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Court : Allahabad

Decided On : Sep-05-2003

Reported in : (2004)1UPLBEC622

Judge : R.B. Misra, J.

Acts : Allahabad High Court Rules, 1952 - Rule 2

Appeal No. : Civil Misc. Writ Petition No. 8779 of 1999

Appellant : Sanjay Kumar Saxena

Respondent : Circle Development Officer (Personal Department), State Bank of India and ors.

Advocate for Def. : Navin Sinha and ;Vipin Sinha, Advs. and ;S.C.

Advocate for Pet/Ap. : Neeraj Agarwal and ;R.D. Agarwal, Advs.

Disposition : Petition dismissed

Judgement :

R.B. Misra, J.

1. Heard Sri R.D. Agarwal learned Counsel for the petitioner and the learned Standing Counsel.

2. With the consent of the parties, this writ petition is being disposed of at this stage in view of Second Proviso to Rule 2 of the Chapter XXII of the Allahabad High Court Rules, 1952.

3. In this petitioner prayer has been made to quash the order dated 16.2.1999 (Annexure-1 to the writ petition). Further, prayer has been made for directing the respondents not to disturb or interfere in the peaceful working of the petitioner at Zonal Office Bareilly, till the final disposal of this petition.

4. According to the petitioner, he is B.Sc. and CAIIB-I and Certificate Course in Computer Programming after due selection he was appointed on 23.5.1983 as a Assistant Typist (Clerk) and in February, 1986 at the relevant time he was posted at Zonal Office State Bank of India, Bareilly. It appears that the test/interview was conducted for promotional post in August, 1987 and the panel of the successful candidate appeared in the said test was prepared and those who were found above and were eligible were given promotional appointment to the post of Computer Operators. However, the petitioner's claim was agitated after 11 years to consider his appointment from the panel of successful candidates prepared in the year 1987.

5. As indicated in the impugned order dated 16.2.1999, the required number of Computer Operators at the relevant time were appointed amongst the panel list and out of the qualified person and since no fresh vacancies were further available, therefore, petitioner was not given promotion for such panel list and the petitioner was communicated by the impugned order dated 16.2.1999 against which the writ petition has been preferred. This petitioner has not indicated anything as how long the select list shall be kept alive. In absence of any rules, select list is to kept ready normally for one year and in absence of vacancy the petitioner was rightly not considered for promotion. Even if a person placed in the select list has no legal right of promotion in absence of vacancy. It has not been argued or it has not been indicated in the writ petition anywhere that any person shown in the panel and Junior to the petitioner was ever deployed during the life

time of the select list.

6. On behalf of the petitioners, it was argued that in 1995 Supp. (2) SCC 230, R.S. Mittal v. Union of India, where the person after being selected and put in the panel of the selected candidates was not to be denied the appointment without a proper reason, however, in peculiar facts and circumstances relief was refused by the Supreme Court by observing in Para 10 of below :--

'10. 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 a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to the candidate at Sl. No. 1 of the select list within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.'

7. It was also argued on behalf of the petitioners that in (2000) 9 SCC 283, Munna Roy v. Union of India and Ors., the Supreme Court after acknowledging that mere inclusion in select list does not confer any right to the Selectee and mandamus could not be issued but the Court could interfere when an Administrative Authority took a decision on erroneous reasons namely dubious method was suspected in the selection inasmuch as the candidate was a graduate, whereas, the minimum qualification for selection was matriculation and when the reason was described as arbitrary, irrational and not germane. In those circumstances, the decision to cancel the panel on this score could be set-aside. In view of the observations made by the Supreme Court in R.S. Mittal (supra), as well as in Munna Roy (supra), the action of respondent in not declaring the result of selection in question

and subsequently giving appointment to the petitioners is arbitrary inaction discriminatory as the same are in derogation to the spirit of Article 14 of the Constitution, as contended on behalf of the petitioners.

8. However, as contended on behalf of learned Counsel for Nagar Nigam that in absence of original records, documents the selection process could not be said to be complete and no direction could be issued to finalise the selection on the basis of duplicate records in peculiar facts and circumstances, when the Selection Committee before it could finalise the selection and make recommendation became obsolete, therefore, for taking any further steps a fresh Selection Committee has to be constituted, which too, as well as Nagar Nigam are not under statutory obligation to declare the result in absence of original records/documents. Even after selection the petitioners do not acquire legal right of appointment even if vacancy is persisting for sometime. According to the respondents for the sake of argument even if the petitioners were recommended to the post of 'Naib Moharrir', after declaration of the result of said selection in question, do not acquire any legal right merely because they were likely to be put in the penal of select list. According to the respondents, the selection in question has become obsolete and cannot be revived irrespective of the fact that subsequent selection for recruitment to the post of 'Naib Moharrir' in Nagar Nigam had taken place or not.

9. In (2002) 4 SCC 726, Vinodan T. and Ors. v. University of Calicut and Ors., the Supreme Court has held that the appointments to the vacancies must be made in accordance with law, if any and the Appointing Authority cannot scrap the panel of select list during the period of its validity except for well-founded. reasons. It also observed in Para 14 as below :--

'14. The principle that persons merely selected for a post do not thereby acquire a right to be appointed to such post is well established by judicial precedent. Even if vacancies exist, it is open to the authority concerned to decide how many appointments should be made.'

10. In (2002) 5 SCC 195, S. Renuka and Ors. v. State of U.P. and Anr., the Supreme Court while acknowledging the decision made in above two cases R.S. Mittal (supra) and Munna Roy (supra), has, however, held that no right accrues to

a person merely because a person is selected and his or her name is put on a panel and the candidates have no right to claim the appointment.

11. In (2003) 2 UPLBEC 1697, State of Andhra Pradesh and Ors. v. D. Dastagiri and Ors., the Supreme Court has taken the similar view and has held that no vested right accrue to the candidates to be appointed even if selection process was completed and the Supreme Court has observed in Para 4 as below :--

'4. There is serious dispute as to the completion of selection process. According to the appellants, the selection process was not complete. No record has been placed before us to show that the selection process was complete, but it is not disputed that the select list was not published. In Paragraph 16 of the counter-affidavit, referred above, the respondents themselves had admitted that the selection process was cancelled at the last stage. In the absence of publication of select list, we are inclined to think that the selection process was not complete. Be that as it may, even if the selection process was complete and assuming that only select list was remained to be published, that does not advance the case of the respondents for the simple reason that even the candidates who are selected and whose names find place in the select list, do not get vested right to claim appointment based on the select list. It was open to the State Government to take a policy decision either to have prohibition or not to have prohibition in the State. Certainly, the Government had right to take a policy decision. If pursuant to a policy decision taken to impose prohibition in the State, there was no requirement for the recruitment of Constables in the Excise Department, nobody can insist that they must appoint candidates as Excise Constables. It is not the case of the respondents that there was any mala fide on the part of the appellants in refusing the appointment to the respondents after the selection process was complete. The only claim was that the action of the appellants, in the appointing the respondents as Excise Constables, was arbitrary. In the light of the facts that we have stated above, when it was open to the Government to take a policy decision, we fail to understand as to how the respondents can dub the action of the respondents as arbitrary, particularly, when they did not have any right as such to claim appointments. In the absence of selection and publication of select list, mere concession or submission made by the learned Government Pleader on behalf of

the appellant-State cannot improve the case of the respondents. Similarly, such submission cannot confer right on the respondents, which they otherwise did not have.'

12. A person has a right only to be considered being eligible as per the Rules for employment. He can raise the grievance provided a person having lesser merit in the same category is offered appointment.

13. Mere inclusion of the name of a candidate in the select list does not confer any right of appointment [vide Shanker Sen Das v. Union of India and Ors., AIR 1991 SC 1612; Asha Kaul v. State of Jammu and Kashmir, (1993) 2 SCC 573; Union of India and Ors. v. S.S. Uppai, AIR 1996 SC 2340; Hanuman Prasad v. Union of India and Ors., (1996) 10 SCC 742; Bihar Public Service Commission v. State of Bihar, AIR 1998 SC 2280; Syndicate Bank and Ors. v. Shankar Paul and Ors., AIR 1977 SC 3091 and Vice Chancellor University of Allahabad v. Dr. Anand Prakash Mishra and Ors., (1997) 10 SCC 264].

14. As there is no enforceable right to appointment, mandamus cannot be issued to the respondents to appoint petitioner [vide Punjab S.E.B. v. Seema, 1999 SCC (S/S) 629].

15. The Supreme Court in Union of India and Ors. v. Ishwar Singh Khatri and Ors., 1992 Suppl. (3) SCC 84, has held that selected candidates have right to appointment only against 'vacancies notified' and that top during the life of the select list as the panel of selected candidates cannot be valid for indefinite period. Moreover, empanelled candidates 'in any event cannot have a right against future vacancies'. In State of Bihar v. Secretariat, Assistant S.E. Union, 1986 and Ors., AIR 1994 SC 736, the Supreme Court has held 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 the appointed unless relevant service rules provides to the contrary.

16. In Surinder Singh v. State of Punjab, 1997 (8) SCC 488, the Supreme Court observed as under :--

'.....If the waiting list in one examination was to operate as infinite stock for power, there is danger that the State may resort to the device of not holding the examination for years together and pick-up candidates from the waiting list as and when required. The Constitutional discipline requires that improper exercise of power which may result in creating a vested interest and perpetuating the waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service..... Exercise of such power (to requisition the post) has to be tested on the touch-stone of reasonableness.....'

17. It is settled legal proposition that no relief can be granted to the candidate if he approaches the Court after expiry of the Select List. [Vide J. Ashok Kumar v. State of Andhra Pradesh and Ors., JT (1996) 3 SCC 320; State of Bihar and Ors. v. Mohd. Kalimuddin, AIR 1996 SC 1145; State of Uttar Pradesh v. Harish Chandra, AIR 1996 SC 2173 and State of U.P. and Ors. v. Ram Swamp Saroj, (2000) 3 SCC 699]. It has been held therein that if the selection process is over, select list had expired and appointments had been made, no relief can be granted by the Court at a belated stage.

However, in Purshottam v. Chairman, Maharashtra State Electricity Board and Anr., (1999) 6 SCC 49, the Supreme Court has held as under :--

'The right of the appellant to be appointed against the post to which he has been selected, cannot be taken away on the pretext that the said panel, in the meanwhile, expired and the posts had already been filled up by somebody else. Usurpation of post by somebody else is not on account of any fault on the part of the appellant but on the erroneous decision of the employer himself. In that view of the matter, appellant's right to be appointed on the post has been illegally taken away by the employer.'

The Supreme Court held that in such a situation the party should be given the relief. The aforesaid judgment had been delivered by a Bench consisting of two Hon'ble Judges of the Supreme Court and that too without taking note of the judgments referred to hereinabove.

18. A Bench of Three Hon'ble Judges of the Supreme Court, in Sushma Suri v. Government of National Capital of Delhi, (1999) 1 SCC 330, dealing with a case, wherein the Court had been approached at the stage when the process of selection had started but by the time the matter was decided, the selection process stood concluded and the appointments had been made, observed as under :--

'However, we are not in a position to give any relief to the appellant before us now because when she commenced the litigation, the recruitment process was still going on and it had gone too far ahead. In fact, the same has been completed and selected candidates, had already been appointed and they had reported for duty in different places and they are not impleaded as parties in these proceedings, it would not be proper to upset such appointment.'

19. There can be no dispute that wherever there is a conflict in two judgments of the Court, the judgment of the Larger Bench would prevail [Vide Rameshwar Shaw v. Distt. Magistrate, Burdwan and Anr., AIR 1964 SC 335; State of U.P. and Ors. v. Ram Chandra Trivedi, AIR 1976 SC 2547; N. Meera Rani v. Govt. of Tamil Nadu and Anr., AIR 1989 SC 2027; N.S. Gin v. Corporation of City of Mangalore and Ors., (1999) 4 SCC 697; Coir Board Ernakulam and Anr. v. Indira Devai P.S. and Ors., (2000) 1 SCC 224; Sub-Inspector Roop Lal and Anr. v. Lt. Governor, Delhi and Ors., (2000) 1 SCC 644; Lily Thomas and Ors. v. Union of India and Ors., (2000) 6 SCC 224 and S.H. Rangappa v. State of Karnataka and Ors., (2002) 1 SCC 538].

Thus, in view of the above we are of the considered opinion that in view of the Larger Bench judgments no appointment can be made after expiry of the Select List.

20. The Court has no competence to issue a direction contrary to law, [vide Union of India and Anr. v. Kirloskar Pneumatic Co. Ltd., (1996) 4 SCC 453; State of U.P. and Ors. v. Harish Chandra and Ors., (1996) 9 SCC 309 and Vice Chancellor, University of Allahabad and Ors. v. Dr. Anand Prakash Mishra and Ors., (1997) 10 SCC 264].

21. In State of Punjab and Ors. v. Renuka Singla and Ors., (1994) 1 SCC 175, dealing with a similar situation, the Supreme Court has observed as under :--

'We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations.'

22. Similarly, in Karnataka State Road Transport Corporation v. Ashrafulla Khan and Ors., JT 2002 (2) SC 113, the Supreme Court has held as under :--

'The High Court under Article 226 of the Constitution is required to enforce rule of law and not pass order or direction which is contrary to what has been injected by law.'

23. A waiting-list prepared in service matters by the Competent Authority is a list of eligible and qualified candidates who in order of merit are placed below the last selected candidate. How, it should operate and what is its nature may be governed by the rules. Usually, waiting-list is linked with selection or examination for which it is prepared. Such waiting-lists are prepared either under the rules or otherwise mainly to ensure that the working in the office does not suffer if the selected candidates do not join for one or other reason or the next selection or examination is not held soon. A candidate in the waiting-list in the order of merit has a right to claim that he may be appointed if one or more selected candidates do not join. But, when all the selected candidates join and no other vacancy arises due to resignation or otherwise within the period the list is to operate under the rules or within reasonable period when no specific period is provided, then the candidate from the waiting-list has no right to claim appointment unless a selection was held for it. He has no vested right except to a limited extent, indicated in the above or when the Appointing Authority acts arbitrarily and makes appointment from the waiting-list by picking and choosing for extraneous reasons. [Gujarat State Deputy Ex. Engineers Association v. State of Gujarat, 1994 Supp. (2) SCC 591].

24. The waiting-list is operative only for the contingency, that, if any, of the selected candidates does not join, then the candidates from the waiting-list may be pushed up in the vacancy so caused or if there is some extreme exigency the

Government may as a matter of policy decision pick up persons in order of merit from the waiting-list. But, the view that since the vacancies have not been worked out, therefore, the candidates from the waiting-list are entitled to be appointed does not appear to be sound. This practice may result in depriving those candidates who became eligible for competing for vacancies available in future. If the waiting-list in a recruitment examination was to operate as an indefinite stock for appointments, there is a danger that the State Government may resort to this device of not holding an examination for years together and pick up candidates from the waiting-list as and when required. The Supreme Court should not permit such improper exercise of power which may result in creating a vested interest at the cost of fresh candidates either from the open or even from service.

25. Panel prepared of the candidates in excess of the notified vacancies have no right to appointment, as when the life of the select list is one year, it has to be expired after one year unless rules so indicate to fill up all or any of the vacancies. The candidates in the merit list since have no indefeasible right to be appointed on existing vacancies in view of (1991) 3 SCC 47, Shankarshan Dash v. Union of India.

26. It is open to the State Government to decide how many appointments are to be made. The process of selection and selection for the purpose of recruitment against the existing or anticipated vacancies does not create a right to be appointed to the post which can be enforced by a writ of mandamus as observed by the Supreme Court in J&K; Public Service Commission v. Narinder Mohan, (1994) 2 SCC 630.

27. In the facts and circumstances, I do not find any illegality and impropriety in the said impugned order dated 16.2.1999.

28. The writ petition is dismissed.

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