

# SUPREME COURT OF INDIA

Naseem Ahmad

Vs.

State of U.P.

C.A.No.10459 of 2010

(R.V.Raveendran, P.Sathasivam and A.K.Patnaik JJ.)

10.12.2010

## JUDGMENT

**P.Sathasivam, J.**

1. Leave granted.

2. This appeal is directed against the judgment and final order dated 08.08.2007 passed by the High Court of Judicature at Allahabad in Special Appeal No. 1004 of 2007 whereby the High Court dismissed the appeal and upheld the order dated 19.09.2003 passed by the District Judge, Mahoba .

3. The facts and circumstances giving rise to this case are:

“(a) An advertisement was issued by the Office of District Judge, Mahoba on 17.08.2000 inviting applications for appointment of Class IV posts of Process Server, Orderly, Peon and Farrash in the pay scale of Rs.2550-3200/- in District Judgeship, Mahoba mentioning that the selections are to be made for the purposes of preparation of a wait list. The advertisement did not mention the details or number of posts for which the advertisement was issued. The appellants herein applied for the said posts. After interview, a select list was prepared on 19.09.2000 mentioning 22 names and the appellants were placed at S.Nos. 9, 10 and 11. Subsequent to the result, appointments were made as and when the vacancies arose. Appointment orders were issued to the appellants on 13.08.2001. The total sanctioned strength of Class IV employees in the Judgeship of Mahoba on the date of advertisement was 31. In 2001, 4 more posts were created in the Judgeship of Mahoba for the outlying Court in Tehsil Charkhari. For the said newly created posts, the appointment letters were issued to the appellants herein on 13.08.2001. In the meantime, one Court of Addl. District Judge was transferred from Hamirpur to Mahoba increasing the sanctioned strength of Class IV employees in Mahoba to 37 including the outlying Court of Charkhari.

(b) On 19.09.2003, the District Judge, Mahoba passed an order that as per the provisions of G.Os. dated 27.02.1974 (Personnel), 29.07.1995 (Personnel and administrative Reforms Department, U.P. Government) and order dated 23.01.1996 passed by the High Court of Allahabad in Ram Babu etc., the panel made of Class IV employees is valid for a period of one year, and thus, the appointments made after 19.09.2001 are ad hoc. He also cancelled the select list/wait list forthwith. On the basis of the said order, the appointments of the appellants were treated as ad hoc.

(c) Alleging arbitrary appointments, promotions and discrimination in appointments, several writ petitions were filed which were disposed of by the High Court vide judgment and order dated 26.10.2005. However, the appellants herein were not party to the said writ petitions, therefore, they filed a separate Writ Petition being W.P.(C) No. 49006 of 2003 against the order dated 19.09.2003 passed by the District Judge, Mahoba. The learned single Judge of the High Court, vide order 02.07.2007, dismissed the writ petition. Against the said order, a special appeal being S.A. No. 1004 of 2007 was filed by the appellants herein before the High Court which was also dismissed by the High Court on 08.08.2007 in terms of the judgment and order dated 26.10.2005 in C.M.W.P. No. 34640 of 2003 (Murari Lal Pandey vs. District Judge, Mahoba Ors.) wherein the High Court had held as follows:

".....A fair and reasonable interpretation of Rule 12 in the light of the aforesaid Judgment is that the wait list should not be drawn for more than twice the number of anticipated vacancies in the recruitment year, and should come to an end as soon as the last vacancy on the date of advertisement is filled up. It is always open to the District Judge to anticipate the vacancies due to superannuation or likely promotion, but having determined number of vacancies, for which the advertisement is made, and drawing a wait list of equal number of candidates he is not permitted under the Rules to go on appointing persons from the wait list on unanticipated vacancies. Any other interpretation will only give rise to serious irregularities as in the present case, and will also violate the rights of those persons, who become eligible in the meantime for being considered for such vacancies in future."

In pursuance of the order dated 08.08.2007, the District Judge, Mahoba informed the appellants by letter dated 12.11.2007 that their services came to an end with immediate effect. Aggrieved by the said order, the appellants have filed this appeal by way of special leave petition."

4. Heard learned counsel for the parties.

5. The advertisement was issued on 17.08.2000 by District Judge, Mahoba inviting applications for selection and appointment on Class IV posts of Process Server, Orderly, Peon and Farrash. In response to the said advertisement, the appellants applied and on 19.09.2000 results were published and they were included in the select list. All the appellants

were given appointment on 13.08.2001. It is the claim of the appellants that all the appointments were made on substantive vacancies. It is the grievance of the appellants that without any show cause notice, by order dated 19.09.2003, their appointments have been converted into ad hoc appointment. The appellants also pointed out that the Rules nowhere provides that the regular appointments can be converted into ad hoc appointments, hence, the order passed by the District Judge, Mahoba, terminating their services cannot be sustained and the same was wrongly approved by the High Court. The appellants have asserted that they were appointed by order dated 13.08.2001 i.e. within one year of their selection by select list dated 19.09.2000, as such, the grounds mentioned in the order dated 19.09.2003 cannot be sustained and the service of the appellants has to be treated as regular service and no adverse order can be passed against them.

6. On the other hand, it is the contention of the respondents that in view of Rule 12 of the Uttar Pradesh Subordinate Civil Courts Inferior Establishment Rules, 1995 (in short 'the Rules'), the select list, mentioned as waiting list, should be a moderate one containing that number of candidates which was not less than or much excess of the vacancies which might be available in the year of recruitment or the year succeeding thereto and this list should be in reasonable proportion to the notified vacancies. In other words, according to the respondents, a wait list of the candidates contemplated under Rule 12 cannot be deemed to be subsisting for a period beyond the filling up of the notified vacancies. It is also submitted by the respondents that once all the vacancies were filled up, the waiting list would stand exhausted. In support of the above stand, the respondents relied on Office Memorandum of the State Government dated 31.01.1994 in which it has been provided that the waiting list should be valid only for one year.

7. In order to consider the rival claim of both the parties, it is useful to refer the relevant provisions from the Rules:-

“Rule 2 (f) defines "Waiting List" as the list of candidates approved under the rules, for appointment to the various posts in the establishment.

Rule 4(2) of the Rules lays down the method of recruitment for Process Servers, Orderlies, Office Peons and Farrashes and reads thus:

"Rule 4. Method of recruitment.--Recruitment to the following posts in the establishment shall be made-- (1).....

(2) Process servers, orderly peons, office peons and farrashes.--(a) by appointment of candidates on the waiting list prepared under rule 12 or, (b) by transfer from one post to another according to suitability.

(3) ....."

As per Rule 5, all appointments to the establishment in a Judgeship shall be made by the District Judge. Rule 12 is very relevant for our purpose which reads as under: "12. Waiting List--(i) A waiting list of candidates shall be maintained for each Judgeship for the posts of process servers, orderlies, office peons and farrashes. No waiting list shall be maintained for chaukidars, malis, sweepers and waterman.

(ii) The waiting list should be of reasonable dimensions and be revised from time to time with a view to removing there from the names of--

(a) all such candidates as are not likely to receive appointments before attaining the maximum age prescribed in Rule 8, and

(b) such candidates as are found guilty of insubordination, misbehaviour or dishonesty in the discharge of their duties in temporary or officiating vacancies, after giving them necessary opportunities to explain their conduct. Note--The order of names in the waiting list shall be in the order in which the candidates are admitted to it but the District Judge may at the time of appointment, choose from the list the most suitable of all the candidates for reasons to be recorded in writing."

8. The advertisement dated 17.08.2000 makes it clear that a waiting list for the post of Tamola Dahak Orderly, Peons and Farrash in the pay scale of Rs. 2550-3200/- for District Court, Mahoba is to be prepared. In view of the same, applications from eligible candidates were invited in the prescribed format and the same has to be submitted to the Office of Senior Administrative Officer of District Judge, Mahoba. The advertisement further shows that the candidates will be interviewed on 11.09.2000 at District Court, Mahoba. The eligibility conditions for the said posts were that the candidates should be at least 8th, should be an Indian citizen, capable of writing and reading english words and figures and should not be less than 18 years and more than 35 years as on 31.09.2000. There is no dispute that all the three appellants satisfied the eligibility conditions. The list of selected candidates interviewed during 11.09.2000 to 15.09.2000 in District Court, Mahoba was published on 19.09.2000. In that select list, appellants were shown at S.No. 9, 10 and 11. By appointment orders dated 13.08.2001 of District Judge, Mahoba, the appellants have been appointed to Class IV posts in the District Court, Mahoba. No doubt, it is specifically stated that they were appointed in a temporary capacity in the pay scale of Rs. 2550-3200/- and their appointment was purely temporary and was terminable at any time without any prior notice.

9. It is the claim of the respondents before the High Court as well as before us that since the appellants were appointed after a period of one year from the date of their selection by select list dated 19.09.2000, in terms of Government Order as well as Rule 12, their appointment cannot be sustained since the wait list stood exhausted on the appointments being made against the available vacancies on the date of advertisement i.e., 6 + 1, and therefore, they have no right to claim any appointment. We are unable to accept the said contention. We have already noted the date of advertisement and the vacancies available. The material placed as well as the details available in the order of the learned Single Judge of the High

Court clearly shows that on 20.09.2000, the District Judge appointed six persons, namely, Sri Shitla Prasad, Shri Anand Kumar Shukla, Shri Santosh Kumar Saini, Shri Ravi Ranjan Kumar Gautam and Shri Vinod Kumar Paliwal on these available six vacancies on the thirty five sanctioned posts (31 at Mahoba and 4 at Charkhari) in the Judgeship. These factual details were extracted by the learned single Judge in the order dated 26.11.2005 based on the information supplied in the counter affidavit of Shri Balendu Singh, Ist Additional District Judge, Mahoba. The same order further shows that Shri Prem Narayan at S.No. 7 was left out and was given appointment as SC candidate on 23.12.2000. Smt. Mamta Devi at S.No. 8 of the list drawn according to roster was given appointment on 13.02.2001. It is further recorded that the candidates at S.Nos. 9 to 12, namely, Shri Naseem Ahmad, Shri Prakash Chandra, Shri Sohan Lal, (appellants herein), Shri Rajendra Prasad Gautam were given appointments as against four vacancies at the outlying court at Charkhari.

10. It is clear from the information furnished before the learned single Judge that the select list of the appellants was dated 19.09.2000 whereas they were appointed by order dated 13.08.2001 i.e. within one year of the declaration of results. The order dated 19.09.2003 provides that only the appointments made after 19.09.2001 were ad hoc. As all the appellants have been given appointment within one year of publication of select list dated 19.09.2000, their services cannot be termed as ad hoc. Even if it is accepted that wait list is valid only for one year, since the appellants were appointed well prior to the expiry of the one year, the said objection cannot be countenanced.

11. About the validity of wait list and the claim of the respondents that it is valid only for one year, we have already pointed out that the relevant Rule applicable is Rule 12 which admittedly does not prescribe any such limitation. Even though, the High Court has adverted to clarification said to have been issued by the Government, the fact remains, the statutory rule i.e. Rule 12, as it existed on the relevant date did not provide any time limit in regard to the operation of the waiting list. In such circumstances, the claim of the official respondents that a waiting list of candidates contemplated under Rule 12 cannot be deemed to be subsisting for a period beyond the filling up of the notified vacancies for the filling whereof the list has to be prepared and maintained is not supported by any statutory Rule and liable to be rejected. It is true that it cannot be deemed to be operative for an indefinite period. We have already pointed out that even if we accept that the life of the wait list is only for one year, inasmuch as these appellants were appointed by order dated 13.08.2001, within one year of their selection by the select list dated 19.09.2000, the stand of the respondents is to be rejected and the service of the appellants has to be treated as regular service and no adverse order can be passed against them. As discussed above, the construction of Rule 12 as per interpretation of the statute would be that its life is not limited for a particular year since the Rule is very specific and unambiguous. Wait list gets exhausted only when all duly selected candidates are given appointments in the light of Rule 12. As long as the wait list was not exhausted, a fresh list could not be prepared under Rule 12 and the process initiated by the respondents for advertising fresh posts and cancelling the wait list by making it as ad hoc is against the provisions of the Rules.

12. The waiting list was prepared as per Rule 12 and had to be operated as per Rule 12. The aforesaid Rule 12 contemplates that the waiting list should be of "reasonable dimension" and be revised from time to time with a view to removing therefrom the names of such candidates who are found guilty of insubordination, misbehaviour or dishonesty in the discharge of their duties in temporary or officiating vacancies. The wait list is neither a selection list prepared with reference to specific number of vacancies notified. It is somewhat peculiar and special. The expression "reasonable dimension" used in Rule 12 of the aforesaid Rules signifies that the wait list should be a moderate one containing that number of candidates which is adequate to meet the vacancies which might be available within a reasonable period in the year of recruitment or the year succeeding thereto and this list should be in reasonable proportion to the notified vacancies. To be more precise, this waiting list should broadly be correlated to the number of vacancies either available in the year of recruitment or likely to become available in the succeeding year and the proportion qua the existing and anticipated vacancies. It is only in order to obviate the possibility of the waiting list becoming vitiated on account of the vice of arbitrariness or illegal discrimination that the provision contains the Rules which specifically provides for maintaining a waiting list of a reasonable dimension. The word 'dimension' has to be understood to emphasise the proportion qua the vacancies which are sought to be filled up. It is relevant to mention that we have already noted the factual materials furnished before the learned Judge which was noted in the order and shows that the sanctioned posts at the relevant time were 35 i.e. 31 at Mahoba and 4 at Charkhari in Judgeship. In this factual position, the contrary conclusion and the interpretation as to expression "reasonable dimension" cannot be accepted.

13. Under these circumstances, the claim of the appellants has to be accepted. In the course of hearing, it is brought to our notice that appellant Nos. 1 and 3 i.e., Naseem Ahmad and Sohan Lal were once again appointed temporarily for one year by order dated 30.11.2007 as Class IV employees. However, the appellant No. 2 -Prakash Chandra was not re- appointed since at that time he was over aged.

14. In these circumstances, we hold that appellant Nos. 1 to 3 are deemed to continue in service from the date of initial selection i.e., 13.08.2001 and for all purpose and service benefits, the relevant date is date of their initial selection i.e., 13.08.2001 and they are permitted to continue as per the Rules applicable. The impugned order of the High Court is set aside. The appeal is allowed to the extent mentioned above. No costs.