

Court No. - 34

Case :- WRIT - A No. - 17398 of 2023

Petitioner :- Balwant Pal And 11 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Shardendu Mishra, Jai Shankar Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

1. Heard Sri Shardendu Mishra, learned counsel for the petitioners and learned Standing Counsel for the State-respondents.

2. Petitioners who have been applicant for the post of Constable in Civil Police and PAC in the recruitment selection undertaken in the year 2015 were initially placed in the select list having obtained more than last cut-off of '395.53' marks. It transpires that later on, on 21.05.2018, the merit list was revised making the cut-off of OBC category '396' for PAC Constable and resultantly petitioners who had secured less marks than the last cut-off got out of the select list.

3. Now the grievance of the petitioner is that during physical verification of documents, may be for reasons for forged or fraudulent documents, many variances have remained unfilled and to this effect he has drawn attention of the Court towards the statement of vacancies by the respondents themselves to be 535 in number that have remained unfilled and submits that if the last cut-off marks is revised as per the available vacancies ousting those who have not found place in the final merit list on account of their credentials rendered doubtful or liable to be rejected during physical verification, petitioners can get very happily placed in the merit list. Learned counsel for the petitioner has relied upon the judgment of Supreme Court in the case of **Alok Kumar Singh & ors vs. State of UP & ors** reported in **2019 (4) SCC 692** and that of **Saurav Yadav vs. State of UP & ors; 2021 (4) SCC 542**.

4. *Per contra*, it is argued by Sri R.S. Umrao, learned Standing Counsel that selection and appointments are held as per the Service Rules called UP Police Constable and Head Constable Service Rules, 2015 (in short, 'Service Rules, 2015') in which Rule 15 does not provide for preparation of any supplementary or waiting list. It provides for a final merit list to be prepared after

verification of records and physical efficiency test. This last cut-off marks which is prepared on the over all merit in respect of the candidates-applicants in the selection process is not subject to further revision for the purposes of preparation of supplementary or waiting list. It is argued that Rule 15 has been subject matter of challenge before this Court in Special Appeal Defective No.416 of 2021 (Ajay Prakash Mishra & ors vs. State of UP & ors) and other connected matters which came to be dismissed on 10.08.2021 holding that Rule 15(j) was not unconstitutional. It is submitted that these judgments traveled to the Supreme Court at the instance of the candidates and the Supreme Court dismissed the Special Leave to Appeal (C) No.16073-16074 of 2021 which also got dismissed on 22.03.2022. Thus, the controversy has come to an end. The Court has put quietus to the controversy *qua* the preparation of waiting or supplementary list in addition to the final merit list prepared under Rule 15(j) of the Service Rules, 2015.

5. Having heard learned counsel for the parties and perused the record, I find that petitioners are virtually making a request for revision of the merit list prepared with the last cut-off '396' on the plea that certain credentials having been rendered invalid *qua* certain candidates, if the cut off marks were further revised petitioner would have been placed in the merit list as the vacancies have remained unfilled. Yet another argument is that the vacancies in light of the judgment of the Supreme Court in the case of Alok Kumar Singh (*supra*), can be directed to be considered in the same selection year.

6. It is an admitted position that after 2015, 2018 selections have also been held of the Police Constable and Head Constable so it is not a case where no further selections have been held as was the case involved in the Alok Singh's case. Further, I find from the perusal of the judgment in Alok Singh (*supra*) that the Court had very categorically recorded that directions were issued in those cases as one time exception looking to the fact situation of that case which was assessed to be quite peculiar by the Supreme Court and it is in that background that available 833 posts were directed to be also subject matter of selection.

7. In my considered view, these directions are by the Supreme Court in exercise of power under Article 142 of the Constitution which cannot be exercised by this Court, otherwise, the law declared earlier by this Court as also by the Supreme Court is that once the merit list has been prepared, in absence of any provision for preparation of supplementary or waiting list, no such list can be prepared, this law has not been diluted till date.

8. Coming to the second judgment cited by the learned counsel for the petitioner of Saurav Yadav's case, I find that the controversy arose on account of High Court earlier holding selection of candidates who used blades and whitener during examination, to be bad and were ousted from the zone of selection. Although that judgment of the High Court was reversed but by the time select list was already declared and selection and appointment was made and the question arose to adjust those candidates whose selection was earlier held bad. To accommodate them left over vacancies were directed to be taken into consideration. 2312 vacancies for which candidates entitled to horizontal reservation were not available, were directed to be taken into account on this principle that no carry forward rule would apply and further 982 unfilled vacancies to be filled up in the original selection and so the Court had directed the Public Service Commission to complete the process of selection in respect of 2312 vacancies and also 982 left over vacancies. However, controversy arose for non consideration of OBC and SC female candidates against the post meant for general category female candidates and it is for this reason that miscellaneous applications being IA No.2641 of 2019 was filed and Court laid down guidelines for horizontal reservation vide its judgment dated 18.12.2020 quashing the order of State Government dated 01.08.2018. This controversy addressed to in the said judgment and order has nothing to do here to the facts of the present case.

9. Coming to the judgment of this Court in Ajay Prakash (*supra*) and and other connected matters, I find that Court has very categorically recorded its finding that the applicants were not able to demonstrate that Rule 15(j) to be unconstitutional. The Court, accordingly, upheld the provisions and so also held that no waiting or supplementary list can be prepared in absence of any specific rule. This judgment that has been affirmed/upheld by the Supreme Court in Special Leave to Appeal No.16073-16074 of 2021, therefore, holds to be a good law.

10. In view of the above, petition fails and is, accordingly, dismissed.

Order Date :- 17.10.2023

P Kesari