

SUPREME COURT OF INDIA

State of U.P.

Vs.

Rajkumar Sharma

C.A.No.1433 of 2006

(Arijit Pasayat and Tarun Chatterjee JJ.)

03.03.2006

JUDGMENT

ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the judgment rendered by a Division Bench of the Allahabad High Court in a Letters Patent Appeal. This is practically the second journey of the parties to this Court. Earlier in State of Uttaranchal and Ors. v. Sidharth Srivastava and Ors. (2003 (9) SCC 336) connected issues were considered.

The factual background in a nutshell is as follows:-

Uttar Pradesh Public Service Commission (in short 'UPPSC') published advertisement inviting applications for 544 posts of J.E. Civil/Technical (507 Civil + 37 Technical). The result of selection was published on 7-1-2000. The UPPSC sent its recommendations to the U.P. Government on 30-10-2000. The U.P. Government forwarded the recommendations on 31-10-2000 to the Chief Engineer's Office, Hill Cadre, Almora. The separate State of Uttaranchal came into existence on 9-11-2000. U.P. Government forwarded the UPPSC recommendations in respect of posts in Hill Cadre to the Government of Uttaranchal. On 29-8-2001, Government of Uttaranchal issued the order not to appoint the selected candidates mentioning two reasons that - (1) the new reservation policy of the State of Uttaranchal is different from that of U.P. and (2) practical and legal difficulties "in such a situation" in giving appointments to the candidates recommended by the UPPSC. The selected candidates, aggrieved by the same, filed a batch of writ petitions assailing the said order, impleading State of Uttaranchal and its officers, State of Uttar Pradesh and its officers and UPPSC. A Division Bench of the High Court, by a common judgment allowed the writ petitions and issued direction to the State of Uttaranchal to give appointments to the writ petitioners. The High Court took the view that the recommendations made by the UPPSC of the erstwhile State of U.P. were binding on new State of Uttaranchal. High Court's judgment was assailed before this Court by the State of Uttaranchal.

After noticing various provisions contained in Articles 320 and 323(2) of the Constitution of India, 1950 (in short the 'Constitution'), as well as Section 178 of the U.P. Reorganisation Act, 2000 it was held that the decision of the High Court was not correct. It was, inter alia, observed as follows:

"27. The High Court misread the Government order dated 29-8-2001 and drew wrong inference in saying that the Government of Uttaranchal denied acceptance of the recommendations but did not say that no appointment shall be given on the basis of the recommendations of UPPSC. If the Government of Uttaranchal has denied to accept the recommendations of UPPSC, essentially it follows that no appointment could be given. This apart in the very order in paragraph 2 it is specifically stated that "therefore, in this regard after thorough consideration it has been decided that the candidates recommended by the UPPSC may not be appointed in various Departments of the Government of Uttaranchal." Thus, the reason given by the High Court that the Government of Uttaranchal though denied to accept the recommendations of UPPSC but did not deny to give appointment and as such the said Government order could be ignored, does not stand to reason and it is untenable.

The interpretation placed by the High Court on S. 78 of the Act is also wrong. Merely because the recommendations received by the erstwhile State of Uttar Pradesh had been sent to State of Uttaranchal and they were not reversed by the Governor for being placed with the reasons before the Assembly of State of Uttar Pradesh under S. 78 of the Act, it cannot be held that the recommendations made by the UPPSC were binding on Government of Uttaranchal. In this regard we have already made the legal position clear. Hence it is unnecessary to deal with the same any further. In our view, looking to the reasons recorded by the High Court in the impugned judgment, which are neither tenable nor acceptable, the impugned judgment cannot be allowed to stand."

Para 31 of the judgment is also significant as the case of the non- official respondents had its foundation on the said paragraph which reads as follows:

"31. It was also urged in the alternative that the State of Uttar Pradesh may be directed to give appointments to the non-official respondents. This aspect was neither raised before the High Court nor it was considered. Hence, we do not wish to deal with the same. All that we can say is that this order shall not come in the way of the State of Uttar Pradesh, if so advised, to consider the claims of the non-official respondents for appointments based on the selection made by UPPSC. Having regard to the peculiar situation in which the non-official respondents are placed, we would like to say that in case the non-official respondents apply as and when the applications are invited for selection either by UPPSC or by the Uttaranchal State Public Service Commission in future within a period of three years, the UPPSC or the Uttaranchal State Public Service Commission shall consider them for selection subject to their satisfying all other eligibility requirements but relaxing the upper age-limit.

After this Court's judgment, the candidates whose names had been included in the select list approached the State of Uttar Pradesh to appoint them. However, their requests were turned down. Challenging order of the State Government, the writ application was filed which was allowed by learned Single Judge. The State of Uttar Pradesh and its functionaries filed Letters Patent Appeal before the Division Bench which affirmed the order of the learned Single Judge.

The stand of the appellant-State before the High Court was that considering the peculiar circumstances the only relief granted by this Court was relaxation in age for a period of 3 years whenever the selection is held. The Uttar Pradesh Hill Sub-cadre Rules, 1992 (in short '1992 Rules') were enacted for certain hill areas of the State of Uttar Pradesh as it is stood before the re-organisation, and the Rules were applicable in all districts of hills, namely, Almora, Chamoli,

Dehradun, Nainital, Pauri Garhwal, Pithoragarh, Tehri Garhwal, Uttarkashi and Udham Singh Nagar. All the said districts now stand included in the State of Uttaranchal. Therefore, the vacancies which were advertised for the hills could not be filled up as the said cadre stood abolished. Reliance has been placed by the High Court on Office Memorandums issued on 31.1.1994 and 15.12.1999 which did not have any application whatsoever.

Stand of the non-official respondent, however, was that the note appended to the advertisement made it clear that there was one application to be made for all the posts in different departments. It was only indicated that the screening shall be made at the time of final selection regarding posting in plain or hill areas. It was pointed out that in similar circumstances those candidates who had not been appointed by the State of Uttaranchal, were appointed by of State of U.P. as sub- registrar and Passengers Goods Officers in the Transport Department. There could not be differential treatment so far as the writ-petitioners are concerned. No fresh advertisement has been issued since 1998 though period of more than 6 years has lapsed.

The High Court accepted that Hill sub-cadre stood abolished. But held that currency of select list had not expired and the vacancies could be filled up. High Court noted that appointments beyond number advertised would amount to filling up future vacancies which is impermissible. It also noted that mere inclusion in the select list did not confer any enforceable right to be selected even if some of the vacancies remain unfilled. Though it was noted that even if a mistake has been committed in some case that cannot be a ground to perpetuate the mistake, on the logic of negative equality yet this is a case, according to the High Court, which was not based on any mistake. The select list was operative and its validity had not expired. If the State Government had given effect to the Office Memorandums while making appointment in other departments, there could be no justification to deprive the writ petitioners of some benefit particularly when the select list was in force and no vacancies had been advertised since 1998. It was held that this Court left the matter to be determined by the State Government. The discretion had not been exercised objectively. Accordingly, the special appeal was dismissed, upholding similar views expressed by learned Single Judge.

In support of the appeal, Mr. R.G. Padia, learned senior counsel appearing for the State of U.P. and its functionaries submitted that the High Court's judgment is unsupportable on more than one counts. First, all the posts which were advertised for the plain areas cadre have been filled up. After having accepted that the appointments cannot be made beyond the number of post advertised, should not have directed appointment.

The High Court having noticed that even if by mistake some appointments have been made that cannot confer a right on others, therefore erroneously held that this was not a case of mistake and/or that the select list was in force. Even Uttar Pradesh Cadre Rules, 1992 clearly stipulates that the list was valid only for one year. The High Court erroneously placed reliance on the Office Memorandum dated 31.1.1994 and 15.12.1999.

The Office Memorandums had no application to the facts of the case. Even otherwise, the Office Memorandums clearly indicated that the select list is valid only for one year. It is of relevance to note that the U.P. PSC had prepared two lists one for the plan and the other for the hill cadre. Further, in the earlier case at para 23 grievance had been made that Uttranchal Government had made appointments by picking up some candidates selected by U.P. PCS. This Court observed that there was no evidence of any mala fides and similar is the position in the case at hand. It is pointed

out by Mr. Padia that only 11 persons in total were appointed in the two departments. Rules 12 and 16 of the Uttar Pradesh Public Works Department Subordinate Engineering Rules, 1951 (in short the 'Engineering Rules') substantiate the stand of learned counsel for the appellants that the select list is valid only for one year.

Filling up of vacancies over and above the number of vacancies advertised would be violative of the fundamental rights granted under Articles 14 and 16 of the Constitution. (See: *Union of India & Ors. v. Ishwar Singh Khatri & Ors.* (1992 Supp (3) SCC 84), *Gujrat State Dy. Executive Engineers, Association v. State of Gujarat & Ors.* (1994 Supp (2) SCC 591); *State of Bihar & Ors. v. the Secretariat Assistant S.E. Union, 1986 & Ors.* (AIR 1994 SC 736); *Prem Singh & Ors. v. Haryana State Electricity Board & Ors.* (1996 (4) SCC 319); *Surendra Singh & Ors. v. State of Punjab & Anr.* (AIR 1998 SC 18), and *Kamlesh Kumar Sharma v. Yogesh Kumar Gupta & Ors.* (AIR 1998 SC 1021).

Selectees cannot claim the appointment as a matter of right. Mere inclusion of candidates' name in the list does not confer any right to be selected, even if some of the vacancies remained unfilled and the concerned candidates cannot claim that they have been given a hostile discrimination. (See: *Shankarsan Dash v. Union of India*, (AIR 1991 SC 1612), *Smt. Asha Kaul and Another v. State of Jammu & Kashmir and another* (1993 (2) SCC 573), *Union of India v. S.S. Uppal* (AIR 1996 SC 2346), *Hanman Prasad v. Union of India* (1996 (10) SCC 742), *Bihar Public Service Commission & Ors. v. State of Bihar & Ors.* (AIR 1997 SC 2280), *Syndicate Bank & Ors. v. Shankar Paul & Ors.* (AIR 1997 SC 3091), *Vice Chancellor, University of Allahabad v. Dr. Anand Prakash Mishra and Ors.* (1997 (10) SCC 264), *Punjab State Electricity Board v. Seema* (1999 SCC (L&S) 629); *All India SC & ST Employees Association v. A Arthur Jeen*, (AIR 2001 SC 1851), *Vinodan T. v. University of Kalikut*, (2002 (4) SCC 726), *S. Renuka v. State of Andhra Pradesh and Ors.* (AIR 2002 SC 1523), and *Baitariani Gramiya Bank v. Pallab Kumar & Ors.* (AIR 2000 SC 4248).

Even if in some cases appointments have been made by mistake or wrongly that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake. (See: *Snehprabha v. State of U.P. & Ors.* (AIR 1996 SC 540), *Secretary, Jaipur Development Authority, Jaipur, v. Daulat Mal Jain & Ors.* (1997 (1) SCC 35), *State of Haryana and Ors. v. Ram Kumar Mann* (1997 (3) SCC 321), *Faridabad C.T. Scan Centre v. D.G. Health Services & Ors.* (1997 (7) SCC 752), *Jalandhar Improvement Trust, V. Sampuran Singh* (AIR 1999 SC 1347), *State of Punjab and Others v. Dr. Rajeev Sarwal* (1999 (9) SCC 240), *Yogesh Kumar and Ors. v. Govt. of NCT, Delhi and Ors.* (2003 (3) SCC 548), *Union of India and Anr. v. International Trading Co. and Anr.* (2003 (5) SCC 437) and *Kastha Niwarak G.S.S. Maryadit, Indore v. President, Indore Development Authority* (JT 2006 (2) SC 259).

In view of the aforesaid, the High Court after having correctly indicated the legal position has failed to apply the same to the factual scenario in its proper perspective. The basic fallacy in the judgment of the learned Single Judge and the Division Bench is that they proceeded under the presumption that the select list was in force. The view is clearly wrong. In paragraph 31 of the earlier judgment it was made clear that it was upto the State to take a decision as to whether any relief can be granted to the persons who were selected in respect of the hill cadre. All the posts advertised for the plain cadre have been filled up. Therefore, the State has rightly taken the stand that there was no scope for appointing non-official respondents. Relaxation was given for a period of three years for applicants, when applications are invited for selection by the U.P. PSC or the Uttaranchal State Public Service

Commission. Obviously, relaxation is to be granted when fresh applications are invited. That is not the case here. Therefore, the judgments of the learned Single Judge as well as Division Bench affirming the same cannot be maintained and are set aside. The appeal is allowed but without any order as to costs.