

State of U.P. and ors. Vs. Brij Kishore Pandey and anr.

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Court : Allahabad

Decided On : Sep-19-2003

Reported in : 2003(4)AWC3448; (2004)1UPLBEC166

Judge : M. Katju and ;U. Pandey, JJ.

Acts : [Constitution of India](#) - Article 16

Appeal No. : Special Appeal No. 105 of 2003

Appellant : State of U.P. and ors.

Respondent : Brij Kishore Pandey and anr.

Advocate for Def. : D.R. Chaudhary, ;Surendra Tewari, ;Deepak Kumar Srivastava, ;V.K. Shukla and ;Shash Nandan, Advs.

Advocate for Pet/Ap. : Sabha Jeet Yadav, S.C.

Disposition : Appeal dismissed

Judgement :

ORDER

M. Katju and U. Pandey, JJ.

1. Heard learned counsel for the parties.

2. This special appeal has been filed against the judgment and order of the learned single Judge dated 10.5.2001. We have carefully perused the said judgment. It appears that earlier one of us (M. Katju, J.) allowed Writ Petition No. 40495/1996, Ravindra Nath and Ors. v. State of U. P. on 28.5.1997.

3. The facts in the said case were that 475 posts of Sub-Inspector of Civil Police for males and 50 for females were advertised in October, 1991. The petitioners appeared in the examination and alleged that they qualified but since no waiting list was prepared, they were not considered for appointment, as they were not in the main select list.

4. The learned single Judge in that petition (Writ Petition No. 40495 of 1996) observed :

'In the present case no proper reason has been given by the respondents as to why a waiting list has not been prepared. Hence, in my opinion the action of the respondents, is arbitrary. In my opinion there must be a waiting list so that if some of selected candidates do not join then the persons in the waiting list can be considered. This is in accordance with the judgment of the Supreme Court in AIR 1996 SC 703 and the decision of Hon'ble Mr. Justice Om Prakash in Writ Petition No. 18930 of 1989, Santosh Kumar Singh v. State of U. P. and Ors.

Following the said decisions, this writ petition is allowed. The respondents are directed to prepare a waiting list in the said examination and consider, and appoint the persons in the waiting list in accordance with merit to the extent of the number of candidates in the main select list who had not Joined.'

5. Against the judgment of the learned single Judge, Special Appeal No. 313 of 1998 was filed before the Division Bench, which was dismissed on 3.2.1999 and the judgment of the learned single Judge was upheld. While affirming the judgment of the learned single Judge, the Division Bench directed, that 136 posts of Sub-Inspector of Civil Police, which had not been filled in, must be filled in from the waiting list.

6. We are informed that against the judgment of the Division Bench, S.L.P. was filed in the Supreme Court being S.L.P. No. 8923/1999, State of U. P. and Ors. v. Ravindra Nath Rai and Ors., which was dismissed on 26.7.1999. Hence, the judgment of the learned single Judge as well as Division Bench became final.

7. We are informed that out of the 136 selected candidates, who did not join, some had not joined at all, while others had joined but left shortly thereafter. Hence, as directed by the learned single Judge in W.P. No. 40495/1996, which judgment was upheld in special appeal and S.L.P. in place of these 136 persons candidates in the waiting list should have been given appointment.

8. We are informed by the learned standing counsel that 124 candidates did not join the post while 12 persons joined, but they resigned or left shortly thereafter. We are of the opinion that all these vacancies have to be filled in from the waiting list and hence altogether 136 posts should be filled in from the waiting list.

9. The State Government gave appointments to only 99 persons who joined from the waiting list instead of 136, as directed by the Court. Hence, clearly the State Government should have made 37 more appointments as directed by the Court.

10. It has been mentioned in para 16 of the counter-affidavit filed before the learned single Judge as follows :

^;g fd ;kfpdk ds izLrj 23 esaof.kZr dFku vLR; gSa A bl lEcU/k esa ;g dguk fd izrh{kk lwph eas 124 vH;fFkZ;ksaeas ls 99 vH;FkhZ izf'k{k.k izklr dj jgs gSa A 'ks'k vH;fFkZ;ksa esa 2vH;FkhZ esfMdy vuf QV gks tkus ds dkj.k izf'k{k.k esa ugha Hksts x;s gSaa A dqNvH;fFkZ;ksa dk pfj= lR;kiu iw.kZ u gksus ds dkj.k ugha Hksts x;s gSa A**

11. From the above averments made in the counter-affidavit of the State Government, it is evident that State Government has selected only 99 persons instead of 136. Hence, we direct the State Government to make 37 more appointments from the waiting list strictly in accordance with merit, whether such persons filed writ petitions or not.

12. We, therefore, agree with the decision of the learned single Judge. The special appeal is dismissed.

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