

Court No. - 5

Case :- WRIT - A No. - 6383 of 2024

Petitioner :- Sachin Srivastava

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Agriculture
Education And Research Lko. And Others

Counsel for Petitioner :- Deep Narayan Tripathi

Counsel for Respondent :- C.S.C.,Prashant Kumar Singh

Hon'ble Abdul Moin,J.

1. Rejoinder affidavit filed today in Court is taken on record.
2. Heard Sri Deep Narayan Tripathi, learned counsel for the petitioner, learned Standing Counsel appearing for respondent no.1, and Sri Prashant Kumar Singh, learned counsel appearing for respondents no.2 to 4.
3. Instant petition has been filed praying for the following reliefs:-
 - "i. to issue a writ, order or direction in the nature of Mandamus commanding the opposite parties to make selection of the petitioner on the post of Assistant Professor, Agriculture Business Management belonging to general category in order of panel/merit list in the process of selection on said post under Advt. no.9/2021 dated 30.12.2021.*
 - ii. to issue a writ, order or direction in the nature of Mandamus commanding the opposite parties to not hold the selection process on the post of Assistant Many Professor, Agriculture Business Management belonging to general category under Advt. no.3/2024 dated 04.03.2024.*
 - ii-a. to issue a writ, order or direction in the nature of certiorari quashing the selection and appointment on the post of Assistant Many Professor, Agriculture Business Management belonging to general category through Advertisement No.9/2021.*
 - iii. to issue a writ, order or direction to the opposite parties to grant approval of selection and appointment of the petitioner on the post of Assistant Professor, Agriculture Business Management belonging to general category under Advt. no.9/2021 dated 30.12.2021.*

iv. To issue any other order of direction which this Hon'ble Court may deems fit and proper under the circumstances of the case.

v. To allow the writ petition throughout cost."

4. Learned counsel for the petitioner states that inadvertently while incorporating the amendment as made in prayer 'ii-a' the advertisement number has been indicated as '9/2021' rather the same should be 3 of 2024.

5. The aforesaid statement of learned counsel for the petitioner is recorded.

6. Bereft of unnecessary details, the facts of the case are that an advertisement no.9/2021 dated 30.12.2021 had been issued by respondent no.2, a copy of which is Annexure-1 to the petition, inviting applications for various posts in the University including the post of Assistant Professor, Agriculture Business Management. The number of posts were indicated as three - one for unreserved, one for OBC and one for SC/ST. As the petitioner belongs to the General Category as such he applied for the said post under the unreserved category.

7. It is contended that a written examination was conducted by the respondents in which the petitioner claims to have qualified. Thereafter, interview letter dated 21.11.2022 was issued. The result had been declared on 11.09.2023. Incidentally the result has not been annexed along with the writ petition. It is contended that the result did not contain the name of the petitioner rather one Sri Ashutosh Chaturvedi was selected on the said post. Even before Sri Chaturvedi could be appointed, a complaint was made against his selection which resulted in his selection being cancelled. It is contended that subsequent thereto, instead of respondents proceeding further with the waiting list, if any, that may have been prepared in which the petitioner might have qualified they have issued an advertisement no.3 of 2024, a copy of which is Annexure-2 to the petition, on 04.03.2024 whereby apart from inviting application on various other posts the post of Assistant Professor, Agriculture Business Management has again been advertised and there are three posts as per earlier advertisement itself.

8. Raising a challenge to the advertisement dated 04.03.2024 no.3 of 2024 as well as praying for selecting the petitioner on the post of Assistant Professor, Agriculture Business Management on the basis of the earlier advertisement no.9 of 2021 the instant petition has been filed.

9. So far as the prayer for making selection on the post concerned in terms of the earlier advertisement no.9 of 2021 the argument of learned counsel for the petitioner is that as the selection of the selected candidate namely Sri Chaturvedi was itself cancelled by the respondents due to he being unqualified consequently the respondents should have activated the waiting list and in case the petitioner found place in the said waiting list he should have been appointed and as such the respondents have patently erred in law in not firstly activating the waiting list and secondly not appointing him from the said waiting list and have patently erred in law in initially selecting an unqualified candidate namely Sri Chaturvedi.

10. Raising a challenge to the advertisement no.3 of 2024 the contention is that the respondents have changed the qualification, so far as it pertains to the post of Assistant Professor, Agriculture Business Management for which they are not possessed of any power to do so. Thus, it is prayed that the advertisement no.3 of 2024, a copy of which is Annexure-2 to the petition, be cancelled and the respondents be required to appoint the petitioner on the basis of earlier advertisement no.9 of 2021.

11. In this regard, reliance has been placed on the judgment of Hon'ble Supreme Court in the case of **Shankarsan Dash vs. Union of India - (1991) 3 SCC 47**.

12. On the other hand, Sri Prashant Kumar Singh, learned counsel appearing for the respondents, argues that admittedly subsequent to the advertisement no.9 of 2021 a fresh advertisement no.3 of 2024 has been issued by the respondents and consequently it is deemed that the earlier advertisement stands cancelled so far as it pertains to the post of Assistant Professor, Agriculture Business Management i.e. the post to which the petitioner is seeking his selection/appointment.

13. Further placing reliance on the judgment of Hon'ble Supreme Court in the case of **Shankarsan Dash (supra)** itself Sri Prashant Kumar Singh argues that the Hon'ble Supreme Court has held that even a selected candidate has got no indefeasible right for being appointed on the post.

14. The contention is that once the selection of Sri Chaturvedi was itself found to be not in accordance with law as he was not qualified on the date of advertisement consequently the respondents in their wisdom have deemed it fit to issue a fresh advertisement inviting fresh applications vide advertisement no.3 of 2024 and once the petitioner himself does not have any indefeasible right for appointment consequently there is no occasion for the petitioner to seek an appointment in terms of the earlier advertisement no.9 of 2021 more particularly when it stands superseded by fresh advertisement no.3 of 2024.

15. Sri Prashant Kumar Singh, learned counsel appearing for respondents no.2 to 4, has specifically referred to the averments made in paragraphs 7 and 9 of the counter affidavit to contend that the advertisement with respect to the post in question was cancelled even prior to declaration of the result and a fresh advertisement had been issued.

16. So far as the advertisement no.3 of 2024 is concerned, Sri Prashant Kumar Singh argues that the petitioner had not applied in pursuance to the said advertisement and did not even deem it fit to challenge the said advertisement within the last date which was prescribed in the said advertisement which was 06.04.2024 inasmuch as instant petition has been filed on 07.08.2024 and thus the petitioner, at this stage, more particularly when the fresh selection has proceeded further, would not have any right of raising a challenge to the advertisement no.3 of 2024.

17. Responding to the belated challenge to the advertisement no.3 of 2024, learned counsel for the petitioner states that the new qualification which has been prescribed in the advertisement no.3 of 2024 so far as it pertains to the post of Assistant Professor Agriculture Business Management does not conform to the qualification as prescribed by the UGC and

changing of the qualification has not been approved by the UGC and as such the petitioner is perfectly within his right to challenge the advertisement as and when he deems fit.

18. Having heard learned counsel for the parties and having perused the records, it emerges that the respondents had initially issued an advertisement no.9 of 2021 dated 30.12.2021 inviting applications to various posts including the post in question. There were three posts of which one post was unreserved. The petitioner finding himself suitable for applying for an unreserved post had applied for the said post. He qualified in the written examination and an interview letter was also issued to him. Upon declaration of the result on 11.09.2023 the name of the petitioner did not find place in the select list rather the name of one Sri Ashutosh Chaturvedi found place in the said select list for the aforesaid post. Even before Sri Chaturvedi could be appointed certain irregularities were noted in his selection inasmuch as Sri Chaturvedi was not having the qualification prescribed on the date of the advertisement and as such his candidature has been cancelled.

19. Incidentally, in the counter affidavit which has been filed on behalf of respondents no.2 to 4 specific averments have been made in paragraphs 7 and 9 of the counter affidavit that the result of the post in question was never declared and the advertisement itself, so far as it pertained to the post in question, had been cancelled prior to declaration of the result and a fresh advertisement for the said post has been issued. Incidentally, the averments made in paragraphs 7 and 9 of the counter affidavit though have been denied in paragraphs 6 and 8 of the rejoinder affidavit by the petitioner yet the petitioner in his wisdom has chosen not to file the said result and in absence thereof the Court has no option but to believe the version of the respondents that the result had not been declared.

20. The respondents instead of proceeding further with the said advertisement, so far as it pertains to the post in question, deemed it fit to issue a fresh advertisement no.3 of 2024 calling for fresh applications to various posts including the post in question. Admittedly the qualification has

been changed. The last date fixed in the advertisement no.3 of 2024 was 06.04.2024. Admittedly the petitioner has not applied in pursuance to the said advertisement as he did not find himself eligible in terms of the said advertisement as he was not having the qualification prescribed. A challenge has only been raised to the advertisement no.3 of 2024 by filing the instant petition which has been filed on 07.08.2024 i.e. after the last date fixed for receipt of the said applications.

21. The first thing which is to be considered by this Court is as to whether even a selected candidate has got a right to the post.

22. The issue stands settled by the judgment of this Court in the case of Service Single No.1893 of 2011 in re: Sanjay Tripathi and another vs. District Judge, Hardoi, decided on 27.08.2019, wherein this Court after considering the judgment of Hon'ble Supreme Court in the case of **Shankarsan Dash (supra)** has held as under:-

*"8. Now the question which arises is as to whether a selected person has any indefeasible right for appointment? The issue is no longer res-integra taking into consideration the law laid down by Hon'ble Apex Court in the case of **Sankarsan Dash (supra)** wherein the Constitution Bench of the Apex Court has held as under:-*

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the 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. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State

of Haryana vs. Subhash Chander Marwaha (1973)IILLJ266SC, Neelima Shangla vs. State of Haryana [1986]3SCR785 or Jatendra Kumar vs. State of Punjab AIR1984SC1850 ."

9. Likewise, the Apex Court in the case of **Shubhas Chandra (supra)** has held as under:-

10. One fails to see how the existence of vacancies gives a legal right to a candidate to be selected for appointment. The examination is for the purpose of showing that a particular candidate is eligible for consideration. The selection for appointment comes later. It is open then to the Government to decide how many appointments shall be made. The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed. Indeed, if the State Government while making the selection for appointment had departed from the ranking given in the list, there would have been a legitimate grievance on the ground that the State Government had departed from the rules in this respect. The true effect of Rule 10 in Part C is that if and when the State Government propose to make appointments of Subordinate Judges the State Government (i) shall not make such appointments by travelling outside the list and (ii) shall make the selection for appointments strictly in the order the candidates have been placed in the list published in the Government Gazette. In the present case neither of these two requirements is infringed by the Government. They have appointed the first seven persons in the list as Subordinate Judges. Apart from these constraints on the power to make the appointments, Rule 10 does not impose any other constraint. There is no constraint that the Government shall make an appointment of a Subordinate Judge either because there are vacancies or because a list of candidates has been prepared and is in existence.

10. The Hon'ble Supreme Court in the case of **All India SC and ST Association (supra)** has held as under:-

"10. Merely because the names of the candidates were included in the panel indicating their provisional selection, they did not acquire any indefeasible right for appointment even against the existing vacancies and the State is under no legal duty to fill up all or any of the vacancies as laid down by the Constitution Bench of this Court, after referring to earlier cases in *Shankarsan Dash Vs. Union of India*.

Para 7 of the said judgment reads thus :-

"It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the 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. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana vs. Subhash Chander Marwaha (1973)IILLJ266SC, Neelima Shangla vs. State of Haryana [1986]3SCR785 or Jatendra Kumar vs. State of Punjab AIR1984SC1850 ."

11. Likewise, the Hon'ble Supreme Court in the case of Akhilesh V. (supra) has held as under:-

"4. The short question arising for consideration in these appeals is whether mere empanelment can justify a mandamus to make appointments because vacancies may exist. Additionally, whether mandamus can be issued to make appointments from the panel on vacancies which may have arisen subsequently due to superannuation etc. during the life of the rank list. The question assumes significance in view of the stand of the Appellant that it did not wish to make any further appointments due to a financial crunch and a skewed bus to passenger ratio, and for which purpose it had also appointed a committee to recommend remedial measures.

5. We have heard the counsel for the parties and opine that the order of the High Court is unsustainable. The cadre strength has rightly been held not to be a relevant consideration. The High Court has erred in issuance of mandamus to fill up a total of 97 vacancies, including those arising subsequently but during the life of the rank list. Vacancies which may have arisen subsequently could not be clubbed with the earlier requisition

and necessarily had to be part of another selection process. The law stands settled that mere existence of vacancies or empanelment does not create any indefeasible right to appointment. The employer also has the discretion not to fill up all requisitioned vacancies, but which has to be for valid and germane reasons not afflicted by arbitrariness. The Appellant contends a financial crunch along with a skewed staff/bus ratio which are definitely valid and genuine grounds for not making further appointments. The court cannot substitute its views over that of the Appellant, much less issue a mandamus imposing obligations on the Appellant corporation which it is unable to meet.

6. Suffice to observe from *Kulwinder Pal Singh v. State of Punjab*, (2016) 6 SCC 532:

12. In Manoj Manu v. Union of India, (2013) 12 SCC 171, it was held that (para 10) merely because the name of a candidate finds place in the select list, it would not give the candidate an indefeasible right to get an appointment as well. It is always open to the Government not to fill up the vacancies, however such decision should not be arbitrary or unreasonable. Once the decision is found to be based on some valid reason, the Court would not issue any mandamus to the Government to fill up the vacancies...."

12. Thus, taking into consideration the aforesaid dictum of law as laid down by Hon'ble Apex Court, it is apparent that selected persons have no indefeasible right of appointment."

23. Today itself i.e. on 07.11.2024, a Constitution Bench of Hon'ble Supreme Court in the case of **Tej Prakash Pathak and others vs. Rajasthan High Court and others – 2024 INSC 847** has concluded in paragraph 42(6) of the judgment as under:-

"(6) Placement in the select list gives no indefeasible right to appointment. The State or its instrumentality for 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."

24. Thus, from a perusal of the judgment of this Court in the case of **Sanjay Tripathi (supra)** as well as Constitution Bench of the Supreme Court in the case of **Tej Prakash Pathak (supra)**, it clearly emerges that

even a selected candidate has got no right to the post and that the State or its instrumentality for bona fide reasons may choose not to fill up the vacancies.

25. The instant case so far as it pertains to the petitioner stands on weaker footing inasmuch as the petitioner was never declared as a selected candidate rather the candidature of the candidate namely Sri Chaturvedi had itself been cancelled prior to issue of select list by the respondents. Thereafter, the respondents have issued a fresh advertisement no.3 of 2024.

26. Once even a selected candidate has got no indefeasible right for appointment and the petitioner was never declared as selected and a fresh advertisement has been issued consequently this Court does not have any occasion to direct the respondents to make selection from the earlier advertisement more particularly when a fresh advertisement has already been issued by the respondents.

27. So far as challenge raised to the advertisement no.3 of 2024 is concerned whereby as per the petitioner the qualification has been changed for the post in question even without seeking the approval from the UGC and the said qualification being not a qualification prescribed by the UGC, suffice to state that the last date fixed for receipt of applications in terms of the said advertisement was 06.04.2024. In case the petitioner was aggrieved by the said advertisement he should have challenged it within the last date fixed for receipt of the applications but he chose not to do so and only in the month of August 2024 that he has chosen to challenge the said advertisement by means of instant petition. For this act, the petitioner has to thank himself and the Court is not expected to come to the rescue of a litigant who chooses not to challenge the advertisement timely rather challenges it only at the time when the said selection has proceeded to a substantial stage.

28. Keeping in view the aforesaid discussion, no case for interference is made out. Accordingly, the writ petition is dismissed.

Order Date :- 7.11.2024

A. Katiyar