(2011) 01 AHC CK 0134

Allahabad High Court

Case No: Special Appeal No. 87 of 2011

Shanti Kumar Tiwari		APPELLANT
	Vs	
State of U.P. and Others		RESPONDENT

Date of Decision: Jan. 20, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Citation: (2011) 2 ADJ 884 : (2011) 2 UPLBEC 1303

Hon'ble Judges: Sanjay Misra, J; Amitava Lala, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Amitava Lala, J.
This appeal is arising out of judgment and order passed by learned Single Judge on 04th October, 2010.

2. The fact remains that the Appellant/writ Petitioner wanted consideration of his candidature as second empanelled candidate when first empanelled candidate has resigned from the service after a period of eight months from the date of his appointment as per the panel.

3. Mr. Umesh Vats, learned Counsel appearing for the Appellant, has contended before us that at the time of deciding the matter learned Single Judge did not consider two very important Division Bench judgments of this Court in proper manner but distinguished the same instead of referring the matter to any Division Bench being larger than the bench of the learned Single Judge.

4. Therefore, at the time of hearing the Special Appeal we have gone through the judgments, which the learned Counsel appearing for the Appellant, has placed before us. Firstly, he cited a judgment reported in Kishori Raman Shiksha Samiti and Others Vs.

Regional Depnty Director of Education and Others, , whereunder the life of panel has been considered as per the U.P. Secondary Education Services Commission Act, 1982 (hereinafter referred to as the "Act") readwith relevant rules thereof. Paragraph 7 of the judgment is relevant for the purpose of deciding the case hereunder, therefore, such paragraph is quoted below:

7. There is no statutory provision either in the Act or in the Rules specifically laying down that the penal would exhaust with the appointment of a candidate. On the contrary Rule 7 lays down that the life of panel will be one year. We do not think that the moment a candidate from the panel joins the post, the panel exhausts or becomes non-est. If a candidate comes and merely puts his signature at the close of the working hours in token of his having joined the post and does not turn up thereafter to perform his duty, can it be said that the penal has exhaused and the whole process of selection has to be gone into all over again denovo. This will be the logical consequence of accepting the contention of the learned Counsel for the Appellants. We do not think that is the intention of the Act or the Rules. In the instant case the panel was recommended by the Commissioin on January 19, 1984 and even before expiry of a period of two months. R.I.G.S. directed the management to issue appointment letter in favour of Smt. Zubairi. This was well within the limitation laid down by Rule 7 regarding the life of panel.

(Emphasis Supplied)

5. We have gone through U.P. Secondary Education Services Commission Rules, 1983 (hereinafter referred to as "Rules 1983") and relevant rule is quoted below:

7. Preparation of Panel.- The Commission shall prepare an institution-wise panel of those found most suitable for appointment and arrange them in order of merit, inter alia mentioning-

(i) the name of institution and where it is situate;

(ii) the subject in which vacancy existed and selection made;

(iii) names of selected persons in order of merit and with due regard to their preference for appointment in a particular institution.

(2) The panel, prepared under Sub-rule (1), shall hold good for one year from the date of its notification by the Commission.

6. From the highlighted portion of the above quotation it is crystal clear that the notification will be issued by the Commission and consequently under Rule 8 of the Rules, the Commission shall forward the panel, referred to in Rule 7, in quadruplicate, to the Deputy Director and shall also notify the same on its notice board and publish it in such other manner as it may consider fit and proper. Following the said judgment another judgment was delivered by a Division Bench of this Court reported in Nagar Palika Inter

College Vs. Dr. Hawaldar Singh and Others, (Nagar Palika Inter College, Jaunpur v. Dr. Havildar Singh and others), where the ratio of Kishori Raman Shiksha Samiti, Mathura (Supra) was applied by the Division Bench. There also the Rule 1983 was considered along with Section 11 of the Act. Section 11 of the Act 1982 speaks about the panel of the candidates without specifying any period thereof but as per Rule 1983 the period has to be counted from the date of notification of the panel by the Commission meaning thereby such Rules wanted to supplement the vacuum, if any, under the Act. In other words, Act did not require it necessary to mention but left it open as per the discretion of the Commission.

7. Mr. Vats further submitted that the learned Single Judge has proceeded on the basis of a latest judgment, which is virtually reversion of earlier Division Bench judgments of this Court. But upon going through that judgment we find that the Division Bench never wanted to distinguish the earlier judgments by making a general ratio but on the peculiar facts and circumstances of that case. However, at the time of delivering the judgment, the Court held on the basis of several judgments of the Supreme Court that the select list, as the panel of selected candidate can not be valid of indefinite period. Once the candidate at serial No. 1 of the select panel had joined against the one vacancy advertised, the said vacancy stands fulfilled and if the incumbent so appointed vacates the post, the same would necessarily create a new vacancy. Any attempt to fill up the subsequent vacancy on strength of the earlier panel would be violative of Articles 14 and 16 of the Constitution of India inasmuch the Hon''ble Supreme Court has clearly held that any appointment made against an unadvertised vacancy would be a nullity.

8. Mr. Raman and Pandey, learned Standing Counsel and Mr. S.R. Singh, learned Counsel appearing for Board have submitted before us that the Appellant''s case is covered by Rules 1983 to which Mr. Vats has opposed by saying that the Appellant''s case is not covered by Rules 1983 but the Uttar Pradesh Secondary Education Services Commission Rules, 1995 (hereinafter referred as the Rule 1995). Relevant rule under Rule 13(3) of Rules 1995, as pointed out by Mr. Vats, is quoted hereunder:

(3) Where the candidate, referred to in Sub-rule (1), fails to join the post within the time allowed in the letter of appointment or within such extended time as the Management may allow in this behalf or where such candidate is other wise not available for appointment, the Inspector may, on the request of the management, intimate fresh name or names standing next in order of merit on the panel, under intimation to the Deputy Director and the Commission, and the provisions of sub-rules (1) and (2) shall mutatis mutandis apply.

9. Therefore, when there is no period fixed under the Rules the question of life of panel can not be held to be applicable in the case of Appellant but as soon as the first empanelled candidate vacates the post, the Appellant being the second empanelled candidate would be recruited.

10. If the Appellant''s case is covered by the Rules 1995 then obviously the same will override the earlier Rules i.e. Rules 1983 and again vacuum will arise for fixation of period and a circular has been issued giving one year period as it was before. Therefore, applying the same principle when there is a vacuum under the Rule the same can be supplemented by the administrative circular to fill up the vacuum and the same has been accordingly done. Therefore, period of panel was fixed for a period of one year but it was not kept open for an unlimited period and it is undesirable as per the ratio of the several Judgments that the panel of the selected candidates will be valid for an indefinite period.

11. The panel has been prepared by the Commission on 17th June, 2009, therefore, as we find from the Annexure No. 1 of the appeal that the same is notification of the Commission to which Mr. Vats wanted to convince us that such date can not be held to be the correct date for counting the period of one year because it is not possible for any candidate to know that the publication was made by the Board or Commission but as soon as it is notified by the District Inspector of Schools of each district then only it will be made known to them, hence, counting of days for publication of panel would be the date of notification of it by the District Inspector of Schools.

12. Mr. Pandey has vehementaly opposed such submission by saying that if such principle is adopted then the District Inspector of Schools of each district will notify the panel on different dates, hence, there will not be any uniformity in respect of completion of selection process. That apart, the selecting authority is Board or Commission, therefore, the panel prepared by the Board or Commission and the date thereof given in the notification is in accordance with law to count for a period of one year.

13. Against this background, factually we have come to know that the first empanelled candidate has come to join the service on 27th September, 2009 and resigned from the service on 25th May, 2010 and the resignation was accepted on 29th June, 2010 thereby the life of panel for one year had expired for considering the second empanelled candidate before us. Therefore, there is no merit in the special appeal. Hence, it is dismissed at the stage of admission however, without imposing any cost.