

Court No. - 10

Case :- WRIT - A No. - 41017 of 2003

Petitioner :- Abhimanyu Singh And Another

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Shashi Nandan, B.R. Singh, Punit Khare, Sanjeev Singh, Sudeep Harkauli

Counsel for Respondent :- C.S.C., Dileep Gupta, H.C. Singh, Mahaveer Singh, Purushottam Mani Tripathi

connected with

Case :- WRIT - A No. - 41074 of 2003

Petitioner :- Jitendra Prasad Sharma And Others

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Shashi Nandan, Abhishek Mishra, Namit Srivastava, Sanjeev Singh, Satyendra Chandra Tripathi, Sudeep Harkauli

Counsel for Respondent :- C.S.C., Dileep Gupta, H.C. Singh, Purushottam Mani Tripathi

and

Case :- WRIT - A No. - 1049 of 2007

Petitioner :- Akhilesh Pandey And Others

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Kripa Shankar, R.K.Ojha, Rajesh Kumar Asthana, S.K. Srivastava, Vinod Sinha

Counsel for Respondent :- C.S.C., Brij Raj Singh, H.C. Singh, Mahendra Singh, S.C. Tripathi, S.C. Srivastava, Santosh Kumar Srivastava

Hon'ble Kshitij Shailendra,J.

1. Heard Shri Sanjeev Singh, learned counsel for the petitioners, learned Standing Counsel for State-respondents and Shri Satyendra Chandra Tripathi, learned counsel for contesting-

respondents in Writ A Nos. 41017 of 2003 and 41074 of 2003. Shri Satyendra Chandra Tripathi along with Shri Rajesh Kumar Asthana, learned counsel for the petitioners in Writ A No. 1049 of 2007, Shri Purushottam Mani Tripathi, learned counsel appearing on behalf of Institution in all the writ petitions and learned Standing Counsel for all the State-respondents in all the writ petitions and perused the record.

2. Since all the three writ petitions relate to the posts in the same Institution and fate of the petitioners of Writ A No. 1049 of 2007 is dependent upon the result of remaining two Writ A Nos. 41017 of 2003 and 41074 of 2003, all the writ petitions are being decided by this common judgment.

3. For the sake of convenience, Writ A No. 41017 of 2003 is being treated as a leading case.

4. There are two petitioners in the leading writ petition, namely, Abhimanyu Singh and Shamsheer Mall. There is no dispute about the fact that cause of action for pressing the writ petition on behalf of petitioner Shamsheer Mall stands vanished in terms of a subsequent order dated 28.09.2005, by which the impugned order in relation to him was recalled/ revisited and, later on, financial approval to his appointment and services was also accorded. Therefore, the writ petition is being decided only in respect of petitioner No. 1, Abhimanyu Singh.

5. By the order impugned dated 28.08.2003, the Regional Higher Education Officer, Gorakhpur has dislodged the selection proceedings and consequential appointment of the petitioner No. 1, on the ground that selection was hit by the service Regulations. Following three reasons have been assigned in the order impugned:

(i) At the time of appointment, no names were called from the office of District Employment Officer.

(ii) Advertisement has not been published in newspapers.

(iii) Approval has not been accorded to the selection.

6. It is contended by Shri Sanjeev Singh, learned counsel for the petitioners that the selection procedure is governed by Chapter XXIII of the First Statutes of Gorakhpur University and insofar as the selection for the Class IV posts is concerned, the Statute 25.06 (3) of the same would be applicable. Since reference to requirement of publication of advertisement has come on record, it is necessary to quote the entire Statute 25.06, which reads as follows:

“25.03. Appointment to the post of Head Clerk-cum-Accountant, Head Clerk, Office Superintendent and Bursar shall be made by promotion according to seniority, subject to suitability and fitness from amongst the existing staff appointments on the post of Head Clerk-cum-Accountant. Head Clerk, Office Superintendent and Bursar, may be made t by Direct Recruitment on the basis of selection after advertisement of the vacancy in newspapers.

25.04. Appointment of employees shall be subject to the approval of the Director of Education (Higher Education) or an Officer authorized by him in this behalf If the approving authority does not within two months from receiving the proposal for approval intimate its disapproval or does not send any intimation in respect of such proposal to the appointing authority the approving authority shall be deemed to have approved the appointment.

25.05. Appointment of permanent posts shall be made on probation for one year. The period of Probation May be extended if the candidate's work is not found to be satisfactory provided that the total period of probation shall not exceed three years. The extended period of probation shall not count for increment.

25.06. (1) (a) The Selection Committee for appointment to the post of Librarian, Deputy Librarian or Physical Training Instructor shall consist of:

(i) the Head of Management or a member of the Management nominated by him, who shall be the Chairman;

(ii) The Principal of the college:

(iii) One Officer to be nominated by the Director of Education (Higher Education).

(b) The selection Committee for the appointment to the remaining posts referred to in Statute 25.01 or Statute 25.03 either by direct recruitment or by Promotion shall consist of :-

(i) the Head of the Management or a member of the Management & nominated by him who shall be the Chairman.

(ii) the Principal of the College;

(ii) the District Inspector of Schools; (iv) the District Employment Officer or an Officer authorised by him in this behalf.

(2) For the purposes of direct recruitment, to the posts referred to in Statute 25.03 the vacancy shall be advertised in at least two newspapers having adequate. shall also be obtained from the concerned District Employment Officer.

(3) Names of candidates for appointment to a posts in class four shall be obtained from the concerned District Employment Officer. In the event of non-availability of suitable candidate in such manner the post may be advertised.

(4) No employee shall be eligible for payment of salary from the salary payment Account unless the permission as contemplated by Sub-clause (b) of clause (iii) of section 60-A of the Act has been accorded.

(5) If the Management does not agree with the recommendation of the Selection Committee, it shall refer the matter to the approving authority alongwith reasons of

its disagreement, and the decision of the said authority shall be final.”

7. It is contended that insofar as the requirement of advertisement is concerned, a bare perusal of the aforesaid Statute shows that publication in two newspapers having adequate circulation is the requirement in relation to posts mentioned in Statute 25.03, whereas for the Class IV candidates, the only requirement is to obtain names from the District Employment Exchange Officer and in the event of non-availability of suitable candidates, the post may be advertised.

8. The case of the petitioners is that on 21.02.2002, a letter was sent by the Principal, who is the appointing Authority of the petitioners, to the District Employment Exchange Officer requesting sending of names as per the aforesaid statutory requirement, however no response was received from the said office.

9. On the earlier occasion, during the course of hearing, a dispute arose with reference to various documents on record, as to whether the letter dated 21.02.2002 was received in the office of District Employment Exchange Officer or not. In the said situation, following order was passed on 17.08.2023:

“1. Parties were heard at length.

2. The issue involved in these writ petitions is as to whether due process of law was followed before appointing the petitioners. The dispute was also raised as to whether the petitioners were absorbed against the existing vacancies or their appointments were done in pursuance of fresh publication of advertisement. The issue is also to the effect as to whether the Principal being appointing authority was competent to publish advertisement as such publication is dependent upon

sending or not sending of names by the District Employment Exchange Office.

3. Since Mr. Sanjeev Singh places strong reliance on the selection of their clients pursuant to the advertisement, the Court wants to be satisfied whether any occasion to issue advertisement arose inasmuch as there appears to be some controversy with respect to absorption viz-a-viz selection.

4. To examine the sanctity of the process adopted by the respondents, reference to letter dated 21.02.2002 sent by the Principal of the Institution to the District Employment Exchange Office, Kushinagar can be made. It is annexed as Annexure No. R.A.-1 to the rejoinder affidavit dated 05.01.2020 filed in Writ Petition No. 41074 of 2003. According to the petitioners, the letter was admittedly received in the office of District Employment Exchange Officer on 28.02.2002, whereas there is a different document in terms of letter dated 24.02.2003 issued by the District Employment Exchange Officer, Kushinagar by which he has communicated the Principal that aforesaid letter dated 21.02.2002 was not served in his office. The said letter has been annexed as C.A. 8 to the counter affidavit dated 07.11.2019 filed in Writ Petition No. 41074 of 2003.

5. There being factual controversy with regard to service of the said letter dated 21.02.2002 in the office of District Employment Exchange Officer.

6. The Court feels it appropriate to summon the original record from the office of District Employment Exchange Officer, Kushinagar in relation to the letter dated 21.02.2002.

7. Let requisite original records be produced before this Court through the learned Standing Counsel on the next date fixed.

8. List on 21.09.2023 in top ten cases, alongwith connected cases.”

10. Learned Standing Counsel has come up with instructions and has also produced relevant records and submits

that the letter dated 21.02.2002 was received in the office of District Employment Exchange Officer.

11. Even otherwise, I find that the College had sent various papers to the Regional Higher Education Officer, Gorakhpur on 05.09.2014, which was received on 09.09.2014 and the documents included the letter dated 21.02.2002 and all other proceedings of selection. Following is the list of documents sent to the Office of Regional Higher Education Officer on 05.09.2014:

"संलग्नक सूची"

- 1- नियुक्ति पत्र अभिमन्यु कुमार सिंह
- 2- " " राजेश कुमार श्रीवास्तव
- 3- " " सुरेश प्रसाद दीक्षित
- 4- " " जितेन्द्र प्रसाद शर्मा
- 5- चतुर्थ श्रेणी रिक्त पदों का विवरण
- 6- दफ्तरी के पद पर पदोन्नति के संबंध में
- 7- पदोन्नति के फलस्वरूप नियुक्ति का विवरण
- 8- रिक्त पदों के समायोजन हेतु
- 9- अनुमोदन हेतु पत्र
- 10- शपथ पत्र की प्रति
- 11- उप 0 अभ्यर्थियों की सूची
- 12- सा० चप० / प्र० पत्रों की उपस्थिति
- 13- चयनित अभ्यर्थियों की सूची
- 14- दैनिक हिन्दुस्तान स्वरूप को विज्ञापन पत्र
- 15- विज्ञापन की रसीद (छाया प्रति)
- 16- जिला सेवायोजन को पत्र
- 17- ब्लैक बोर्ड की सूचना प्रति
- 18- विज्ञापन का पेपर (समाचार पत्र)
- 19- अनुसा- दो पन्ना
- 20- " "- (छाया प्रति)
- 21- " "- (छाया प्रति)"

12. In view of above, I find that insofar as requirement of sending letter to the District Employment Exchange Officer is concerned, the same was fulfilled by the Institution.

13. Now the question arises as to whether in absence of sending the list of candidates by the District Employment Exchange Officer, what recourse was adopted by the Institution. In this regard, reference to advertisement dated 20.02.2002 published in “Dainik Hindustan Ka Swaroop” has been made. Although, a dispute has been raised that the said newspaper did not have wide circulation, it is contended that since Class IV post was to be advertised, publication in a local newspaper was sufficient.

14. Learned counsel for contesting-respondents has placed reliance upon the judgment of Supreme Court in the case of ***State of Orissa and another vs Mamata Mohanty***, reported in (2011) 3 SCC 436 with special reference to paragraph Nos. 35 and 36 of the same and it has been argued that in addition to sending the names by the Employment Exchange Office, the requirement to publish advertisement in widely circulated newspaper is mandate of law.

15. In this regard, Shri Sanjeev Singh, learned counsel submits that the Statutes of the Gorakhpur University do not contemplate such a requirement in relation to Class IV post, whereas the judgment of Apex Court in the case of ***State of Orissa (supra)*** relates to the appointments on the post of Lecturers in degree colleges and, therefore, the ratio laid down has no application.

16. I find that the judgment of Apex Court, with due respect, does not deal with the selection on Class IV posts, nor the requirements contained in the relevant Statutes governing the conditions of appointment or the selection process. Once the concerned selection relates to the year 2002 and there being no statutory requirement for making publication in two widely

circulated newspapers, at least in relation to Class IV posts, but the said requirement was relevant for the posts described in Statute 25.03, the submission of Shri Sanjeev Singh, learned counsel for the petitioners that the Legislature was cautious of the fact as to in respect of which services, requirement of publication in two widely circulated newspapers would be there and nothing can be read contrary to the Statute, appears to be correct in the facts of the case, where advertisement was made in one local news paper even without there being a requirement in Statutes.

17. The third ground taken in the order impugned that no approval was granted to the selection made stands dislodged in view of Annexure No. 4 to the writ petition, which is a letter dated 07.04.2002 sent by the Selection Committee to the Regional Higher Education Officer, which shows that there was due approval granted to the selection of six persons including all the petitioners in all the three connected writ petitions.

18. The observation made in the order impugned that the petitioners, who were appointed in 1997 and 1999, were somehow adjusted creating a show off as if their appointments are consequent upon the subsequent selection proceedings, does not appear to be made out from the record, as this Court has dealt with the grounds and reasons dislodging the selection in this judgment.

19. Insofar as the petitioners of Writ A No. 1049 of 2007 are concerned, by the order impugned, the claim of the petitioner Mritunjay Dixit has been said to be subject to the result of other writ petitions including Writ A Nos. 41017 of 2003 and 41074 of 2003 and insofar as the petitioner Akhilesh Pandey is concerned, it has been observed that he was appointed pursuant to the superannuation of one Laboratory Assistant, namely,

Krishnadhari, but after critical analysis of the record, it was found that his selection was not as per the process.

20. It is contended that the post was duly advertised in two daily newspapers, the selection proceedings were held in accordance with law, a waiting list was prepared, approval was granted on 28.01.2006, salary was paid to the appointed candidates, but later on, it was withheld on 06.03.2006 and lastly by the order impugned without assigning any reason and without providing any opportunity of hearing, the entire selection has been dislodged. In support of his submission, reliance has been placed by the learned counsel for the petitioners upon the judgment of Supreme Court in the case of *Mahipal Singh Tomar vs State of Uttar Pradesh and others*, reported in (2013) 16 SCC 771, on the lines that any order passed in violation of Principles of Natural Justice cannot sustain.

21. I find that no reason has been assigned in the order impugned dated 28.06.2006 at least in relation to petitioner Akhilesh Pandey as to what was the flaw in his selection.

22. As regards petitioner No. 3, Jaichand Prasad, no body is present to argue the case on his behalf and the learned counsel arguing the matter represent petitioner Nos. 1 and 2 only.

23. Having heard the learned counsel for the parties, I find that insofar as order dated 28.08.2003 dislodging the selection of Abhimanyu Singh and Shamsheer Mall is concerned, the same is contrary to the material on record and none of the grounds taken in the order impugned stands substantiated. The case of petitioners of Writ A No. 41074 of 2003 is similar to the petitioners of Writ A No. 41017 of 2003.

24. The Writ A Nos. 41017 of 2003 and 41074 of 2003 are **allowed**.

25. The order impugned dated 28.08.2003 is **quashed**.

26. Necessary consequences shall follow in respect of petitioners of both the said petitions.

27. The order impugned dated 26.08.2006 in Writ A No. 1049 of 2007 is also **quashed** and the said writ petition is also **allowed**.

28. Since the fate of writ petition of petitioner Mritunjay Dixit is dependent upon the fate of Writ A No. 1049 of 2007, merely because relief has been granted to the petitioners of Writ A No. 41074 of 2003, the same, by itself, would not be sufficient to dislodge the selection of Mritunjay Dixit, inasmuch as there is no contrary observation recorded in the order dated 26.08.2006 in relation to petitioner Mritunjay Dixit as to whether his appointment was lawful or unlawful.

29. Insofar as petitioner Akhilesh Pandey, what illegality has been found by the respondents in his selection, has not been disclosed in the order impugned.

30. The Regional Higher Education Officer, Gorakhpur is directed to pass a **fresh order in relation to petitioners Mritunjay Dixit and Akhilesh Pandey**, after analysing the entire material on record.

31. In case, posts are still lying vacant in the concerned Institution, and no illegality is found in the selection procedure in relation to Akhilesh Pandey and Mritunjay Dixit, their claims shall be sympathetically considered and appropriate orders shall be passed, within a period of **three months** from the date a

certified copy of this order is produced before the Authority concerned.

32. The original record produced by the learned Standing Counsel has been returned to him for the purposes of sending the same to the concerned Authorities.

33. All the three writ petitions are **allowed** with the aforesaid observations.

Order Date :- 16.10.2023

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