

**ORIGINAL JURISDICTION  
CIVIL SIDE  
DATED: ALLAHABAD 27.02.2006**

**BEFORE  
THE HON'BLE DR. B.S. CHAUHAN, J.  
THE HON'BLE DILIP GUPTA, J.**

Civil Misc. Writ Petition No. 40736 of 2002

**Manoj Kumar Pandey & others ...Petitioners  
Versus  
State of U.P. and another ...Opp. parties**

**Counsel for the Petitioners:**

Sri S.P. Pandey  
Sri D.P. Shukla

**Counsel for the Opposite Parties:**

Sri B.N. Singh

**Constitution of India, Art. 226-Right to appointment-petitioner appeared in competitive examination-held for the Post of A.P.O. result declared on 20.3.99-State Government send requisition 26.7.01-petition filed in September 2002 e.g. much after expiry of the life of waiting list-parity can not be claimed.**

**Held: Para 9 & 10**

**The Hon'ble Apex Court while considering the case has granted relief only to those persons who had approached the Court and those were the persons who had filed the writ petition before this Court within one year from the date on which the last recommendation had been made. Therefore, those persons had approached the Court when the select list/merit list was alive. The case of the petitioners is quite distinguishable as they have approached this Court after more than two months of the expiry of the select list. Therefore, petitioners cannot claim the relief which had been granted to other persons by the Hon'ble Apex Court.**

**If some person has taken a relief from this Court by filing a Writ Petition immediately after the cause of action had arisen, petitioners cannot take the benefit thereof by filing a writ petition belatedly. They cannot take any benefit thereof at such a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.**

**Case law discussed:**

2004 (2) ESC-256  
AIR 1979 SC-765  
AIR 1981 SC-487  
AIR 1983 SC-580  
1990 (3) SCC-468  
1993 (Suppl.) 1 SCC-632  
1997 (6) SCC-721  
1996 (3) SCC-225  
AIR 1996 SC-1145  
AIR 1996 SC-2173  
1999 (1) SCC-330  
2003 (3) SCC-669  
1006 (6) SCC-267

(Delivered by Hon'ble Dr. B.S. Chauhan, J.)

1. This petition has been filed for a direction upon the U.P. Public Service Commission, Allahabad to recommend the names of the waiting list-candidates against the existing vacancies of Assistant Prosecuting Officers, which had been advertised by Advertisement No. A-5/E-1/1997-98.

2. Learned counsel for the petitioners has submitted that all the petitioners had appeared in the written examination and were also called for interview. The final select list was declared on 20th March, 1999 and even though the names of the petitioners were not included in the main select list, but they are hopeful that their names would be included in the waiting list. The State Government had sent a requisition to the Commission to recommend the names of

the candidates next in order of merit, as certain candidates did not join the post, but the Commission expressed its inability as the life of the waiting list had expired. This decision of the Commission was challenged by 11 candidates by filing a writ petition in this Court which was dismissed. The Supreme Court however granted relief to them by directing that they shall be considered by the Commission and the State Government, and would be appointed if otherwise found suitable and eligible. The said decision was rendered in *Sheo Shyam & Ors. Vs. State of U.P. & Ors.*, (2004) 2 ESC 256. The Supreme Court in the said decision held that the life of the waiting list which is of one year should be reckoned from the last date when the recommendation was made by the State Government. However, in view of the fact that after the decision of the Commission not to send the names to the State Government as the waiting list had expired, which decision was the subject matter of the writ petition before the High Court, the State Government itself had sent a requisition of 56 posts, including 11 posts to which the dispute related, and examinations were held subsequently on 9th November, 2003, the Supreme Court observed that the career of 11 candidates cannot be jeopardised, and therefore in these peculiar circumstances, it directed that the appointment shall be considered by the Commission and the State Government.

3. Learned counsel for the petitioners submitted that the same relief should be granted to the petitioners. From a perusal of the judgment of the Supreme Court we find that because of the peculiar facts and circumstances of the case that the Supreme Court had granted relief to

the 11 appellants only. The Supreme Court could have granted relief to all the candidates in the waiting list subject to the availability of the vacancies.

4. In the State of Kerla Vs. Kumari T.P. Roshana & Ors., AIR 1979 SC 765, the Hon'ble Supreme Court considered this aspect and observed as under:-

"The root of the grievance and the fruit of the writ are not individual but collective and while the 'adversary system' makes the Judge a mere umpire, traditionally speaking, the community orientation of the judicial function, so desirable in the Third World remedial jurisprudence, transforms the Court's power into affirmative structuring of redress so as to make it personally meaningful and socially relevant. Frustration of invalidity is part of the judicial duty; fulfilment of legality is complementary. Selection of these thirty students will not be confined to those who have moved this Court or the High Court by way of writ petition or appeal. The measure is academic excellence, not litigating persistence. It will be thrown open to the first thirty strictly according to merit measure by marks secured."

5. The same view has been expressed by the Apex Court in *Ajay Hasia & Ors. Vs. Khalid Mujib Sehravardi & Ors.*, AIR 1981 SC 487; and *Punjab Engineering College, Chandigarh Vs. Sanjay Gulati & Ors.*, AIR 1983 SC 580. In *Thaper Institute of Engineering & Technology, Patiala Vs. Abhinav Taneja & Ors.*, (1990) 3 SCC 468, the Apex court considered a case where the High Court had issued directions to admit the students who had approached the writ Court,

ignoring the merit of the students who had not approached the Court.

The Hon'ble Supreme Court observed as under:-

"The High Court should have directed only two students to be admitted and that too on merit. Admittedly, there were more meritorious students than the respondents, waiting in queue. The High Court, thus, travelled beyond its jurisdiction and not only directed more students than the institute could absorb but also students who were less meritorious, to be admitted. No reasons whatsoever have been given by the High Court for exercising its extraordinary writ jurisdiction so peremptorily which has resulted in injustice, both to the appellant-institution as well as to the students who stood higher in merit than all most all the respondent- students. We refrain from making any further comment on the impugned judgment."

6. Similarly, general directions were issued to give benefit to the students strictly in accordance with the merit, in *Srawan Kumar & Ors Vs. Director General of Health Services & Ors*, 1993 (Supp) 1 SCC 632. In *K.C. Sharma & Ors. Vs. Union of India & Ors.*, (1997) 6 SCC 721, a Constitution Bench of the Hon'ble Supreme Court has considered the aspect of giving benefit to a particular person and refusal to grant such benefit by the High Court to other similarly situated only on the ground that they had approached the Court at a belated stage. The Apex Court held that in such a case the judgement has to be rendered in rem and benefit of the judgment should be given to all other similarly situated persons.

7. However as seen above, the Supreme Court in *Sheo Shyam & Ors (Supra)* restricted the relief to 11 appointments only. In this view of the matter we would not be justified in granting any relief to the petitioners. This apart, it must also be noticed that no specific averment has been made by the petitioners that their names were included in the waiting list. All that they have stated is that they expect that their names would be included in the waiting list.

8. Further the present petitioners have filed this writ petition only in September, 2002 much after the expiry of one year from the date when the last recommendation was made on 26th July, 2001. This petition has been filed after the life of the waiting list came to an end. It is settled legal proposition that no relief can be granted to the candidate if he approaches the Court after expiry of the Select List. (*Vide J. Ashok Kumar Vs. State of Andhra Pradesh & Ors.*, JT (1996) 3 SCC 225; *State of Bihar & Ors. Vs. Md. Kalimuddin & Ors.*, AIR 1996 SC 1145; *State of U.P. & Ors. Vs. Harish Chandra & Ors.*, AIR 1996 SC 2173; *Sushma Suri Vs. Government of National Capital Territory of Delhi & Anr.*, (1999) 1 SCC 330; & *State of U.P. & Ors. Vs. Ram Swarup Saroj*, (2003) 3 SCC 699). It has been held therein that if the selection process is over, select list had expired and appointments had been made, no relief can be granted by the Court at a belated stage.

9. The Hon'ble Apex Court while considering the case has granted relief only to those persons who had approached the Court and those were the persons who had filed the writ petition before this Court within one year from the date on

which the last recommendation had been made. Therefore, those persons had approached the Court when the select list/merit list was alive. The case of the petitioners is quite distinguishable as they have approached this Court after more than two months of the expiry of the select list. Therefore, petitioners cannot claim the relief which had been granted to other persons by the Hon'ble Apex Court.

10. If some person has taken a relief from this Court by filing a Writ Petition immediately after the cause of action had arisen, petitioners cannot take the benefit thereof by filing a writ petition belatedly. They cannot take any benefit thereof at such a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.

11. In *State of Karnataka & Ors. Vs. S.M. Kotrayya & Ors.*, (1996) 6 SCC 267, the Hon'ble Supreme Court rejected the contention that a petition should be considered ignoring the delay and laches on the ground that he filed the petition just after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. The Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches.

12. Same view has been reiterated by the Hon'ble Supreme Court in *Jagdish Lal & Ors. Vs. State of Haryana & Ors.*, AIR 1997 SC 2366, observing as under:-

"Suffice it to state that appellants may be sleeping over their rights for long and elected to wake-up when they had impetus from *Veerpal Chauhan and Ajit*

*Singh's ratio....* desperate attempts of the appellants to re-do the seniority, held by them in various cadre.... are not amenable to the judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well."

13. In *M/s. Roop Diamonds & Ors. Vs. Union of India & Ors.*, AIR 1989 SC 674, the Hon'ble Supreme Court considered a case where petitioner wanted to get the relief on the basis of the judgment of the Supreme Court wherein a particular law had been declared ultra vires. The Court rejected the petition on the ground of delay and laches observing as under:-

"There is one more ground which basically sets the present case apart. Petitioners are re-agitating claims which they have not pursued for several years. Petitioners were not vigilant but were content to be dormant and close to sit on the fence till somebody else's case came to be decided."

14. Thus, petitioner was not entitled to claim any benefit of the said judgment of this Court.

15. In view of the above, we are of the considered opinion that no relief can be granted to the petitioners. Petition lacks merit and is accordingly dismissed.

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