

Chandra Shekhar and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Mar-23-2004

Reported in : 2004(3)AWC2429

Judge : Vineet Saran, J.

Acts : [Constitution of India](#) - Articles 14 and 16

Appeal No. : C.M.W.P. No. 51448 of 2003

Appellant : Chandra Shekhar and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : Nripendra Mishra, Adv. and ;Ranjit Saxena, S.C.

Advocate for Pet/Ap. : Ashok Khare, ;V.K. Singh, ;Ajay Shanker and ;Sanjai Kumar Rai, Advs.

Disposition : Writ petition allowed

Judgement :

Vineet Saran, J.

1. The Electricity Service Commission, Lucknow, issued an Advertisement No. 2 of 2003, whereby applications were invited for appointment of 190 Office Assistant Grade III. All the posts to be filled up were of backlog vacancies falling under the

Scheduled Castes/Scheduled Tribes category. The petitioners were some of the applicants in response to the aforesaid advertisement. All the petitioners are Scheduled Caste candidates regarding which there is no dispute. The petitioners participated in the examination conducted by the Electricity Service Commission and on the basis of the same, the results of typing and computer examination were published in the first week of August, 2003. Since the petitioners had qualified in the written examination, they were called for interview and finally the Commission on 22.8.2003, prepared the select list, in which the names of the petitioners were shown as the selected candidates. The Commission, thereafter on 25.8.2003, forwarded the names of the petitioners for appointment in its Varanasi and Allahabad circles. However, subsequently all the petitioners were assigned Varanasi Circle. On 28.8.2003, appointment letters were issued by General Manager of the Corporation to some of the petitioners, namely, petitioner Nos. 3, 5, 6 and 8 and in respect of the remaining petitioners also, the appointment letters were to be issued on the basis of the said select list dated 22.8.2003. By means of the Government order dated 29.8.2003 issued by the State Government a ban was imposed on further appointments to be made by the respondents and other Government departments except for Group 'C' posts pertaining to 2001 selection in which interim orders had been passed by the High Court. Thereafter by the impugned order dated 1.9.2003 passed by the Deputy General Manager, the appointment letters already issued in favour of some of the petitioners had been cancelled. Aggrieved by the aforesaid order, the petitioners have filed this writ petition with a prayer for quashing the order dated 1.9.2003 and also for a direction to the respondents for declaring the Government order dated 29.8.2003 as not applicable to the Corporation or alternatively to quash the said Government order. A further prayer has also been made for a direction to the respondents to permit those petitioners, to whom appointments letters had already been issued, to join on the post of Office Assistant Grade III on which posts they had been selected and also to forthwith issue appointment letters in favour of the remaining petitioners and to permit the petitioners to function on the said posts and be paid their salary regularly month by month.

2. I have heard Sri Ashok Khare, learned senior counsel assisted by Sarva Shri Sanjai Kumar Rai and V.K. Singh, appearing on behalf of the petitioners and Sri

Ranjeet Saxena, learned counsel appearing for the respondent-corporation as well as learned standing counsel for the State-respondents and have perused the record.

3. It is the categorical case of the petitioners that they have been denied appointment merely on the basis of the restriction on appointment having been imposed by the Government order dated 29.8.2003. The said averments have not been denied by the respondents in their counter-affidavit. Admittedly the said Government order dated 29.8.2003 has now been withdrawn by the State Government itself by its order dated 15.1.2004, a copy of which has been filed as Annexure-1 to the rejoinder-affidavit. It has also been clearly stated in paragraphs 32 and 33 of the writ petition that about 120 candidates, out of 190 candidates selected in the aforesaid examination, had already been given appointment, who had also joined and were working. Some such candidates were even lower in order of merit than the petitioners. The said position has also not been denied in the counter-affidavit. The only ground which has now been raised by Sri Ranjeet Saxena during the course of arguments while justifying the action of the respondents is that 'some enquiry' is pending with regard to the said selection. The respondents have set out no such case in their counter-affidavit and a mere casual reference of an 'investigation' being conducted has been made. It has been stated that there are 'some reasons' for not appointing the petitioners. What possible reasons could there be for not giving the appointments to the petitioner even after the issuance of the select list in which they were declared selected, have not been specified. The counter-affidavit is totally silent of any 'enquiry' regarding the selection nor has it been stated that on what grounds the alleged enquiry is to be conducted and by whom. Only oral submissions have been made that an enquiry is likely to be conducted and completed very soon and thus, the hearing of this writ petition may be adjourned. In the absence of any such averments having been made in the counter-affidavit, the prayer does not appear to be justified and is, thus, rejected. Even otherwise from the counter-affidavit it is not disclosed as to what sort of irregularity or illegality could be said to have been committed during the selection process. It is for the first time during the course of argument that the mention of any enquiry has been made, although it was the categorical case of the petitioners that appointments were not being given to the petitioners merely on the

ground that a ban had been imposed by the State Government by its order dated 29.8.2003. In view of the ban having been withdrawn by the State Government vide its order dated 15.1.2004, the said ground also does not exist any longer.

4. In support of his contention that no opportunity is to be given to the selected candidates when the appointments have been made illegally, and the same are being cancelled on the ground of illegality and irregularity having been committed during the selection process, Sri Saxena has placed reliance on a Division Bench decisions of this Court in the case of *Bharat and Ors. v. Nagarpalika, Azamgarh and Ors.* (1994) 2 UPLBEC 745, as well as the decision of the Apex Court rendered in the case of *Union of India v. O. Chakradhar*, 2002 (2) AWC 1264 (SC) : (2002) 3 SCC 146. In my view the ratio of the said decisions are not applicable to the facts of the present case as there is no illegality or irregularity even alleged in the selection process by the respondents in their counter-affidavit, leave aside the same being proved. It cannot be said that the cancellation of the selection was being done because of irregularities or illegalities in the selection process, as it has not been denied that the cancellation orders had been passed and appointments refused to the petitioners merely on the basis of the Government order dated 29.8.2003 imposing restriction on the respondent-corporation for making any fresh appointment, which has admittedly now been withdrawn.

5. Sri Saxena has also placed reliance on another decision of the Supreme Court in the case of *Union of India v. Tarun K. Singh*. 2002 (2) SLR 195, wherein the selection process had been cancelled on the ground of mal practice, when it was found on enquiry that gross irregularities and illegalities had been committed. There is no such allegation of irregularities or illegalities having been committed in the selection process of the present case which was admittedly conducted by the Electricity Service Commission on the requisition having been sent by the respondent-corporation for filling up the backlog vacancies. No doubt, merely on the declaration or issuance of the select list, the candidates included therein do not acquire an indefeasible right to appointment but as has been held by the Apex Court in the case of *Asha Kaul (Mrs.) and Anr. v. State of J&K*, (1993) 2 SCC 573, the same is only one aspect of the matter and 'the other aspect is the obligation of the Government to act fairly'. The Apex Court was of the view that once a

requisition/request had been sent to the Commission to select a particular number of candidates for a particular category and in pursuance thereof the Commission issued a notification, held a written test, conducted interviews, prepared a select list and then communicated to the Government, the Government could not then quietly and without good and valid reasons nullify the whole exercise and tell the candidates, when they complain, that they have no legal right to appointment. According to the Supreme Court, in such a case, the whole exercise could not be reduced to a farce and the Government could not adopt such a stand with any justification.

6. The principles laid down in the aforesaid decision by the Apex Court squarely cover the present case. The impugned Government order dated 29.8.2003, having already been withdrawn and there being no allegation of misconduct, illegality or irregularity in the selection process, the corporation which had itself sent the requisition/request to the Commission to select the candidates, and once the same had been done after following the requisite procedure, the respondent-corporation is obliged to appoint the petitioners as Officer j Assistant Grade-III on which posts they were duly selected by the Commission, except for good and valid reasons, which do not exist in the present case.

7. Another reason because of which this direction needs to be issued to the respondents is that several candidates from amongst those who had been included in the select list dated 22.8.2003 had already been given appointment prior to 29.8.2003, which fact has not been denied in the counter-affidavit. Merely because there was some delay in the issuance of the appointment letters to the petitioners and the Government order dated 29.8.2003 had been issued during the said period before the appointment letters could be issued, the said action of not appointing the petitioners cannot be justified specially in view of the fact that the impugned Government order dated 29.8.2003 itself has been withdrawn by the State Government vide its order dated 15.1.2004.

8. For the foregoing reasons, this writ petition deserves to be allowed. The impugned order dated 1.9.2003 passed by Deputy General Manager of the Corporation, respondent No. 5, is thus, quashed. In view of the withdrawal of the

Government order dated 29.8.2003 by the State Government itself, no order quashing the same need be passed. The respondents are directed to issue appointment letters in favour of the petitioners in pursuance of the select list dated 22.8.2003 within one month from today and permit them to join on their respective posts within two weeks thereafter. The appointment letters already issued in favour of petitioner Nos. 3, 5, 6 and 8 shall stand revived and they shall be permitted to join their duties within one month from today. The petitioners shall be entitled for payment of their regular salary and other emoluments that they may be found entitled to, in accordance with law.

9. In the result, this writ petition stands, allowed. No order as to cost.

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