

State of U.P. and anr. Vs. Rakesh Kumar

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Court : Allahabad

Decided On : Nov-15-2002

Reported in : 2003(1)AWC327

Judge : S.K. Sen, C.J. and ;R.K. Agrawal, J.

Appeal No. : Special Appeal No. 172 of 2000

Appellant : State of U.P. and anr.

Respondent : Rakesh Kumar

Advocate for Def. : Jai Krishna Tiwari and ;Shashi Nandan, Advs.

Advocate for Pet/Ap. : Sabhajeet Yadav, Adv. and ;S.C.

Disposition : Appeal dismissed

Judgement :

R.K. Agrawal, J.

1. The present special appeal has been filed against the judgment and order dated 10th March, 1999 passed by the learned single Judge whereby a direction in the nature of writ of mandamus has been issued commanding the present appellants who were respondents in the writ petition to give appointment to the respondent-writ petitioner on the post of Machine Assistant which fell vacant on 3rd November,

1989. This Court, however, directed that the service shall be deemed to have commenced after one month from the date when he had approached this Court, namely, 14th September, 1993, and the said period shall be counted towards his service. Further, if the petitioner has crossed the age limit in the meantime, the same should be overlooked since he had become eligible for appointment on 3rd November, 1989. However, he shall not be entitled for payment of salary for the period till the date of his appointment pursuant to this order. In case, the petitioner's appointment is made beyond the period of four months as directed by the learned single Judge, in that event, he shall be entitled to payment of salary immediately after expiry of four months from the date a copy of this order is produced before the concerned respondent.

2. Briefly stated, the facts giving rise to the present special appeal, are as follows :

'The appellant advertised post of Machine Assistant. It appears that vacancy against three posts was already in existence. The fourth vacancy was anticipated on account of imminent promotion of one of the Machine Assistants to the post of Rotary Machine Operator. A select list was prepared on 24th January, 1989, against four posts of Machine Assistants. The name of the respondent-writ petitioner was placed at serial No. 4 in the list. Persons appearing at serial Nos. 1, 2 and 3 were given appointment on the existing vacant posts of Machine Assistants. When Nasir Ahmad, Machine Assistant was promoted to the post of Rotary Machine Operator vide order dated 29th August, 1989, the post held by Nasir Ahmad fell vacant on 3rd November, 1989, on his Joining the promoted post. On this post, the respondent-writ petitioner was to be accommodated. However, by reason of a ban imposed by the State Government on 26th February, 1989, from filling up the post, the petitioner was informed through letter dated 21st December, 1989, that he could not be appointed because of the ban imposed on direct recruitment, but he will be given appointment as soon as the ban is lifted. The letter dated 21st December, 1989, is available on record as Annexure-1 to the counter-affidavit filed by the present appellant in the writ petition. The ban was lifted in the year 1993 but the petitioner was not given any appointment. The petitioner approached this Court by filing Civil Misc. Writ Petition No. 32743 of 1993, giving rise to the present special appeal. The learned single Judge allowed

the writ petition and issued certain directions by judgment and order dated 10th March, 1999, which has been challenged in the present appeal.

3. We have heard Sri Sabhajeet Yadav, learned standing counsel for the appellants and Sri Jai Krishna Tiwari holding brief of Sri Shashi Nandan, learned Advocate appearing on behalf of respondent-writ petitioner.

4. Sri Sabhajeet Yadav, learned standing counsel submitted that the life of the select list which was prepared on 24th January, 1989, was only for one year and if the respondent-writ petitioner has not been given appointment during the aforesaid period, the select list ceases to remain in existence and the respondent-writ petitioner cannot claim his appointment as a matter of right. He further submitted that in the year 1989 the State Government had imposed a ban on recruitment and in view of this subsequent development, appointment was not given, thus, the respondent-writ petitioner cannot claim any right of appointment. He further submitted that merely the name of the respondent-writ petitioner was placed in the select list, it did not give any right of being appointed. According to him, in the year 1993 when the ban was lifted by the State Government, the post of Machine Assistant was to be filled up from amongst the candidates belonging to Scheduled Caste, Scheduled Tribes and Backward Class category as it fell in the share of reserved category post. Thus, the learned single Judge was not justified in issuing writ of mandamus to the appellants and directing them for giving appointment to the respondent-writ petitioner.

5. Sri Jai Krishna Tiwari, learned counsel for the respondent-writ petitioner, however submitted that the name of the respondent-writ petitioner was placed at serial No. 4 in the select list and in fact the advertisement was made for filling the post of Machine Assistant in respect of the vacancy which was to come into existence during the year. He further submitted that the respondent-writ petitioner was informed vide letter dated 21st December, 1989, that he would be given appointment immediately when the ban is lifted and, therefore, after the ban has been lifted he cannot be denied appointment as the promise held out to the petitioner binds the appellants on account of doctrine of promissory estoppel. The respondent-writ petitioner awaited for more than four years in the hope of being

appointed on the post of Machine Assistant. Thus, the learned single Judge was justified in issuing writ of mandamus commanding the appellants to give appointment to the respondent-writ petitioner. He relied upon a decision of the Supreme Court in the case of Bhim Singh and Ors. v. State of Haryana and Ors., (1981) 2 SCC 673. He further submitted that the person whose name is included in the select list acquires a right of appointment. In this behalf he cited a decision of the Supreme Court in S. Govindaraju v. Karnataka S. R. T. C. and Anr., (1986) 3 SCC 273. He next submitted that a person who has been selected for a particular post is entitled to be appointed and any ban on appointment placed by the Government cannot take away the right to be appointed as held by this Court in Pradeep Kumar Mishra and Ors. v. V. P. State Road Transport Corporation, Lucknow and Ors., (1991) 2 UPLBEC 796. He also relied upon a decision of this Court in Vijay Kumar Gupta v. U. P. State Road Transport Corporation, Lucknow and Ors., (1996) 3 UPLBEC 1944, in which this Court had taken the similar view.

6. In rejoinder Sri Sabhajeet Yadav relied upon a decision of the Supreme Court in the case of Sri Kant Tripathi and Ors. v. State of U. P. and Ors., 2001 (4) AWC 3010 (SC) : JT 2001 (7) SC 519, wherein Hon'ble the Supreme Court in paragraph 35 of the judgment has interpreted the words 'the vacancies likely to occur in the next two years' and held that the expression 'vacancies likely to occur in the next two years' would obviously mean the vacancies, which in all probability, would occur and can only refer to the cases when people would superannuate within the next two years and nobody can anticipate as to how many people would die or how many would compulsorily be retired or removed or dismissed. According to him the vacancy, which may be caused on account of promotion of Nasir Ahmad, could not have been taken into account for making the select list. Thus, the respondent-writ petitioner was not entitled for being appointed.

7. Having heard learned counsel for the parties, we find that it is not in dispute that the name of the respondent-writ petitioner was Included at serial No. 4 in the select list for the post of Machine Assistant. There already existed three vacancies which were filled up by the persons whose names stood at serial Nos. 1, 2 and 3. One post of Machine Assistant was to fall vacant in the year 1989 as Nasir Ahmad was due for promotion and that is why select list of four persons were prepared by

the authorities. Nasir Ahmad was, in fact, promoted on 29th August, 1989, and he joined the promotional post on 3rd November, 1989. When the respondent-writ petitioner approached the authorities for giving appointment, he was informed in writing that on account of a ban imposed by the State Government, on direct recruitment, he cannot be given appointment but as soon as the ban is lifted he shall be given an appointment. The ban was lifted in the year 1993. The respondent-writ petitioner waited for more than four years in the hope of getting an appointment pursuant to the promise made by the authorities as contained in the letter dated 21st December, 1989. The question is, as to whether, after the ban was lifted, the respondent-writ petitioner is entitled for being appointed on the post of Machine Assistant or not. The Hon'ble Supreme Court in the case of S. Govindaraju (supra), has held that once a candidate is selected and his name is included in the select list for appointment in accordance with the regulations, he gets a right to be considered for appointment as and when vacancy arises. Thus, the respondent-writ petitioner gets a right to be considered for appointment on the post of Machine Assistant since his name was placed in the select list. It is not disputed that the authorities vide letter dated 21st December, 1989, had assured the respondent-writ petitioner that he shall be given an appointment immediately on the lifting of the ban by the State Government. He waited for more than four years. As held by the Supreme Court in the case of Bhim Singh (supra), the respondent-writ petitioner having bona fide believed the representation made by the State and having acted thereon cannot now be defeated of his hope to get appointment which has converted into his right on account of the application of the doctrine of promissory estoppel. Thus, the respondent-writ petitioner is entitled for appointment on the post of Machine Assistant as soon as the State Government lifts the ban. It may, however, be mentioned here that this Court in the case of Pradeep Kumar Mishra (supra), has held that the selected candidates for a particular trade are entitled to be appointed against the vacancies which occurred during the period for which the select list/waiting list is stipulated to remain valid. The vacancy on the post of Machine Assistant occurred on 3rd November, 1989, i.e., within one year of the preparation of the select list which was prepared on 24th January, 1989. The select list was valid and was in force during that period. Thus, the respondent-writ petitioner was entitled for appointment on the said post.

The submission of the learned standing counsel that the person whose name has been placed in the select list has no right to claim the post, cannot be accepted in view of the authoritative pronouncement in the case of S. Govindaraju (supra), which has been followed by this Court in the case of Pradeep Kumar Mishra (supra). So far as the decision of Hon'ble Supreme Court in the case of Sri Kant Tripathi (supra), is concerned, Hon'ble Supreme Court while interpreting the phrase 'the vacancies likely to occur in the next two years' in Rule 8 (1) of the U. P. Higher Judicial Service Rules, 1975, has held that nobody can anticipate as to how many people would die or how many would compulsorily be retired or removed or dismissed or even would be elevated to the higher posts. The expression 'vacancies likely to occur in the next two years' would obviously mean the vacancies, which in all probability, would occur. In other words, it can only refer to the cases when people would superannuate within the next two years. In view of the principle laid down by the Supreme Court in the aforesaid decision, we find that the vacancy on account of promotion of Nasir Ahmad from the post of Machine Assistant to Rotary Machine Operator was due in the year 1989 and, therefore, the authorities have rightly anticipated the said vacancy. Thus, the authorities were perfectly justified in preparing the select list for fourth vacancy which was likely to occur in that year. So far as the question that the fourth post of Machine Assistant was to be filled up from amongst the reserved category candidate is concerned, suffice it to mention that the learned standing counsel has not brought on record any material to show that the said post was to be filled up from the reserved category candidate. Thus, the plea taken by the learned standing counsel cannot be sustained.

8. In view of the foregoing discussions, we hold that the respondent-writ petitioner was entitled for being given appointment on the post of Machine Assistant.

9. In the result, we do not find any merit in this special appeal. The special appeal, accordingly, fails and is dismissed.