

iftkhar Ansari Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Apr-15-1998

Reported in : 1998(3)AWC1800

Judge : O.P. Garg, J.

Appeal No. : C.M.W.P. No. 7911 of 1995, Connected with 14 other writ petitions

Appellant : iftkhar Ansari

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : B.P. Srivastava, Adv.

Judgement :

O.P. Garg, J.

1. This bunch of 15 connected writ petitions involves the question of appointment or otherwise of the petitioners as Urdu Translator-cum-Junior Clerks in various offices of district Deoria. Since common questions of law and fact are involved in the writ petitions, the petitioners are proposed to be decided together.

2. The Government of State of U. P. took a policy decision to provide employment to Urdu knowing persons by absorbing them on the post of Urdu Translator-cum-

Junior Clerks in the various departments of the State and also with a view to promote the Urdu language and to make it job-oriented and further to link it with economic aspects of life. In the month of August all over the State 5,061 posts were sanctioned/created in the various departments of the State. It was stipulated that one post each in all the offices of departmental heads and heads of offices, both at the Divisional and District level shall be filled in by Urdu Translator/Junior Clerk subject to the restrictions that where the post of Regular Assistant Clerk in the Pay Scale of Rs. 950-1,500 is lying vacant. It will be treated to have been converted as that of Urdu Translator ; in case there was no vacancy, the first vacancy which may occur due to retirement/pro motion or for any other reason shall be filled up by a Urdu Translator. The appointing authority of Urdu Translator was the same authority which was authorised to appoint the Junior Clerks. It was also contemplated in the Government Order that all the posts of Urdu Translator shall be filled by special recruitment drive within a period of three months. Subsequently, it was clarified that if there is no vacancy, appointment shall be made against the supernumerary post created for the purpose and the supernumerary post shall continue till a regular vacancy is available.

3. In pursuance of the acclaimed policy and various Government Orders, the District Magistrate, Deoria initiated proceedings and took steps to recruit the Urdu Translators. The posts were advertised and a written test was held on 25.12.1994. A Select List of 58 candidates was published/notified on 12.1.1995. Out of the said list certain persons were appointed in different departments such as Police, Education, Employment Exchange, etc. On 3rd February, 1995 a Government Order was issued by the Secretary of the Karmik Anubhag-4 that the appointment letters to all the selected candidates be issued by 20th February, 1995. In 12.1.1995, 16 successful candidates were posted in the Police Department ; on 19th February, 1995, 5 selected candidates were appointed in the Education Department. Mohd. Latif and Iftikhar Ansari were also given appointments though they were respectively at Serial Nos. 40 and 31 of the select list. On 15th March, 1995 three more candidates were given appointments in the Co-operative Department.

4. It appears that certain complaints of corruption and favouritism in the selection process were made to the State Government. The Government by order dated 20th June, 1995 directed the District Magistrate, Deoria to make enquiry into the complaints. The Sub-Divisional Officer, Salempur (Deoria) was entrusted with the task of making enquiry into the complaints. On the basis of the report of enquiry submitted by the Sub-Divisional Officer, Salempur, the District Magistrate, Deoria wrote a letter dated 12th July, 1995 to the State Government in Karmik Anubhag-4. A copy of the letter sent by the District Magistrate, Deoria has been filed as Annexure-1 to the supplementary affidavit filed by the petitioners in Writ Petition No. 34723 of 1995. It was recommended that five persons, namely, Saharyar Mazrooh and Shabhab Mazrooh who are the nephews of Isa Khan, Smt. Akhtar Shamim, Shahib Ahmad and Shamin Ansari be dropped from the select list and in respect of other selectees, steps for Issue of appointment letters be allowed to be taken. It was also suggested by the District Magistrate, Deoria that if the State Government does not approve the above proposal, the entire selection be cancelled. After receiving the said report from the District Magistrate, the State Government vide order dated 7.8.1995 cancelled the entire selection and ordered that fresh selection be made on extreme priority basis.

5. In Writ Petition Nos. 7911 of 1995, 10077 of 1995, 11684 of 1995, 24022 of 1995, 34014 of 1995, 30414 of 1995, 30418 of 1995, 35504 of 1995, 34723 of 1995 and 20264 of 1996, petitioners have challenged the order dated 7.8.1995 passed by the State Government and it is prayed that the said order being illegal and arbitrary be quashed as also the direction to hold fresh selection. Some of the petitioners who had been appointed earlier prayed for the relief that their functioning as Urdu Translator/ Junior Clerks be not disturbed.

6. In pursuance of the order of the State Government dated 7.8.1995, a fresh selection was made and its result was published in Daily 'Dainik Jagran' and Dally 'Rastriya Sahara', on 16.12.1995 and 17.12.1995 respectively. The candidates who were successful in fresh examination held in pursuance of the order dated 7.8.1995 passed by the State Government and who have not been given appointment, have filed Writ Petition Nos. 20264 of 1996. 40892 of 1996. 494 of 1997, 6596 of 1997, 6674 of 1997 and 12102 of 1997, in which a prayer has been

made that the respondents be directed to appoint them as Urdu Translator/Junior Clerks in pursuance of the result published on 17.12.1995.

7. Counter and rejoinder-affidavits in some of the writ petitions have been filed. Since common question of law and fact are involved, the counter and rejoinder-affidavits filed in some of the petitions, has been taken into consideration even in those cases in which counter and rejoinder-affidavits have not been filed. It is of no consequence that in some of the cases, counter and rejoinder-affidavits have not been filed.

8. Heard the learned counsel for the petitioners as well as the learned standing counsel at considerable length.

9. To begin with, it may be mentioned that the petitioners in Writ Petition Nos. 20264 of 1996, 40892 of 1996, 494 of 1997, 6596 of 1997, 6676 of 1997 and 12102 of 1997, shall swim or sink with the decision in the earlier writ petitions by which the order dated 7.1.1995 passed by the State Government cancelling the earlier selection has been challenged. The question of appointments of subsequent selectees whose result was declared on 17.12.1995 would arise only if the order dated 7.8.1995 passed by the State Government is quashed and is held to be illegal. Therefore, the moot point for consideration is whether the order dated 7.8.1995 passed by the State Government cancelling the selection list published on 12.1.1995 was justified in the circumstances of the case. By my order dated 23.2.1998 passed on the order sheet of Writ Petition No. 34723 of 1995, it was directed that the learned standing counsel shall deliver the enquiry report along with the connected papers in a sealed cover to this Court by 8.3.1998, so that the allegations made in the complaints against the recruitment, evidence collected and the sufficiency of the ground of cancelling the selection may be perused. The order dated 23.2.1998 has not been complied with as no enquiry report along with connected papers in sealed cover as directed have been brought before the Court. As stated above, a copy of the letter sent by the District Magistrate, Deorla to the State Government on 12th July, 1995 on the basis of which the State Government has passed the impugned order dated 7.8.1995 has been brought on record by the petitioners in Writ Petition No. 34723 of 1995. A

perusal of the said letter dated 12th July, 1995 would reveal that the allegations in the complaint was that Musa Mazrooh is the real brother of is a Khan and Saharyar Mazrooh and Shahab Mazrooh are the sons of Musa Mazrooh. It is further alleged that it is evident that they are not the sons of Isa Khan but are the sons of his brother Musa Mazrooh. It has further been mentioned that Saharyar Mazrooh has also been selected in district Siddarth Nagar and is still working and is holding the post of Junior Clerk-cum-Translator Urdu. The other persons, namely, Shahab Mazrooh has also been appointed as Urdu Teacher in district Siddarth Nagar. In view of the report of the District Magistrate as contained in the letter dated 12.7.1995, no malpractice alleged to have taken place in the recruitment process, has been pointed out. There is not even a faint suggestion that the selection was. In any manner, afflicted by corruption or favouritism The allegation of mass copying was also negatived. Since Saharyar Mazrooh and Shahab Mazrooh who were the sons of the brother of Isa Khan had been appointed in district Siddarth Nagar, the question of any malpractice in the selection did not arise. The State Government, therefore, had no material before it to scrap the entire select list without affording opportunity to those petitioners who had already been appointed prior to the passing of the order of cancelling the select list on 7.8.1995. According to the learned counsel for the petitioners, it is in rarest of the rare cases in which the process of selection can be set at naught by cancelling or scrapping the selection list. This extreme step can be taken if there is a concrete and reliable evidence of large scale bunglings, favouritism, nepotism, corruption or the like or if there is violation of fundamental procedural requirements. In support of his contention, the learned counsel placed reliance on the decision of this Court dated 8.4.1997 in Sri Niwas Singh and others v. Union of India and others. Civil Misc. Writ Petition No. 38772 of 1996 and the decision dated 9.12.1997 in Amar Nath Singh v. Union of India and 4 others, Civil Misc. Writ Petition No, 38406 of 1996 and the decision in Ram Darsh Rai and others v. State of U. P. and others. 1995 (2) UPLBEC 985. The Hon'ble Supreme Court in Asha Kaul (Mrs.) and another v. State of Jammu and Kashmir and others, (1993) 2 SCC 573, has observed that the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they had no legal right to appointment. No Government can adopt such a stand

with any justification. In *Shankarson B. Dash v. Union of India*, AIR 1991 SC 1612, a Constitution Bench of the Supreme Court has observed that though a candidate who has been duly recruited and has no indefeasible right to get appointment. 'it does not mean that the State has a licence of acting in an arbitrary manner.' The State is bound to respect the comparative merits of the candidates as reflected at the recruitment test and no discrimination is permissible. In the Instant case, the State Government has cancelled the select list by a cryptic and non-speaking order dated 7.8.1995 without any Justification and concrete evidence of malpractice, favouritism or corruption. Even the report of the District Magistrate, Deoria dated 12th July. 1995 does not disclose, as stated above, any malpractice or bungling in the recruitment. The order passed by the State Government cancelling the select list which was published on 12.1.1995 was without any justification and since it suffers from the vice of arbitrariness and Irrationality. It has to be quashed.

10. The petitioners who are affected by the Impugned order dated 7.8.1995 had acquired vested right on getting their appointment on the post of Urdu Translator/Junior Clerks. By the decision dated 3.11.1995 made in *Ammurddin Khan and others v. State of U. P. and others*, Civil Misc. Writ Petition No. 22127 of 1995, a copy of which is Annexure-13 to the Writ Petition No. 34723 of 1996, this Court has directed that the petitioners of that case shall be given appointment as they had been selected. The service of the petitioners who were appointed in pursuance of the order dated 3.11.1995 passed by this Court and those candidates who have been appointed in pursuance of their having been placed in the select list dated 12.1.1995 and were actually working on 7.8.1995 on which date the order cancelling the select list was passed, cannot be terminated without affording them an opportunity of hearing. This aspect of the matter was considered in *Sri Dhar v. Nagar Palika, Jaunpur*, 1990 (1) UPLBEC 1 and *Shravan Kumar Jha v. State of Bihar and others*. AIR 1991 SC 309, in which the view taken by the Apex Court is that the order cancelling the appointment without giving an opportunity of hearing to the affected persons was against the principles of natural justice and , consequently void.

11. For the reasons stated above, the impugned order dated 7.8.1995 passed by the State Government cancelling the select list which was published on 12.1.1995 is liable to be quashed. The petitioners who have been appointed in pursuance of the select list dated 12.1.1995 shall be deemed to have validly appointed and if some of the selectees in the said list have not yet been appointed, they shall be appointed against the vacancy which may be existing or may occur in near future.

12. Now I take up the case of those petitioners who have prayed for their appointment on the post of Urdu Translator /Junior Clerks in pursuance of the select list published on 17.12.1995. Since I have found above that the order of the State Government dated 7.8.1995 was illegal and cannot be sustained, subsequent selection held in pursuance of the said order was otiose and of no consequence. The posts of Urdu Translators are to be filled in from the select list which was published on 12.1.1995. The petitioner in Writ Petition Nos. 20264 of 1996, 40892 of 1996, 494 of 1997, 6596 of 1997, 6674 of 1997. 12122 of 1997, have not been given appointments.

13. It is now well-settled 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 be appointed unless relevant service rule says to the contrary. In this connection, a reference may be made to Shankarson Dash's case, (supra) ; Sabita Prasad v. State of Bihar, (1992) 3 SCALE 361 ; State of Bihar and others v. Secretariate Assistants' Successful Examinees Union 1996 and others, (1993) 5 SLR 598 ; State of M. p. and others v. Raghubir Singh Yadav, (1994) 6 SCC 151 and N. Mohanan v. State of Kerala, 1997 (2) ESC 1075. Therefore the petitioners in Writ Petition Nos. 20264 of 1996, 40892 of 1996. 494 of 1997, 6596 of 1997, 6674 of 1997 and 12102 of 1997 are not entitled to claim appointment on the posts of Urdu Translator,

14. In the result, I find that Writ Petition Nos. 7911 of 1995, 10077 of 1995, 11684 of 1995, 24022 of 1995, 34014 of 1995, 30418 of 1995, 35504 of 1995, 34723 of 1995 and 34728 of 1995 succeed and are allowed. The impugned order dated

7.8.1995 passed by the State Government cancelling the select list which was published on 12.1.1995 is hereby quashed. The petitioners in the said writ petitions who have been appointed shall continue to work on the posts on which they are working and shall be paid their salary with arrears. Those petitioner in Writ Petition Nos. 7911 of 1995 10077 of 1995, 11684 of 1995, 24022 of 1995, 34014 of 1995, 30418 of 1995, 35504 of 1995, 34723 of 1995 and 34728 of 1995 have not been appointed shall be appointed on the basis of their merit in the select list published on 12.1.1995 on the existing vacancies or the vacancies which may occur in the near future.

15. Writ Petition Nos. 20264 of 1996, 40892 of 1996, 494 of 1997, 6596 of 1997, 6674 of 1997 and 12102 of 1997 are devoid of any merits and substance and are accordingly dismissed.

16. No order as to costs is made.

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