

Court No. - 5

Case :- WRIT - A No. - 5919 of 2008

Petitioner :- Dileep Kumar S/O Late Hajari Lal

Respondent :- State Of U.P. Through The Principal Secretary
In The Deptt.O

Counsel for Petitioner :- A.P.Singh,Amarendra Pratap Singh

Counsel for Respondent :- C.S.C.

Hon'ble Irshad Ali,J.

1. Heard Sri A.P. Singh, learned Senior Advocate assisted by Sri Amarendra Pratap Singh, learned counsel for the petitioners and Sri Raj Kumar Singh, learned Standing Counsel for the respondent-State.

2. By means of the present writ petition, the petitioners are challenging an order dated 25.10.2008, whereby the claim of the petitioners for the appointment against two vacancies arisen due to transfer of two employees from the post of Sinchpal against the select list prepared.

3. Factual matrix of the case is that the Executive Engineer, Barabanki Prakhanda, Sharda Nahar, Barabanki issued an advertisement to fill up 13 backlog vacancies reserved for the Scheduled Caste and Scheduled Tribe candidates. The petitioners, who are scheduled caste candidates, fully eligible and qualified, applied for the appointment against the advertisement.

4. A select list was prepared, wherein 13 candidates were shown in the main list and three candidates were shown in the waiting list, including the petitioners at serial Nos.2 and 3 of the waiting list on the post of Sinchpal. The petitioners applied under the Right to Information Act, 2005 on 29.7.2008 and accordingly they have been informed that four vacancies are available in the cadre of Sinchpal for scheduled caste candidates. Out of them, two vacancies occurred due to transfer of selected candidates in the cadre of Sinchpal and two more vacancies occurred in the cadre during the lifetime of the select list/ merit list, therefore, request was made by the petitioners to appoint them from the waiting list. When no action was taken, the petitioners filed several representations including the representation mentioned in the list of date for consideration of appointment to the post of Sinchpal on account of occurrence of vacancies out of 13 vacancies, having been advertised for scheduled caste

candidates vide Annexure-2 to the writ petition.

5. It is the case of the petitioners that the petitioners, who are members of the scheduled caste are entitled to be considered and appointed to the post of Sinchpal out of 13 vacancies having been advertised as one vacancy in the cadre of Sinchpal on account of non joining of selected candidate has been filled by one Shiv Vishal from the waiting list at serial No.1 and therefore, two vacancies which had occurred on account of transfer out of 13 vacancies having been advertised for the appointment.

6. While entertaining the writ petition, this Court passed an order on 22.9.2009, whereby following direction was issued :-

"By the next date of listing, opposite party no. 2- Executive Engineer, Barabanki Prakhanda, Sharda Nahar, Barabanki, is directed to look into the matter and if the posts of Sinchpal are available and the select list/ merit list dated 14.11.2007 is operative, the petitioners' case shall be considered and appropriate order shall be passed in accordance with law."

7. In compliance of the order, the Executive Officer passed an order dated 5.10.2008, whereby the claim placed by the petitioners has been rejected.

8. Assailing the order impugned, submission of learned counsel for the petitioners is that the petitioners who belong to the scheduled caste category were selected in pursuance to the advertisement issued on 14.8.2007 for appointment on the post of Sinchpal. Select/ merit list was prepared on 14.11.2007, in which 15 candidates were fixed in the main list and three candidates were fixed in the waiting list. The petitioners' name was fixed at serial Nos.2 and 3 of the waiting list.

9. Next submission is that on account of non joining of one candidate namely Mahendra Kumar, one Shiv Vishal, who was at serial No.1 of the waiting list, was appointed on the post of Sinchpal. On 28.6.2008, from the selected candidates whose name were fixed in the merit list, namely Sushil Kumar and Hemant Kumar, were transferred and they joined at transferred place of posting and as a consequence thereof, two vacancies occurred and as such the petitioners have made several representations for considering and appointing them on the post of Sinchpal, but the respondents did not pay any heed in the matter.

10. It is submitted that the select/ merit list dated 14.11.2007 is still alive and the posts of Sinchpal are also available, but in spite of that, the petitioners' name have neither been considered

for appointment nor they have been appointed on the post of Sinchpal on the basis of the said select list dated 14.11.2007. While making submission, learned counsel for the petitioners placed reliance upon a judgment in the case of **Devendra Pratap Pandey Vs. Secretary, Gramya Vikas, U.P., Lucknow & Others [2007 (25) LCD 162]**.

11. On the basis of the aforesaid, it is contended that once posts became vacant due to transfer of employees of selected candidate of the select list dated 14.11.2007, the vacancy is to be filled up. In case the vacancy arisen due to transfer on the post of Sinchpal during the existence of the panel, the vacancy came in existence shall be filled up from the select list prepared.

12. In paragraph 9 of the writ petition, the petitioners have stated that the post of Sinchpal is district level cadre and not of State level, therefore, the vacancy of the post of Sinchpal advertised as backlog quota of scheduled caste and scheduled tribe candidate by the Executive Engineer vide advertisement contained as Annexure-2 is to be filled up at district level. The statement of fact in regard to occurrence of vacancy due to transfer of two employees has been made in paragraphs-8, 10 and 11 of the writ petition, which has not been denied in the counter affidavit. Last submission is that the reasons assigned in the impugned order is erroneous in nature and does not sustain in the eyes of law. The vacancy which has been occurred due to transfer of two Sinchpals from the panel prepared is to be filled up by candidates of the waiting list, who are the petitioners.

13. On the other hand, learned Standing Counsel submits that there is no illegality in the impugned order and the same is just and valid. The contention advanced by learned counsel for the petitioners is wholly misconceived and is not acceptable in the eyes of law. He invited attention on the statement of fact made in the supplementary affidavit and on the said basis, he submits that there is no illegality in declining to appoint the petitioners on the post of Sinchpal.

14. After having heard the rival contention of learned counsel for the parties, I perused the material on record as well as the judgment relied upon.

15. On perusal of the record, it is evident that under the advertisement issued on 14.11.2007, applications were invited to fill up the backlog vacancies of the scheduled caste and scheduled tribe candidates. In pursuance thereof, the petitioners applied for appointment on the post of Sinchpal. A panel list was prepared of 13 candidates from the main list and three candidates from the waiting list. The petitioners were placed at

serial Nos.2 and 3 of the waiting list. The candidate at serial No.1 of the waiting list was granted appointment during the existence of panel, two Sinchpals of the select list were transferred and two vacancies came into existence, therefore, the petitioners claimed appointment against the said vacancies as the panel was existing and time was not lapsed.

16. To demonstrate that the petitioners have enforceable right to be appointed as their names were in the select list dated 14.11.2007, learned counsel for the petitioners placed reliance upon a judgment in the case of **Devendra Pratap Pandey** (Supra), relevant paragraphs 7, 8 and 9 are being quoted below :-

"7. It is admitted by the parties that an advertisement was made for 66 vacancies. In para 7 of the counter affidavit it has been admitted that 3 to the general category and 33 vacancies pertain to the reserved category. In para 5 of the counter affidavit it has been averred that the petitioner could not be appointed on account of the fact that by the time appointments were finalized and interview were held, 5 vacancies were filled up by transfer from other districts.

8. The action on the part of the opposite parties in not selecting the petitioner was malicious. At the first instance appointment was denied to the petitioner saying that the post is of a dying cadre post, therefore, the appointment can not be made. Although, the said notification has been withdrawn by means of the Government Order dated 29.7.1999. The opposite parties failed to justify the denial of the appointment and came forward with a new stand that the vacancies have decreased during the course of selection, and therefore, the petitioner can not be appointed as he is a person who is placed in the waiting list and there was no occasion to appoint a person whose name appears in the waiting list.

9. Placing of the names of the petitioner and others in waiting list up to serial No.33, who were regularly selected candidates could not have been done by the opposite parties and that too under the garb and shelter of the fact that the incumbents from the other districts have been transferred to fill up the vacancies, therefore, denying the rightful claim of the petitioner is bad in law."

17. In view of the reasons recorded above, the writ petition succeeds and is **allowed**. The impugned order dated 25.10.2008 is hereby set aside.

18. The respondents are directed to reconsider the claim of the petitioners for the appointment on the post of Sinchpal within a period of six weeks from the date of production of a certified copy of this order.

Order Date :- 30.10.2023

Gautam