

Neutral Citation No. - 2024:AHC-LKO:68772-DB

Court No. - 2

Case :- SPECIAL APPEAL No. - 394 of 2022

Appellant :- Kaushalendra Pratap And Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy. (Personal), Deptt. Of
U.P. Lko. And Others

Counsel for Appellant :- Kshitij Mishra,Ramendra Kumar
Yadav,Sudhanshu Chauhan,Vipul Shukla

Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL No. - 46 of 2023

Appellant :- Radhey Shyam And 218 Others

Respondent :- State Of U.P Thru. Addl. Chief Secy (Personal) U.P.
Lucknow And 2 Others

Counsel for Appellant :- Sudhanshu Chauhan,Ramendra Kumar Yadav

Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL No. - 479 of 2022

Appellant :- Parmod Kumar Singh And Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy. U.P. (Personal)

Deptt. Of U.P. Lko. And Others

Counsel for Appellant :- Kaushal Kishore

Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 940 of 2023

Appellant :- Bharat Ram And Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy. (Personal) Deptt. Of
U.P. Lko. And Others

Counsel for Appellant :- Kshitij Mishra, Sanjeet Kumar, Sridhar Awasthi

Counsel for Respondent :- C.S.C.

with

Case :- SPECIAL APPEAL DEFECTIVE No. - 975 of 2023

Appellant :- Abdhesh Kumar

Respondent :- State Of U.P. Thru. Addl. Chief Secy. (Personal) Deptt. Of
U.P. Lko. And 2 Others

Counsel for Appellant :- Kshitij Mishra, Ramendra Kumar Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

(1) Heard.

- (2) These are special appeals arising out of the judgment and order dated 26.07.2021 passed by the learned Writ Court in Writ Petition No. 14983 (S/S) of 2021, Kaushlendra Pratap & Ors. Vs. State of U.P. & 2 Others.
- (3) The facts of the case in brief are that an advertisement was issued on 22.12.2013 by U.P. Public Service Commission for recruitment on 6628 vacant posts of Sub-ordinate Agriculture Service Grade-III (Technical Assistant Group-C). Out of these, 3616 posts were advertised as Unreserved, 2211 posts were reserved for Scheduled Castes, 235 for Scheduled Tribes and 566 for Other Backward Classes. A written examination was held on 30.03.2014, the appellants herein also applied and appeared in the written examination.
- (4) After the written examination was held, the State Government issued a second requisition on 20.08.2014 to the U.P. Public Service Commission with regard to the vacancy position category wise i.e. Unreserved and Reserved, and as per this second requisition out of 6628 posts which had been advertised, only 2515 fell in the Unreserved category; 1882 fell in the Reserved category of Scheduled Castes; 201 were reserved for Scheduled Tribes, whereas 2030 were reserved for Other Backward Classes. Thus, there was a substantial change in the category wise vacancies.

- (5) Be that as it may, on 15.09.2014, result of the written examination was declared. Now, this written examination had been held as per the first requisition, as, by then, the second requisition had not been received by the Public Service Commission. Therefore, the result of the written examination was also based on the first requisition. Thereafter, on 12.10.2014, the Commission issued a corrigendum in the advertisement dated 22.12.2013 incorporating the amendments made by the State Government vide its second requisition dated 20.08.2014, with regard to the number of vacancies category wise i.e. Reserved and Unreserved. Be that as it may, interview was held based on the aforesaid written examination on 27.10.2014. The appellants being successful in the written examination, referred above, appeared in this interview which took place from 27.10.2014 to 02.05.2015. In the meantime, some interim order was passed on 29.04.2015 and result of 29 posts was withheld, but this as submitted by the Counsel for the parties, is not very relevant.
- (6) The final result of the selection was declared on 21.05.2015 and while declaring this result, the change in the category wise vacancy position vide second requisition of the State Government dated 20.08.2014 was also taken into consideration. Based thereon, on 30.05.2015, the U.P. Public Service Commission recommended 6599 candidates (excluding 29 posts) for appointment. Thereafter, a writ petition bearing *Writ C No. 34196 of 2015, Manish Upadhyay & others Vs. State of U.P. & 3 others*; was filed challenging the

result dated 21.05.2015 and Office Memorandum dated 12.10.2014, inter alia, on the ground that the rules of recruitment had been changed after issuance of the advertisement, which was impermissible. This petition came to be allowed on 10.02.2017 with the observation that the selection vitiated after the holding of written examination dated 30.03.2014, as thereafter, the rules of the game had been changed which was impermissible, therefore, directions were issued to the State Government to send a fresh requisition to the Commission on the basis of quantifiable data, existing strength, as well as, actual persons working in different categories forthwith, so that interview may be ensured, at the earliest.

- (7) This led to the filing of a *Special Leave Petition bearing no. 4376 of 2017, Anupal Singh & Others Vs. State of U.P. & Others on 03.03.2017*. Initially, an interim order was passed for maintaining status quo. It is not out of place to mention that in the meantime, in pursuance to a letter of the Chief Secretary dated 12.10.2015, appointment letters were issued to 5669 candidates i.e. excluding 906 candidates belonging to the Reserved category, which includes the appellants before this Court in these appeals. In their case, the appointment letters were not issued, as according to the State Government, their appointment would interfere with the percentage of reservation in various categories, and this was the stand taken by the State Government before the Supreme Court in the Special

Leave Petition, subsequently, although as per the appellant, this was contrary to the stand taken by it before the Writ Court.

- (8) Be that as it may, the fact of the matter is that 906 candidates could not be offered appointment. The S.L.P. referred above was converted into Civil Appeal No. 4815 of 2019 and it was allowed along with other connected appeals on 20.09.2019, the impugned judgment of the Writ Court dated 10.02.2017 was quashed.
- (9) It is worthwhile to mention that the 906 candidates including the appellants before this Court in these appeals, moved an intervention application before the Supreme Court of India claiming issuance of appointment letters to them, but, considering the stand of the State Government, as already noticed hereinabove, relating to them, the Supreme Court declined their claim, however, gave them limited relief to the extent that they shall be granted age relaxation as one time measure in future recruitment. A clarification application was filed by some of the appellants before us, in Civil Appeal No. 4819 of 2019, which was dismissed on 16.12.2019. A review petition was filed by some of the appellants in connected Civil Appeal No. 4819 of 2019 which was also dismissed on 19.05.2020, but this is not the end of it. The appellants in spite of losing their claim before the Supreme Court, as referred above, moved a representation before the State Government on 24.03.2021 seeking appointment i.e. the very appointment which had been withheld and withholding of

which had been affirmed by the Supreme Court. The State Government rejected the said representation on various dates in view of the judgment of the Supreme Court in Anupal Singh's case, referred hereinabove.

- (10) These decisions of the State Government were challenged by the appellants before the Writ Court by means of ***Writ Petition No. 14983 (S/S) of 2021, Kaushlendra Singh & Others Vs. State of U.P. & Others.*** This writ petition came to be dismissed by the learned Single Judge of this Court on 26.07.2021. Being aggrieved, the appellants herein straightaway approached the Hon'ble Supreme Court by way of filing Special Leave to Appeal (C) No. 8180 of 2022 and 8513 of 2022. The Special Leave Petitions were dismissed on 16.08.2022, in the following terms:-

"The learned Senior Counsel appearing for the petitioners wishes to avail the remedy of an intra-court appeal. Hence, the learned senior counsel seeks leave to withdraw the present Special Leave Petitions.

The Special Leave Petitions are, accordingly, dismissed as withdrawn."

- (11) The S.L.P.'s were dismissed on the ground that the petitioners before it had a remedy of intra-Court appeal. This is how these appeals have come up before this Court. No doubt, liberty was granted by the Supreme Court on 16.08.2022 as referred

hereinabove, but the fact of the matter is that the issue already stands concluded by the decision of Hon'ble the Supreme Court in Anupal Singh's case, rendered on 03.03.2017. The clarification and review applications filed by the appellants herein have also been rejected. In fact, the filing of the representation dated 24.03.2021 itself was quite misconceived and in the teeth of what had already been held by the Supreme Court, therefore, the State Government cannot be faulted for having rejected the representation with reference to the said decision of the Supreme Court in Anupal Singh's case. For the same reason, the Single Judge has also dismissed the writ petition, rightly so. Before us also, the result is not going to be very different.

(12) As regards, the contention of Shri Seth that the State Government filed a misleading affidavit before the Supreme Court, we will not venture into this issue, nor would say anything which will unnecessarily open issues already decided by the Supreme Court.

(13) The appeals lack merit and they are accordingly **dismissed**.

Order Date :- 24.9.2024

Lokesh Kumar

[Om Prakash Shukla, J.] [Rajan Roy, J.]