

Court No. - 4**Case :-** WRIT - A No. - 5652 of 2025**Petitioner :-** Ajit Singh And 11 Others**Respondent :-** State Of U.P. And 2 Others**Counsel for Petitioner :-** Deepesh Kumar, Mujib Ahmad Siddiqui**Counsel for Respondent :-** C.S.C., Siddharth Singhal**Hon'ble Ajit Kumar, J.**

1. Heard Sri Mujib Ahmad Siddiqui, learned counsel for the petitioner, Sri A.K. Maurya, learned counsel for the respondents and Sri Siddharth Singhal, learned counsel for the respondent-Commission and learned Standing Counsel for the State.

2. Petitioners who were applicants for the post advertised by the U.P. Subordinate Services Selection Commission, Lucknow (hereinafter referred to as Commission) vide advertisement no.05 Examination/2019, have approached this Court for a relief in the nature of writ of mandamus to command the respondent-Commission to prepare and declare an additional list to the list of recommendation for appointment on the post of Forest Guard pursuant to the examination held under the advertisement.

3. The submission advanced by learned counsel for the petitioner is that in the event candidates already selected may not turn up to join, there should be an additional list of the candidates next in order of merit to the selected and recommended candidates, to be adjusted and accommodated instead of leaving the vacancies unfilled and carrying it forward to the next selection which would result in a detailed exercise in

terms of determination of vacancies and recommendation by the department to the Commission and then re-advertising the vacancies.

4. According to Mr. Siddiqui, for such a long exercise of sending requisition to the commission the result would be that several aspirants will get over aged. He has placed before the Court, firstly a judgment of a Coordinate Bench of the Court in the matter of Vatsyayan Shukla and another v. State of U.P. and 5 others (Writ A No.7494 of 2019) decided on 30.07.2019 in which according to Mr. Siddiqui similar issue had come up. The relevant portion relied upon by learned counsel for the petitioner is reproduced hereunder:

"So far as the plea of waiting list is concerned, the same will have no applicability in a case of the present nature where the selected candidates have not joined. In case vacancies remain available, the authorities would be expected to fill up the posts from the candidates next in the order of merit, and their claim cannot be rejected only on the ground that a waiting list has not been prepared. The observation of the Apex Court in the case of State of U.P. and another Vs. Rajiv Kumar Srivastava and others, would be clearly applicable in the facts of the present case."

5. He has also placed reliance upon authority of Supreme Court in the matter of Constitution Bench judgment of Supreme Court in the case of **Tej Prakash Pathak v. Rajasthan High Court:2024 SCC Online SC 3184//Law Finder Doc ID #2662169**.

6. Meeting the above submissions, Sri Akhilesh Kumar Maurya, learned Advocate holding brief of Sri Siddharth Singhal, learned counsel for the respondent has argued that all these candidates could not qualify further after the document verification and hence, were not placed in the select list. It is, therefore, argued that non-selected candidate does not have any right to take the plea of preparation of additional list. It is argued that the

pleadings in the writ petition are absolutely silent as to what fact has merited the claim of the petitioner for an additional select list. He has further argued that the recruitment rules as applicable to the forest department do not provide for preparation of additional select list and rules have to be strictly adhered to by the Commission. He submits that the Commission is only a selecting and recommending body for the purposes of appointment and, therefore, it cannot travel beyond the recruitment rules either in holding the selection process or in preparation of select list. He has further submitted that the recommendation dated 29.08.2024 has clarified that the appointment of the selected candidates recommended by the Commission would be subject to the final discretion to be exercised by the department only. Sri Maurya, placed reliance upon the Division Bench judgment of this Court in **Arvind Yadav v. State of U.P. and others and other connected matters** being Special Appeal Defective No.421 of 2021 decided on 22.09.2021 in which the Court has held thus:

"We have gone through the Office Memorandum (O.M.) dated 15.11.1999 so as the judgment in case of Trilok Nath Mishra (supra). We find that the O.M. issued by the Government, dated 15.11.1999, was not accepted to be valid in the case supra being in conflict with the statutory provisions.

In the instant case, learned counsel for the appellant fairly admits that there is no provision for preparation of the wait list in the Rules of 2015. In absence of it, decision to of the respondents could not have been faulted in not preparing the wait list/select list for giving appointment to the candidates against unfilled post.

The issue in reference to it was considered by the Apex Court in case of Bihar State Electricity Board vs. Suresh Prasad and Others, (2004) 2 SCC 681. Relevant paras of the judgment are quoted hereinasunder:-

"6. We find merit in this appeal preferred by the Board. In the case of Shankarsan Dash v. Union of India [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95] it has been held by

this Court that even if number of vacancies are notified for appointment and even if adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to be appointed against existing vacancies. That ordinarily such notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. It was further held that the State is under no legal duty to fill up all or any of the vacancies unless the relevant recruitment rules indicate. In the present case we are not shown any such relevant recruitment rules. Moreover, there is no merit in the contention advanced on behalf of Respondents 1 to 7 that the appellant had violated the order of the High Court dated 23-3-1994 by preparing a list of only 22 candidates instead of filling up 50% of the alleged 161 vacancies. In this connection, the impugned judgment of the High Court has recorded a finding of fact that the Board has rightly reduced the number of vacancies to 50 and to that extent claim of the writ petitioners was rejected. In the impugned judgment, the High Court found that 50 vacancies were required to be filled up, 25 against the advertisement dated 15-12-1986 and 25 against advertisement dated 15-11-1992. However, according to the impugned judgment, the appellant ought to have made appointments by preparing a further panel for 18 vacant posts which became vacant when the earlier 18 selected candidates opted out. It is this part of the reasoning of the High Court, which is fallacious.

7. In the present case pursuant to the direction of the High Court dated 23-3-1994, the appellant took steps for filling up 25 vacancies in the post of Operators from Advertisement No. 3/86 and the remaining 25 vacancies from Advertisement No. 6/92. The results were notified on 29-4-1994 on the notice-board. The Board recommended names of successful candidates under Advertisement No. 3/86 and Advertisement No. 6/92. Out of 22 candidates selected by the Board for appointment under Advertisement No. 3/86, 18 candidates did not turn up. At this stage it is important to note that Respondents 1 to 7 had applied for appointment under Advertisement No. 3/86 dated 15-12-1986 and they had qualified but they were placed at Serial No. 23 onwards in the descending order. As stated above, a panel of 22 candidates was prepared for appointment under Advertisement No. 3/86 and Respondents 1 to 7 fell beyond the cut-off number. We are not shown any statutory recruitment rules which require the appellant Board to prepare a waiting list in addition to the

panel. The argument advanced on behalf of Respondents 1 to 7 was in effect that when 18 candidates failed to turn up the appellant was bound to offer posts to candidates in the waiting list. No such rule has been shown to us in this regard. In our view, the judgment of this Court in the case of Shankarsan Dash v. Union of India [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95] squarely applies to the facts of this case. Further there was no infirmity in the judgment of this Court delivered on 4-12-1998 [Ed.: See Bihar SEB v. Suresh Prasad, (2004) 2 SCC 687.] and in our view with respect there was no need to recall the said judgment."

The paras quoted above shows similarity of the facts to present cases, and consideration of the issue at length by the Apex Court. In absence of the provisions for wait list, no indulgence could have been given.

The prayer made by the appellant to issue direction to prepare wait list and as a consequence to fill all the vacancies was not accepted.

In view of the above and as the recruitment is of the year 2016, we don't find any ground to issue direction to the respondents to prepare a wait list and thereupon to fill vacant posts out of the recruitment of 2016."

7. Submitting the arguments in the rejoinder affidavit, Sri Siddiqui reiterated the points already argued by him but very fairly conceded that the service rules do not provide for preparation of waiting list or additional list either even provisional.

8. Having heard learned counsel for the respective parties and having perused the records, I am of the considered view that the Commission that has been constituted under the Uttar Pradesh Subordinate Services Selection Commission Act, 2014 is only a selecting and recommending body and subject to the requisition sent by the department concerned and in such circumstances, therefore, every requisition has to be sent by the department as per the recruitment rules so framed. The Commission can have its own guidelines for conduct of his business but in matters of selection it is to strictly adhere to the provisions contained in the relevant recruitment rules. The

Constitution Bench while answering the question as to the right of the selected candidate to be appointed after being placed in select list, the reference vide paragraph 42 came to be answered as under:

"(1) Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;

(2) Eligibility criteria for being placed in the Select List, notified at the commencement of the recruitment CIVIL APPEAL NO.2634 OF 2013 process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;

(3) The decision in K. Manjusree (supra) lays down good law and is not in conflict with the decision in Subash Chander Marwaha (supra). Subash Chander Marwaha (supra) deals with the right to be appointed from the Select List whereas K. Manjusree (supra) deals with the right to be placed in the Select List. The two cases therefore deal with altogether different issues;

(4) Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/ non- arbitrary and has a rational nexus to the object sought to be achieved.

(5) Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the Rules are non-existent, or silent, administrative instructions may fill in the gaps;

(6) Placement in the select list gives no indefeasible right to appointment. The State or its instrumentality for CIVIL APPEAL NO.2634 OF 2013 bona fide reasons may choose not to fill up the vacancies. However, if vacancies exist, the State or its instrumentality cannot arbitrarily deny appointment to a person within the

zone of consideration in the select list."

(Emphasis added)

9. Sub-Paragraph-5 of the aforesaid judgment makes it very clear that the rules having statutory force are binding upon the recruitment body both in terms of procedure and eligibility.

10. It is not a case of the petitioner here that rules do not have statutory force or there were no rule at all. The Division Bench in the case of Arvind Yadav (*Supra*) also held very clearly that in the absence of provisions under the relevant rules of preparation of waiting list, no recognition can be granted by the Court of preparation of waiting list. Even if it is said, rules are silent, yet the petitioners have failed to place before this Court any executive instructions so that it may be said as a rule providing for additional list to the merit list. Even though certain observations have been made by a Coordinate Bench in the case of Vatsayan Shukla and another (*Supra*) as quoted above but in view of the aforesaid authorities referred to and discussed, no direction can be issued to the Commission to prepare the waiting list or additional list even provisionally. In so far as the prayer for the petitioner to direct to the State Government to decide the representation of the petitioners in respect of the selection held pursuant to the advertisement no.5 of 2019 is concerned, in my considered view, State Government having already framed under the Rules is under no statutory obligation to decide the representation of the petitioner making the prayer contrary to the Rules. No writ of mandamus as such can be issued.

11. I do not find any merit in the writ petition. Writ petition fails and is, accordingly ***dismissed***.

Order Date :- 30.4.2025

Deepika