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Excise Commissioner and ors. Vs. Sanjay Kumar Yadav and anr.

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Court : Allahabad

Decided On : Jan-30-2004

Reported in : (2004)1UPLBEC695

Judge : Tarun Chatterjee, C.J. and ;Vineet Saran, J.

Appeal No. : Special Appeal No. 280 of 2003

Appellant : Excise Commissioner and ors.

Respondent : Sanjay Kumar Yadav and anr.

Advocate for Def. : R.K. Ojha, Adv.

Advocate for Pet/Ap. : S.C.

Disposition : Appeal dismissed

Judgement :

Tarun Chatterjee, C.J. and Vineet Saran, J.

1. This special appeal arises out of a judgment and order dated 7.10.2002 passed by a learned Judge of this Court in Civil Misc. Writ Petition No. 14179 of 1999, whereby a direction had been issued to the present appellants (respondents in the writ petition) to declare the merit list prepared on the basis of the selection held under Advertisement No. 17701 and make appointment in accordance with law.

2. The facts in brief are that Advertisement No. 17701 was issued by the Excise Department which was published in the Newspaper on 5th August, 1995 for making appointment of Excise Constables in various districts, including the District of Mirzapur which is in question. The writ petitioners (respondents herein), being duly qualified for such appointment, went through the selection process. Thereafter a merit list was prepared indicating the names of ten persons. The names of the writ petitioner were shown at Serial Nos. 3 and 5. Similar selection process for other districts/regions of the State had also been completed and the candidates in some other regions, who were similarly placed, had been issued appointment letters and had been given appointments but the writ petitioners had been denied such appointment. The reason for not issuing appointment letters to the writ-petitioners' was because, according to the appellants, by a Government Order issued on 4.11.1997, the State Government had imposed a ban on making new appointments. The contention of the appellants is that on the basis of the selection made in pursuance of the same advertisement, those who had been given appointment prior to the Government Order dated 4.11.1997 and had joined on the post were held to be valid but since the writ petitioners had not joined the post prior to the imposition of such ban they cannot now be given appointments. Brushing aside such grounds given by the State for not giving appointment to the writ petitioners and holding that the same were not valid and justified reasons, the learned Single Judge allowed the writ petition and directed the appellants to declare the merit list and make appointments in accordance with law.

3. Having heard the learned Standing Counsel appearing for the appellants as well as Sri R.K. Ojha, learned Counsel appearing for the respondents writ petitioners and on perusal of record, we do not find any illegality or irregularity in the judgment of the learned Single Judge.

4. In the counter-affidavit filed to the writ petition, the stand taken by the State was that 'the appointment was not cancelled in those regions, where the joining report and selection process had already been completed before 4.11.1997. But in those regions where the selection process was not completed, the selection proceeding/interview and appointment of the candidates and joining of the incumbents was stayed in compliance of the Government Order No. 2910 E-1/XIII-

97, dated 4.11.1997.' Such stand of the State that the entire selection process was brought to halt and the appointment and joining of the candidates was stayed would only mean that the issue of the appointment was only deferred. It was not the case of the appellants that the appointment process was improper or that there were no posts available. On the contrary, in those districts/regions where the appointments had been made prior to 4.11.1997, the same were held to be valid and such persons are continuing on their respective posts. Further by issuing fresh advertisement in the year 2002 for the same post, it is clear that the post on which the writ petitioners had been selected were still vacant.

5. In the case of State of U.P. v. Rakesh Kumar, 2003 (1) LBESR 88, a Division Bench of this Court while considering as to whether after the ban was lifted, the respondents-writ-petitioners would be entitled for being appointed on the post or not, relying on two decisions of the Apex Court rendered in S. Govindaraju v. Karnataka S.R.T.C., (1986) 3 SCC 273 and Bhim Singh v. State of Haryana, (1981) 2 SCC 673, held that the respondents-writ-petitioners would be entitled for appointment as soon as the State Government lifts the ban. It is not denied by the State that the candidates similarly situated had already been given appointments on the basis of the same advertisement in different districts/regions which is being denied to the writ-petitioners-respondents merely because they were not issued appointment letters and permitted to join the post before the issuance of the Government Order dated 4.11.1997.

6. No doubt it is true that a successful candidate does not acquire indefeasible right to be appointed merely on the basis of the select list but there is an obligation on the Government to act fairly. Once a select list is prepared after holding written test, interview, etc., the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates that they have no legal right to appointment. The decision not to fill up the vacancies and give appointment to the selected candidates has to be taken for bona fide and appropriate reasons which is lacking in the present case.

7. In the present case, the only reason given by the Government for not giving appointment to the writ petitioners was because of the Government Order dated

4.11.1997. By the said Government Order, the appointments and joining of the candidates had only been stayed. Once the State Government has accepted that the vacancies still exist and had even issued fresh advertisement for filling up such vacancies, it obviously means that the stay on the issuance of the appointment on such post had been withdrawn. The writ petitioners who had been validly selected for appointment on such post would, thus, be entitled for appointment immediately on the withdrawal of such stay/ban on the appointments. Hence, the writ petitioners would be entitled for appointment in pursuance of the selection held on the basis of Advertisement No. 17701. However, although they shall be entitled to the seniority and other consequential benefits but they shall be entitled for payment of salary only from the date of their appointment pursuant to this order. The appellants shall give appointment to the writ-petitioners within a period of three months and in case if such appointment is not given, they shall be entitled for payment of salary immediately after expiry of three months from today.

8. Subject to the aforesaid observations, this special appeal is dismissed without any order as to costs.

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