

**Surendra Kumar Pandey and anr. Vs. State of U.P. and ors.**

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**Court :** Allahabad

**Decided On :** Mar-01-2002

**Reported in :** 2002(2)AWC1191

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

**Appeal No. :** C.M.W.P. No. 16899 of 2001

**Appellant :** Surendra Kumar Pandey and anr.

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

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

**Advocate for Pet/Ap. :** Umesh Narain Sharma, ;Arun Kumar Mishra and ;Jai Prakash Rai, Advs.

**Disposition :** Writ petition dismissed

**Judgement :**

**M. Katju and S.K. Singh, JJ.**

1. By means of the writ petition, the petitioners have prayed for issuance of a writ in the nature of mandamus commanding the respondent Nos. 1 and 3 to inform the vacancies to the respondent No. 2 for recommending the name of candidates from the waiting list which is said to be maintained .

2. The facts as stated in the writ petition are that for filling up different posts in the State of U. P. through the Combined State Upper Subordinate Examination, 1999, an advertisement was published in the daily newspaper dated 1.1.1999. The petitioners filled their forms for appearing in the said examination. In the final result so declared, petitioner No. 2 was finally selected and was allotted the post of Assistant Director (Industry) but petitioner No. 1 was not selected. It is stated in paragraph 11 of the writ petition that the State Government has issued two Government orders dated 29.8.1992 and 31.1.1994 for declaration of result, preparation of the waiting list and the life span of the waiting list. According to the petitioners, in accordance with the Government orders dated 29.8.1992 and 31.1.1994, the vacancies are liable to be informed by the respective departments within one year of the result to the respondent No. 2 (U. P. Public Service Commission) about the posts on which the candidates have not turned up to join their respective assignments, upon which respondent No. 2 has to send recommendations of the candidates from the waiting list. As this exercise was not done by the respondent, the petitioners have come to this Court seeking a direction to the respondents in this regard to send names from the waiting list and reshuffle the appointments.

3. We have heard learned counsel for the petitioner, learned standing counsel, who represents the respondent Nos. 1 and 3 and learned counsel appearing on behalf of the respondent No. 2 and have also examined the facts as stated in the writ petition and in the counter-affidavit filed on behalf of the respondents.

4. Learned counsel for the petitioner has submitted that there was inaction on the part of the respondent Nos. 1 and 3 in not informing the vacancies to the respondent No. 2 which remained unfilled in the combined State Upper Subordinate Examination, 1999, on account of which respondent No. 2 could not make recommendation of the candidates out of the waiting list, which is clearly illegal and arbitrary. Learned counsel has submitted that the respondents are under a legal obligation to accept the petitioners claim in the light of the Government orders dated 29.8.1992 and 31.1.1994 (Annexures-6 and 7 to the petition). It has been pointed out that in the event of acceptance of the claim as prayed in this writ petition, there is every chance that the petitioner No. 2 could get

a better placement as per his preference and petitioner No. 1 could get himself selected on any post as he is virtually at the top of the waiting list. Lastly, it has been submitted that on similar set of facts in pursuance of the directions issued by this Court in Writ Petition No. 54131 of 1999, decided on 22.12.1999 (vide Annexure-12) respondents have completed the exercise and after reshuffling, recommended the name of the candidates from the waiting list and, therefore, the petitioners claim that suitable directions be issued to the respondents. In support of his submissions learned counsel for the petitioner has relied on the decision given by this Court in Writ Petition No.18096 Of 2001, Bibhakar Dwivedi and others v. State of U.P. and others, dated 20.12.2001, and decisions in Ram Darosh Rai and others v. State of U. P. and others, 1995 (2) AWC 1327 ; (1995) 2 UPLBEC 985, P. Mahendran and others v. Matteesh Y. Annigeri and others, AIR 1990 SC 405 and Virendra S. Hooda and others v. State of Haryana and another, (1999) 3 SCC 696.

5. Learned standing counsel, who represents the respondent Nos. 1 and 3 and learned counsel who represents respondent No. 2 have taken the same stand during the course of their submission. It has been submitted that the claim of the petitioner for consideration of their claim and issuance of a direction to the respondent Nos. 1 and 3 for information regarding the vacancies to enable the respondent No. 2 to send recommendations, based on the Government order dated 29.9.1992 and 31.1.1994 is clearly untenable as by the subsequent Government order dated 15.11.1999 (Annexure-7 to the petition), the Government has now stopped the preparation of the waiting list. Learned counsel submitted that the result of the combined State Upper Subordinate Examination, 1999. In respect of which the relief is being claimed was published on 6.5. 2000 in which no waiting list could be prepared and there was no occasion for the respondents for reshuffling and sending the name of any candidate, Learned counsel submitted that the decision referred to by the learned counsel for the petitioner in Bibhakar Dwivedi and others (supra) had no application to the facts of the present case as in that case, it was observed by this Court that the result of the examination was published before the said Government orders and hence, it was held that the Government order was not applicable to the facts of that case.

6. In view of the aforesaid submission advanced from both sides, it appears that the result of the combined State Upper Subordinate Examination, 1999, was published on 6.5.2000 as stated in para 8 of the writ petition. The Government order which at present holds the field has been issued on 15th November, 1999, which clearly provides that no waiting list will be prepared except in respect of selection which is for a single post. It has been further provided in the said Government order that no reshuffling exercise will be now undertaken, in view of this Government order dated 15th November, 1999, the claim of the petitioners about intimation about the remaining vacancies for the purpose of reshuffling and sending of the names from the waiting list does not appear to be justified. Otherwise also, as has been stated by the petitioners themselves, within the period of one year, no name has been asked by the department from the Commission to be recommended from the waiting list and, therefore, petitioners cannot claim any relief of sending names out of the waiting list. Even according to Clause 5 of the earlier Government order dated 31.1.1994 (Annexure-7 to the petition) the waiting list cannot survive after 1 year of the result unless within that period of 1 year, the department concerned asks the Commission to send names from the waiting list. In the present case, it appears that the department concerned did not ask the Commission to send names within 1 year and hence, the list has lapsed. This Court has had occasion to consider about the life of the waiting list which was prevalent prior to the Government order dated 15.11.1999. It has been held that the life of the waiting list is for a period of one year and no reshuffling can be made after expiry of that period from the candidates of that waiting list, and the remaining vacancies will have to be filled up by a fresh selection. Reference can be made to the decisions given in Writ Petition No. 26913 of 2001, Dharmendra Singh v. State of U. P. and others, decided on 18.1.2002. The decisions as has been referred by the learned counsel for the petitioner in Ram Darash Rai and others v. State of U. P. and others, 1995 (2) AWC 1327 : (1995) 2 UPLBEC 985, P. Mahendran and others v. Matteesh Y. Annigeri and others, AIR 1990 SC 405 and Virendra S. Hooda and others v. State of Haryana and another, (1999) 3 SCC 696. have no application to the facts of the present case, as we are of the opinion that now there is no provision of preparation of waiting list and in view of the decision as has been given by this Court the life of the waiting list also lapses after

one year and, therefore, on either count, it appears that the petitioners are not entitled to get any relief.

7. In view of the aforesaid discussion, this writ petition fails and it is accordingly dismissed without any order as to costs.

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