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HIGH COURT OF JUDICATURE AT ALLAHABAD

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Court No. 3

Civil Misc. Writ Petition No. 54794 of 2005.

Anil Kumar Verma.Petitioner.

Versus

State of U.P. and others.Respondents.

Present:

(Hon'ble Mr. Justice Amitava Lala and Hon'ble Mr. Justice Shishir Kumar)

Appearance

For the Petitioner : Sri Rameshwar Nath, &
Sri Namit Srivastava.

For the Respondents : Sri Amit Sthalekar, &
Sri S.K. Mehrotra, Standing Counsel.

Amitava Lala, J.-- This writ petition has been made by the petitioner on 08th August, 2005 praying inter alia as follows:

"A-- An order, direction or writ in the nature of Mandamus commanding the respondents to appoint the petitioner in the U.P. Nyayik Sewa Civil Judge (Junior Division) in pursuance to the 2000 examinations conducted by the U.P. Public Service Commission.

B-- Such other and further order, direction or writ of suitable nature which this Hon'ble Court may deem fit and proper in the circumstances of the case.

C-- An order awarding cost of this petition to the petitioner."

The fact remains that the petitioner belongs to Scheduled Caste category and appeared in U.P. Judicial Service Civil Judge (Junior Division) Examination, 2000. The petitioner's name was not included in the list of the selected candidates although he had been awarded 530 marks, whereas, the last selected candidate belonging to Schedule Caste category had secured 531 marks. Learned Counsel appearing for the petitioner contended that the last selected Scheduled Caste candidate in the select list, namely, Sri Pooran Chandra even after being selected did not join because he was appointed in Delhi Judicial Service. He further contended that appointment of another Schedule Caste candidate Sri Suresh Kumar Singh was cancelled due to fake Scheduled Caste certificate produced by him. Therefore, according to the petitioner, two vacancies are available in the select list to accommodate the petitioner against one of the existing vacancies of such category. In the writ petition there is no whisper with regard to any arbitrary action on the part of the State or the High Court.

On behalf of the High Court, being respondent no. 3 herein, a counter affidavit has been filed categorically mentioning certain facts, which are important in this respect. It has been stated in the counter affidavit that for recruitment to fill up 147 posts of the officers of U.P. Nyayik Sewa i.e. Civil Judge, Junior Division--2000, the same were advertised on 04th March, 2000 in daily newspaper i.e. Northern India Patrika. After holding the examination and interview the State Government vide its letter No. 4351/II/4-2003-32(2)/98 T.C.-2, dated 12th November, 2003 communicated a list of the names of 145 successful candidates to the High Court for indicating the places of posting in the districts. By letter No.283/D.R.(S)/03, dated 10th December, 2003 the High Court communicated to the State Government the places of postings in respect of 138 recruited candidates i.e. Civil Judge, Junior Division, out of 145 selected candidates as six selected candidates were already appointed and working as Civil Judge, Junior Division, on the basis of U.P. Nyayik Sewa Civil Judge, Junior Division, Examination--1999 as well as under the interim order of the Supreme Court and one selected candidate Sri Pradeep Kumar Srivastava had refused to join as he was appointed in Jharkhand Judicial Services. It has been further submitted that out of aforesaid 138 selected candidates, three candidates,

namely, Sri Mohd. Wasim Ali, Sri Pooran Chandra and Smt. Alka Gupta did not join and as such their candidatures were cancelled by the Government. Thus, only 135 selected candidates of Civil Judge, Junior Division, have joined their services pursuant to appointment notifications. It has been categorically contended by the respondents that Sri Dinesh Singh, whose name was wrongly excluded from the select list, made a representation. In his representation dated 27th June, 2005 addressed to the Principal Secretary (Law) and Legal Remembrancer, Govt. of U.P., Lucknow as well as to the High Court, Sri Dinesh Singh (the then candidate of Civil Judge, Junior Division, Examination-2000) has brought the following facts:

Sl. No.

Name of candidates

Marks obtained in written

Marks obtained in interview

Total

1.

Sri Mohd. Ghazali

562

50

612

2.

Sri Ajai Kumar Dixit

542

70

612

3.

Sri Dinesh Singh

548

64

612

Learned Counsel appearing for the respondent no. 3 contended that from the perusal of the above chart, it appears that Sri Dinesh Singh secured more marks in interview than Sri Mohd. Ghazali. Sri Mohd. Ghazali and Sri Ajai Kumar Dixit were selected and appointed, but besides obtaining more marks in interview than Sri Mohd. Ghazali, he (Dinesh Singh) could not be selected. Subsequently, under the directions of this Court passed in the writ petition filed by Sri Dinesh Singh he was selected as 136th candidate, because the Court in Writ Petition No. 1247 (SB) of 1992 (Manju Trivedi Vs. State and others) has held that if there are equal marks of two or more than two candidates then their placement will be made according to the marks obtained in interview. It has been further stated that the vacancies caused due to not joining by Sri Pooran Chandra, Sri Mohd. Wasim Ali and Smt. Alka Gupta were not included in the recruitment of 347 posts of Civil Judge (Junior Division), i.e. in the recruitment batch of 2003, because at the time of requisition of 347 posts of Civil Judge (Junior Division) the result of 147 posts of Civil Judge (Junior Division) i.e. the recruitment batch of 2000, was not declared. Hence, the aforesaid three vacancies have been included/carried forward to the next recruitment i.e. U.P. Nyayik Sewa Civil Judge (Junior Division) Examination--2006 for 355 posts of Civil Judge (Junior Division).

However, Mr. Rameshwar Nath, learned Counsel appearing for the petitioner contended that in view of the judgement reported in 2005 (6) AWC 6015 (Om Prakash Singh Vs. State of U.P. and others) if the posts, for which selections have been made, are not actually filled up by the joining of the candidates who might later have withdrawn, but that the withdrawal or not joining happened before the actual filling up of posts, then the ordinary course to be followed by the public respondents would be to draw upon the unexhausted merit list and give appointment to the persons who are next in order of merit. He also relied upon a judgement of the Single Judge, having its persuasive value, as reported in 2002 (4) AWC 2804 (Trilok Nath Mishra and others Vs. State of U.P. and another) and contended that the action of the respondents is unreasonable, extraneous to the object of preparing list and are arbitrary. A candidate has a constitutional right under Article 14 read with Article 16 of the Constitution of India to be considered for appointment on the available vacancies after going through the process of selection. This right can not be defeated on the ground that some of the candidates in some other selections have filed writ petitions and challenging the number of vacancies, which could not be filled up for various reasons or that it takes a long time. He relied upon a judgement of the Supreme Court reported in JT 2006 (12) SC 105 (Andhra Pradesh Public Service Commission Vs. P. Chandra Mouleesware Reddy and others) to apprise that lapse of seven years in not filling up the vacancies is a good cause. Learned Counsel appearing for the petitioner further contended that in view of another Division Bench judgement of this High Court reported in 1999 (2) AWC 1230 (State of U.P. and others Vs. Ravindra Nath Rai and others) it is no doubt

correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time the appointing authority can not ignore the select panel or decline to make the appointment on its whims. It has also been stated that although there is no provision either statutory or other otherwise to prepare waiting list but preparation of such list cannot be nullified. Learned Counsel for both the parties contended that as per the present rule, select list prepared under sub-rule (3) of Rule 20 of the Uttar Pradesh Judicial Service Rules, 2001 shall lapse after all the vacancies advertised or varied after due notification, are filled up as per sub-rule (2) of Rule 21 of the said Rules. According to the learned Counsel appearing for the petitioner on interpretation of such sub-rule, since their names are not incorporated in the selection of 2003 but in 2006, his right has not been exhausted. To that, learned Counsel appearing for the High Court-respondent no. 3 contended before this Court that both the selections for the year 2003 and 2006 have already been held and results are declared as because result of 2000 examination was not declared prior to recruitment of 2003, the alleged vacancies of Sri Pooran Chand, Sri Mohd. Wasim and Smt. Alka Gupta were not included in the batch of recruitment for the year 2003. On enquiry we have come to know that the recruitment Rules of the year 2001, as aforesaid, was effected from 01st July, 2000 prior to selection of the year 2000 itself.

Sri Amit Sthalekar, learned Counsel appearing for the respondent no. 3, cited a decision of the Supreme Court reported in AIR 1988 SC 162 (State of U.P. Vs. Rafiquddin and others) to establish that it is necessary to consider as to how long the list of candidates for a particular examination can be utilized for appointment. There is no expressed provision under the Rule. In absence of any provision in the Rules a reasonable period must be followed during which the appointment on the basis of the result of a particular examination should be made. Due to non-availability of suitable candidates, the appointment to the remaining vacancies could be made on the basis of the result of the subsequent competitive examination and unfilled vacancies of 1970 examination (as therein) could not be filled after five years as subsequent competitive examination of the year 1972 (as therein) and of the year 1973 (as therein) had taken place and the results had been declared. The 1970 examination could not be utilized as a perennial source or inexhaustible reservoir for making appointments indefinitely. Both the parties have relied upon the judgement reported in AIR 1991 SC 1612 (Shankarsan Dash Vs. Union of India), in which it has been held by the Five Judges' Bench of the Supreme Court that it is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which can not be legitimately denied. However, a condition has been imposed by the Supreme Court by holding a view that unless an action is in the arbitrary manner. Learned Counsel appearing for the respondent no. 3 also cited a judgement reported in 2001 (6) SCC 380 (All India SC & ST Employees' Association and another Vs. A. Arthur Jeen and others) to establish that merely because the names of the candidates were included in the panel indicating their provisional selection, they did not acquire any indefeasible right for appointment even against the existing vacancies and the State is under no legal duty to fill up all or any of the vacancies as laid down by the Constitution Bench of the Supreme Court in Shankarsan Dash (supra). During the course of hearing we also found a judgement being 1993 Supp (2) SCC 600 (Jai Singh Dalal and others Vs. State of Haryana and another) in which three Judges' Bench of the Supreme Court held that law is settled that even candidates selected for appointment have no right to appointment and it is open to the State Government at a subsequent date not to fill up the posts or to resort to fresh selection according to revised criteria.

Therefore, in totality what we gather from the discussions are to be jotted down hereunder. This is not a case of any arbitrary or whimsical action nor it has been pleaded anywhere by the petitioner. The petitioner's case is only based on equity. As because he is only short of one mark and not placed in the select list of the year 2000 against the vacancy created for the Scheduled Caste candidates, he can be easily accommodated even in 2006 as no period is fixed under the Rules for lapsing the select list. According to us, equity is not one way traffic. Equity follows law following the maxim *aequitas sequitur legem*. In other words, it is moving on the periphery of law and when law allows to enter, forms a zygote. Sometimes in the rarest occasion the law follows equity following the maxim *lex aliquando sequitur aequitatem*. Such situation is an exceptional situation. Exception can not be the rule. That exceptional circumstance can not be available here particularly when a chance application has been made by the writ petitioner after a period of five years from the original selection in spite of not having been placed in the select list and two successive select lists are exhausted by now. Thus, we do not find any reason to pass any affirmative order in favour of the petitioner. Hence, the writ petition stands dismissed.

However, no order is passed as to costs.

(Justice Amitava Lala)

I agree.

(Justice Shishir Kumar)
Dated: 01st February, 2008.
SKT/-

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