In the said writ petition petitioner had made prayer for declaration of result by filing an application dated 12.8.96 which is Annexure-3 to this writ petition and thereupon an order dated 24.9.96 was passed. Thus, petitioner cannot file a fresh writ petition seeking same relief, which he has sought to obtain in the earlier writ petition. By the order dated 24.9.96 it appears that the said application is still pending in the said writ petition in respect whereof the learned standing counsel was granted four weeks time to file counter-affidavit.

8. The refusal to extend the interim order does not stand in the way of obtaining disposal of the said writ petition. Interim order was to the extent that petitioner may be permitted to appear. In the facts and circumstances of the case though the interim order has not been extended but on the face of specific application for declaration of result which could not have been declared until the next date of listing, the Court having been granted time to file counter-affidavit, it cannot be said that result would be declared without the aid of any order passed in the said writ petition. The petitioner cannot also be allowed to take advantage of the situation of cessation of the interim order to claim that there being no interim order in the matter of declaration of result, there is no impediment in declaring the same. If it is so allowed then it will be giving premium to designing people amounting to encouraging abuse of judicial process.

9. In any event, the question having been involved in the earlier writ petition, it cannot be decided in the form of a fresh writ petition as sought is to be done in the present writ petition.

10. Admittedly, the relief which the petitioner claimed as a right to appear in the interview, has been obtained by the petitioner by the interim order. Therefore the declaration of result is not an independent right. The present case is not an independent one as having been arisen out of earlier writ petition. It cannot be said that same is due to fresh cause of action nor this writ petition is wholly independent. The earlier writ petition is pending where the declaration of result is also kept pending.

11. While the earlier writ petition is pending at Lucknow the petitioner has moved the present writ petition at Allahabad, no reason appears as to why the petitioner has selected such a process. However, the learned counsel for the petitioner has taken care in disclosing the fact of pendency of the earlier writ petition.

12. In view above, the writ petition is not maintainable under Chapter XXII, Rule 7 of the High Court Rules. 1952. The writ petition is, therefore, dismissed with cost of Rs. 1,000 (Rupees one thousand).

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