

SUPREME COURT OF INDIA

BSNL

Vs.

Abhishek Shukla

C.A.No.2239 of 2009

(S.B. Sinha and Dr. Mukundakam Sharma JJ.)

08.04.2009

JUDGEMENT

S.B. Sinha, J.

1. Leave granted.

2. This appeal is directed against a judgment and order dated 1.02.2005 passed by a Division Bench of the Allahabad High Court whereby and whereunder an order dated 1.12.2004 passed by a learned Single Judge of the said Court was modified as also the order dated 3.1.2006 passed by a learned Single Judge of the said High Court dismissing the review application filed by the appellant herein.

3. The basic fact of the matter is not in dispute. An advertisement was issued by the Chief General Manager, U.P. (W), Telecom Circle, Dehradun for recruitment to the post of Telecom Technical Assistants (General Central Services) Group 'C' non-gazetted, non-ministerial in the office of Telecom District Manager, Pilibhit. In the said advertisement, it was specified that there exists five vacancies for the post of General Category candidates, two reserved for the candidates belonging to Other Backward Classes and one for the Scheduled Caste candidates.

“Indisputably, pursuant to the said advertisement a large number of applications were filed. A Selection Committee was constituted which prepared a select list. It is also beyond any doubt or dispute that names of the appellants herein were placed in the waitlist.

Results were published on 8.8.2002 which is in the following terms:

"Sl. Roll No. Name Date of Caste Total Roster No. Birth

1 14-035 Alok Kumar Rathor 05.07.78 OBC 724 Gen.

- 2 14-063 Ravi Kumar 16.07.74 SC 659 Gen.
- 3 14-008 Pradeep Kumar 05.01.76 OBC 650 Gen.
- 4 14-059 Sanjay Kumar 01.01.78 OBC 645 OBC
- 5 14-004 Chandra Pal Singh 12.05.78 SC
- 611 SC 6 14-129 Amit Vaish 16.07.74 OC 611 Gen.
- 7 14-058 Kamlesh Kumar Maurya 02.07.80 OBC 608 Gen.
- 8 14-112 Prem Pal 02.01.79 OBC 600 OBC
- 9 14-085 Abhisek Shukla 01.08.79 OC 596 Gen.
- 10 14-151 Jitendra Pal Gangwar 21.04.79 OBC 589 SC"

It is furthermore not in dispute that Shri Pradeep Kumar and Shri Kamlesh Kumar Maurya, whose names appear at Serial No.3 and 7 at the said select list did not join their posts. First respondent belongs to General Category candidate whereas the second respondent belongs to Scheduled Castes category candidate.

The selected candidates were sent for training for a period of two months. They had, however, been given placement orders only on 29.8.2003. Having come to learn that two of the select list candidates had not joined, appellants made representations on or about 12.9.2003 and 20.9.2003 respectively. The said representations were, however, rejected only on the premise that there was no provision in the Recruitment Rules for maintaining such a waitlist."

4. Appellants filed a writ petition before the Allahabad High Court praying, inter alia, for the following reliefs:

"Issue a writ, order or direction in the nature of certiorari quashing the impugned letter dated 24.11.2003, issued by the Respondents.

(Annexure-7) Issue a writ, order or direction in the nature of mandamus directing the Respondents to issue appointment letters to the Petitioners, in the light of the result declared by the respondents."

5. In the affidavit filed on behalf of the appellant herein and affirmed by one Shri B.S. Bhandari, it was averred:

"That in reply to the contents of para 10, 11 and 12 of the writ petition, it is stated that there is no provision of waiting list by the department."

6. By reason of a judgment and order dated 1.12.2004, a learned Single Judge of the High Court noticed that most of the averments made in the writ petition had not been traversed and, thus, the same would be deemed to have been admitted. The writ petition was, therefore, allowed, directing:

“In the result, the writ petition stands allowed.

The order dated 26.9.2003/24.11.2003 passed on the representation of the petitioner, is quashed.

The petitioners would be entitled to be given appointment on the post of Telecom Technical Assistants under Telecom District Manager, Pilibhit in pursuance to the select list dated 05.08.2002. There will be no order as to cost.”

7. An intra court appeal was preferred thereagainst and by reason of the impugned judgment, the order of the learned Single Judge was modified to the following effect:

“The learned Single Judge has allowed the writ petition vide judgment and order dated 01.12.2004 issuing a direction to the present appellants to appoint the respondents No.1 and 2 on the post of Telecom Technical Assistants under Telecom District Manager, Pilibhit, as their names appeared in the waiting list at serial Nos.1 and 2, as two persons from the select list did not join. The learned Single Judge has held that the present appellants did not file the counter affidavit in a proper manner and the denial was not in accordance with the mandate of the Order VIII Rule 5 of the Code of Civil Procedure. The averments made in the petition were thereafter found to be correct. No interference is required with the judgment and order of the learned Judge except to the extent that the learned Single Judge should not have issued a direction to the appellants to appoint the petitioners straightaway.

In our opinion the present appellants should have been directed to consider the candidates whose names appeared in the waiting list against those vacancies.

In view of the above, the impugned judgment and order dated 01.12.2004 is modified to the extent that the present appellants shall consider to fill up the two vacancies which remained unfilled because two selected persons did not join by offering the appointment letters to the respondents who are in the waiting list at serial Nos.1 and 2 within a period of six weeks from today.”

8. As indicated hereinbefore, by an order dated 3.1.2006, the review application filed by the appellants has been dismissed.

9. Mr. K.C. Kaushik, learned counsel appearing on behalf of the appellant, would contend:

“i) There being no provision in the statutory rules for preparing a select list with waitlist candidates, the impugned judgment cannot be sustained.

ii) The life of the panel being one year, it was impermissible for the High Court to direct the appellant to consider the candidatures of the appellants.”

10. Mr. Navin Chawla, learned counsel appearing on behalf of the respondent, on the other hand, would support the impugned judgment.

11. In their Writ Petition, the respondents had categorically stated that only on 29.8.2003, appellant had cleared the names of six persons and were permitted to join. Paragraph 4 of the counter affidavit, traversing the averments made in paragraph 7 of the writ petition, reads as under:

“That in reply to the contents of para 7 of the writ petition it is stated that only eight candidates were selected in merit list they have appointed.”

In paragraph 13 of their writ petition, the respondents averred:

"That in this regard, appointments made at other places, waitlisted persons have been given appointment. One of such place, i.e., meerut, one Shri Parvesh Malhotra bearing Roll No.1880 and Shri Nirmal Singh bearing Roll No.1575, who were not in the first 20, but subsequently they have been given appointment being on the Wait Listed Panel. A copy of the aforesaid result is annexed as Annexure-9 to this writ petition."

The said averments have been traversed in paragraph 8 of the affidavit, stating:

"That contents of para 13 of the writ petition are not correct as stated hence denied. It is stated that there is no waiting list in Pilibhit.”

12. There cannot, therefore, be any doubt whatsoever that the allegations contained in the writ petition that in all other districts the Selection Committee had prepared `waitlist' and a large number of appointments had been made therefrom were not specifically been denied.

13. Appellant is a `State' within the meaning of Article 12 of the Constitution of India. It must have its law department. It is, therefore, difficult to conceive that the concerned officers of the department could not place the factual and legal position before the Court as has been contended before us.

14. Mr. Kaushik furthermore contended that one of the vacancies had been earmarked for a handicapped candidate and, thus, it is not possible to comply with the order of the High Court. Such a decision must have been taken only in the year 2003. Such appointment of a handicapped person, indisputably, is de' hors the advertisement.

15. We, therefore, do not find any error in the impugned judgments.

“We are, however, not oblivious of the fact that ordinarily the life of such a panel is one year as has been observed by this Court in *Girdhar Kumar Dadhich & Anr. v. State of Rajasthan & Anr.*¹.

However, the select list was approved by the appellant only in August 2003 and the respondents having made representations within one year therefrom in our opinion, the said requirement also stands satisfied in the instant case.

Moreover, such a question had not ever been raised before the courts below.

Had such a question been raised, the respondent could have dealt with the same. {See *Amlan Jyoti Borooah v. State of Assam & Ors.*² }.”

16. For the reasons aforementioned, we do not find any merit in this appeal. It is dismissed accordingly. As the appellants have already deposited a sum of Rs.20,000/- pursuant to this Court's order dated 24.4.2006, we do not make any order as to costs.

¹2009 (2) SCALE 98

²2009 (2) SCALE 56