

**Devendra Kumar Vs. State of U.P. and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/488484](http://sooperkanoon.com/488484)

**Court :** Allahabad

**Decided On :** Sep-17-2004

**Reported in :** 2005(1)AWC94

**Judge :** Rakesh Tiwari, J.

**Acts :** [Constitution of India](#) - Articles 14 and 16

**Appeal No. :** C.M.W.P. No. 33620 of 2004

**Appellant :** Devendra Kumar

**Respondent :** State of U.P. and anr.

**Advocate for Def. :** S. C.

**Advocate for Pet/Ap. :** R.P. Pandey and ;S.P. Pandey, Advs.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**Rakesh Tiwari, J.**

1. Heard counsel for the parties and perused the record.

2. This writ petition has been filed for issuance of a writ, order or direction in the nature of mandamus commanding the respondents to issue appointment letter to the petitioner in pursuance of his selection as class IV employee in the department of the respondents within a stipulated period.

3. On 9.4.2003 an advertisement was issued by respondent No. 2 inviting applications from the eligible candidates for the post of class IV employee in the department of Bal Vikas Evam Pushtahar. The petitioner applied for the said post. It is stated that after interview the result was declared in which the petitioner was declared successful and his name found place in the 'select list'.

4. It is alleged that on 7.10.2003 a Government order was issued by which the entire selection had been cancelled. Consequent upon the aforesaid Government order respondent No. 2 passed an order dated 16.10.2003 cancelling all the appointment letters issued to the selected candidates. The candidates who were already appointed and whose appointment was cancelled by virtue of the aforesaid Government order filed W. P. No. 49351 of 2003, Manoj Kumar and Ors. v. State of U. P. and Ors.. The aforesaid writ petition was allowed vide judgment and order dated 7.5.2004. In compliance of the aforesaid judgment of this Court the petitioners of W. P. No. 49351 of 2003, were given appointment but the petitioner in the present writ petition, has not been issued appointment letter. Hence, this writ petition.

5. The counsel for the petitioner submits that the selected candidates along with the petitioner, who were issued appointment letter, are already working and are getting their salary, hence the petitioner is also entitled to get the similar benefits. He further submits that the petitioner could not be given appointment letter on account of the Government order dated 7.10.2003 by which the entire selection was cancelled and since the aforesaid Government order dated 7.10.2003 has been set aside, the respondents may be directed to issue appointment letter to the petitioner.

6. The counsel for the petitioner has relied upon R. S. Mittal v. Union of India, 1995 (Supp) (2) SCC 230 ; Jai Narain Ram v. State of U. P. and Ors., AIR 1996 SC 703 and Sheo Shyam and Ors. v. State of U. P. and Ors., JT 2004 (2) SC 467.

7. In *R.S. Mittal (supra)* it has been held that although a person on the select panel has no vested right to be appointed to the post for which he has been selected, the appointing authority cannot ignore the select panel or on its whims decline to make the appointment. When a person has been selected by the Selection Board and there is vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. In the aforesaid case, there was mere inaction on the part of the Government which amounted to denial of appointment without a proper reason but in the peculiar facts of that case the relief was refused by the Apex Court. This case does not help the petitioner as in the instant case there was a Government order imposing ban and the authorities were justified in not issuing the appointment letter pursuant thereof. The authorities had not acted on its whims and the petitioner was not in merit position.

8. In the case of *Jai Narain (supra)* it has been held that appointment was to be made through Public Service Commission against reserved quota for four posts. The candidates duly selected on those posts did not opt to join the service. Denial of appointment to next four qualified candidates standing in merit list on ground that there was no requisition by the State Government to Service Commission for preparation of waiting list was held to be improper and the Commission was directed to recommend and the State Government was directed to issue appointment orders to them.

9. In the last case, *Sheo Shyam and Ors. v. State of U. P. and Ors.*, it has been held that appointment was made on the basis of the recommendations of the Public Service Commission. Some of the candidates who were in the waiting list claimed entitlement to be also considered for the post. The appellants who were on the waiting list were denied appointment as the appointment was made by the State Government in instalments and two and half years time had elapsed. It was claimed by appellant *Sheo Shyam and Ors.* that the period of one year should be reckoned from the last requisition and not from the first requisition.

10. The counsel for the petitioner has then relied upon the judgment of this Court in Civil Misc. Petition No. 1 49351 of 2003, *Manoj Kumar and Ors. v. State of U. P.*

and Ors., along with 49 other connected cases decided on 7.5.2004. In that case, the appointments were cancelled by the Director Bal Vikas Pushtahar on the ground that ten different Boards have not been constituted for interviewing the candidates. There was no illegality or infirmity in the selection. The moot point for consideration was whether constitution of ten selection boards without seeking prior permission from the Government was proper and the cancellation of appointments of the petitioners was sustainable in law or not. It was held by the Court that there was no sufficient cause for cancellation of the appointments of the petitioners and termination was against all canons of the principle of natural justice resulting in miscarriage of justice.

11. It is apparent from the case law cited by the petitioner that the controversy involved in the present case is different and there does not apply to the facts and circumstances of the present case. In the instant case, only those candidates had been offered appointment who had been issued appointment letter and had joined the duties before the entire selection was cancelled by the State Government. The petitioner has not brought any instance before this Court in which any appointment has been made after the cancellation of the selection. The petitioner has not challenged the order of the Government dated 7.10.2003.

12. Admittedly, the petitioner has not been issued appointment letter. It is settled law that a person on the select panel has no vested right to be appointed to the post for which he has been selected.

13. For the reasons stated above, the writ petition is dismissed. No order as to costs.