

SUPREME COURT OF INDIA

Secretary, U.P. Public Service

Vs.

Uday Kumar Upadhyaya & Ors.

C.A.No.2402 of 2002

(H.K.Sema and Markandey Katju, JJ.)

14.02.2008

ORDER

1. Aggrieved by the order dated 15/11/2000, this appeal has been preferred by the U.P. Public Service Commission.

2. Heard the parties.

3. Briefly stated, the facts are as follows. Sometimes in the year 1983, an advertisement was issued for filling up posts of 301 Naib Tehsildar. Result was declared on 22/9/1988. In the said result, 297 candidates were recommended and appointed. Subsequently, 40 recommended candidates did not join their post within the stipulated time and 6 appointees resigned. Thus, 46 posts became vacant. For the 46 subsequent vacancies, the department again recommended 46 candidates from the waiting listed. The break-up of 46 candidates are as follows: 32 general candidates, 6 OBC and 8 SC candidates. All of them were appointed. It appears that the respondents herein preferred a writ petition in February 1992 claiming their appointment from the waiting list. In paragraph 28 of the writ petition, allegation has been made that the respondents 1 to 3, the appellants herein, have committed illegality in giving appointment to the 12 persons who have not even appeared in the examination and they were not in the merit list and as such their appointment is wholly illegal and is liable to be cancelled. Counter affidavit has been filed on behalf of the appellants rebutting the said contention. Be that as it may. The allegation in paragraph 28 of the writ petition was as vague as anything. The name of none of the 12 persons, who were alleged to have been appointed despite the fact that they did not appear in the examination, has been mentioned, save and except, making bald statement. They were not made parties. Also it is not the case of the respondents that they were high in the waiting list and ignoring their candidature, the persons, who were below them in the waiting list, have been appointed.

4. By now it is well-settled principles of law that even a recommended candidate does not possess any indefeasible right. No enforceable right has accrued even to the recommended candidates. The case of the respondents was still worse. It is contended that the respondents, who filed writ petition, were far below than the candidates who have been appointed from

the waiting list. The High Court on such bald allegation issued a writ of mandamus to the appellants for appointment of the respondent Nos. 3 and 4. The order of the High Court is clearly not in accordance with law.

5. In the result, this appeal is allowed. The order of the High Court is set aside. No costs.