

(2007) 07 AHC CK 0231

Allahabad High Court

Case No: C.M.W.P. No's. 36622, 29735 and 34194 of 1995

Bhagwan Das and Others

APPELLANT

Vs

District Judge and Another

RESPONDENT

Date of Decision: July 31, 2007**Citation:** (2007) 7 AWC 7480**Hon'ble Judges:** Vineet Saran, J**Bench:** Single Bench**Advocate:** M.C. Tiwari, P.K. Mishra, A.K. Singh, R.N. Singh, Anurag Khanna, Shailendra and A.K. Upadhyay, for the Appellant; S.M.A. Kazmi, K.R. Sirohi and Amit Sthalekar and S.C., for the Respondent**Final Decision:** Dismissed

Judgement

Vineet Saran, J.

Selections were held in the year 1986, for appointment on six vacant class IV posts in the Judgeship of Azamgarh. Besides declaring a select list of six candidates, a waiting list of 43 candidates was prepared. After giving appointment to the selected candidates, from 1986 to 1990, 19 such other candidates who were placed in the waiting list have also been accommodated. Then on 26.10.1990, the waiting list was cancelled by the Respondent-District Judge. Challenging the said order, Writ Petition No. 30407 of 1990, was filed, which was allowed vide judgment and order dated 23.7.1992. The Petitioners, who claim themselves to be in the waiting list prepared on 17.5.1986, filed representations to the Respondents for being given appointment on Class IV posts. By order dated 5.10.1995 the representation of the Petitioners has been rejected. Writ Petition No. 36622 of 1995, has been filed by the Petitioners challenging the order dated 5.10.1995 whereby their representation has been rejected. Thereafter the District Judge published an advertisement in the newspaper on 15.11.1995 inviting applications for appointment on class IV posts in the Judgeship. The Petitioners have challenged the said advertisement by means of Writ Petition No. 34194 of 1995. By means of Writ Petition No. 29735 of 1995, the

Petitioners have challenged the appointment of Respondents No. 3 to 8 of the said writ petition. A common prayer has been made by the Petitioners in all the three writ petitions that they be absorbed on class IV posts in pursuance of the selection held on 4.5.1986 and the waiting list prepared at that time.

2. I have heard Sri Shailendra, learned Counsel for the Petitioners as well as Sri S.P. Singh, learned Counsel appearing for the Respondents and have perused the record.

3. The life of a waiting list cannot be for all times to come. It is very strange that for selection on six vacant post, a waiting list of 43 candidates had been prepared. A Division Bench of this Court in the case of [The District Judge and The Hon"ble High Court of Judicature Vs. Sri Anurag Kumar, Deepak Nigam, Narendra Kumar Khare and Sri Tarun Pratap Yadav](#), has held that appointment made beyond the post advertised from amongst the candidates placed in waiting list would not be justified and would thus be beyond jurisdiction. A waiting list is to be prepared for appointing candidates placed in such list when the selected candidates fail to join. For example, if six candidates were to be appointed and out of the six selected candidates if any of them do not join the post, then alone a candidate from the waiting list can be accommodated. It is not so that the waiting list would be there to fill up the future vacancies which occur subsequently for all times to come. If this is to be permitted then for six posts, after preparing a list of six selected candidates, the remaining can be placed in the waiting list (which may be a hundred or even more) and then for the next hundred vacancies which occur subsequently, those from such waiting list would be appointed, thereby killing the opportunity of all such candidates who become eligible subsequently when the posts fall vacant later. This cannot be permitted in law.

4. It is not disputed that the six candidates had already joined the post. As such the Petitioners cannot be entitled to appointment on the post for which selection was held in the year 1986. On the occurrence of fresh vacancies, fresh selection has to take place and the candidates, who were selected in pursuance of an earlier selection in which all the advertised posts had been filled, cannot be appointed as of right. As such I do not find any good ground for interference in this writ petition. However, I would also not like to comment or pass any orders with regard to any appointments already made from the waiting list of 1986, beyond the advertised posts, as the said issue is not before me.

5. These writ petitions are, accordingly, dismissed. No order as to cost.

6. Let a photostat copy of this judgment be placed on the records of Writ Petition Nos. 29735 of 1995 and 34194 of 1995.