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**(2006) 09 AHC CK 0238**

**Allahabad High Court**

**Case No:** None

Virendra Kumar Srivastava

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** Sept. 4, 2006

**Citation:** (2006) 7 AWC 7586

**Hon'ble Judges:** Vikram Nath, J; R.K. Agrawal, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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### **Judgement**

Vikram Nath, J.

This writ petition has been filed with a prayer to quash the Office Memorandum dated 31.01.2003 by which the representation of the petitioner was rejected by the State Government and further for quashing the Advertisement dated 20.09.2002 published in the Employment news. The second prayer is for issuing a direction in the nature of mandamus commanding the opposite parties to give appointment to the petitioner against the vacancies existing for the year 1997 for the post of Child Development Project Officer.

2. The State Government issued Advertisement No. A-6/E-1/97-98 Inviting applications for filling up the posts of Zila Karyakram Adhikari (District Programme Officer) and Bal Vikas Pariyojana Adhikari (Child Development Project Officer). The said advertisement was published in the newspapers, pursuant to which the petitioner applied and was allotted Roll No. 010704. The petitioner appeared in the written examination which was held in April, 1998 the result of which was declared on 13.10.1998 in which the petitioner was declared successful. The petitioner was called for interview by the U.P. Public Service Commission and he was interviewed on 07.11.1998.

3. The final result was declared on 16.11.1998 In which the petitioner was not found selected. According to the petitioner he had secured 626 marks out of a total of 900

marks. Further according to the petitioner in the waiting list prepared by the Commission his name found place at serial No. 10. According to the petitioner more than ten candidates had not joined and 11 candidates had left after joining pursuant to the declaration of the result, as such he was entitled to be issued the appointment letter. The petitioner submitted a representation which was not being decided whereupon the petitioner filed Writ Petition No. 41674 of 2002. The said writ petition was disposed of by order of this Court dated 30.09.2002 with the direction to the State Government to decide the representation of the petitioner by a speaking order. Pursuant to the said direction the State Government had passed the impugned order dated 31.01.2003 rejecting the claim of the petitioner relying on the office order dated 31.01.1994 and 23.12.1997. It is this order, which is sought to be challenged in the present writ petition. Further, as the State Government issued a fresh advertisement for filling up 64 posts of Child Development Project Officer, the petitioner has challenged the said advertisement also. The petitioner has further prayed for a direction to the respondents to appoint him against the vacancies of 1997.

4. We have heard Sri S. C. Budhwar, learned Senior Counsel assisted by Sri J. P. Tripathi, Advocate appearing for the petitioner, Sri M. A. Qadeer, learned Counsel appearing for the U.P. Public Service Commission and the learned Standing Counsel appearing for the respondent Nos. 1 and 2. We have also perused the original record which was summoned by this Court vide order dated 19.09.2005.

5. The submission of the learned Counsel for the petitioner is that the respondents committed illegality in not issuing appointment letter to the petitioner. According to him from the declared list of successful candidates more than ten had not joined within the period of one year which was the life of the select list/ waiting list and, therefore, the petitioner should have been offered the appointment. The petitioner had been agitating for his claim from the very beginning and the respondents having not taken any timely action in this regard and having not acted in time by not issuing the appointment letter cannot subsequently turn around and say that as the life of the select list has expired due to the fact that more than one year has elapsed therefore, the petitioner cannot be issued the appointment letter.

6. Further submission of the counsel for the petitioner is that even after the expiry of the waiting list appointment letter could be issued and therefore the respondents are not right in saying that after the lapse one year and expiry of the life of the waiting list appointment letters cannot be issued. The learned Counsel for the petitioner has placed reliance upon the following three decision of Hon"ble Apex Court in support of his contention that even after the expiry of the life of the waiting list the candidates from the waiting list could be given appointments. The cases relied upon are:

(i) [Rabindranath Bose and Others Vs. The Union of India \(UOI\) and Others,](#)

(ii) [Sheo Shyam and Others Vs. State of U.P. and Others](#), and

(iii) [Ashok alias Somanna Gowda and Another Vs. State of Karnataka by its Chief Secretary and Others](#),

7. On the other hand the learned Standing Counsel on behalf of the State Government has submitted that after the expiry of the life of the waiting list nothing further could be done and no appointment can be made thereafter. He has referred to various Office Orders issued by the Government from time to time in this regard laying down its policy in matters relating to the life of the select list.

8. It has further been urged by the learned Standing Counsel that as the waiting list had never been requested for from the Commission, there is no waiting list with the State Government and in fact no consideration was ever made on the waiting list. Even if It is assumed that the name of the petitioner finds place In the waiting list he has no vested right to seek appointment on its strength.

9. The life of select list and the manner in which the waiting list if any prepared is to be used is governed under the Office Order dated 31.01.1994 filed as Annexure CA-1 to the counter affidavit filed by Sri Bhuiyadin, Special Secretary, Personnel Department. According to the same appointment letters should be issued within 3 months, the character verification and medical examination should be obtained at the earliest. Clause 5 of the said Office Order provides that the life of the waiting list will be one year whether it is for annual competitive examinations or for special selections. It also mentions that request can be made to the Commission within one year only, however where the Commission despite request being sent within one year does not send the waiting list then it may be valid after one year also. Further Clause 6 of the said Office Order provides that where the waiting list has not been used within the prescribed period or the waiting list is not called for from the Commission within the prescribed time then all the remaining vacancies will stand merged with the vacancies of the next year.

10. According to the learned Standing Counsel after receipt of the recommendation from the Commission on 16.11.1998 the life of the select list was for a period of one year and was valid till 15.11.1999. Further according to the State Government during this period of one year only those vacancies where the selected candidates had not joined and their candidature were cancelled on account of non joining within the stipulated period, could be filled up from the waiting list, if any, prepared by the Commission, for which request would have to be sent to the Commission for providing the waiting list within one year. After lapse of one year no request could be sent to the Commission.

11. It is further the stand of the State Government that where a candidate joined and subsequently resigns even though within the period of one year, such vacancy would stand exhausted upon joining of the candidate and subsequently resignation would not leave a vacancy for being filled up from the waiting list. All vacancies /

posts which were filled up upon joining and subsequently vacated would not be covered by the waiting list from the same selection and they were treated to be vacancies after the advertisement under which selections were being made. Such vacancies were to be carried forward for the next year and could be filled up pursuant to the next advertisement for selection. In this regard our attention was invited to Clause 3 of the Office Order dated 23.12.1997 filed as Annexure CA-2 to the counter affidavit filed by Sri Bhuiyadin, Special Secretary, Personnel Department, which clearly mentions that the State Government has taken a decision that waiting list cannot be utilised for filling up vacancies caused upon the resignation or otherwise by the selected candidates after joining as upon joining the vacancy advertised stand fulfilled or exhausted.

12. Having given our anxious consideration to the above facts, we do not find any flaw in the decision of the State Government as contained in the office order dated 23.12.1997. After the appointment letter is issued and upon fulfilment of other requirements prior to joining, when the selected candidate joins the post, the process of selection for that post is completed. From the stage of advertisement of the said post till the joining of the selected candidate is the period when the selection process can be said to be continuing, however, upon joining, the process is completed. The post so advertised for filling up no longer remains vacant upon joining of the candidate. Where after joining, the post again falls vacant on account of resignation, death, termination or for any other reason, whether on the next day, or subsequently then, it is a fresh vacancy created at the time of such happening. Such vacancy was not in existence at the time when the advertisement was issued for which select list/ waiting list has been prepared and would be of subsequent period and, therefore, can only be covered by a fresh advertisement. The decision of the State Government in this regard as contained in the office order dated 23.12.1997 is, therefore, upheld.

13. Alongwith the writ petition, the petitioner has annexed copies of two judgments of this Court as Annexures 12 and 13. Based on these judgments, it is contended that the vacancies, which are caused due to resignation of the selected candidates, are to be filled up from the waiting list. The judgment annexed as Annexure 13 is a judgment of a learned Single Judge dated 04.01.2000 passed in Civil Misc. Writ Petition No. 12921 of 1999, Shivendra Nath Singh and Ors. v. State of U.P. and Ors. Firstly, this order was passed in the absence of any counter affidavit. Secondly, the waiting list in this case was sent by the Commission. Thirdly, this judgment did not lay down any law of its own, but only relied upon the judgment dated 09.04.1998 passed in Civil Misc. Writ Petition No. 32389 of 1997, Yogendra Kumar Pal v. State of U.P. and Anr. filed as Annexure 12 to the writ petition. Coming to this judgment, we find that in this case also the learned Single Judge relied upon another decision of this Court in the case of Abdul Wasim v. Collector, Budaun 1997(2) ESC 1011. In the case of Abdul Wasim (supra), the issue as to whether vacancies caused due to resignation of selected candidates, who had joined, could be filled up from the

waiting list was not directly in issue. In that case, the vacancies caused due to retirement were partly filled from the waiting list and the remaining waiting list was cancelled during its life, and such order of cancellation was under challenge on the ground of discrimination. Any observation made in the course of discussion would not amount to any ratio of law laid down.

14. We are, therefore, of the view that these decisions are clearly distinguishable and do not help the petitioner.

15. In view of the above, it is only those posts where the selected candidates had not joined, and their candidature had been cancelled within one year and request sent to the Commission within one year, which could be said to be covered by the waiting list. According to the State Government during the life of the select list / waiting list as no candidature was cancelled within a period of one year and no request was sent to the Commission within the same time, therefore, there was no occasion to make appointment from the waiting list.

16. In para 8 of the 2nd supplementary counter affidavit filed on behalf of the respondent, sworn by Smt. Neelam Ahlawat, Additional Director, Bal Vikas Sewa Evam Pushtahar, details have been furnished with regard to the candidates to whom appointment letters were issued and upon their failure to join, their candidature were cancelled. We find that in all cases, the cancellation took place in the year 2000, i.e., after the expiry of one year. It may, thus, be concluded that the State Government had no occasion to call for the waiting list and as rightly contended by it, no request was sent by the State Government to the Commission to send the waiting list.

17. Now coming to the contention of the petitioner with regard to the averments made in paragraph Nos. 13 and 14 of the writ petition wherein the petitioner has given a list of candidates who either did not join or after joining tendered their resignations. Paragraph No. 13 contains only 9 names which is the list of the selected candidates who did not join whereas paragraph No. 14 contains 11 names of those candidates who after joining left the employment and/ or tendered their resignations. As already observed above the law with regard to panel of waiting list candidates is applicable only where the candidates have not joined and their candidature is rejected within the life of the select list. It is not applicable to situations where after joining the candidates have subsequently left even though within the life time of the waiting list. Such posts falling vacant upon resignation or otherwise cannot be filled up from the waiting list as selected candidates upon joining have exhausted that posts and subsequently even if on the next day it falls vacant upon resignation or otherwise, such vacancy will be for the future and cannot be counted for the vacancies which were advertised.

18. Thus, at best only the contention with regard to the averments made in paragraph 13 of the petition, according to which only 9 candidates who had not

joined remains to be determined in the present controversy. In this regard, from a perusal of second supplementary counter affidavit sworn by Smt. Neelam Ahlawat, it is apparent that the candidature of the 9 candidates mentioned in para No. 13, were cancelled only in the year 2000 and, therefore, being beyond the last date of the life of the waiting list, i.e. 15.11.99, no benefit could be given to any of the candidates of the waiting list even if it was prepared and sent to the State Government. Further with regard to the candidates mentioned in paragraph No. 14 of the writ petition, adequate reply has been given In paragraph No. 8 of the second supplementary counter affidavit which gives the date of their joining and the date of their resignation or the reasons for not continuing. All these dates extend beyond the life of the select list barring one candidate Pramod Kumar Singh who is said to be still working.

19. Even though the petitioner cannot succeed in view of the above discussion, but as the original record was summoned from the Commission, we proceed to examine the same.

20. The Commission was requested to produce in a sealed cover the position of the petitioner in the merit list in the examination of 1998 conducted by it for the posts against which the petitioner had applied. The record was produced and from a perusal of the same it transpires that in the combined merit list the last selected candidate was at serial No. 85 whereas the petitioner's position was at serial No. 104 and in the general category to which the petitioner actually belongs the last selected candidate was at serial No. 58 whereas the petitioner was placed at serial No. 70. Thus we see that under both the lists the petitioner was below the 10th position from the last selected candidate. There could not have been any justification for issuing the appointment letter to the petitioner even if 10 candidates had not joined within the life of the select list.

21. Considering the decisions relied upon by the counsel for the petitioner, we find that the case of Rabindra Nath Bose and Ors. (supra) related to preparation of seniority list and has, therefore, no application to the present case.

22. In the case of Sheo Shyam and Ors. (supra), the Supreme Court in the facts and circumstances peculiar to that case, wherein the State Government and the Commission had taken inconsistent and varying stands and the moves adopted by the State Government and the Commission were different for different stages and different purposes, had directed for consideration of the appellants' case for appointment, if otherwise, found suitable. The Apex Court in the said case had held that one year validity should be computed from the last requisition and not the first requisition as in the said case, the State Government had made the appointments in instalments and the difference of time in the first instalment and last instalment was two and a half years. From perusal of the writ petition, we find that no such plea has been raised nor any foundation had been laid with regard to the date of first requisition or last requisition and even otherwise in the facts of the present case,

the petitioner, who was almost placed after 20 candidates from the last selected candidates in the combined merit list and after 12 candidates in the general category list, to which he belongs and their being only 9 vacancies, he could not have been called. Although, in the rejoinder affidavit and supplementary rejoinder affidavits, the petitioner has tried to allege the dates regarding issue of first appointment letter and the last appointment letter, but in view of the above facts cannot gain any advantage from the decision of the Apex Court as in the said case, the question was of first requisition and last requisition. In the present case, there was only one requisition.

23. In the case of Ashok alias Somanna Gowda and Anr. (supra), we find that the Apex Court directed for appointment of the appellants therein, who had challenged the selection on the ground that the allotment of marks in the viva voce was 33.3%, which was much beyond the maximum number of marks for viva voce determined by the Apex Court in the case of [Ashok Kumar Yadav and Others Vs. State of Haryana and Others](#), and [Mohinder Sain Garg Ors. Vs. State of Punjab and Others](#), and upon reduction of the viva voce marks proportionately of all the candidates, who were selected including those of the petitioners, the Apex Court come to the conclusion that the marks obtained by the petitioner would be more than those selected candidates. In the present case, there is no such claim made by the petitioner that the candidates with lesser marks have been selected nor has he challenged the selection on any ground. Thus, this case also does not help the petitioner.

24. It would not be out of place to mention here that the law is well settled that even a selected candidate has no indefeasible right to be appointed. In the present case, petitioner is not one of the selected candidate whose name has been recommended by the Commission in the select list, but he claims to be in the waiting list. Since it is well settled that a selected candidate does not have a vested right of appointment, the petitioner on his own claim being in the waiting list cannot be said to have any right much less vested or indefeasible right to be appointed. In this regard, the Apex Court in the case of [Union Territory of Chandigarh Vs. Dilbagh Singh and others](#), has held as follows:

A candidate who finds a place in select list as a candidate selected for appointment to a civil post, does not acquire an indefeasible right to be appointed in such post in absence of any specific rule entitling him for such appointment and he could be aggrieved by his non-appointment only when the Administration does so either arbitrarily or for no bona fide reasons, it follows as a necessary concomitant that such candidate even if has a legitimate expectation of being appointed in such posts due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is cancelled for bona fide and valid reasons and nor arbitrarily.

25. Again the Apex Court in the case of [State of A.P. and Others Vs. D. Dastagiri and Others](#), has held as follows:

Be that as it may, even if the selection process was complete and assuming that only select list was remained to be published, that does not advance the case of the respondents for the simple reason that even the candidates who are selected and whose names find place in the select list, do not get vested right to claim appointment based on the select list.

26. Recently In the case of [State of U.P. and Others Vs. Rajkumar Sharma and Others](#), the Apex Court has held as follows:

Selectees cannot claim the appointment as a matter of right. Mere inclusion of candidate's name in the list does not confer any right to be selected, even if some of the vacancies remained unfilled and the candidates concerned cannot claim that they have been given a hostile discrimination.

27. Apart from the above in the following three decisions, (1) [Sri Kant Tripathi and Others Vs. State of U.P. and Others](#), Surinder Singh v. State of Punjab (1997) 13 (SC) 537 [Sanjoy Bhattacharjee Vs. Union of India and others](#), it has been held by the Apex Court that a wait listed candidate had no vested right to be appointed except when a selected candidate does not join and the waiting list is still operative. In the present case, no waiting list was called by the State Government. In the present case, no candidature was cancelled during the life time of the select list and, therefore, there was no question of inviting any name from the Commission from waiting list.

28. We may, thus, safely conclude that the petitioner does not have any case either on facts or on law and therefore the writ petition being devoid of merits is liable to be dismissed.

29. The writ petition is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.