

Court No. 24

Writ Petition No. 303 (SB) of 2011

Avinash Chandra and others ...Petitioners

Versus

U.P. Public Service Commission

Allahabad and others ...Respondents

Hon'ble Rajiv Sharma, J.

Hon'ble Surendra Vikram Singh Rathore, J.

(C.M. Application No. 90577 of 2012-Application for Impleadment)

Impleadment application and objection to the impleadment application filed in Court are taken on record.

1. Heard Mr. Vivek Raj Singh, learned counsel for the petitioners and Mr. I.B. Singh, learned Senior Counsel for the respondents.

2. Impleadment application has been filed for impleading the recommended candidates, who have been appointed as Civil Judge (Junior Division) in the instant writ petition to which Mr. I.B. Singh, learned Senior Advocate submitted that the instant writ petition has been filed in the year 2011 and at this belated stage, there was no occasion for moving an application for impleadment and as such, the same is liable to be rejected. In support of his submission, he placed reliance upon a decision of Hon'ble the Apex Court in the case of ***Jiten Kumar Sahoo & Ors Vs. Chief General Manager, Mahanadi Coalfields Ltd. & Ors*** reported in ***[2011 AIR SCW 1282]***.

3. In order to consider the aforesaid objection, it is relevant to note down the facts of the instant case. The instant writ petition has been filed in the year 2009 for

assailing the recommendations of the U.P. Public Service Commission, the result of which was declared on 5.12.2008 for appointment on the post of Civil Judge (Junior Division) inter alia on the ground that the evaluation/moderation of the answer scripts of U.P. Civil Judge (Junior Division) Main Examination 2006 has not been correctly applied and inspite of an application being preferred under the Right to Information Act, the method for awarding the marks has not been disclosed. This Court while entertaining the instant writ petition has directed vide order dated 6.2.2009 to connect instant writ petition which was renumbered as Writ Petition No. 3030 (SB) of 2011 to be listed along with the record of Writ Petition No. 11642 (MB) of 2008 and for perusal of the record produced by the Public Service Commission as well as State Government. This Court vide order dated 2.3.2009 directed the State Government that the recommended candidates may be offered an appointment. This Court has also further directed in the said order that in the appointment orders so issued, it should be categorically mentioned that the selection or appointment is subject to further orders of this Court. In compliance of the orders, the appointment orders were issued in bunches and the first list of bunch of appointment orders was issued on 24.3.2009 but in the said appointment orders, the directions of this Court to the effect that the appointment shall be subject to further orders of this Court was not mentioned and as such, it was brought to the notice of this Court and when this Court has taken cognizance of the same for initiation of criminal proceedings, the State Government vide order dated 10.10.2010 issued a general order providing therein that the appointment of all 317 persons, who have been offered an appointment on the basis of the recommendation of the U.P. Public Service Commission, the same shall be subject to the further orders of this Court as the appointment order of 22 persons have been issued subsequently and as such, in the officer of appointment the

direction of this Court to the effect that appointment shall be subject to the further orders of this Court was mentioned.

4. On perusal of the record it further reflects that the matter also went to the Apex Court and Hon'ble the Apex Court provided in SLP that it will be open for the Court concerned to examine the answer sheets but no candidate or his counsel shall be permitted to see the answer sheets and the SLP was finally disposed of and a request was made to the High Court for deciding the matter expeditiously. Thereafter on perusal of the order sheets, it reflects that hearing was going on and one of the Hon'ble Judge of this Bench has recused himself from the hearing of the case on 3.8.2012 and as such, the matter was placed before Hon'ble the Senior Judge and vide order dated 8.8.2012 it was directed to be listed before the appropriate Court and as such, the same has come up before this Court.

5. Thus, in view of the facts and circumstances of the case, impleadment application, which has been preferred by the petitioner to which objection has been filed by Mr. I.B. Singh, learned Senior Counsel cannot be said to be belated and accordingly, further in the facts and circumstances of the case, which has been relied upon by the respondents are not attracted in the instant case. Insofar as in the case on which, reliance has been placed, appointment order was challenged without impleading the appointed candidates in the writ petition and after a lapse of more than ten years impleadment application was filed whereas in the instant case, the entire selection process for awarding marks has been challenged. It has been prayed for quashing of the said selection. This Court as an interim measure directed the State Government for issuance of appointment orders. It is only in compliance of the orders so passed by this Court, the appointment orders were issued and in pursuance thereof, the selected candidates

have joined their respective services and started discharging the duties, as such, this Court as stated hereinabove has also directed to issue appointment order that will be subject to the further orders of this Court but the said direction was not incorporated in the appointment letter as such, cognizance of the same was taken and a general government order was issued. The copy of the said government orders was also sent by the State to respective candidates. But as neither the copy of the writ petition was furnished to them nor they were made party to contest the proceedings which are going on before this Court in the aforesaid writ petition, as such, impleadment application of the selected candidates in whose favour the appointment orders were issued, has been made. Thus, we do not find that the facts of the case on which reliance has been placed has any relevance under the facts and circumstance of the instant case. Accordingly, we allow the application for impleadment.

6. As such, issue notices to newly impleaded opposite parties as the matter has been lingering on and the Apex Court has also directed for expediting the hearing of the case and as such, it is expedient, in the interest of justice that in this electronic era, we propose to send copy of the notices by loading the notices along with the copy of the writ petition and annexures on the official website of this Court. Registrar of this Court is directed to issue a general order on the official website to the effect that the objection on which notices have been issued may be treated to be a notice by means of personal service as all the officers, who have been offered an appointment, have been allotted website by the Registrar of this Court. Registry will accordingly upload the said notices on the official website of the officers concerned, who have been offered an appointment and have been impleaded in the instant writ petition by means of impleadment application. In case, the officers concerned have not been allotted official

website, same shall be uploaded on the official website of the District Judges where the officer concerned is posted.

7. Under Chapter XXII, Rule 4-A of the High Court Rules, 1952 deals with in the writ application for a direction or order or writ under Article 226 of the Constitution other than a writ in the nature of Habeas Corpus and the said chapter deals with the said notice and it only provides as under:-

[“**4-A.** In the writ petition for a direction or order or writ under Article 226 of the Constitution other than a writ in the nature of Habeas Corpus, the counter affidavit and the rejoinder affidavit filed therein not only the facts but also the evidence in proof of such facts shall be pleaded and annexed to it.”

Note.- The amendment shall come into force from the date of publication in U.P. Gazette.

Under Order 5, Rule 20 of Code of Civil Procedure deals with the substituted service, which reads as under:-

20. Substituted service.-(1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court House, and also upon some conspicuous part of the house (if any) in which the defendant is know to have last resided or carried on business or personally worked for gain, on in such other manner as the Court thinks fit.

[(1-A) Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last know to have actually and voluntarily resided, carried on business or personally worked for gain.]

(2) **Effect of substituted service.**- Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

(3) Where service substituted, time for appearance to be fixed.- Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.”

8. In view of the above provisions, we also deem it proper to direct that notices be sent through uploading the same on the official website as it will avoid delay in personal service to each selected candidate in view of the direction of the Hon'ble Apex Court for expeditious disposal of the case.

9. Learned counsel for the petitioners is directed to file copy of the writ petition along with its annexures by means of soft copy/CD/Pen drive in the registry of this Court and the registry is directed to send notices to all the newly impleaded respondents through E-Mail. As indicated above, if the official E-Mail has not been allotted to the officer concerned, same shall be sent to the District Judge concerned, who in turn shall effect the service on the officer concerned. The Registrar of this Court, namely, Shri Alok Kumar Mukherji shall ensure that soft copy of writ petition and complete annexures is uploaded on the website of this Court and shall also be uploaded on the e-mail of the concerned parties/the District Judges concerned. Registrar shall also communicate all the newly opposite parties that if they so wish they may get the copy of the writ petition by downloading the same from the website of this Court/ or the same can be downloaded from the e-mail of the concerned District Judges.

10. List this matter in the second week of November, 2012 before the appropriate Bench. Newly impleaded opposite parties, if intend to file any response, they may do so within the aforesaid period after serving the its duplicate on the counsel for the petitioners.

11. Learned counsel for the petitioner submitted that the newly impleaded opposite parties to be treated to be opposite parties in all the connected matters as the question of law involved in all the matters is identical.

Order Date: 11.10.2012

Virendra