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Court : Allahabad

Decided On : May-12-2004

Reported in : (2004)2UPLBEC1377

Judge : R.B. Misra, J.

Acts : Constitution of India - Articles 14 and 16

Appeal No. : Civil Misc. Writ Petition No. 44324 of 2001

Appellant : Pradeep Kumar and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : S.S. Sharma, Adv. and ;S.C.

Advocate for Pet/Ap. : Arun Kumar Singh, ;R.G. Padia, ;Navin Sinha, ;Prakash Padia, ;Anand Mishra and ;Anant Misra, Advs.

Disposition : Petition dismissed

Judgement :

R.B. Misra, J.

1. Heard Sri Prakash Padia, with Sri Anant Misra, learned Counsel for the petitioner and learned Standing Counsel for the respondents. With the consent of learned Counsel for the parties this writ petition is decided at this stage in view of

Second proviso to Rule 2 of Chapter XXII of Allahabad High Court Rules, 1952.

2. In this petition prayer has been made for issuance of writ of mandamus to declare the result to the post of 'Bandi Rakshak' and issuance for writ of certiorari in quashing the order dated 1.12.2001 (Annexure-7 to the writ petition) passed by the Principal Secretary, State Government and consequential order dated 22.7.2002 (Annexure-8 to the writ petition) passed by the Secretary, State of Uttar Pradesh.

3. The brief facts necessary for adjudication of the writ petition are that the advertisement was published for recruitment to the post of 218 'Bandi Rakshak' under the Director General, Karagar Evam Prashasan Sudhar Sevayen, U.P., Lucknow in different range including Varanasi, Bareilly, Fatehgarh, Naini, Lucknow, Mccrut, Agra, Saharanpur, Moradabd, Azamgarh. The petitioners applied in 'Moradabad Range' and had participate in the physical test and interview ;conducted for the purpose however, when, the result was not declared the petitioner approached to the department officials of the concerned department as well as 'Director General' but their grievances were not redressed, therefore, petitioners preferred writ petition initially for declaration of result and subsequently challenged the decisions of the State Government as indicated above.

4. According to the petitioners they appeared in the selection of 'Bandi Rakshak' have successfully performed at every stage and neither irregularity ever noticed by any authority in the recruitment for selection of Moradabad Range/Division not any lapse was ever noticed on their part, therefore, the petitioners' result was to be declared and they were to be given appointment. The petitioners in their bonafide belief are suitable by virtue of their performances in the physical test as well as written test for appointment as a 'Bandi Rakshak'. The Principal Secretary, State Government of Uttar Pradesh by a letter dated 1.12.2001 addressed to the 'Director General' indicated that large number of complaints of the irregularities tempering, manipulation, erasing of marks were received in respect of selection of 'Bandi Rakshak' where Commissioner, Azamgarh was appointed as an Inquiry Officer who submitted his report 11.1.2002 to the Sate Government. The report reveals that in respect of selection specifically Azamgarh, Varanasi, Mccrut,

Lucknow, Naini, Bareilly and Saharanpur region serious irregularities were noticed where the registration were erased in respect of large number of candidates in those places registration of another candidates were mentioned. The roll number of few candidates were erased and different roll numbers were mentioned by erasing and over writing. The policy of reservation was overlooked and large number of other irregularities were indicated, therefore, in the interest of public appointment orders were decided not to be issued rather cancelling the said selection a fresh selection was to be conducted where the earlier candidates could be allowed to participate in the fresh selection on their original applications/forms and even on becoming over age a relaxation was also to be given to such candidates in respect their upper age limit.

5. By subsequent letter dated 22.7.2002 from Secretary, State of Uttar Pradesh to the 'Director General' that in the list of irregularity in the selection for the 218 posts of 'Bandi Rakshak' of the Azamgarh, Varanasi, Meerut, Lucknow, Naini, Bareilly ad Saharanpur region. Moradabad, Agra, Fatehgarh region arc also included.

5-A. According to the petitioner the report of the Commissioner, Azamgarh Range/Division has not indicated any discrepancy, or irregularity in respect of 'Bandi Rakshak' of Moradabad Region/Division as recruitment in each Regions/Range/Division were being made separately, therefore, for the alleged irregularities of other range the petitioner arc not to be penalized in derogation to the provisions of Articles 14 and 16 of the Constitution even if the selection of other ranges are cancelled.

6. On the other hand the respondents have submitted that the State Government and the officials themselves have come forward to point out the irregularities and have suggested an alternative. In these circumstances this Court should not give indulgence for giving any relief.

7. On behalf of the petitioners it was argued that in 1995 Supp (2) SCC 230, R.S. Mined v. Union of India, where the person after being selected and put in the panel of the selected candidates was not to be denied the appointment without a proper reason, however, in peculiar facts and circumstances relief was refused by the Supreme Court by observing in Para 10 as below :

'10. Although a person on the select paned has no vested right to be appointed to the post for which he has been selected, the appointing authority cannot ignore the select panel or on its whims decline to make the appointment. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were riot offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to the candidate at Sl. No. 1 of the select list within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.'

8. It was also argued on behalf of the petitioners that in (2000) 9 SCC 283, Munna Roy v. Union of India and Ors., the Supreme Court after acknowledging that mere inclusion in select list does not confer any right to the Selectee and mandamus could not be issued but the Court could interfere when an administrative authority took a decision on erroneous reasons namely dubious method was suspected in the selection inasmuch as the candidate was a graduate, whereas, the minimum qualification for selection was matriculation and when the reason was described as arbitrary, irrational and not germane. In those circumstances the decision to cancel the panel on this score could be set aside, In view of the observations made by the Supreme Court in R.S. Mittal (supra) as well as in Munna Roy (supra) the action of respondent in not declaring the result of selection in question and subsequently giving appointment to the petitioner is arbitrary inaction discriminatory as the same are in derogation to the spirit of Article 14 of the Constitution, as contended on behalf of the petitioners.

9. In (2002) 4 SCC 726, Vinodan T. and Ors. v. University of Calicut and Ors., the Supreme Court has held that the appointments to the vacancies must be made in accordance with law, if any, and the appointing authority can not scrap the panel of select list during the period of its validity except for well-founded reasons. It also observed in Para 14 as below :

'14. The principle that persons merely selected for a post do not thereby acquire a right to be appointed to such post is well established by judicial precedent. Even if vacancies exist, it is open to the authority concerned to decide how many appointments should be made.'

10. In (2002) 5 SCC 195, S. Renuka and Ors. v. State of U.P. and Anr., the Supreme Court while acknowledging the decision made in above two cases R.S. Mittal (supra) and Munna Roy (supra) has however held that no right accrues to a person merely because a person is selected and his or her name is put on a panel and the candidates have no right to claim the appointment.

11. In (2003) 2 UPLBEC 1697, State of Andhra Pradesh and Ors. v. D. Dastagiri and Ors., the Supreme Court has taken the similar view and has held that no vested right accrue to the candidates to be appointed even if selection process was completed and the Supreme Court has observed in Para 4 as below :

'4. There is serious dispute as to the completion of selection process. According to the appellants, the selection process was not complete. No record has been placed before us to show that the selection process was complete, but, it is not disputed that the select list was not published. In Paragraph 16 of the counter affidavit, referred above, the respondents themselves had admitted that the selection process was cancelled at the last stage. In the absence of publication of select list, we are inclined to think that he selection process was not complete. Be that as it may even if the selection process was complete and assuming that only select list was remained to be published, that does not advance the case of the respondents for the simple reason that even the candidates who are selected and whose names find place in the select list, do not get vested right to claim appointment based on the select list. It was open to the State Government to take a policy decision either to have prohibition or not to have prohibition in the State. Certainly, the Government had right to take a policy decision. If pursuant to a policy decision taken to impose prohibition in the State there was no requirement for the recruitment of Constables in the Excise Department, nobody can insist that they must appoint candidates as Excise Constables. It is not the case of the respondents that there was any malafide on the part of the appellants in refusing

the appointment to the respondents after the selection process was complete. The only claim was that the action of the appellants, in the appointing the respondents as Excise Constables, was arbitrary. In the light of the facts that we have stated above, when it was open to the Government to take a policy decision, we fail to understand as to how the respondents can dub the action of the respondents as arbitrary, particularly, when they did not have any right as such to claim appointments. In the absence of selection and publication of select list, mere concession or submission made by the learned Government Pleader on behalf of the appellant-State cannot improve the case of the respondents, Similarly, such submission cannot confer right on the respondents, which they otherwise did not have.'

12. Mere inclusion of the name of a candidate in the select list does not confer any right of appointment [vide Shanker Sen Das v. Union of India and Ors., AIR 1991 SC 1612; Asha Kaul v. State of Jammu and Kashmir, (1993) 2 SCC 573; Union of India and Ors. v. S.S. Uppai, AIR 1996 SC 2340; Hanuman Prasad v. Union of India and Ors., (1996) 10 SCC 742; Bihar Public Service Commission v. State of Bihar, AIR 1998 SC 2280; Syndicate Bank and Ors. v. Shankar Paul and Ors., AIR 1977 SC 3091 and Vice Chancellor, University of Allahabad v. Dr. Anand Prakash Mishra and Ors., (1997) 10 SCC 264].

13. As there is no enforceable right to appointment, mandamus cannot be issued to the respondents, to appoint petitioner [vide Punjab SEB v. Seema, 1999 SCC (S/S) 629].

14. The Supreme Court in Union of India and Ors. v. Ishwar Singh Khatri and Ors., 1992 Suppl. (3) SCC 84, has held that selected candidates have right to appointment only against 'vacancies notified' and that top during the life of the select list as the panel of selected candidates cannot be valid for indefinite period. Moreover, empanelled candidates 'in any event cannot have a right against future vacancies'. In State of Bihar v. Secretariat, Assistant SE Union, 1986 and Ors., AIR 1994 SC 736, the Supreme Court has held that 'a person who is selected does not, on account of being empanelled alone, acquire any indefeasible right of appointment.' Empanelment is at the best a condition of eligibility for purposes of

appointment, and by itself does not amount to selection or create a vested right to the appointed unless relevant service rules provides to the contrary.

15. In Surinder Singh v. State of Punjab, 1997 (8) SCC 488, the SupremeCourt observed as under :

'..........If the waiting list in one examination was to operate as infinite stock for power, there is danger that the State may resort to the device of not holding the examination for years together and pick-up candidates from the waiting list as and when required. The Constitutional discipline requires that improper exercise of power which may result in creating a vested interest and perpetuating the waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service......Exercise of such power (to requisition the post) has to be tested on the touch-stone of reasonableness......'

16. It is settled legal proposition that no relief can be granted to the candidate if he approaches the Court after expiry of the Select List. [Vide J. Ashok Kumar v. State of Andhra Pradesh and Ors., JT (1996) 3 SCC 320; State of Bihar and Ors. v. Mohd. Kalimuddin, AIR 1996 SC 1145; State of Uttar Pradesh v. Harish Chandra, AIR 1996 SC 2173 and State of U.P. and Ors. v. Ram Swarup Saroj, (2000) 3 SCC 699]. It has been held therein that if the selection process is over, select list had expired and appointments had been made, no relief can be granted by the Court at a belated stage.

However in Purshottam v. Chairman, Maharashtra State Electricity Board and Anr., (1999) 6 SCC 49, the Supreme Court has held as under :

'The right of the appellant to be appointed against the post to which he has been selected, cannot be taken away on the pretext that the said panel, in the meanwhile, expired and the posts had already been filled up by somebody else. Usurpation of post by somebody else is not on account of any fault on the part of the appellant but on the erroneous decision of the employer himself. In that view of the matter, appellant's right to be appointed on the post has been illegally taken away by the employer.'

The Supreme Court held that in such a situation the party should be given the relief. The aforesaid judgment had been delivered by a Bench consisting of two Hon'ble Judges of the Supreme Court and that too without taking note of the judgments referred to hereinabove.

17. A Bench of Three Hon'ble Judges of the Supreme Court, in Sushma Suri v. Government of National Capital of Delhi, (1999) 1 SCC 330, dealing with a case wherein the Court had been approached at the stage when the process of selection had started but by the time the matter was decided, the selection process stood concluded and the appointments had been made, observed as under :

'However, we are not in a position to give any relief to the appellant before us now because when she commenced the litigation, the recruitment process was still going on and it had gone top far ahead. In fact, the same has been completed and selected candidates had already been appointed and they had reported for duty in different places and they are not impleaded as parties in these proceedings, it would not be proper to upset such appointment.'

18. There can be no dispute that wherever there is a conflict in two judgments of the Court, the judgment of the Larger Bench would prevail. [Vide Rameshwar Shaw v. Distt. Magistrate, Burdwan and Anr., AIR 1964 SC 335; State of U.P. and Ors. v. Ram Chandra Trivedi, AIR 1976 SC 2547; N. Meera Rani v. Govt. of Tamil Nadu and Anr., AIR 1989 SC 2027; N.S. Giri v. Corporation of City of Mangalore and Ors., (1999) 4 SCC 697; Coir Board, Ernakulam and Anr. v. Indira Devai P.S. and Ors., (2000) 1 SCC 224; Sub-Inspector Roop Lal and Anr. v. Lt. Governor, Delhi and Ors., (2000) I SCC 644; Lily Thomas and Ors. v. Union of India and Ors., (2000) 6 SCC 224 and S.H. Rangappa v. State of Karnataka and Ors., (2002) 1 SCC 538].

Thus, in view of the observations above in my respectful consideration in view of the Larger Bench judgements, no appointment could be made after expiry of the Select List.

19. The Court has no competence to issue a direction contrary to law, [vide Union of India and Anr. v. Kirloskar Pneumatic Co. Ltd., (1996) 4 SCC 453; State of U.P. and Ors. v. Harish Chandra and Ors., (1996) 9 SCC 309 and Vice Chancellor, University of Allahabad and Ors. v. Dr. Anand Prakash Mishra and Ors., (1997) 10 SCC 264].

20. In State of Punjab and Ors. v. Renuka Singla and Ors., (1994) 1 SCC 175, dealing with a similar situation, the Supreme Court has observed as under :

'We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations.'

21. Similarly, in Karnataka State Road Transport Corporation v. Ashrafulla Khan and Ors., JT 2002 (2) SC 113, the Supreme Court has held as under :

'The High Court under Article 226 of the Constitution is required to enforce rule of law and not pass order or direction which is contrary to what has been injected by law.'

22. In view of the Supreme Court in State of M.P. v. Raghubir Singh Yadav, (1994) 4 SCC 151, the cancellation of selection process prior to appointment is not invalid and the candidates passing the examination does not acquire any vested right to be appointed on passing the examination.

23. In Satyandra Dwivedi it was held by this Court (Hon'ble R.B. Misra, J.) in (2004) 1 UPLBEC 588, Satyendra Dwivedi v. Administrator, Nagar Mahapalika, Allahabad, that no writ of mandamus under Article 226 of the Constitution could be issued for pronouncement of result of selection and declaration of select list for giving appointment to the post of Naib Muharir in Nagar Mahapalika, Allahabad after selection is over, in view of the policy decision taken by the above instrumentality of State Government for not to finalize the select list and appoint the candidates to the said post and denial of pronouncing result and not declaring the select list for giving appointment does not violate the vested right of candidate and is not illegal or is not arbitrary Similar view was also taken by this Court in the

judgment dated 11.12.2003 in Writ Petition No. 1718 of 1991 (Kanhiya Lal v. UPSRTC).

24. In 1994 (6) SCC 651, Tata Cellular v. Union of India, the Supreme Court has observed that the Court cannot interfere in the policy matter as the Court has not to exercise its power to correct the administrative decision unless the decision/action of the. State Government is vitiated by arbitrariness, unfairness, illegality, irrationality or the decision of the State Government is such as a reasonable person on proper application of mind has to take such decision as the action and decision of the State Government must be in consonance to the Article 14 of the Constitution. The Supreme Court has further observed as below :

'The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the Court's ability to quash an administrative decision on merits. These restrains bear the hall marks of judicial control over administrative action.

Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision making process itself. It is thus different from an appeal. When hearing an appeal, the Court is concerned with the merits of the decision under appeal. Since the power of judicial review is not an appeal from the decision, the Court cannot substitute its own decision. Apart from the fact that the Court is hardly equipped to do so, it would not be desirable either. Where the selection or rejection is arbitrary, certainly the Court would interfere. It is not the function of a Judge to act as a superboard, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator.'

25. The Supreme Court in (1997) 7 SCC 592, M.P. Oil Extraction and Anr. v. State of M.P. and Ors., has held unless the policy decision of State is absolutely capricious, unreasonable and arbitrary and based on mere ipse dixit of the executive authority or is violative of any Constitutional or statutory mandate the Court's interference is not called far. The Supreme Court has further observed that treating unequals unequally does not violate the provisions of Article 14 of the

Constitution in view of M.P. Oil Extraction (supra). The Supreme Court in M.P. Oil Extraction v. State of M.P., has also held in Para 41 as below :

'The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other Constitutional provisions Or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the Sate. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the unchartered ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e., legislature, executive and judiciary in their respective fields of opinion needs to be emphasized. The power of judicial review of the executive and legislative action must be kept within the bounds of Constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the policy is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields.'

26. The Supreme Court following the decision of Tata Cellular v. Union of India, (1994) 6 SCC 651, has observed in (1997) 7 SCC 622, Mansukhlal Vithalidas Chauhan v. State of Gujarat, in respect of exercise of power under Article 226 by the High Court and under Article 32 by the Supreme Court that the Court does not sit as a Court of Appeal but merely reviews the manner in which the decision was made, particularly as the Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted, it will be substituting its own decision which itself may be fallible. The duty of the Court is to confine itself to the question of legality. Its concerned should be, (i) whether the

decision-making authority exceeded its power? (ii) committed an error of law; (iii) committed a breach of the rules of natural justice; (iv) reached a decision which no reasonable Tribunal would have reached; or (v) abused its powers.

27. I have heard learned Counsel for the parties and perused to documents I find that selection was conducted however on enquiry and the report of Commissioner, the State Government in all fairness in the interest of justice had decided to proceed for further selection by cancelling the entire earlier selection conducted for all the range/division and entire selection was found to be had where public confidence was lost then the out come of a particular range/division cannot be segregated for giving relief for declaration of the result and issuance of the appointment. The policy decision is neither unreasonable, arbitrary or irrational or unfair and the decision of the State Government in cancelling the entire selection and to proceed for further selection is not in derogation to the provisions of Article 14 of the Constitution. When the State Government of its instrumentality or the competent authority on behalf of the State Government themselves come forward to acknowledge the irregularity, defects and or illegalities occurred in any selection process and arrive at a stage and decides as a measure of policy to cancel selection on the basis of some report by a competent authority, in such situation there appears no scope of any interference by this Court.

28. In view of the above observations the writ petition is dismissed. No order as to costs.

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