

**Court No. - 1**

**Case :-** SPECIAL APPEAL DEFECTIVE No. - 485 of 2023

**Appellant :-** Sushil Kumar And 2 Others

**Respondent :-** Legislative Council U.P. Lko. Thru. Prin. Secy. And 11 Others

**Counsel for Appellant :-** Shobhit Mohan Shukla, Manoj Kumar Chaurasiya

**Counsel for Respondent :-** Akansha Dubey, C.S.C., Gaurav Mehrotra, Raj Kumar Upadhyaya (R.K. Upadhyaya)

**connected with**

**Case :-** WRIT - A No. - 140 of 2022

**Petitioner :-** Vipin Kumar Singh

**Respondent :-** State Of U.P Thru. Addl. Chief Secy. (Legislative Assembly) And 14 Others

**Counsel for Petitioner :-** Anu Pratap Singh, Aditya Vikram Shahi, Arvind Kumar Pandey

**Counsel for Respondent :-** Abhinav Trivedi, Abhishek Tiwari, Satya Prakash Mishra

**Hon'ble Attau Rahman Masoodi, J.**

**Hon'ble Om Prakash Shukla, J.**

- (1) The instant Special Appeal has been filed assailing the judgment and order dated 12.04.2023 passed in Writ-A No. 36 of 2021, *Sushil Kumar and others v. Legislative Council and others*, whereby the writ petition filed by the petitioners has been dismissed. The challenge is to the process of recruitment of staff in the Secretariat of Vidhan Parishad.
- (2) Fair competition in public employment is the foundational rule. For achieving this object, the credibility of recruitment agency is indispensable. The State or any recruitment agency for making employment in public service, therefore, is not only required to have utmost credibility in the functioning of recruitment body but the procedure therefor must also stand the test of Articles 14 and 16 of the Constitution of India failing which it shall be amenable to the judicial scrutiny within the

ambit of judicial review under Article 226 of the Constitution of India. The hallmark of any fair selection stands guaranteed provided the recruitment agency is publicly acceptable and the implementation of procedure prescribed remains unquestionable. It is for this reason, the constitutional bodies, like Vidhan Parishad, for the purpose of recruitment of staff/Officers, as is the case before us is governed under Article 187 of the Constitution of India which for ready reference is extracted hereunder:-

*“(1) The House or each House of the Legislature of a State shall have a separate secretarial staff:*

*Provided that nothing in this clause shall, in the case of the Legislature of a State having a Legislative Council, be construed as preventing the creation of posts common to both Houses of such Legislature.*

*(2) The Legislature of a State may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House or Houses of the Legislature of the State.*

*(3) Until provision is made by the Legislature of the State under clause (2), the Governor may, after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the Assembly or the Council, and any rules so made shall have effect subject to the provisions of any law made under the said clause.”*

- (3) The Rules, i.e., U.P. Legislative Council Secretariat (Recruitment and Condition of Service) Rules, 1976 were framed under Article 187 (3) of the Constitution of India. The U.P. Public Service Commission was the recruitment agency as per the aforesaid Rules, 1976 which came to be amended in

2019 and the amended Rules 21 and 22, relevant for our purpose, read as under:-

**"21. Determination of Vacancies and Procedure for Direct recruitment--**

(1) The appointing authority shall determine the number of vacancies to be filled through direct recruitment, during the course of the year of recruitment as also the number of vacancies to be reserved for candidates belonging to the Scheduled Castes Scheduled Tribes and other categories in accordance with such Government orders as may be in force at the time of recruitment.

(2) For Direct recruitment advertisement will be published in leading daily newspapers.

(3) Application for permission to appear in the competitive examination shall be invited by the Selection Committee referred to in clause (i-D) of rule 6 in the form published in the advertisement.

(4) The Selection Committee shall call for written examination and/or interview as the case may be such candidates as are *prima facie* eligible in accordance with the qualifications prescribed for the post/s.

(5) After the results of written examinations and/or interview as the case may be have been received and tabulated, the selection committee shall, having regard to the need for securing due representation of the candidates belonging to the Scheduled Castes, Scheduled Tribes and others, prepare a list of candidates in order of merit as disclosed by the marks obtained by each candidates at the written examination and/or interview as the case may be and recommend such number of candidates as they consider fit for appointment. If two or more candidates obtain equal marks, the candidates senior in age shall be placed higher in the list. The selection committee shall forward the list to the appointing authority.

(6) After fulfilling all requirements, the appointing authority shall make appointments by taking the

names of candidates in the order in which they stand in the list/lists prepared by the selection committee.”

**“22. Examination –**

(1) The syllabus and rules for competitive examination for direct recruitment under these rules shall be made separately with the approval of the Chairman.

(2) The Chairman may, if required authorize any external agency to conduct whole selection process or part thereof.

(3) In case of decision taken by Chairman to conduct the selection in the Chairmanship of Principal Secretary, the Selection Committee shall be constituted in accordance with clause (i-D) of rule-6.”

- (4) Firstly, it was surprising to notice as to why the Rules, 1976 were amended by ousting the examination agency i.e., U.P. Public Service Commission in the year 2019 and secondly, as to why the scope for an external agency as per Rule 22 (2) of the above Rules was opened when no such agency was known on the basis of any credible foundation. The fairness in the matter of identifying recruitment agency was, however, guaranteed by prescribing two-fold mechanism under Rule 22. A selection committee under Clause (i-D) of Rule - 6 was recognized to be the one mode, whereas, the alternative method via Chairman, if required, was also authorized to conduct the whole selection process or part thereof through external agency. It appears that the Chairman/Secretary/Nodal Officer of the Vidhan Parishad opted for an external agency of recruitment without there being any agency either empanelled or ever identified for the purpose.
- (5) The decision for an external agency by-passing the rule of Selection Committee prescribed under Rule 6(i-D) was quite

shocking. In order to probe the identification of external agency, the Court summoned the original record.

- (6) The record summoned before this Court unfolded that as many as five external agencies were short-listed in the zone of consideration for the purposes of recruitment of secretariat staff. The procedure for identifying the external agencies surfaced doubts, therefore, further instructions were sought in terms of the orders passed on 24.08.2023 and 15.09.2023 which for ready reference are reproduced below:

**24.08.2023**

*“1. Shri Shobhit Mohan Shukla, learned counsel appearing on behalf of appellants and Shri Gaurav Mehrotra, learned counsel appearing on behalf of respondents- Legislative Council are present.*

*2. Shri Gaurav Mehrotra, learned counsel appearing on behalf of respondents- Legislative Council, prays for further time to seek instructions specifically on the point as to how five recruitment agencies became known to the Chairman, Legislative Council and as to how one of them was shortlisted for the purposes of conducting the examination in question.*

*3. List/put up on Tuesday i.e. 29.08.2023 along with connected petition.*

*4. The original record shall be retained in the office till the next date of listing.”*

**15.09.2023**

*“It is a record summon case.*

*Learned counsel for the appellants as well as Sri Gaurav Mehrotra, learned counsel representing the respondent nos.1 to 3 jointly pray that the matter may be listed on Monday i.e. 18.09.2023.*

*Accordingly, list this case on 18.09.2023.*

*Let the necessary instructions as directed earlier by the orders dated 24.08.2023 and 29.08.2023 be placed before this Court regarding recruitment agency and further instructions as to the master company data of the agencies so shortlisted.“*

- (7) The record placed before us reveals that the external recruitment agencies were attempted in the spirit of the Government Order dated 22.06.2018 which had identified seven online and two offline agencies which were empanelled by the State Government for holding recruitment examinations. As per Rules, the recruitment examination in the present case was offline, therefore, the choice as per above mentioned Government Order was restricted between the two agencies only. It is informed that out of two external agencies empanelled for offline examination, one of the two agencies was blacklisted and it was for this reason that the matter as regards engagement of external agency came to be placed before the Chairman, Vidhan Parishad.
- (8) Sri Gaurav Mehrotra, learned counsel appearing for the Legislative Council/opposite party then took the Court through the letter of Chairman dated 08.07.2020 which for ready reference is extracted as under:-

"विधान परिषद सचिवालय के रिक्त पदों पर चयन कराने हेतु मेरे द्वारा अभिकरण (agency) का चयन किया जाना है ।

आप कृपया लोक सेवा आयोग उत्तर प्रदेश सहित अन्य आयोगों से दूरभाष पर यह जानकारी प्राप्त कर लें कि उनके द्वारा किन-किन अभिकरणों को पैनल में सम्मिलित किया गया है । विभिन्न अभिकरणों से दूरभाष एवं अन्य संसाधनों से सम्पर्क किया जाय तथा इच्छुक अभिकरणों से यह अपेक्षा की जाय कि वे अपने

ब्रेसर (विवरण पत्र) सीधे मुझे उपलब्ध कराते हुये मेरे समक्ष प्रस्तुति (presentation) भी दें ।

अभिकरणों के कार्य-प्रदर्शन के संबंध में भी जानकारी प्राप्त कर ली जाय तथा परीक्षा की शुचिता एवं पवित्रता का ध्यान रखा जाय। "

- (9) The letter dated 08.07.2020 directing the Nodal Officer for identifying the external recruitment agency to the best of our understanding restricts the agencies either empanelled by the State/Public Service Commissions or other institutions dealing with public examinations for recruitment. We have not been taken through any correspondence of refusal with the U.P. Public Service Commission or any other Subordinate Services Selection Commission or any institution dealing with employment recruitment examinations before identification of the five private external agencies whose consideration in an unnatural way leads us to doubt. On scrutiny of the company master data with respect to the agency chosen for recruitment, we came across some inexplicable details which, *prima facie*, satisfy the Court for a preliminary enquiry by an impartial agency as regards the identification of external agency in the present case entrusted the function of recruitment in public service which in our firm view cannot be compromised on the hallmark of fairness. The Court proceeds to frame the following questions in Public Interest:

(1) Whether the U.P. Public Service Commission, Prayagraj or U.P. Subordinate Services Selection Commission, Lucknow was contacted for carrying out the recruitment process and had refused to carryout such an obligation necessitating the engagement of an external agency?

- (2) Whether there was any refusal by the Statutory Committee prescribed under the Rules to carryout the statutory obligation as per the Rules and the justification, if any?
- (3) Whether the five external agencies had any credible record with the U.P. Public Service Commission or any such institution nominating them for consideration to be selected as an external agency and if not, the manner of shortlisting the same for consideration?
- (4) Whether the experience certificate of the agency chosen by the Nodal Officer for the purpose of empanelment was scrutinized as per the norms prescribed and if not, as to whether an external agency for which the norms are not settled can be empanelled or selected for recruitment in the matter of public employment?
- (10) Since this Court is vested with the jurisdiction of P.I.L., therefore the Court further proceeds to take *suo motu* notice in public interest on the aforesaid questions for necessary directions and the case be listed as *suo motu* P.I.L. in the matter of recruitment of Staff in Vidhan Parishad and Vidhan Sabha, Secretariat, U.P. in the light of grievance raised in the Special Appeal and Writ-A No. 140 of 2022, *Vipin Kumar v. State of U.P. through Additional Chief Secretary (Legislative Assembly) and others* connected thereto.

### **ORDER**

- (11) Having regard to the facts evident from the record and keeping in view the aforesaid questions of public importance, we are of the opinion that the matter be referred to Central Bureau of Investigation (CBI) for conducting a preliminary enquiry to submit the report to this Court within a period of six weeks from the date of receipt of this order alongwith photocopies of the relevant record.



- (12) Office is directed to register the case separately as *suo motu* P.I.L. whose title is as under:-
- “Suo Motu in the matter of Recruitment of Staff in Vidhan Parishad Sabha and Vidhan Sabha, Secretariat, U.P.”**
- (13) Let a copy of this order alongwith the instructions placed before this Court be registered as part of P.I.L.
- (14) The original record supplied to the Court shall be kept in the sealed cover.
- (15) Photocopy of the original record shall be transmitted to the C.B.I. by the Senior Registrar of this Court in a sealed cover to facilitate the preliminary enquiry in the matter.
- (16) Dr. L.P. Mishra, Advocate is appointed as *amicus curiae* to assist the Court in the matter of *suo motu* P.I.L.
- (17) Let the Special Appeal and P.I.L. be listed before the appropriate Bench in the first week of November, 2023.

**(Om Prakash Shukla, J.) (Attau Rahman Masoodi, J.)**

**Order Date :- 18.9.2023**  
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