

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 247 of 2021

Appellant :- State Of U.P. Thru. Secy. Home Lucknow And Ors.

Respondent :- Ashok Kumar Srivastava

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- Jitendra Kumar Pandey

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Jaspreet Singh, J.

Heard Shri Mohit Johari, learned Standing Counsel for the State-appellant and Shri Jitendra Kumar Pandey learned counsel for the respondent.

The instant intra court appeal has been preferred by the State-appellant impugning the judgment passed by the learned Single Judge dated 04.02.2020 in Writ Petition No.1279 (S/S) of 2007 whereby the writ court allowed the writ petition of the respondent and directed the appellant to consider the petitioner's candidature on the post of police constable within a period of four weeks from the date a copy of the order was placed before the concerned authority.

Submission of the learned counsel for the appellant is that the respondent had claimed to have appeared in an examination for the post of constable in pursuance of an advertisement dated 01.03.1995. This fact is disputed by the appellant on the ground that the respondent was found resorting to impersonation and even an First Information Report was lodged. He further stated that though this ground was raised before the learned Single Judge but the same has not been appropriately considered; inasmuch as the records relating to the recruitment of constable of the year 1995 were searched but could not be traced and there was nothing on record to establish the credibility of the averments made by the respondent. It is also urged that the recruitment was of the year 1995 and almost after a lapse of 25 years, the Court has directed to consider the case of the respondent for the post of police constable.

Learned counsel for the respondent, on the other hand, submits that all the aforesaid issues were cogently considered by the learned Single Judge and also noticing the fact that no record could be produced by the appellant in the criminal proceedings nor any evidence was led as a result the respondent was

acquitted. It is in the aforesaid circumstances that the Court has merely directed the appellant to consider the respondent's candidature within a time frame as indicated in the order dated 04.02.2020 and as such till date the appellant has not taken any decision rather has filed the instant special appeal which deserves to be dismissed.

The Court has considered the submissions and also perused the material on record.

In so far as the fact whether the respondent had resorted to impersonation and in regard thereto an First Information Report was lodged, this aspect was considered and there is a clear statement that the respondent was acquitted of the charges levelled against him. This is not disputed by the appellant nor it has been brought on record whether any appeal/revision against the acquittal has been filed.

From the perusal of the order dated 04.02.2020, the learned Single Judge has directed the appellant to consider the petitioner's candidature on the post of police constable within a period of four weeks. Be that as it may, this Court finds that whether the petitioner is entitled for the post of police constable or not is a decision which is to be taken by the department. The learned Single Judge has also directed the appellant to take a decision considering the candidature of the respondent. Whether any post exists or whether after a lapse of 25 years any appointment can be granted is a matter to be considered by the department and a decision is to be taken. The order passed by the writ court does not specify any particular manner in which the decision is to be taken. The State cannot evade its duty of taking a decision when a clear direction has been issued by the learned Single Judge.

In view of the aforesaid, this Court does not deem appropriate to interfere in the order passed by the learned Single Judge dated 04.02.2020 in Writ Petition No.1279 (S/S) of 2007. Accordingly, the special appeal is devoid of merits and is dismissed.

Order Date :- 18.7.2023

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(Jaspreet Singh, J) (Pritinker Diwaker, C.J)