

Court No. - 18

Case :- WRIT - A No. - 412 of 2012

Petitioner :- Mohd. Parvez And Another

Respondent :- State Of U.P.Thr.Secy.Minority Welfare Muslim Waqfs And Anr.

Counsel for Petitioner :- G.S.L.Verma,Dinesh Prakash Tripathi,Kaushal Kishore,Mohd. Ali (I)

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar,J.

Heard.

Present writ petition has been preferred for issuing a direction to the respondents not to give effect the impugned order dated 03.01.2012 passed by respondent no. 2 and quash the same in view of the ratio of judgment reported in 1988 (2) SCC 602 (A.R. Antuley Vs. R.S. Nayak); 2006 (2) SCC 747 (State of Karnatka Vs. C. Lalitha) and 1996 (1) SCC 332 (Jai Narain Ram Vs. State of U.P.) and with a further prayer to direct the respondents to consider and appoint the petitioners on the post of Junior Clerk against the selection held to fill up the vacancies of Junior Clerks in the year 1996. The petitioners' name finds place at Serial No. 6 and 7 in the select list prepared on 24.06.1997, the persons below in merit to the petitioners have been given appointment in the light of judgment and order of this Court dated 30.07.2007 passed in Special Appeal No. 209 of 2004.

Learned counsel for the petitioner has submitted that the respondent no. 2 had issued an advertisement dated 14.08.1996 for appointment on the post of Junior Clerk in Minority Welfare Department. The petitioners being fully eligible and qualified had applied against the said advertisement.

It is further submitted that the respondent no. 1 had passed an order on 23.08.1997 directing the respondent no. 2 to cancel the selection of junior clerk and issue afresh advertisement. Against the said order, two persons namely Gaffar Ahmad and Abdul Qayyum had filed a Writ Petition No. 1788 (S/S) of 1998 which was dismissed by the judgment and order of this court dated 04.06.2004. Against the said judgment a Special Appeal bearing No. 209 of 2004 was preferred before this Court which was allowed by the judgment and order dated 30.07.2007 with a direction that who had approached this Court challenging the

cancellation of selection, their result may be declared and on the basis of declaration of result, they may be given appointment against the vacancies advertised. The result of the selection of the subsequent advertisement shall also be declared subject to adjustment of the appellants and the other candidates, if any, who have already approached the Court. It was also provided therein that the said benefit shall not be available to those candidates of earlier selection who have not come to the Court till date.

It is also submitted that the petitioners had also filed a Writ Petition bearing no. 4522 (S/S) of 2004 which was dismissed vide judgment and order of this Court dated 16.08.2004 as time barred. Against the said judgment present petitioners had preferred a Special Appeal No. 410 (S/B) of 2004 which was also dismissed by judgment and order dated 14.05.2009.

It is further submitted that the case of the petitioners is covered by the judgment dated 30.07.2007 passed in Special Appeal No. 209 of 2004 as the petitioners had also approached this Court against the cancellation of result of selection made in pursuance of the advertisement published in the year 1996 for the reason that this Court in its judgment dated 30.07.2007 passed in Special Appeal No. 209 of 2004 had specifically provided that result of selection of subsequent advertisement shall also be declared subject to adjustment of the appellants and the other candidates, if any, who have already approached this Court by filing writ petition, as mentioned above.

On the other hand, learned Standing Counsel has submitted that the petitioners are not entitled for the benefit of the judgment dated 30.07.2007 passed in Special Appeal No. 209 of 2004. The said judgment was applicable upon the appellants of that Special Appeal.

It is further submitted that after adjusting the appellant of that Special Appeal, the result of subsequent selections were declared and thereafter few more selections have been made.

After hearing learned counsel for the parties and going through the record of the case, it is found that the submission of learned counsel for the petitioners that their case is covered by the judgment and order dated 30.07.2007 passed in Special Appeal No. 209 of 2004 by pressing upon observations made in the said judgment that " the other candidates, if any, who have already approached this Court", is not applicable in the present case for the reason that when the petitioners preferred Writ Petition No. 4522 (S/S) of 2004, which was dismissed on 16.08.2004, the petitioners preferred a Special Appeal No. 410 (S/B) of 2004,

which was also dismissed by this Court vide its judgment and order dated 14.05.2009 in which the Division Bench of this Court had considered the case of the petitioners in the light of the judgment passed by this Court in Special Appeal No. 209 of 2004. The relevant extract of the said judgment dated 30.07.2007 passed by the Bench comprising Hon'ble Pradeep Kant, J and Hon'ble Shri Narayan Shukla, J is reproduced hereinbelow:-

"At this juncture, the learned counsel for the parties submitted that since there were only thirty vacancies in the earlier selection against 68 vacancies of the subsequent advertisement and look to the fact that very few persons have come to the Court, who can very well be accommodated against the 68 vacancies, we provide that the appellants, who approached this Court, challenging the cancellation of selection, their result may be declared and on the basis of declaration of result, they may be given appointment against the vacancies advertised. The result of the selection of the subsequent advertisement shall also be declared subject to adjustment of the appellants and the other candidates, if any, who have already approached this court. The said benefit shall not be available to those candidates of earlier selection who have not come to the court till date. "

Petitioners had preferred Writ Petition No. 4522 (S/S) of 2004 which was dismissed by this Court vide order dated 16.08.2004 as it was time barred.

Thereafter petitioners preferred a Special Appeal No. 410 of 2004, which was dismissed by the Bench comprising Hon'ble Pradeep Kant, J and Hon'ble S.N.H. Zaidi, J vide its judgment/order dated 14.05.2019. The said order is being quoted hereinbelow:-

"Heard learned counsel for the parties.

This Special Appeal has been filed with the delay of more than two months.

The delay is condoned.

The appellants assailed the order passed by the learned Single Judge dated 16.8.2004 saying that their case was identical to the case of various other petitioners who had filed Writ Petition No. 1788(S/S) of 1998 and they also prayed for declaration of the result in pursuance of the earlier selection held on the post of Junior Clerk and, therefore, the writ petition could not have been rejected merely on the ground of laches.

The learned Single Judge has found that the appellants approached the Court after lapse of seven years and, therefore, dismissed the writ petition.

While dismissing the writ petition since the learned Single Judge was apprised at the fact that against the judgment and order passed in the earlier writ petitions filed by the different persons, Special Appeal No. 209 of 2004(S/B) was filed, which was pending, he gave liberty to the appellants to move appropriate application for impleadment in the pending Special Appeal, but it appears that the appellants did not take advantage of the aforesaid liberty.

The learned Single Judge dismissed the writ petition on 16.8.2004. Special Appeal No. 209 of 2004 (S/B) has been decided on 30.7.2007 but during long three years also the appellants did not approach to move any application in the pending Special Appeal.

The order passed in Special Appeal No.209 of 2004 (S/B) has been produced before us, wherein the benefit of the aforesaid order has been confined to only those persons / candidates, who approached this Court challenging the cancellation of selection.

That being so, the present appeal can not be entertained now. The appellants were guilty of laches and if, they were aggrieved by their non-selection, non-declaration of result and cancellation of selection, they had opportunity to approach the Court but knowing fully about the aforesaid facts they did not do so.

The writ petition preferred by the other persons were decided on 11.2.2004. It was much thereafter that the appellants preferred the writ petition.

We, thus, do not find any illegality in the order under Appeal.

The Special Appeal is accordingly dismissed."

Once the Division Bench of this Court has denied to grant benefit of the judgment dated 30.07.2007 passed in Special Appeal No. 209 of 2004, this Court cannot pass contrary order taking different view from the Division Bench, which has a binding effect. The judicial propriety demands that no different orders could be passed by a Single Bench against the view taken by a Division Bench.

In view of the aforesaid, the writ petition is dismissed.

Order Date :- 31.1.2024
Ashish