

Constable (M) Deepak Joshi and ors. Vs. State of Uttarakhand and ors.

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Court : Uttaranchal

Decided On : Apr-19-2010

Judge : Tarun Agarwala, J.

Appellant : Constable (M) Deepak Joshi and ors.

Respondent : State of Uttarakhand and ors.

Disposition : Petition allowed

Judgement :

Tarun Agarwala, J.

1. The respondents issued an advertisement dated 18th December, 2008 inviting applications for recruitment in the clerical cadre in the police department on the post of Constable (M) Clerk and Constable (M) Steno. As per Clause 11 of the advertisement, a procedure was provided for the recruitment process namely, a physical test and a written test. Candidates, who had passed the written test were thereafter required to give a typing test and, under Clause 14, the selected candidates were required to be subjected to a verification of their character/antecedents and, upon verification of the antecedents, appointment letters was to be issued for vacancies existing in various police departments. Under Clause 12 of the advertisement, it was provided that with regard to the recruitment process, directions could be given by the Director General of Police from time to time.

2. Based on the aforesaid advertisement, the petitioners applied and underwent the various processes given in Clause 11 of the advertisement. On 6th August, 2009, a select list was prepared by the respondents, in which the names of the petitioners were found. In this select list, it was stipulated in Clause 3 that candidates would be sent for training for four months after submission of their medical examination and under Clause 7, it was stipulated that upon completion of the training, the candidates would be appointed in the vacancies existing in the department.

3. Based on the order dated 6th August, 2009, appointment letters were also issued to the petitioners indicating that they have been appointed on a temporary basis and upon completion of the stipulated period of training of four months, they would be appointed on probation for a period of two years.

4. Based on the aforesaid select list and, the appointment letters so issued, the petitioners were sent on training and, in anticipation of the completion of the training, the respondents issued an order dated 27th November, 2009 issuing allotment orders indicating the place of posting of the petitioners upon completion of their training. It is alleged in paragraph 11 and 12 of the writ petition that upon completion of the training and pursuant to the order dated 27.11.2009, the petitioners joined their place of posting and started discharging regular duties. In paragraph 2 of the writ petition, the petitioner contended that they are discharging the regular duties which have been allotted to them. It is alleged that after starting their regular duties, the respondents issued an order dated 23rd December, 2009 directing the petitioners to undergo a further training for six months and further directing that the petitioners would be paid a stipend during this period of training for six months. The petitioners, being aggrieved by the order directing payment of stipend, have filed the present writ petition praying for the quashing of the order dated 23rd December, 2009 issued by the Director General of Police, insofar as it related to the payment of stipend during the period of training.

5. Heard Mr. U.K. Uniyal, the learned Senior Counsel duly assisted by Mr. Shobhit Saharia, the learned Counsel for the petitioners and Mr. Subhash Upadhyay, the learned brief holder for the State.

6. The learned Senior counsel submitted that there was no provision in the advertisement which placed a condition that the petitioners would be required to undergo a period of training before the issuance of the actual appointment letter. Further, the advertisement did not stipulate that the petitioner would be paid a stipend and consequently, the direction of the Director General of Police to direct the petitioners to undergo further training and be paid a stipend was wholly illegal and without jurisdiction. The learned Senior counsel further submitted that pursuant to the order dated 27.11.2009, the petitioners were given their place of posting upon completion of the initial training of four months and started discharging their duties and, therefore, the petitioners became entitled for payment of regular salary.

7. The learned Senior Counsel submitted that even though, the respondents may direct the petitioners to undergo further training, the petitioners could not be saddled for payment of stipend and that the petitioners were entitled for payment of a regular salary. The learned Senior Counsel, consequently, submitted that the action of the respondents in directing payment of stipend was *ex facie* illegal, especially when the petitioners joined pursuant to the select list dated 6th August, 2009 and allotment order dated 27.11.2009. In the end, the learned Senior Counsel submitted that whenever the respondents required candidates to undergo a training, a specific mention was made in the advertisement and in this regard, the Government had also issued certain orders to that effect, but in the present case, there was no such stipulation either in the advertisement nor any such Government Order has been issued and consequently, no direction for payment of stipend during the training period could be issued by an executive order. In this regard, the petitioners have stated in paragraph 18 of the writ petition that with regard to an advertisement dated 16th September, 2008 for the post of Sub-Inspector in Civil Police etc, a stipulation was made in the said advertisement directing the select candidates to undergo a training for a limited period for which they would be paid a stipend. Similar direction was issued on 13.12.2006 for the post of Assistant Operators and in the advertisement dated 4.12.2008 for the post of Constable in Civil Police. The learned Counsel, consequently submitted that in the instant case, no such provision has been made to the effect that a stipend would be paid for the period of training.

8. Mr. Subhash Upadhyay, the learned brief holder for the State has invited the attention to paragraph 3(B) of the counter affidavit indicating the stand of the respondents. The respondents have tried to justify the impugned order for sending the petitioners on training and paying stipend on the strength of Clause 12 of the advertisement, which provides that certain directions would be issued from time to time by Director General of Police with respect to the recruitment process. The learned brief holder submitted that the impugned order dated 23rd December, 2009 was passed on the strength and the powers given to the Director General of Police under Clause 12 of the advertisement. The learned brief holder further submitted that the impugned order was also passed in consonance with the Government order dated 18th August, 2001 as modified by an order dated 11th May, 2006 which provided payment of stipend to the recruits during the training period.

9. Having heard the learned Counsel for the parties at some length, the court finds that the stand taken by the respondents cannot be sustained. The reply is evasive and appears to be an afterthought. In the first instance, the Government order dated 18th August, 2001 and 11th May, 2006 relates to the recruitment process for Constables in the Civil Police and P.A.C. and the said Government Order was only confined to that recruitment process and cannot be utilized for the present recruitment process of Constable(M) Clerk and Constable (M) Steno. Further, Clause 12 of the advertisement cannot be applied at the stage when the impugned order was passed. Clause 12 of the advertisement provides that the Director General of Police was empowered to issue such direction from time to time during the recruitment process. In my opinion, the recruitment process starts upon the issuance of the advertisement and concludes when the appointment letter is issued.

10. In the present case, the recruitment process started on 18th December, 2008 when the advertisement was issued and concluded when the select list dated 6th August, 2009 was issued, pursuant to which appointment letters appointing the petitioners on a temporary basis and placing them on probation for two years upon completion of the training was also issued. This recruitment process at best could be extended till the actual joining in various department on the existing vacancies,

pursuant to the letter dated 27th November, 2009, but the recruitment process cannot continue after the selected candidates had joined in various department on the existing vacancies that was advertised. The recruitment process, in any case, would come to an end when the candidates joined the post in question and started discharging their duties. In the present case, the petitioners have categorically stated in paragraph No. 11 and 12 of the writ petition, that upon completion of the training, the petitioners had joined the place of posting. This crucial fact has not been denied by the respondents in paragraph No. 9 of the counter affidavit. In paragraph No. 2 of the writ petition, the petitioners have contended that upon joining the place of posting, they have been discharging their regular duties. This fact has again not been denied by the respondents in paragraph No. 5 of the counter affidavit.

11. In the light of these admitted facts, this Court is of the opinion that Clause 12 of the advertisement could not have been utilized by the Director General of Police after recruitment process had come to an end.

12. In paragraph No. 24 of the writ petition, the petitioners have categorically stated that there is no provision under the Act or its regulations providing any provision for sending the petitioners on training and being paid stipend during the period of training. This crucial fact has also not been denied by the respondents in paragraph No. 16 of the counter affidavit.

13. In the light of the aforesaid, the court is of the opinion that the direction of the Director General of Police directing payment of stipend during the training period pursuant to the training being done by the petitioners by an order dated 23rd December, 2009 appears to be without jurisdiction. The respondents have no such power to issue such direction for payment of stipend. Once the petitioners have joined pursuant to the select list and, upon completion of the initial training, any further direction for further training could be done, but no direction for payment of stipend could be made. Any subsequent training could be ordered, but the petitioners would be entitled for payment of regular salary.

14. In view of the aforesaid, the writ petition is allowed. A writ of mandamus be issued to the respondents directing them to pay regular salary to the petitioners

during the training period, which the petitioners have underwent or are undergoing pursuant to the order dated 23rd December, 2009.

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