

**Santosh Kumar Sonkar and Others Vs. State of U.P. and Others**

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**Court :** Allahabad

**Decided On :** Mar-17-2001

**Reported in :** 2001(2)AWC1220; [2001(89)FLR846]; (2001)2UPLBEC1429

**Judge :** A.K. Yog, J.

**Appeal No. :** C.M.W.P. No. 17009 of 1998

**Appellant :** Santosh Kumar Sonkar and Others

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

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

**Advocate for Pet/Ap. :** A.C. Tiwari and ;V.K. Shukla, Advs.

**Judgement :**

A. K. Yog, J.

1. Santosh Kumar Sonkar. Sidhnath Pal and Raj Kishore Singh (petitioners) have filed this petition claiming a writ of mandamus directing the respondents to issue the letter of appointment after initiating process of selection forthwith on the post of Lower Division Clerk and a writ of mandamus directing the respondents to submit a fresh report before this Hon'ble Court in the matter of sanctioned vacancy of 160 post and its mode of filling up amongst daily wages employees by adjusting them in Scheduled Castes/Scheduled Tribes as well as Backwards Class quota including in general quota.

2. At the outset, it may be stated that the second relief has lost its efficacy. Contesting respondents have filed counter-affidavit and three supplementary counter-affidavits (the original of IIIrd supplementary counter-affidavit is not on record but the typed copy of it has been supplied by learned counsel for the respondents and it shall be retained on record.

3- The facts in brief are that petitioners were engaged on daily wages during 1986 due to the exigency of workload by U. P. Madhyamik Shiksha Parishad (for short called the 'Parishad') for getting 'certificates' prepared. The appointment of the petitioner was primarily by way of stop arrangement in order to clear the backlog. These persons were discontinued in the year 1987.

4. Petitioners filed Writ Petition No. 1505 of 1992, which was allowed on 22.4.1992 in terms of Judgment and order in connected Writ Petition Nos. 4953of 1989, 11144 of 1988 and 26515 of 1990 (writ paragraphs 4 and 5 of the petition). The Parishad filed special leave petition against aforementioned judgment and order and the said special leave petition was decided by Supreme Court vide judgment and order dated August 19. 1992 (Annexure-2 to the writ petition). Perusal of Supreme Court order shows that Apex Court did not find favour with the judgment of the High Court passed in favour of the petitioners and disposed of appeals on the concession of the Parishad vide paragraphs 6 and 7 of the Supreme Court judgment. The said paragraphs

read :

'6. The appellant.--Parishad has offered to consider the cases of these 27 respondents who were writ petitioners before the High Court, for purposes of recruitment to the post of Lower Division Clerks as and when vacancies arise and steps for filling up of those posts are taken up by appellant. The appellant submits that if the respondents made appropriate applications at the appropriate time of filling up of the vacancies and if they possess the requisite minimum qualifications for the posts and if they were not beyond the prescribed maximum age limit as on the date of which utilisation of their services commenced in the year 1986. their cases would be duly considered, affording to them preference in the recruitment, other conditions being equal subject to the reservations policy. Appellant also requires registration of the respondents with the employment exchanges. For purpose of age limit, their respective age as at the time of commencement of their earlier casual employment would be reckoned.

7. This concession is placed on record and the orders of the High Court under appeal are set aside. The appeals are disposed of accordingly. No costs.'

5. From the perusal of the judgment of the Apex Court, it is absolutely clear that petitioners had no vested statutorily enforceable right of regularisation/absorption on the basis of their working on stopgap basis. The only right, which the persons like the petitioners can claim on parity, is the direction of the Supreme Court in its above order.

6. Learned counsel for the petitioner, however, drew notice of this Court to the Government Order dated December 14, 1990 (Annexure-4 to the writ petition). The said Government Order cannot be challenged or relied upon at this stage by the petitioners to carry their right beyond what is contemplated in the above quoted order of the Supreme Court. In case, the said Government Order or any other material, which was there prior to said Supreme Court order, if not brought to the notice of the Apex Court and the circumstances warrant reconsideration of the same, any aggrieved persons including the petitioners were free to approach the Apex Court. This not having been done, this Court cannot interpret or alter the order of the Apex Court on the ground of aforesaid Government Order. Annexure-5 to the writ petition is the judgment and order dated 8th March. 1994, passed by learned single Judge (Hon'ble S. R. Singh. J.) in W.P. No. 16370 of 1991, Rajesh Kumar and others v. State of U. P. and others. Learned counsel for the petitioner admit that the aforesaid judgment of Apex Court was not brought to the notice of the said Bench while deciding the case.

7. In the supplementary affidavit, petitioners allege about issuing of advertisement dated August 10, 1998 (Annexure-S.A. 1) and impliedly charged 'Parishad' of making appointment in violation of ex parte interim order dated 11.12.1998 passed by this Court. In paragraphs 6 and 7 of supplementary counter-affidavit sworn on 17th April, 1999 by Km. Achla Khanna, Secretary Madhyamik Shiksha Parishad. U. P. it is stated :

'6. That in the meantime, State Government issued fresh rules for recruitment of employees for the posts of class III. Accordingly advertisement dated 10.8.1998 was published for 25 vacancy reserved for Scheduled Castes. The petitioner was duly informed to submit the application against the advertisement dated 10.8.1998. The petitioner did not apply against the advertisement dated 10.8.1998 and as such, he is not entitled for any relief from this Hon'ble Court.

7. That since 19.8.1992, no direct appointment for the post of Lower Division Clerk had been made except those under dying-in-harness Rules. 15% promotional quota from class IV to class III and of course 22 posts have been filled in pursuance to the advertisement dated 10.8.1998.-

8. The above averments have been replied vide paragraphs 8 and 9 of the supplementary rejoinder-affidavit, which are reproduced for ready reference :

'8. That in reply to the contents of para 6 of the S.C.A.. it is stated that once as stated by the respondents that due to stay order in Writ Petition No. 37835 of 1995 and 35347 of 1994 the selection postponed still the

respondents be put to strict proof upon whose direction the respondents advertised again the vacancy dated 10.8.1995 for only 25 posts for reserve category even not mentioning the order of Hon'ble Supreme Court re-earlier advertisement dated 10.8.1994. Hence re-advertising the vacancy dated 10.8.1998 is nothing just to preclude the writ petitioners and others who were party before the Hon'ble Supreme Court.

9. That the contents of para 7 of S.C.A. as stated are relating to the high manipulation of respondents. It is further submitted that the respondents have flouted the Court orders dated 19.5.1998 and 11.12.1998 passed in Writ Petition No. 17009 of 1998 and as such seems very curious to fill up the vacancy advertised dated 10.8.1998 by way of pick and choose policy flouting the judgment and order dated 19.8.1992 also passed by the Hon'ble Supreme Court.'

9. The fact remains that information was given to petitioner No- 1, who was eligible under said advertisement (as he belonged to the category of persons whose quota was required to be filled up) and still he chose not to appear to participate the selection process. He cannot blame any one.

10. The Parishad has also filed IIIrd supplementary counter-affidavit sworn on 19th February, 2001 by K. P. Shukla, Deputy Secretary. Madhyamik Shiksha Parishad. U. P., Allahabad and chart has been annexed stating therein the sanctioned strength of class III post in the establishment and the numbers of posts filled by Scheduled Caste/Backward Class as well as existing unfilled vacancies vide Annexure-S.A. 1 to the said supplementary counter-affidavit.

11. In view of the averments made in the counter-affidavit and the supplementary counter-affidavits filed by Parishad. I find no arbitrary action on the part of the Parishad. The halfhearted grievance of the petitioner that direction of Supreme Court was not being complied, is not substantiated. Petitioner appears to have, due to paucity of time, got restless and rushed to this Court. No case for issuing 'mandamus' directing the respondents to issue letter of appointment by issuing process of selection forthwith arises in the facts of instant case.

12. It may be pointed out that no foundation has been laid, much less proper foundation, to assail the action on the part of the Parishad for not filling-up the post.

13. The petition lacks merit and it is, accordingly, dismissed.

14. No order as to costs,

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