

Court No. - 29

1. Case :- WRIT - A No. - 4204 of 2019

Petitioner :- Manish Kumar Singh
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Siddharth Khare
Counsel for Respondent :- C.S.C., M.N. Singh

2. Case :- WRIT - A No. - 10526 of 2019

Petitioner :- Farheen Khan
Respondent :- State Of U.P. And Another
Counsel for Petitioner :- Jainendra Pandey, Anjani Kumar
Mishra, Shreesh Bahadur Tripathi
Counsel for Respondent :- C.S.C., M.N. Singh and

3. Case :- WRIT - A No. - 27614 of 2018

Petitioner :- Gargi
Respondent :- State Of U.P. And Another
Counsel for Petitioner :- Siddharth Khare
Counsel for Respondent :- C.S.C., M.N. Singh

Hon'ble Pankaj Mithal, J.

Hon'ble Vivek Agarwal, J.

Heard Sri Siddharth Khare, learned counsel for the petitioners in Writ Petitions No. 4204 of 2019 and 27614 of 2018 and Sri Jainendra Pandey, learned counsel for the petitioner in Writ Petition No. 10526 of 2019, Sri M.N. Singh who has appeared for U.P. Public Service Commission, Sri Saurebh Srivastava, Chief Standing Counsel-III for the State of UP and Sri Ashish Mishra, learned counsel for High Court of Judicature at Allahabad.

These bunch writ petitions raise similar issues namely issuance of writ order or direction in the nature of mandamus commanding the respondents-authorities to fill the posts of Civil Judge (Junior Division), which were advertised on 29.7.2016 by operating the waiting list inasmuch as ten candidates who were selected to such service but did not join the service.

Counsel for the petitioners has drawn attention of this Court to provisions contained in Uttar Pradesh Judicial Services Rules, 2001 (hereinafter referred to as "Rules, 2001"). Specific attention has been drawn to the provisions contained in Rule 20 under part VI of the Rules, 2001 dealing with the appointment, probation and confirmation and also to the provision contained in Rule 21 of Rules, 2001 dealing with appointment to the service.

Placing reliance on these Rules and the compliance report filed by the Chief Standing Counsel - III, it is submitted that even the Special Secretary to the Government of Uttar Pradesh, Department of Personnel, Government of UP, Lucknow vide letter bearing No. 576/Two-4-2019-32(1)/2016 addressed to the Secretary, UP Public Service Commission dated 26.8.2019 enclosed as Annexure CA-2 alongwith compliance affidavit filed by the learned Chief Standing Counsel, in para-2 makes a clear mention of names of 10 candidates who were though selected to be appointed as Civil Judge (Junior Division), but they have not joined the posts consequent to their selection which was initiated in the year 2016. For ready reference contents of para nos. 2 to 5 of said communication are reproduced herein below :

2- इस संबंध में अवगत करना है कि निम्नलिखित 10 अभ्यर्थियों द्वारा अन्य प्रदेशों में न्यायिक सेवाओं की जा रही हैं तथा इनके द्वारा उ०प्र० न्यायिक सेवा

सिविल जज (जूनियर डिवीजन) सेवा में योगदान किये जाने में रुचि भी नहीं दिखाई जा रही है:-

1. श्री अजीत नारायण
2. श्री अनिमेष भास्कर नणि त्रिपाठी
3. सुश्री श्रुति चौधरी
4. सुश्री मनु श्री
5. श्री मनीष जैन
6. श्री गौरव शर्मा
7. श्री रुपिन्दर सिंह धीमान
8. सुश्री प्रिया यादव
9. श्री कुमारेश
10. श्री तनवीर अहमद

3- कार्मिक अनुभाग- 4 के शासनादेश संख्या, 1760-आ/47-का4-93-28-5-1980, दिनांक 31.01.1994 के प्रस्तर 5 और 6 में निम्नलिखित प्राविधान किया गया है:-

(5) प्रतीक्षा सूची केवल 01 वर्ष के लिए वैध होगी चाहे प्रतिवर्ष होने वाले प्रतियोगितात्मक परीक्षा से संबंधित हो अथवा किसी ध्यान विशेष से। कतिपय मामलों में यह देखा गया है कि विभागों द्वारा निर्धारित अवधि के अन्दर आयोग से प्रतीक्षा सूची से नाम मांग लिये जाने पर भी आयोग द्वारा निर्धारित 01 वर्ष की अवधि में प्रतीक्षा सूची में नाम उपलब्ध नहीं कराये जाते। अतः समस्या के समाधान हेतु जिन मामलों में विभाग द्वारा निर्धारित अवधि एक वर्ष की अवधि के अन्दर यदि आयोग से प्रतीक्षा सूची से नाम मांग लिये गये हों, किन्तु आयोग ने निर्धारित अवधि में नाम उपलब्ध न कराया हो ऐसे मामलों प्रतीक्षा सूची एक वर्ष के बाद भी वैध होगी।

(6) यदि निर्धारित अवधि में प्रतीक्षा सूची का उपयोग नहीं होता है अथवा निर्धारित अवधि में विभागों द्वारा आयोग से नाम नहीं मांग लिया जाता है तो जो भी रिक्तियां रह जायेंगी वह अगले वर्ष के लिए अग्रणीत मानी जायेंगी।

4- कार्मिक अनुभाग-4 के शासनादेश संख्या- 28/5/80-का/4-1999, दिनांक 15.11.1999 के अनुसार-

लोक सेवा आयोग, त०प्र० द्वारा आयोजित प्रतियोगितात्मक परीक्षाओं तथा अन्य चयनों के आधार पर चयनित अभ्यर्थियों को नियुक्ति प्रदान करने एवं प्रतीक्षा सूची से नाम मांगने संबंधी पूर्व में निर्गत शासनादेशों के अनुपालन में आने वाली कठिनाईयों को ध्यान में रखते हुए शासन द्वारा यह निर्णय लिया गया है, कि एकल संवर्ग के पदों को छोड़कर अन्य समस्त सम्मिलित सेवाओं एवं अन्य चयनों में प्रतीक्षा सूची का निर्माण नहीं किया जायेगा और न ही किसी प्रकार रिशफ्लिंग की कार्यवाही की जायेगी।

5- उपरोक्त वर्णित तथ्यों के परिप्रेक्ष्य में मुझे यह कहने का निदेश हुआ है कि कृपया उत्तर प्रदेश सिविल जज जूनियर डिप्टीजन परीक्षा, 2016 में चयनित उपरोक्त 10 अभ्यर्थियों के अभ्यर्थन के संबंध में शीर्ष प्राथमिकता के आधार पर नियमानुसार निर्णय लेकर कार्यवाही कराने का कष्ट करें। ना० उच्च न्यायालय, इलाहाबाद द्वारा उपर्युक्त रिट पिटीशन में पारित आदेश के दृष्टिगत समयबद्ध कार्यवाही अपेक्षित है।

Learned Chief Standing Counsel, on the other hand, admits that this communication to the Special Secretary to Government of UP is ambiguous and lacks clarity inasmuch as it fails to make any reference to the provisions contained in Rule 21 (2) of the Rules, 2001.

After hearing learned counsel for the parties and perusing the record, the controversy raised in these writ petitions in short is

that wait listed candidates are seeking indulgence of this Court to seek appointment on the post of Civil Judge (Junior Division) by operation of the wait list as was prepared by the UP Public Service Commission in terms of the provisions contained in Rule 20(3) of the Rules, 2001. For ready reference provisions contained in Rule 20 and 21 are reproduced here under:

20. List of candidate approved by the Commission.- (1)

After the result of written examination is prepared, the Commission shall call for interview such number of candidates, who in the opinion of the Commission have secured minimum marks as may be fixed by the Commission in this respect.

(2) Notwithstanding anything to the contrary contained in any rules or orders, the Commission shall invite a sitting Judge of the Court to be nominated by the Chief Justice to participate in the interview of the candidates called under sub-rule (1) and the opinion given by him with regard to the suitability of the candidates shall not be disregarded by the Commission unless there are strong and cogent reasons for not accepting the opinion which reasons must be recorded in writing by the Commission.

(3) The Commission then shall prepare a final list of selected candidates in order of their proficiency as disclosed by aggregate of marks finally awarded to each candidate in the written examination and the interview: Provided that if two or more candidates obtain equal marks in the aggregate, the name of the candidate being elder in age, shall be placed higher: Provided further that if two or more candidates of equal age obtain equal marks in aggregate, the name of the

candidate, who has obtained higher marks in the written examination, shall be placed higher.

21. Appointment to the service.- (1) Subject to the provisions of sub-rule (2), the Governor shall, on receipt of the list of candidates submitted by the Commission under sub-rule (3) of Rule 20, make appointment on the post of Civil Judge (Junior Division) in the order in which their names are given in the list provided the Governor is satisfied that the Candidate is otherwise qualified and entitled for such appointment under these rules. (2) The select list prepared under sub-rule (3) of Rule 20 shall lapse after all the vacancies advertised or varied after due notification, are filled up.

A perusal of Rule 20 (3) clearly provides that after preparation of final list of selected candidates, the Commission is obliged to prepare wait list of 10% of the existing vacancies.

As per advertisement which was published in the year 2016, recruitment was to be made for 218 posts, but only 208 posts could be filled up from amongst various categories and, therefore, wait list has to be operated in relation to those candidates under different categories who had not joined the posts and said vacancies accruing due to said candidates not joining the posts have not been utilised for any subsequent vacancies, as per Sub Rule 3 of Rule 20.

We are in agreement with the contention of learned counsel for the petitioners that compliance affidavit of August, 2019 lacks clarity

and it has failed to take into consideration the specific provision contained in Sub Rule 2 of Rule 21 reproduced above which categorically provides that the select list prepared under sub Rule (3) of Rule 2001 will lapse after the vacancies advertised or varied after due notification are filled up.

We are not commended though any material that memo contained in Government Order Karmik Anubhag-4 GO No. 1760-Aa/47-Ka-4-93-28-5-1980 dated 31.10.1994 supersedes the provisions contained in Rule 21(2) of the Rules, 2001.

There is no material to show that in terms of the note above Sub Rule 3 of Rule 20 that the vacancies which remained unutilised due to non joining of 10 candidates mentioned in the GO dated 26.8.2019 have been utilised for any subsequent recruitment. In fact, pleadings are silent on such aspects.

In view of the aforesaid and looking to the facts that Sri Ashish Mishra, learned counsel for the High Court has categorically stated across the Bar that such vacancies have not been utilized for any subsequent recruitment, therefore, we issue the following directions in these writ petitions for compliance to the authorities-respondents in the following terms :

(1) The respondent (UP Public Service Commission) shall forward list of wait list candidates against each category (keeping vertical and horizontal reservation in mind) within 30 days from today and the concerned authorities of the State subject to verification that the post which were advertised in the year 2016 remained vacant due to non joining of the selected candidates and

further that such posts have not been utilized in any subsequent recruitment shall fill said posts strictly in accordance with the Rules against categories from which posts could not be filled up in order of merit of the wait list candidates within further period of 30 days and submit compliance report to the Registrar General within 75 days from today.

The writ petitions are disposed of in above terms.

Order Date :- 18.10.2019

S.K.S.