



2026:AHC-LKO:19359

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - A No. - 8997 of 2022

Madhusudhan Dwivedi And 5 Others

.....Petitioner(s)

Versus

State Of U.P. Thru. Addl. Chief Secy. /Prin.
Secy. Dept. Home, Civil Sectt. U.P. Lko. And 3
Others

.....Respondent(s)

Counsel for Petitioner(s) : Jai Narayan Mishra, Raj Kumar
Singh

Counsel for Respondent(s) : C.S.C., Vinod Kumar Singh

Court No. - 7

HON'BLE MANISH MATHUR, J.

1. Heard Mr. Raj Kumar, learned counsel for petitioners, learned State Counsel appearing on behalf of the opposite party Nos.1 to 3 and Mr. R. K. Upadhyaya, learned counsel for opposite party No.4.

2. So far as notice to opposite party Nos.5 to 11 is concerned, this Court had directed notices to be issued vide order dated 01.02.2023 with a further direction being issued for service to be effected upon them through U.P. Public Service Commission by dasti notices. In pursuance thereof, affidavit of service dated 11.11.2024 has been filed by the Commission stating that aforesaid persons have been provided notices with regard to pendency of this petition through registered speed post but the said registered envelopes have not been received back by the Commission.

3. Considering the aforesaid facts that notices have been sent to opposite party Nos.5 to 11 through speed post, presumption of service is deemed in terms of Section 27 of the General Clauses Act.

4. Since none of the said opposite parties 5 to 11 have put in appearance, this petition is being adjudicated upon *ex parte* against them.

5. Petition has been filed challenging Office Memorandum dated 28.07.2020 whereby directions have been issued for consideration for recruitment/appointment on the post of Assistant Prosecution Officer in terms of advertisement issued in year 2015, to be in accordance

with merit ranking in the select list or waiting list.

6. Earlier this Court had passed order dated 03.07.2025 which is as follows:-

"1. Heard learned counsel for petitioners, learned State Counsel appearing on behalf of opposite parties 1 to 3 and Mr. R. K. Upadhyaya, learned counsel for opposite party no.4.

2. From the record, it appears that advertisement for recruitment to the post of Assistant Prosecution Officer was issued on 29.04.2015 for 372 posts whereafter results of recruitment process were forwarded to State Government in 2017. The petitioners featured in the wait list and subsequently filed Writ Petition No.25178 (S/S) of 2018 seeking inclusion of their names in posting. Vide interim order dated 28.09.2018, it was provided as an interim measure that in case State Government takes a decision for filling up of the vacancies from wait list, with such vacancies remaining on account of non-joining of selected candidates, the expiry of wait list after one year would not come in the way of petitioners seeking appointment against such vacancies.

3. It also appears that subsequently 43 vacancies on the said account arose due to non-joining of selected candidates and in response to proposal of State Government, 42 names were forwarded by the Commission. Counter affidavit filed on behalf of Commission also indicates that subsequently further 19 names were also forwarded for filling up the said vacancies. It has also been stated that out of 28 petitioners of said Writ Petition No.25178 (S/S) of 2018, twenty persons had already been recommended by the Commission but remaining 8 petitioners, including the present petitioners, could not be recommended on account of their lower merit in the wait list.

4. In view of aforesaid aspects, the claim of petitioners would survive only in case there are any vacancies still remaining due to non-joining of selected candidates. Current position with regard to such vacancies is unavailable due to which learned State Counsel may seek specific written instructions on such vacancies which are still remaining unfilled.

5. Affidavit to that effect shall be filed on or before the next date of listing.

6. *List this case on 21.07.2025 in the top ten category. "*

7. In pursuance thereof, a short counter affidavit on behalf of opposite parties 1 to 3 dated 08.08.2025 has been filed in which it has been specifically stated in paragraph - 14 which reads as follows:-

"14. That for making selection against 182 vacant posts of Assistant Prosecution Officers (APO's) the requisition has already been submitted to the Uttar Pradesh Public Service Commission, Prayagraj, in which those 19 posts are also included which had fallen vacant on account of rejection of candidatures of the candidates of Assistant Prosecution Officers Examination 2015"

8. It thus appears that earlier petitioners had filed Writ Petition No. 25178 (SS) of 2018 seeking a direction to the authorities to call additional names from remaining merit list/waiting list prepared by the U.P. Public Service Commission for post of Assistant Prosecution Officer against vacancies occurred on account of non-joining of the selected candidates in pursuance of advertisement No. A-2/E-1/2015 dated 29.04.2015. Other concomitant prayers were also made.

9. Initially, interim order dated 28.09.2018 was passed which reads as follows:-

"Learned Additional Chief Standing Counsel on the basis of instructions received from the State Government in the Department of Home, vide letter dated 28.09.2018, has submitted that the posts of the Assistant Prosecuting Officer are covered by the Government Order dated 15.11.1999 and accordingly the said Government Order in the instant case shall also be followed. The letter containing the instructions dated 28.09.2018, is taken on record.

In view of the aforesaid submission made by the learned Additional Chief Standing Counsel on the basis of instructions received by him, what is clear is that the State Government will in all probability summon the wait-list for filling up the vacancies which would remain unfilled on account of non-submission of joining of the selected candidates pursuant to the orders of appointment, however, it is not clear as to by what time the said exercise of ascertaining the vacancies which would remain unfilled on account of non-joining of the selected candidates, shall be completed by the State Government. This gives rise to an apprehension in the

mind of the petitioners that in case decision is not taken timely, the same may prejudice the right of the petitioners to seek appointment from the wait-list.

Accordingly, we provide as an interim measure that in case the State Government ultimately takes a decision to summon the wait-list for filling up the vacancies which would remain unfilled on account of non-joining of the selected candidates, the life of the said wait-list, which is one year, shall not come in the way of the petitioners seeking appointment against the vacancies which may remain unfilled on account of non-joining of the selected candidates.

Respondents will file their counter affidavit within a period of four weeks. Two weeks' time thereafter shall be available to the learned counsel for the petitioners to file rejoinder affidavit.

List this case after expiry of the aforesaid period."

10. The aforesaid writ petition was thereafter disposed of vide judgment and order dated 13.12.2019 in the following manner:-

"Sri Raj Kumar Singh, learned counsel for the petitioners has further submitted that the opposite parties are having as much vacancies the petitioners can be accommodated. He has also referred paras-8 and 9 of the supplementary affidavit filed today, wherein a recital have been given that 11 vacancies were already vacant and 8 more vacancies are vacant for the reason that those persons have not submitted their joining on the post in question.

However, Sri Ran Vijay Singh, learned Additional Chief Standing Counsel for the State-respondents has submitted that these 8 vacancies have been taken back by the government for the reason that the life of wait list is only one year and more than one year period has already passed, therefore, on these 8 vacancies, no one can be accommodated.

The aforesaid stand of the opposite parties may not be said to be appropriate in view of the interim order dated 28.09.2018, whereby this Court considering the grievance of the petitioners has observed that the life of the wait list is of one year shall not come in the way of the petitioners. Meaning thereby the petitioners may not be ignored for the reason that the life of the wait list has been over. Rather, these 8 vacancies should be treated as vacant for

accommodation of the petitioners.

Sri Ran Vijay Singh, learned Additional Chief Standing Counsel has submitted that at this point of time he is not aware that how many vacancies are vacant. Since 8 vacancies have been disclosed by the authorities, therefore, he is only aware about these 8 vacancies.

But Sri Raj Kumar Singh, learned counsel for the petitioners has submitted that besides these 8 vacancies, atleast 11 or 12 vacancies are vacant on which the present petitioners may be accommodated.

Considering the aforesaid submissions of learned counsel for the parties, I hereby dispose of this writ petition finally directing the Competent Authority to accommodate the petitioners, who are 11 in numbers, against the vacant posts and the opposite parties shall not take the stand that the wait list has come to an end after expiry of one year period as the same has been protected by the interim order dated 28.09.2018 of this Court.

The petitioners shall produce the certified copy of this order before the Competent Authority along with their joint representation within a period of one week and the appropriate decision shall be taken by the Competent Authority within a period of one month thereafter.

It is made clear that while passing the appropriate order, the Competent Authority shall follow the rules, regulations and the relevant government orders or circulars applicable to that effect, strictly in accordance with law."

11. It thus transpires that directions have been issued to the concerned authority to accommodate petitioners, 11 in number, against the vacant posts without taking into account the fact that waiting list has expired after one year period.

12. It is admitted that present petitioners were the petitioners in the aforesaid Writ Petition No.25178 (SS) of 2018.

13. It also appears that against aforesaid judgment, Special Appeal Defective No. 161 of 2021 was filed and is still pending consideration in the same state without delay being condoned.

14. Earlier vide order dated 03.09.2024 passed in the present writ petition, the aforesaid fact was noticed and one opportunity was granted to learned State Counsel to press the appeal by filing an application for seeking disposal thereof failing which the writ petition would be finally decided on the basis of arguments advanced.

15. Despite such an opportunity having been granted in September, 2024, it is admitted that aforesaid Special Appeal is still pending consideration without delay having been condoned.

16. Mr. R.K.Upadhyaya, learned counsel for Commission has submitted that petitioners are seeking inclusion of their names for consideration for recruitment excluding the names of other persons who are higher in merit in the select list in which names of petitioners also feature. It is submitted that in case such a relief is granted, it would be in violation of Articles 14 and 16 of the Constitution of India.

17. With regard to such submission, it is admitted between the parties that the select list was issued on 22.09.2017. Admittedly, the aforesaid list has expired by efflux of time after one year. It is also admitted that many of the persons indicted in the select list but placed higher than the petitioners did not challenge the same.

18. The said aspect has already been considered by Hon'ble Supreme Court in ***State of U.P. v. Ram Swarup Saroj*** reported in (2000) 3 SCC 699 in which it has been clearly held that a select list normally expires within a period of one year of its being notified except in those cases where the select list is challenged before Courts of Law whereunder such select list would be deemed to continue and be subject to final decision of *lis*.

19. In the present facts and circumstances, the judgment and order dated 13.12.2019 passed in Writ Petition No. 25178 (SS) of 2018 has not been set aside, modified or varied by any competent Court and still holds the field particularly since in Special Appeal filed thereagainst, even delay has not been condoned.

20. In such circumstances, particularly when an opportunity had been granted to opposite parties vide order dated 03.09.2024, opposite parties are bound by the judgment and order dated 13.09.2019.

21. Considering aforesaid facts and circumstances, it is therefore

held that consideration for inclusion for recruitment on the post of Assistant Prosecution Officer in terms of the aforesaid advertisement of 2015 would be available only to such candidates indicated in the merit list who had challenged the aforesaid merit list since for others who have not raised any such challenge, the select list stands exhausted after one year of its notification.

22. Since others who have not challenged the select list are being deprived of consideration on that ground, there is no infringement of any fundamental right under Articles 14 and 16 of the Constitution of India.

23. In view of discussion made here-in-above, impugned Office Memorandum dated 28.07.2020 so far as it directs consideration of all the persons of the select list is hereby quashed to that extent by issuance of a Writ in the nature of Certiorari. Consequential communique dated 14.08.2020 to the extent it includes names of all such persons who have not raised challenge to the select list also stands quashed.

24. A further Writ in the nature of Mandamus is issued commanding the authority concerned to pass appropriate orders with regard to consideration of candidature of petitioners for recruitment on the post of Assistant Prosecution Officers in terms of the advertisement dated 29.04.2015 expeditiously within a period of eight weeks from the date a certified copy of this order is served upon said authority against the 19 posts which as per paragraph - 14 of counter affidavit are said to be still vacant in terms of the aforesaid advertisement of year 2015.

25. Resultantly, petition succeeds and is allowed. Parties to bear their own costs.

March 17, 2026

kvg/-

(Manish Mathur,J.)