

Arjun Prasad Pathak and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Oct-31-2002

Reported in : 2003(2)AWC1342

Judge : G.P. Mathur and ;N.K. Mehrotra, JJ.

Appeal No. : C.M.W.P. Nos. 1204, 24576 and 36283 of 1998 and 1654 of 2002

Appellant : Arjun Prasad Pathak and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : B.N. Singh, ;Sanjay Goswami, ;Pushpendra Singh, ;V.N. Singh, Advs. and ;S.C.

Advocate for Pet/Ap. : Anil Bhushan, ;V.K. Shukla and ;C.B. Yadav, Advs.

Disposition : Petitions dismissed

Judgement :

N.K. Mehrotra, J.

1. The aforesaid writ petitions have been filed for seeking the relief for issuance of the directions to the U. P. Public Service Commission (here-in-after called as 'the Commission') to forward the names from the waiting list to the State Government, prepared on the basis of the combined State/Upper Subordinated Services

Competitive Examinations, 1992, 1994 and 1995 for filling up the vacancies in different departments of the State Government. Since the common question of law and facts is involved in all the aforesaid writ petitions, these writ petitions are being decided by a common Judgment.

2. In Civil Misc. Writ Petition No. 1204 of 1998, Civil Misc. Writ Petition No. 24576 of 1998 and Civil Misc. Writ Petition No. 36283 of 1998 and two other writ petitions (Civil Writ Petition No. 19374 of 1999, Prem Kumar Singh v. State of U. P. and Ors. and Civil Writ Petition No. 41612 of 1998, Brij Mohan v. State of U. P. and Ors.), were decided by this Court with the direction to the respondents to take appropriate steps for recruitment of those candidates, who were selected and were on the waiting list. The aforesaid judgment was pronounced in Civil Writ Petition No. 1204. of 1998 on 10.5.1999 and in the other four writ petitions, judgments were pronounced on 11.5.1999. Against the aforesaid judgments and orders passed by this Court, the State Government as well as the Commission filed special leave petitions before the Supreme Court and the Supreme Court, after clubbing all the special leave petitions, decided and disposed of the same by a common Judgment and order dated 3rd November, 2000. The Supreme Court has set aside the judgments and orders passed by this Court and has sent back the matter to this Court for decision afresh on merits after taking into consideration the counter-affidavit filed on behalf of the respondents. After the remand of the aforesaid writ petitions for further hearing, the State Government and the Commission filed counter-affidavits. The main counter-affidavit by the State of U. P. has been filed in Writ Petition No. 1204 of 1998, Arjun Prasad Pathak and Ors. v. The State of U. P. and Ors.

3. In Writ Petition No. 1204 of 1998, the case of Sri Arjun Prasad Pathak and seven other petitioners is that the Commission advertised 520 posts to be filled up by the Combined State/Upper Subordinate Services Competitive Examination, 1992. The result of the aforesaid examination was declared on 4th/5th April, 1996. The Commission declared the result only against 471 posts. The names of the petitioners were not included in the select list. All the petitioners are stated to be in the waiting list. It is alleged that the select list was forwarded to the State Government and the Personnel Department sent the said list of the selected

candidates for appointment in the respective departments of the State Government on 14.1.1997. According to the petitioners about 100 posts are still vacant in all categories against 471 posts of 1992 selection. The candidature of the candidates, who have not joined in pursuance of the 1992 selection have to be cancelled and fresh names are required to be called for from the Commission. In this petition out of eight petitioners, six have joined on getting the offers.

With the aforesaid facts, the petitioners have approached for writ of mandamus for issuance of a direction to the respondents to call for the names of the candidates from the waiting list and for issuing appointment orders to them.

4. In Civil Misc. Writ Petition No. 24576 of 1998, there are two petitioners, who have appeared in the Combined State/Upper Subordinate Services Competitive Examination, 1995, in which it is stated that 352 posts were advertised. The result of the aforesaid examination was declared on 1st March, 1997. The petitioners are in the waiting list. They allege that near about fifty candidates have not joined, therefore, they should be recommended by the Commission from the waiting list and the State Government should appoint them in different departments.

5. In Civil Misc. Writ Petition No. 36823 of 1998, Ganesh Shanker Tewari, the sole petitioner, has stated that he appeared in the aforesaid examination of 1995, the result was published on 28.2.1997. Total number of 352 candidates were recommended for appointment against different posts. It is alleged that on account of non-joining of the selected candidates 67 vacancies are to be filled up. The State Government called for eleven additional names from the Commission, for which there is no justification. There were 67 vacancies by non-joining of the successful candidates. The name of the petitioner, being in the waiting list, should have been recommended and he should have been appointed against the existing vacancies on the basis of the 1995 examination.

6. In Civil Misc. Writ Petition No. 1654 of 2002, Nikhil Kumar Yadav. the sole petitioner, has stated that he appeared in the aforesaid examination of the year 1995 and he being in the waiting list of the Backward Class, should have been recommended for appointment against the 67 vacancies, which could not be filled-up within one year by non-joining of the successful candidates.

7. In the counter-affidavit of the State Government, it is stated that 471 vacancies were advertised for the Combined State/Upper Subordinate Services Competitive Examination, 1992 and 352 vacancies were advertised for the examination of the Combined State/Upper Subordinate Services Competitive Examination, 1995. The result of 1992 examination was declared on 4th/5th April, 1996 and the result of 1995 examination was declared on 1st March, 1997. Appointment letters were issued to 471 successful candidates of the year 1992 examination and 352 candidates of the year 1995 examination. In the year 1992 examination, candidature of 48 candidates and in the year 1995 candidature of 16 candidates were cancelled by the State Government and the Commission. Certain candidates have given resignations, so there were 53 vacancies of 1992 examination and 58 vacancies of 1995 examination. Recommendations of the selected candidates of the 1992 examination were received in the Government on 31.5.1996 and the recommendations of the selected candidates of the 1995 examinations were received on 29.3.1997. The recommendations of the selected candidates of 1992 examination were sent to the concerned department on 14.1.1997 and of the 1995 examination on 21.8.1997. The cut-off date for demanding the names of the waiting list of 1992 examination was 13.1.1998 and the cut-off date for demanding the names of 1995 examination was 20.8.1998. In view of the Government order (office memorandum dated 31.1.1994) wherein it is provided that time limit of demanding the names from the waiting list by the State Government is one year only in the selection but the Commission can send the names after one year.

8. It is contended by the State Government that the claims made by the petitioners are against the settled policy of the State Government, as in the Government order (G.O.) dated 25.3.1985, it is laid down that the vacancy should be of that very selection year, for which requisition was sent. The vacancies were of the selection years 1992 and 1995 and recommendations were received in the year 1997, therefore, if a candidate submits his resignation after joining the post, that vacancy will be of that year, in which he has resigned and that vacancy cannot be filled-up from the selected/waiting list of the previous year selection.

9. It is further contended by the State Government that the Government's order dated 31.1.1994, provides that the time limit of demanding the names from waiting

list is one year only. Therefore, the State Government asked the Commission to send the names against those vacancies of candidates, whose candidatures were cancelled and those names were sent to the concerned departments for issuing the appointment letters.

10. It is also contended that in the Government order, dated 23.12.1997, it is provided that if a candidate submits his resignation after joining the post, the accruing vacancy will be of that year for which resignation is granted,

11. According to the respondent State in respect of selection for the year 1992, the recommendations of the Commission were made available to the concerned departments by the State Government vide letter dated 14.1.1997 and the period of waiting list was available upto 13.1.1998. The candidatures of 48 candidates were cancelled within time. Accordingly, the Commission made the additional recommendations of 48 candidates from the waiting list and these names were forwarded to the respective departments. After the expiry of the prescribed period (i.e. after 13.1.1998) the different departments informed the Karmik Department that the candidatures of 48 candidates were cancelled and five candidates tendered resignations, therefore, these 53 vacancies were carried forward for the next coming selection year.

12. The respondent State Government has filed the copies of the Government orders, laying down the policy to fill-up the vacancies from the waiting list. A copy of the Government order, dated 25.3.1985, is Annexure-CA1. The second copy of the Government order, dated 31.1.1994, is Annexure-CA2 and the copy of the third Government order, dated 23.12.1997 is Annexure-CA3.

Government order, dated 25.3.1985, provides that if a candidate submits his resignation after joining the post, that vacancy will be of that year, in which he has resigned and that vacancy cannot be filled up from the waiting list of the previous year selection. Government order dated 31.1.1994, provides that only those vacancies are filled from the waiting list against whom candidatures were cancelled within time limit of one year. Government order dated 23.12.1997, provides that if candidate submits his resignation after Joining the post, the accruing vacancy will be of the year, in which the resignation is granted. Thus, that

vacancy could not be filled from the waiting list of the previous selection year.

13. The Commission has also filed the counter-affidavit contending that the Commission has no knowledge about the exact number of vacant posts in the concerning departments. On 13.1.1998, the Commission received the intimation regarding the cancellation of appointment by non-joining of the candidates and the Commission forwarded the names from the waiting list against the cancellation of the candidatures. It is also submitted by the Commission that prior to 31.1.1992, waiting list was being prepared by the Commission and the period of validity of waiting list was of one year and after 1992 examination, the respondent Commission advertised vacancy and conducted Combined State/Upper Subordinate Services examination in each year from 1993 to 2001 for the vacancies notified by the State of U. P. Since the State Government intimated no vacancy to the Commission, it was not required to send any name from the waiting list to the State Government.

14. We have heard the learned counsel for the parties.

15. The maintainability of the writ petitions depends upon the legal question whether the petitioners have any legal right to seek direction for the Commission to get recommended their names from the waiting list and seek direction for the State Government to give them appointments after taking recommendations from the Commission from the waiting list.

16. Learned counsel for the petitioners have placed reliance on the Supreme Court judgment in *Jai Narayan Ram v. State of U. P.*, AIR 1996 SC 703, but in view of the fact that the vacancies have already been carried out in the next selection year and in view of the basis of the rules under various Government orders, the judgment in *Jai Narain Ram* (supra) is of no help to the petitioners. The petitioners have also filed the judgment in *Writ Petition No. 19639 of 1996* ; *Dr. Rani Singh v. State of V. P.* It is a case of select list and the facts of that case and the facts of the present case are different.

17. In our opinion, the law has been finally settled by the Constitution Bench in *Shankarsan Dash v. Union of India*, AIR 1991 SC 1612. The relevant portion of the

judgment of the Supreme Court is as follows :

'It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection, they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decision in *State of Haryana v. Subhash Chander Marwaha*, (1974) 1 SCR 165 : AIR 1973 SC 2216, *Miss Neelima Shangla v. State of Haryana*, (1986) 4 SCC 268 : AIR 1987 SC 169, or *Jitendra Kumar v. State of Punjab*, (1985) 1 SCR 899 : AIR 1984 SC 1850.

18. In the instant writ petitions from the facts given in the counter-affidavit of the State Government it is clear that the period of waiting list is one year and the vacancies which occur due to the cancellation of the candidature of certain candidates within a period of one year had already been filled up and vacancies, which occurred because of ' the resignations have been carried forward in the next selection year. Therefore, no relief can be granted to the petitioners of the aforesaid four writ petitions. In the result, the writ petitions are liable to be dismissed.

19. All the four writ petitions are, accordingly, dismissed.