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Court : Allahabad

Decided On : Feb-22-2001

Reported in : (2001)2UPLBEC1599

Judge : Sudhir Narain, J.

Acts : [Constitution of India](#) - Article 226(3)

Appeal No. : Civil Misc. Writ Petition No. 6626 of 2001

Appellant : Ashok Kumar Jain and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : Pushpendra Singh, Adv.

Advocate for Pet/Ap. : S.C. Budhwar, Adv.

Disposition : Petition allowed

Judgement :

Sudhir Narain, J.

1. The petitioners have sought to quash the order dated 6.2.2001 whereby the appointments of the petitioners to the post of Junior Engineer have been cancelled by the Engineer-in-Chief, Irrigation Department, U.P. Lucknow, respondent No. 2

2. Briefly stated the facts are that U.P. Public Service Commission, Allahabad issued an advertisement in the daily Newspaper Rashtriya Sahara on 2.7.1998 inviting applications from the candidates for recruitment on the post of Junior Engineer (Civil) and Junior Engineer (Mechanical) in U.P. Irrigation Department. The petitioners applied for the posts. They appeared in preliminary examination on 10th October, 1998 and after being successful in the said examination they were invited to appear in the main examination on 29th/30th November, 1999. They were called for interview and appeared before the interview committee between 26.6.2000 to 23.7.2000. They were selected for the post of Junior Engineer (Civil). The result of the examination was published in the daily newspaper 'HINDUSTAN' on 5.8,2000. A list containing names of 593 candidates was shown who had been selected for the post for which the selection was held. The petitioners were declared as successful in the said list.

3. The petitioners were given appointment on the post of Junior Engineer (Civil) vide order dated 22.11.2000 passed by respondent No. 2 The petitioners, on receiving appointment letters, joined the post immediately.

4. Sri A. K. Rai and nine other persons filed writ petition No. 44986 of 1998 seeking regularisation on the post of Junior Engineer (Civil) on which they were working. In the said writ petition the Court passed the following interim order on 21.1.1999.

'Learned Standing Counsel prays for and is granted four weeks time to file counter affidavit stating therein whether rules have been framed pursuant to the direction (i) and to contain in the judgment of the Court dated 24.6.1998 rendered in W.P. No. 13197/96 and others connected writ petitions. It may be observed that in the Special Appeal No. 462 of 1998 preferred against the said Judgment operation of directions (i) and (ii) have not been stayed by the Appellate Bench in its order dated 9.7.1998.

List thereafter along with Writ Petition No. 36603 of 1998.

It is provided as an interim measure that selection pursuant to the impugned advertisement may be completed but the same shall not be given effect to till the

next date of hearing.

Sd/-S.R. Singh, J.

21.1.1999.'

5. the petitioners in writ petition No. 44986 of 1998 preferred a contempt petition in this Court being Civil Contempt Petition No. 4367 of 2000, A.K. Rai and Ors. v. A.K. Tyagi and Ors., with the allegation that the respondents committed contempt of Court by flouting the order of this Court passed on 21.1.1999 wherein the Court had directed that the selection pursuant to the impugned advertisement may be completed but the same shall not be given effect to till the next date of hearing but after completion of the selection process the respondents issued appointment letters and thereby committed contempt of Court. On the said contempt petition the Court issued notice to the respondents. Respondent No. 2 after coming to know of the order passed by the Court in contempt petition, has cancelled the appointments of the petitioners vide order dated 6.2.2001 with the observation that the appointments of the petitioners shall be considered after the High Court passes order in Writ Petition No. 44986 of 1998. This order has been challenged in the present writ petition.

6. I have heard Sri S.C. Budhwar, learned Senior Counsel for the petitioners, Sri Pushpendra Singh and learned Standing Counsel for the respondents and also Sri Ashok Khare, learned Senior Counsel who is a Counsel for the petitioners in Writ Petition No. 44986 of 1998.

7. It is not denied that the petitioners were given appointment on 27th November, 2000 and they have been working since then. Their appointments have been cancelled simply on the ground that the petitioners' appointment shall be considered after the decision in Writ Petition No. 44986 of 1998. The appointments of the petitioners have not been cancelled on the ground that there was any irregularity in the selection.

8. There are only ten petitioners in Writ Petition No. 44986 of 1998 and they have claimed regularisation on the post of Junior Engineer (Civil) on the ground that

they have been working since long and are entitled for regularisation. Today I have also heard the arguments of the learned Counsel for the parties in Writ Petition No. 44986 of 1998.

9. The respondents have advertised for 606 posts out of which the list of 593 candidates was shown as selected. The impugned order indicates that 584 candidates were given appointment. There does not seem any justification to cancel all the appointments if only ten persons are claiming regularisation to the post of Junior Engineer. It is contended that there are other petitions in which there are certain other candidates who are also claiming regularisation. Those writ petitions are not listed and I have been informed that some of the Petitions are pending at Lucknow Bench. I have not been given the details and particulars of those writ petitions. It is however, submitted that the number of petitioners in all those cases shall not exceed 50.

10. The intention of the Court passing interim order on 21.1.1999 was to protect the interest of those petitioners who were claiming regularisation. If their interest is protected there cannot be any grievance in regard to appointments which are made in favour of other candidates who have been selected. The respondents have issued appointment letters to 584 candidates and they are alleged to have been working since 22nd November, 2000.

11. Considering the entire facts and circumstances the writ petition is allowed. The order dated 6.2.2001 is hereby quashed. The petitioners shall be permitted to join their duties provided they give undertaking on affidavit before respondent No. 2 duly sworn by a Notary that in the event any person who has filed writ petition in regard to regularisation of service is ultimately found to be entitled for regularisation, they shall not claim any right and their appointments can be cancelled. It is made clear that if the appointment is to be cancelled, the number of candidates will be counted from the lowest in the order of merit. For example 1950 candidates are entitled to be regularised the appointment of last 50 persons in the list shall be cancelled, As the list has not been produced before me, to avoid any difficulty each of the petitioners shall give undertaking that in the event any other person is regularised to the post which they are holding they will have no objection

to the cancellation of their appointment.

12. The petitioners shall be paid salary for the period they work.

13. In the end I may clarify that in regard to contempt petition, I have not adjudicated upon in regard to the conduct of the respondents in making appointments during the pendency of the interim order of this Court.

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