

**Dharmendra Kumar Singh and ors. Vs. State of U.P. and ors.**

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**Court :** Allahabad

**Decided On :** Jan-18-2002

**Reported in :** 2002(1)AWC857; (2002)2UPLBEC1411

**Judge :** M. Katju and ;S.K. Singh, JJ.

**Appeal No. :** C.M.W.P. Nos. 41612 of 1998, 19374 of 1999 and 26913 of 2001

**Appellant :** Dharmendra Kumar Singh and ors.

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

**Advocate for Def. :** B.N. Singh, Adv. and ;C.S.C.

**Advocate for Pet/Ap. :** Aditya Kumar Singh, Adv.

**Disposition :** Petitions dismissed

**Judgement :**

**M. Katju, J.**

1. This writ petition has been filed for a mandamus directing the U.P. Public Service Commission to forward the names from the select list/waiting list to the State Government prepared on the basis of the combined State/Upper Subordinate Services Examination. 1994, for filling up the vacancies in different departments remaining unfilled on account of non-joining of the candidates

recommended for the said post, as also the vacancies against which the recommended candidates had joined but had left employment within a period of one year. It has also been prayed that the State Government be directed to grant appointments on the basis of the aforesaid recommendations.

2. We have heard the learned counsel for the parties.

3. It appears that the U.P. Public Service Commission had issued an advertisement in 1994 in respect of the above posts and the petitioners had applied. The petitioners were declared successful in the preliminary test and thereafter they appeared in the main written examination. Along with the application form for appearing in the main written examination, a list of instructions was also issued by the Commission vide Annexure-2 to the writ petition. The details of number of posts in various departments is given in paragraph 7 of the writ petition. The main written examination was conducted from 29.9.1996 to 12.7.1996 and the result was published on 17.9.1996 vide Annexure-3 to the writ petition. The petitioners were declared successful in the main written examination and thereafter they appeared in the interview and the final result was published on 14.11.1996 vide Annexure-4 to the writ petition. The petitioners names were not amongst the list of the selected candidates.

4. The State Government had issued a G.O. dated 31.1.1994 vide Annexure-5 to the writ petition and in Clause 4 of the same it was mentioned that the waiting list will not be published but will be kept in a sealed cover and will be sent to the Government as and when necessary. In Clause 5 of the same it was mentioned that the waiting list would be valid only for one year. It was further mentioned in Clause 5 that if the concerned department requests the Commission within one year to send some names from the waiting list the waiting list will be valid even after one year, otherwise it will lapse.

5. In paragraph 16 of the writ petition it is mentioned that a large number of candidates who were selected and recommended for appointment did not Join and also a large number of candidates joined but left the training/employment within one year. These vacancies thus remained unfilled on account of non-joining or on account of joining but resignation within one year. Hence it is alleged that

appointment, should be made against these vacancies from the waiting list.

6. It appears that some of the candidates filed writ petitions in this Court as stated in paragraph 18 of this petition which were allowed by a Division Bench of this Court on 11.5.1999 vide Annexures-8 and 9 to this petition. However, the Supreme Court set aside these judgments on 3.11.2000 vide Annexure-10 to the writ petition. The Supreme Court observed that the writ petitions were not admitted and no notice was issued to the respondents. The Supreme Court further observed that the High Court has not gone into the question whether the petitioners were entitled under the law to be appointed and whether the waiting list was still valid. The Supreme Court hence remanded the matter to the High Court.

7. In paragraph 26 of the writ petition it is stated that during the pendency of the aforesaid litigation out of 63 unfilled vacancies admitted by the State Government in its counter-affidavit appointments were granted to 60 candidates from the waiting list. In paragraph 28 of the writ petition it is mentioned that out of these sixty candidates many have not joined as is evident from Annexure-11 to the writ petition and hence these vacancies continued. The details are given in paragraph 32 to 38 of the petition.

8. The petitioners have relied on the decision of the Supreme Court in *Jai Narain Ram v. State of U.P.*, AIR 1996 SC 703 and the decision of this Court copies of which are Annexures-13A and 14 to the writ petition and have prayed that they should be given appointment.

9. A counter-affidavit has been filed by the Public Service Commission. In paragraph 4 of the same it is stated that the Government had sent a request to the Commission to recommend names to fill up unfilled vacancies arising out of non-joining of the selected candidates. The number of such vacancies was 63 only as intimated by the Government. Consequently, the Commission undertook the process of reshuffling and sent a revised recommendation to the Government but the petitioners' names did not figure in the same due to lower position in the list. The petitioners claimed that there are still unfilled posts even after the revised recommendation and they want the unfilled posts to be filled up from the waiting list. In paragraph 6 of the counter-affidavit, it is mentioned that Dharmendra Kumar

Singh, Ramendra Singh and Anil Kumar Singh had been declared unsuccessful after the interview. In paragraph 10 of the counter-affidavit it is stated that number of unfilled posts was 63 as intimated by the Government.

10. A counter-affidavit of the State Government has been filed in the connected Writ Petition No. 41612 of 1998 and we treat it as the counter-affidavit of the State Government in this case also since the petitions are similar in nature.

11. In paragraph 5 of the same it is stated that the State Government received only a list of 63 candidates from the various department who had issued the appointment letters but failed to join. Consequently the State Government informed the Public Service Commission that 63 candidates have not joined. The State Government by letter dated 24.2.1998 requested all the concerned departments to inform the number of selected candidates who have not joined and get such posts filled up from the waiting list within the specified time. Reminders were sent to the concerned departments and a meeting was held under the Chairmanship of the Secretary, Karmik, U.P. in which the concerned officials of the respective departments were directed to attend. Subsequently a combined list was prepared after cancelling the candidatures of 63 candidates who did not join and the same was forwarded to the Commission for necessary action. It has been denied that 92 selected candidates did not join. It is alleged that no further names can now be called for from the Commission as it would be beyond the time limit stipulated in the G.O. dated 31.1.1994.

12. In our opinion, there is no merit in this petition and the connected petitions. Clearly the waiting list has now lapsed in view of the G.O. dated 31.1.1994 Annexure-5 to the writ petition.

13. The submission of Sri Ashok Khare, learned counsel for the petitioner is that since the vacancies have remained unfilled or were filled but there were resignations within one year hence the waiting list will continue beyond one year. 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 utilised now for filling up more vacancies. These vacancies can now only be filled up by another examination held by the Commission.

14. Hence this petition and the connected writ petitions have no merit and are dismissed.

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