

Mahipal Singh and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Feb-03-1998

Reported in : 1998(3)AWC1744; (1998)2UPLBEC1471

Judge : Alope Chakrabarti, J.

Appeal No. : C.M.W.P. No. 29830 of 1992

Appellant : Mahipal Singh and Others

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Vivek Kumar Birla, Adv.

Judgement :

Alope Chakrabarti, J.

1. The prayers made in the writ petition are for quashing the order dated 27.8.1991 at Annexure No. 5 to the writ petition passed by the respondent No. 3 cancelling the selection of the petitioners for the post of Tube-well Mis tries and for Issuance of mandamus commanding the respondents to appoint the petitioners against the existing vacancies of tube-well mlstrtes in the Tube-well Circle, Agra for which they were selected.

2. The facts stated in the writ petition are that the petitioners alongwith other candidates appeared in the test on 5.4.1991 for selection in respect of the post of tube-well mlstrles in Irrigation branch of public works department of Uttar Pradesh. All the three petitioners were found eligible and their names were included in the select list dated 19.7.1991 showing the names of the petitioners at Serial Nos. 2, 3 and 4 therein. The said list was sent for approval on 22.7.1991 and thereafter by office memorandum dated 27.8.1991, the respondent No. 3 cancelled the said list on the ground that the Divisions have been reorganised and consequently the position of number of vacancies had been changed. It came to the knowledge of the petitioner that by order dated 1.8.1991 there was reorganisation of the Divisions and as a result thereof Etah Division went out of Agra region to Allgarh region and that is why the Impugned order dated 27.8.1991 was passed cancelling the said selection list.

3. The respondents filed counter-affidavit admitting that the petitioners were selected and their names were in the select list and the same was sent for approval on 22.7,1991 but it has been stated that as there was reorganisation of the Tube-well Divisions on 1.8.1991, the position of vacancy had altered and, therefore, the select list had to be cancelled on 27.8.1991. In support of such action, the respondents have disclosed several reasons and disclosed the position of vacancy at the relevant time. It was also stated therein that although ten persons were selected but the vacancies were available only in respect of six posts In respect of the Divisions within Agra region after reorganisation. Contention was also made that the selection was made in violation of reservation policy. The petitioners filed rejoinder-affidavit disclosing the material that the vacancy position after reorganisation had not been correctly disclosed in the counter-affidavit and in Agra region vacancy after reorganisation was not only six but it was more than that.

4. Heard the learned counsel for the petitioners as also the learned standing counsel for the respondents.

5. Learned counsel for the petitioners apart from relying on facts contended that the law in this regard has been settled that when a statutory functionary makes an

order passed on certain grounds, Its validity must be Judged by the reasons so mentioned and cannot be supplemented by fresh reason in the shape of affidavit or otherwise. In support of such contention reference was made to the case of Mahinder Singh Gill v. Chief Election Commissioner, AIR 1978 SC 851.

6. After considering the respective contentions of the parties on facts, it is apparent that there is no dispute that the petitioners were selected for the purpose of said vacancies and their names were at Serial Nos. 2, 3 and 4 as stated in paragraph No. 6 of the writ petition which had not been denied by the respondents in the counter-affidavit. It is admitted by respondents that after reorganisation six posts remained vacant. It is also admitted that the selection took place before reorganisation of the Division and cancellation had been made thereafter on the ground of reorganisation as stated in the Impugned order.

7. Considering the aforesaid aspect, it is found that on the date when select list was cancelled, there were admittedly six vacancies and no reason has been disclosed as to why atleast six persons from the select list could not be appointed against those six vacancies. The other reason for cancellation of the select list as disclosed in the counter-affidavit cannot be considered in view of the law laid down in the case of Mahinder Singh GUI (supra). In this connection also, reference may be made to the case of Commissioner of Police v. Gordhandas Bhanjt, AIR 1952 SC 16.

8. In such background, as discussed herein above, no reason is available as to why the petitioners were not appointed though admittedly the selection took place before even reorganisation of the Division and admittedly sufficient vacancies were available for the purpose of giving appointment to some of the candidates were selected. As the position of the petitioners in the select list was apparently within six, there was no need of considering the allegation of the petitioners that the vacancies after reorganisation were still available more than six or not.

9. The petitioners are, therefore, found entitled to be appointed against the said vacancies particularly when further proposed selection for the purpose of filling-up the vacancies had been stopped by an Interim order dated 2.3.1992 on this writ petition and the respondents have admitted in the counter-affidavit that the

selection had been kept postponed because of the said interim order. Therefore, admittedly, the respondents also proceeded to fill-up the said vacant posts and there was no reason for cancelling the entire select list when admittedly the candidates therein were found to be suitable by the respondents authorities concerned.

10. In view of the aforesaid findings, the writ petition succeeds and is allowed. The impugned order dated 27.8.1991 at Annexure-5 to the writ petition is hereby quashed. The respondents will pass appropriate order in respect of filling-up the said vacancies and in so doing if the petitioners cross upper age limit prescribed the same shall not be taken into consideration.

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