
(1993) 01 AHC CK 0072

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 10495 of 1992

Subhash Chandra and Others

APPELLANT

Vs

District Judge

RESPONDENT

Date of Decision: Jan. 7, 1993

Citation: (1993) 1 AWC 578

Hon'ble Judges: R.A. Sharma, J

Bench: Single Bench

Advocate: B.D. Mandhyan and Satish Mandhyan, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.A. Sharma, J.

For appointment to class III posts in Meerut Judge ship, applications were invited and examination was held. After the result was declared, a list of selected candidates was drawn on 3-3-1987 and the appointments during the next one year were to be made in order of merit from that list Petitioners, who were some of the selected candidates and whose names were placed in the above list, were appointed on various dates from 4-4-1988 to 13-6-1988 to class III posts in Meerut Judgeship. The Petitioners claim to have been appointed on regular basis while the Respondent has stated that their appointments were on ad hoc basis. From the perusal of appointment letters, copies of which have been filed as Annexures 3 to 8 to writ petition, it appears that they were appointed as officiating paid. Apprentices on fixed salary of Rs. 350/- per months. By order dated 5-8-1992 the learned District Judge, Meerut has directed for compliance of the order passed by this Court on 8-8-1991 in Writ Petition No. 10823 of 1989, wherein it was laid down that a select list, prepared under Rule 14 of the Sub-ordinate Civil Courts Ministerial Establishment Rules, 1947 (hereinafter referred to as the Rules), cannot last more than one year and no appointment can be made after the expiry of one year from the date the list was prepared. Petitioners have thereafter filed this writ petition for quashing the above

order dated 5-8-1992, passed by the learned District Judge, Meerut.

2. Respondent has filed counter affidavit and the Petitioners have filed a rejoinder affidavit in reply to. I have heard the learned Counsel for the parties.

3. Learned Counsel for the Petitioners has made three submissions, namely, (i) Petitioners, having been given appointment are entitled to continue and their appointment cannot be cancelled in view of the second proviso of Rule 15 (ii) the decision of this Court dated 8-8-1991 in Writ Petition No. 10823 of 1989 cannot be applied to the Petitioners as they were not parties in that case and the learned District Judge ought not to have applied the said judgment against them, and (iii) as the names of two of the Petitioners were entered in the select list for the first time on 30-9-1987, their appointments were made within one year from the date of their recruitment and they are not hit by one year Rule as their appointment was made within a year from 30-9-1987.

4. It is admitted that selection of Petitioners and other candidates for appointment to class III posts in Meerut Judgeship was made under the Rules and the list of selected candidates was prepared on 3-3-1987 in accordance with Rule 14 of the Rules. Sub-rule (3) of Rule 14, being relevant is reproduced below:

(3) If any such candidate has not been given an appointment offered in strict order of seniority according to the list in the bound register prescribed under Sub-rule (1) within one year from the date of his recruitment his name shall be automatically removed from the register of recruited candidates and he must then take his chance with others for recruitment again in a subsequent year.

According to the above provision if a candidate has not been given an appointment "within one year from the date of his recruitment, his name shall be automatically removed from the register of recruited candidates." It is thus obvious that in the absence of any appointment within one year from the date of the recruitment, the life of the list in which names of the selected candidates are contained comes to an end and their right to seek an appointment on the basis of the selection also comes to an end automatically. It is admitted to the Petitioners that except two of them, they were not given any appointment within one year from the date of their recruitment. This is also clear from paragraph 3 of the writ petition in which it has been mentioned that they were appointed on various dates from 4-4-1988 to 13-6-1988. These dates were apparently after the expiry of one year from 3-3-1987 on which date the list containing the names of the recruited candidates was prepared. The list having ceased to be effective after one year, Petitioners were not entitled to be appointed to class III posts on the basis of their selection made in March, 1987. A Division Bench of this Court in Pawan Singh v. District Judge 1987 AWC 604, the relevant extract from which is reproduced below, has also laid down that the list containing the names of selected candidates lapses after one year and no appointment can be made from it thereafter:

That the select list will stand cancelled after one year and during this one year a candidate from outside the list will not be appointed unless the list has exhausted.

5. Learned Counsel for the Petitioners has however, relying on the second proviso to Sub-rule (2) of Rule 15, argued that as the Petitioners have been appointed, although after the expiry of one year from the date of list, the provision contained in Sub-rule (3) of Rule 14 cannot be applied. In support of this proposition learned Counsel has relied upon a decision of a Division Bench of this Court in *Satendra Prasad Sharma v. District Judge* 1987 AWC 167.

6. Rule 14(1) which provides for registration of selected candidates, lays down that the names of the recruited candidates shall be entered in order of merit in a bound register in a prescribed form Sub-rule (3) thereof lays down that the name of such a candidate who has not been given an appointment within one year from the date of his recruitment, shall be automatically removed from the register of the recruited candidates and he must take his chance with others for recruitment again in subsequent year. The right of a candidate to get an appointment after one year from the date of his recruitment is lost if he has not been given an appointment within the said period of one year. His name having stood removed automatically from the register of recruited candidates, no advantage can be taken by such a candidate of the provision contained in second proviso to Rule 15. That apart, this Rule deals with a different situation. Second proviso to Rule 15, being relevant is reproduced below:

Second Proviso to Rule 15:

Provided also that nothing in these rules shall operate to the disadvantage of any person on the approved list of candidates who have already got an officiating chance and not otherwise disqualified at the time these rules come into force, whether such person, has in fact been appointed or not.

(Emphasis supplied)

As is clear from the above proviso, it deals with a case where name of any person was on the approved list of candidates" at the time these rules come into force." It does not deal with a case when the list prepared after the enforcement of the rules. It was like a saving clause, which is inserted in the Legislation to protect the interest of those, who might be adversely affected after the new Legislation is enforced. Petitioner, therefore, cannot take any advantage of the aforesaid proviso, inasmuch as rules were enforced in 1947, whereas the list, in the instant case, containing the names of selected candidates was prepared in 1987.

7. The decision of the Division Bench of this Court in the case of *Satendra Prasad Sharma* (supra) cannot be of any help to the Petitioners. In that case, as the Petitioners therein were given officiating chance for some time, the benefit of second proviso to Rule 15 was extended to them, on the basis of which it was held

that as they are entitled to the benefit of second proviso to Rule 15, Sub-rule (3) to Rule 14 will not apply to them. It is not clear from the judgment as to whether officiating appointments were made within one year from the date of recruitment. However, it can safely be assumed that the Petitioners therein were given officiating chance within one year from the date of recruitment, otherwise their names would have been struck off automatically from the register of candidates under Sub-rule (3) of Rule 14 and question of their appointment from that list after one year would not have arisen. In the instant case Petitioners' appointments not having been made within one year, their names automatically stood removed from the list of selected candidates. That apart, this Court in the above case of Satendra Prasad Sharma has not considered the effect of words "any person on the approved list of candidates....at the time these Rules came into force", according to which the second proviso to Rule 15 will be applicable only to a case where a person's name is in the approved list of candidates at the time when these rules came into force. It is like a saving clause, which is normally introduced in a Legislative enactment or a Sub-ordinate Legislation in order to protect the interest of those, who may be affected by the new Legislation for the above reasons, I would have referred the case to a larger Bench but I refrain from doing so as the appointments of the Petitioners have not been made within one year from the date of their recruitment on account of which their names stood removed automatically from the select list due to which the benefit of second proviso to Rule 15 cannot be given to them even if it is held that the said proviso is applicable to the case where the approved list was prepared after the enforcement of the Rules. The first submission, as such, lacks merit and is accordingly rejected.

8. The second submission made by the learned Counsel for the Petitioners also lacks merit and cannot be accepted. Certain candidates, who were, like the Petitioners, selected in 1987 and whose names were entered in the list of candidates in the prescribed register, filed a Writ Petition No. 10823 of 1987 before this Court for writ of mandamus to the District Judge, Meerut to appoint them. This Court dismissed that writ petition on the ground that the list of candidates can remain valid for a period of one year only and thereafter it lapses on account of which no appointment can be made from such a list after the expiry of one year. Relevant extract from that judgment is reproduced below:

Suffice it to say that Rule 14(3) of the Subordinate Civil Courts Ministerial Establishment Rules, 1947 postulates that once a select list is published it survives only for a period of one year and thereafter by efflux of time it lapses. It is not disputed by the Petitioners that this petition was filed after the old select list had already lapsed. The Petitioners having not been appointed within one year of the select list dated 2-3-1987 they cannot claim any right on the basis of the old select list. The Petitioners state in para 22 of the petition that certain persons have been appointed after the lapse of the select list ignoring the claim of the Petitioners. In the counter affidavit the Respondents have admitted this petition. Since in

accordance with Rule 14(3) the select list dated 2-3-1987 lapsed on 1-3-1988 and appointment made subsequently is not valid and the said appointment is liable to be revoked. Accordingly Respondent No. 1 is directed to look into the matter and pass necessary orders in the matter of appointments made subsequent to 1-3-1988.

9. It is true that the Petitioners were not parties to the above writ petition. But if they felt aggrieved by any observation made by this Court in that judgment, it was open to them to apply before this Court for review of the judgment. Petitioners in fact made an application before this Court in the above case for review on the ground that they were not parties to the above writ petition and the observations made therein are likely to affect them adversely. This application, however, was withdrawn by the Petitioners on 9-10-1991 and this Court on that date passed the following order:

Learned Counsel wants to withdraw this application.

He is permitted to do so. The application is accordingly dismissed as withdrawn.

The Petitioners having withdrawn their application for review, they cannot raise any grievance now against the judgment of this Court dated 8-8-1991. That apart, this Court has merely laid down the law and made an observation that the learned District Judge may look into the grievance of the Petitioners to the effect that some persons have been appointed after the expiry of one year from the date of their recruitment and pass appropriate order in connection therewith.

10. As regards the third submission, it has been stated that although the list of selected candidates was prepared on 3-3-1987 but by order dated 30-9-1987 the said list was rearranged according to the amended roster and two of the Petitioners, whose names were entered in the list for the first time on 30-9-1987, are entitled to continue, as their appointments were made within one year from the date of the list.

11. In paragraph 3 of the counter affidavit, the above position has been disputed. In the counter affidavit it has been stated that the list of direct candidates was prepared on 3-3-1987 while the list of promotees from IV to class III employees was prepared on 29-9-1987 and for the purpose of giving appointment a roster was prepared on 30-9-1987 in order to provide reservation. Learned Standing Counsel in this connection has also argued that Petitioners, who were appointed in 1988 on various dates, as mentioned in paragraph 3 of the writ petition, were not appointed in accordance with their merit and seniority, and as such, they cannot save themselves from the rigor of the provisions contained in Sub-rule (3) of Rule 14. In this connection learned Standing Counsel has relied on a decision of a Division Bench of this Court in *Vijai Bahadur Yadav v. High Court* (Writ Petition No. 9967 of 1983, decided on 10-1-1985). For deciding the controversy raised by the learned Counsel for the Petitioners regarding his third submission and the contention of learned Standing Counsel, mentioned above, there is no sufficient material on

record before this Court. Under the circumstances, it is appropriate that those Petitioners, who claim to have been appointed within one year from the date of their recruitment (30-9-1987) should make a representation before the learned District Judge, Meerut who will decide this same expeditiously in accordance with law. Before passing order on the representation the learned District Judge will also consider and decide the aforesaid contention raised by the learned Standing Counsel. It is however made clear that this Court is not expressing any opinion on the contentions of the parties mentioned hereinabove. It is for the learned District Judge to decide the same.

12. With the aforesaid observations, the writ petition is dismissed. In view of the facts and circumstances of the case there shall be no order as to costs.