

(2007) 05 AHC CK 0353

Allahabad High Court

Case No: Criminal Miscellaneous Case No. 715 (C) of 2005

Pravesh Kumar

APPELLANT

Vs

Amal Kumar Verma and Others

RESPONDENT

Date of Decision: May 15, 2007

Citation: (2007) 3 ACR 3509

Hon'ble Judges: Narain Shukla, J

Bench: Single Bench

Advocate: A. P. Singh, for the Appellant; C.S.C., for the Respondent

Final Decision: Disposed Of

Judgement

Narain Shukla, J.

Heard Mr. A. P. Singh, learned Counsel for the Petitioner and Mr. Lalit Shukla, learned standing counsel for the Respondents.

2. The Petitioner is claiming the disobedience of the order dated 30.11.2004, passed in Writ Petition No. 6694 (S/S) of 1997, whereby this Court disposed of the writ petition finally in the following terms:

Therefore, these writ petitions are disposed of finally with the direction that the opposite parties shall consider the cases of the Petitioners from select list 1995, only if it is found that any vacancy was already existing during the life time of the select list, 1995, i.e., one year's time, consequently they will be given appointments but the vacancies which were occurred after expiry of one year from the date of publication of select list, 1995, the same should be filled up by making fresh selection and in that case it will be open for the Petitioners to participate therein and in case last date of submitting of application has expired and any or some of the candidates could not apply due to the pendency of these writ petitions before this Court, the opposite parties shall provide opportunity to them to make application to appear in the selection of the post of Stenographer.

3. The Petitioner has submitted that total 127 vacancies occurred during the life time of the select list of 1995, but neither the Petitioner has been considered nor appointed on the post of Stenographer. He has further submitted that the select list of 1995 was published on the Notice Board on 12.12.1995 and in pursuance thereof 41 candidates have been appointed on the post of Stenographer and thereafter six candidates further have been appointed on 9th May, 1996, but the Petitioner's case has not been considered and accordingly he claims that the Respondents have committed contempt of this Court and are liable to be punished under the Contempt of Courts Act.

4. In defence the opposite party No. 1 has taken the stand that in the year 1995 special selection drive was undertaken to fill up 41 vacant posts of the Stenographers as backlog from amongst the Scheduled Caste and Scheduled Tribe candidates and the Selection Committee constituted for the purpose prepared the list of 172 candidates, since there were only 41 posts of Stenographers available for filling up the quota of Scheduled Caste and Scheduled Tribes, appointment letters of those candidates in accordance with the merit list were issued. However, out of 41 candidates six did not join, on account of which the next six persons, i.e., from Sl. Nos. 42 to 47 were issued appointment letters. Validity of the select list was for only one year, which expired on 31st August, 1996, as the select list was made available on 1st September, 1995, under the circumstances thereafter from the aforesaid select list no vacancy could be filled in.

5. The opposite party No. 2 through his supplementary counter-affidavit has taken slightly different stand with the averments that total sanctioned posts of the Stenographers were 661, out of which 601 employees were working and 60 posts were vacant. During the life-time of the select list, i.e., 14.12.1995 to 13.12.1996 total 60 vacancies were in existence. After 1995 the selection process was initiated in the year of 1998 and 61 posts were advertised. However, the said selection was cancelled by the Government. Thereafter in the year of 2003, 82 posts including 61 earlier posts were advertised for filling up backlog.

6. The Writ Petition No. 3134 (SS) of 2003, has been preferred before this Court in which the Court by means of interim order dated 28.5.2003 permitted the authority concerned to proceed with the selection process with the direction not to issue the appointment letters against the aforesaid vacancies. Further in the year of 2004 again for the posts of 20 Stenographers selection process was initiated but the result of the aforesaid selection has also been kept in the sealed cover. He has also brought on record an order dated 3rd August, 2005, passed by the Chief Engineer, Irrigation Department, whereby the Petitioner's representation has been decided, through which it has been stated that the Selection Committee provided a select list of 172 candidates dated 1st September, 1995, which was made available by means of office memorandum dated 14th December, 1995. The Superintending Engineer at the Divisional level were directed to issue appointment orders to those candidates.

Since those candidates did not join, under the circumstances by another office memorandum dated 9.5.1996 the Superintending Engineers were issued direction to issue appointment orders to those candidates who were next in the merit. Those were from Sl. Nos. 42 to 47 in the select list. Since the life of the select list was only from 1st September, 1995 to 31st August, 1996 and till the period of existence of the aforesaid select list there was no further vacancy, no appointment order could be issued. It has further been clarified that in pursuance of the direction of this Court issued in Crl. Misc. Case No. 715 (C) of 2005, passed on 5th July, 2005, again the vacancies taking the period of select list from 14.12.1995 to 13.12.1996 were calculated and it was found as 60 vacancies. By calculating the vacancies arisen out in the year of 1995 and onwards in the year 1998 total 61 posts of Stenographers were advertised, but in light of the Writ Petition No. 4754 (SS) of 2000, preferred before this Court, on the basis of the enquiry report of Vigilance Department a decision was taken to cancel the selection and accordingly the advertisement itself was cancelled and when again in the year of 2003, 82 posts including earlier 61 posts were advertised to fill up the backlog, this Court in Writ Petition No. 3134 (SS) of 2003 by means of interim order dated 28.5.2003 issued direction not to issue the appointment orders and further in the year of 2004, 20 posts have again been advertised, but the result of both the selections has been kept in sealed cover subject to decision of the aforesaid writ petitions.

7. In view of the aforesaid facts and circumstances it has been submitted that now no post is available for appointment from the select list, which was in existence for one year, i.e., with effect from 14.12.1995 to 13.12.1996.

8. Through the supplementary counter-affidavit filed by one Mr. D. C. Samant, Engineer-in-Chief of Irrigation Department all the vacancies at the time of issuance of the advertisement dated 17.2.1995, have been clarified categorywise and actual vacancies have been shown as 41 at the time of advertisement, which were enhanced to 60 vacancies till 13th December, 1996, i.e., till the life of select list and it has been submitted that including those vacancies 82 posts were advertised in the year of 2003, but in pursuance of the interim order dated 28.5.2003 passed in Writ Petition No. 3134 (SS) of 2003, the appointments cannot be made.

9. In view of the aforesaid facts it is clear that till the date of advertisement dated 17.2.1995, there were 41 vacancies which have been filled up from the select list prepared in pursuance of the aforesaid advertisement. However, some vacancies arose thereafter during the life-time of the select list till 13th December, 1996, those have been shown in number as 60 vacancies, it appears that the Department has proceeded to issue a fresh advertisement in 2003 for making selection against those vacancies. According to the Petitioner since those 60 vacancies were created during the life-time of the select list, the Respondents were under obligation in pursuance of the direction of this Court, to fill-up those vacancies from the candidates according to their merit from the select list of 1995.

10. Recruitment process, as is well-known, must be commensurate with the statute or the statutory rule operating in the field. The life of a select list is governed by the statutory Rules. Through the order passed in the writ petition this Court has observed that there is a provision under relevant Rules to the effect that "the life of the select list will be only for one year". The life of the select list starts from the date of publication of the select list. Admittedly the select list was prepared on 1st September, 1995, but the same was published on 14th December, 1995, accordingly the life of which expired on 13th December, 1996. Dealing with the same question the Hon"ble Supreme Court in the case of [Union of India \(UOI\) and Others Vs. B. Valluvan and Others](#), has held that the life of a panel ordinarily is one year and the same can be extended only by the State and that too if the statutory Rules permit to do so. The High Court ordinarily would not extend the life of the panel.

11. In the present matter the Petitioner has not been able to place any rule, which extends the life of the select list beyond the period of one year. From the facts it is clear that the posts, which were advertised, have been filled up from amongst the candidates being on the select list according to their merit and no post advertised through the advertisement in question remained vacant to be filled up. The advertisement was confined only to the vacancies, which were available on the date of advertisement, for which the panel was prepared, the same cannot be given effect to for the future vacancies as admittedly these 60 vacancies arose after the date of advertisement which are the future vacancies, against which the Petitioner cannot claim right of appointment in view of the judgment of the Hon"ble Supreme Court.

12. In view of the facts and circumstances of the case and settled view of the Hon"ble Supreme Court in the case of Union of India and Ors. v. B. Valluvan and Ors. (supra), I do not find any wilful disobedience on the part of the Respondents, under the circumstances, I hereby drop the present contempt proceedings and discharge the notices issued to the Respondents.