2025:AHC:206183

AFR

Reserved On: 09.09.2025
Delivered On:15.11.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 19787 of 2022

Sana Khan

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Seemant Singh
Counsel for Respondent(s)	:	C.S.C., M.N. Singh, Nipun Singh

Connected With:

WRIT - A No. - 3692 of 2022

Ankur Srivastava

.....Petitioner(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Petitioner(s)	:	Seemant Singh, Umang Srivastava
Counsel for Respondent(s)	:	C.S.C., M.N. Singh

And:

WRIT - A No. - 19796 of 2022

Durgesh Kumar Chaturvedi

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Seemant Singh
Counsel for Respondent(s)	:	C.S.C., M.N. Singh, Nipun Singh

And

WRIT - A No. - 20034 of 2022

Shweta Mishra

.....Petitioner(s)

Versus

State Of U P And 2 Others

.....Respondent(s)

Counsel for Petitioner(s) : Seemant Singh
Counsel for Respondent(s) : C.S.C, M.N. Singh, Nipun Singh

And

WRIT - A No. - 20035 of 2022

Sada Shiv Mishra

.....Petitioner(s)

Versus

State Of U P And 2 Others

.....Respondent(s)

Counsel for Petitioner(s) : Seemant Singh
Counsel for Respondent(s) : C.S.C., M.N. Singh, Nipun Singh

Court No. - 4

HON'BLE AJIT KUMAR, J.

1. Heard Shri Ashok Khare, learned Senior Advocate assisted by Shri Seemant Singh and Shri Umang Srivastava, learned Advocates for respective petitioner, Shri Nipun Singh, learned Advocate appearing for Public Service Commission and Shri S.K. Pal, learned Additional Chief Standing Counsel for State respondents.

2. Since all the petitions raise similar controversy accordingly are being decided by this common judgment.

3. Petitioners before this Court in their respective petitions have prayed for a writ of mandamus to command Public Service Commission to make recommendation for appointments as Homeopathic Medical Officer on the basis of waiting list, if any, prepared in respect of the selection held on such posts pursuant to the advertisement No. 1/2018-19 dated 18.05.2018.

4. Briefly stated facts of the case are that Union Public Service Commission having received requisition from the State Government to fill up 596 vacancies of Homeopathic Medical Officer on 26.04.2017,

proceeded to advertise the same vide Advertisement No. 1/2018-19 dated 18.05.2018 and after holding such selection in which petitioners were also participants, it made a recommendation on 28.05.2020 in respect of 566 selected candidates out of the merit list, to the State Government for the purposes of appointment. Later on it made further recommendation on different dates. The said fact as narrated in paragraph 4 of the writ petition is reproduced under:-

"4. That the Commission issued advertisement being Advertisement No. 1/2018-19 dated 18.05.2018 advertising the post of Medical Officer for appointment under U.P. Homeopathy Medical Services in Government Homeopathic Hospitals of the State of Uttar Pradesh, whereby, total 494 posts were advertised, subsequently the posts were increased to 596 posts vide notification dated 09.10.2018, in which 319 posts were notified under Scheduled Caste Category and 9 posts were notified under Scheduled Tribe category, as such total 596 posts were notified for filing the post of Medical Officer under U.P. Homeopathic Hospitals of the State of Uttar Pradesh. The copy of the initial advertisement dated 18.05.2018 and notification dated 09.10.2018 issued by the Commission are collectively being annexed herewith and marked as Annexure No.1 to this Writ Petition. "

5. After these recommendations were made, 26 vacancies were left over for the reason that selected candidates were not issued with the appointment order and two candidates did not join after being appointed and, hence, as per the instructions sent by the Special Secretary, Government of U.P. to be placed before the Court dated 27.08.2025, 28 vacancies of the previous requisition were left unfilled. As per the instructions 9 vacancies that were freshly created and 17 vacancies that had fall vacant on account of superannuation of employees/ sudden death / resignation, total 54 vacancies were requisitioned again by the State Government vide letter dated 22.03.2023 to the Public Service Commission for carrying out fresh selection and recommendation drive. Accordingly Public Service Commission proceeded to advertise the vacancies on 26.09.2023 and made recommendations to the State Government on 27.05.2025 as per the supplementary counter affidavit. While the State Government requisitioned initially 54 vacancies, as have

been referred to hereinabove, and also sent recommendation *qua* 8 vacancies which were also advertised by the Public Service Commission and in respect of which recommendations were also made on 27.05.2025 and 11.06.2025. Both these requisitions have been appended with the supplementary counter affidavit of the Public Service Commission.

6. While selection process could have been initiated by the Public Service Commission pursuant to the requisition sent in the year 2023 by the State Government *qua* 61 vacancies, petitioners who were candidates in the previous selection filed this petition before this Court taking a plea that since vacancies were left unfilled, therefore, waiting list was required to be exhausted first and in such circumstances, petitioners should have been recommended and appointed.

7. The main plank of arguments advanced by Shri Ashok Khare, learned Senior Advocate appearing for petitioners is that under the Homeopathic Health Services Rules, 1990 (for short ‘service Rules, 1990) vide its rule 15 (3) there is a scheme provided for preparation of select list for the purposes of direct recruitment on the post by way of waiting list to the extent of 25% of the selected candidates. It does provide for preparation of select list counting to 25% more than the number of vacancies advertised. According to Shri Khare, this additional 25% is meant to be a waiting list. Shri Khare argued that once rules provide for preparation of waiting list then this is a mandatory requirement under the Rules framed vide proviso to Article 309 of the Constitution and, therefore, the Public Service Commission is hide bound in law to prepare such waiting list of additional 25% to the vacancies advertised. Shri Khare, learned Senior Advocate has placed three judgments before this Court in support of his submissions:-

(i) **Sheo Shyam and others v. State of U.P. and others (2005) 10 SCC 314;**

(ii) **State of U.P. v. Karunesh Kumar and others (2022) SCConline SC 1706;**

(iii) **Uttar Pradesh Public Service Commission v. Surendra Kumar and others (2019) 2 SCC 195**.

8. Shri Khare, has also relied upon the judgment of a Coordinate Bench of this Court in the case of **Priyadarshani v. State of U.P. and others 2023 (12) ADJ 281**.

9. Shri S.K. Pal, learned Additional Chief Standing Counsel in counter to the above arguments advanced by Shri Ashok Khare, learned Senior Advocate, has argued that as per the Office Memorandum dated 15.01.1999 the provision to prepare waiting list has been done away with except in cases where single cadre post is advertised and alternatively he has argued that even if it is claimed that in terms of Rule 15 of Service Rules, waiting list has to be prepared, the life of the waiting list would not be more than one year counting it from the date of initially made substantial recommendation, as according to him, since the initial recommendation was made on 28.05.2020 in respect of 566 vacancies against the vacancies advertised, the life of the waiting list, if any, had expired on 27.05.2021. The basic facts are not in dispute. What is in dispute is the interpretation of the 1994 notification and the 1999 notification. As far as the 1994 notification is concerned, it is reproduced hereunder:

"(2) The department concerned, within three-and-a-half months of obtaining/receiving the sanction of posts should issue the appointment e leuer after deciding so that the candidates should be given at least one month's time to join the post which can be extended. Thereafter, the candidature of the appointed should be cancelled and the copy of such cancellation of appointment order should be sent to the

Commission for obtaining the next suitable candidate existing on the waiting list in place of candidate/candidates so mentioned accordingly. A copy of this order will also be sent to Workman Section IV.

* * *

(4) The waiting list will not be published and it is made available with the Commission and in case of necessity the names are recommended by the Commission.

(5) This waiting list will be considered to be valid for only one year, either it may relate to any such competitive examination which is being conducted every year or for any specific selection. In certain cases it has been found that on demanding names from the Commission for their vacant posts within the prescribed time from the waiting list maintained by the Commission the Commission fails to provide such names to fill up the vacancies, in such cases if the situation is found to be correct and the Commission had not provided the names of the successful candidates, waiting list, under such situations the existing waiting list will be considered as valid for more than one year.

(6) If the said waiting list is not utilised as the names of selected candidates are not demanded by the departments concerned from the Commission out of the waiting list in those cases the vacancies which were not filled up are retained for the next year to be filled accordingly. "

10. Besides the above, this is also argued by Shri Pal that since the left over vacancy out of initially advertised 596 vacancies stood requisitioned subsequently in the year 2023 which were also advertised on 14.06.2023 and 26.09.2023 there being no challenge laid to the advertisement, the candidates having not been selected pursuant to such advertisement and recommendation made on 27.05.2025 and 11.06.2025 by the Public Service Commission, there is no question of revival of any waiting list, taking a plea that last recommendation being made on 26.07.2024 even by relying upon the judgment of Coordinate Bench of this Court in the case of **Priyadarshani (supra)** such a waiting list could not be revived.

11. Shri Nipun Singh, learned counsel for Public Service Commission has raised similar arguments as raised on behalf of state respondents and has denied preparation of any waiting list whatsoever. Shri Nipun Singh, has also relied upon Office Memorandum dated 15.01.1999.

12. Shri S.K.Pal, learned Additional Chief Standing Counsel appearing for State respondents as well as Shri Nipun Singh, learned counsel for

Public Service Commission have relied upon the authority of the Supreme Court in the Case of **State of U.P. v. Bibhakar Dwivedi and others (2003) 12 SCC 62** and also the authority of Supreme Court in the case of **Uttar Pradesh Public Service Commission v. Surendra Kumar and others (2019) 2 SCC 195** on which reliance has also been placed by Shri Ashok Khare, learned Senior Advocate.

13. Having heard learned counsel for respective parties and having perused the records, the points that arise for consideration are:-

(i) Whether the Public Service Commission was not justified in preparing waiting list of 25% candidates in addition to the selected candidates in the face of the statutory clause 15 of the U.P Homeopathic Medical Services Rules, 1990 (for short 'Service Rules, 1990')

(ii) Whether the Office Memorandum dated 15.01.1999 is applicable to advertisement in question.

(iii) Whether the waiting list prepared under the Service Rules, 1990 would be surviving while these petitions were preferred before this Court in November, 2022 taking the last recommendation made by Public Service Commission on 10.1.2022 and then again on 26.07.2022.

(iv) Whether in the event of there being no period prescribed under the Service Rules, 1990 for life of a waiting list, it would be deemed to have continued for a period of three years as a reasonable period

14. Since the point Nos. 1 and 2 are related to each other, I proceed to consider them first.

15. In order to appreciate the arguments advanced by learned Senior Advocate appearing for the petitioners and the counter argument advanced on behalf of State respondents and Public Service Commission,

I proceed first to consider the statutory rules 15 of Service Rules, 1990. The relevant Rule 15 is reproduced hereunder:

"**15-सीधी भर्ती की प्रक्रियाः-(1**) चयन से लिये विचार किये जाने के लिये आवेदन पत्र आयोग द्वारा विहित प्रपत्र में आमंत्रित किये जायेंगे।

(2) **आयोग, नियम-6** के अनुसार अनुसूचित जातियों, अनुसूचित जनजातियों और अन्य श्रेणियों के अभ्यर्थियों का सम्यक् प्रतिनिधित्व सुनिश्चित और जैसा वह उचित समझे, साक्षात्कार के लिये आमंत्रित करेगा।

(3) आयोग अभ्यर्थियों की, उनकी प्रवीणता क्रम में, जैसा कि साक्षात्कार में, प्रत्येक अभ्यर्थी द्वारा प्राप्त अंकों से प्रकट हो, एक सूची तैयार करेगा। यदि दो या अधिक अभ्यर्थी बराबर-बराबर अंक प्राप्त करें तो आयोग के लिये उनकी संख्या उपयुक्ता के आधार पर उनके नाम योग्यता क्रम में रखेगा। सूची में नामों की संख्या रिक्तियों की संख्या से अधिक (किन्तु पच्चीस प्रतिशत से अनधिक) होगी। आयोग सूची नियुक्ति प्राधिकारी को अग्रसारित करेगा।"

16. Upon a bare reading of the aforesaid rules, I find it to be providing quite unequivocally that the list of candidates finally selected for the purposes of recommendations against vacancies would consist of 25% more than candidates than the number of vacancies but not beyond that. The natural corollary would be that if there are 100 vacancies advertised for which the recommendations have to be made, then select list would consist of 125 candidates. Thus, naturally 25 additional candidates would form a waiting list to be offered appointment in the event any candidate already offered appointment against any of the 100 candidates either does not turn up to join or could not be offered appointment for any reason.

17. In view of the above, therefore, it is inferable that rules mandate creation of waiting list consisting 25% candidates in addition to the vacancies advertised for which recommendations have to be made but before drawing any conclusion as to this mandate, I proceed to examine various Government Orders issued from time to time by the State Government *qua* preparation of waiting list.

18. The relevant office memorandum placed before the Court are dated 29.08.1992, 31.01.1994, 24.09.1994, 23.12.1997 and 15.11.1999. In the

office memorandum dated 29.08.1992 it was provided vide clause 3(3) that waiting list will be valid for a period of one year even if it is related to the competitive examination held every year or related to any special selection. It was also provided that the period of one year shall be counted from the date of receipt of recommendation by the department. Vide clause 3(6) it was further provided that if waiting list was not utilized within a period of one year then all left over vacancies shall be carried forward to the next year for selection. Further the guidelines were also given regarding appointment to be offered within a time frame by the department after receiving the recommendation. The office memorandum specifically mentions that it is being issued in respect of competitive examination to be held by Public Service Commission. Relevant Clause 3(3) are reproduced hereunder:

"3. प्रतीक्षा सूची केवल एक वर्ष के लिए वैध होगी चाहे वह प्रतिवर्ष होने वाले प्रतियोगितात्मक परीक्षा से संबंधित हो अथवा किसी चयन विशेष से एक वर्ष के बाद प्रतीक्षा सूची का उपयोग नहीं किया जायेगा। एक वर्ष की गणना विभाग को आवंटन प्राप्त होने की तिथि से की जायेगी ।"

19. However vide clause 6 it was also provided that if the department does not ask for recommendation to be sent to it in respect of the candidates placed in the waiting list within the life span of one year of its publication, such left over vacancies would now be carried forward to the next year for selection. Clause 6 is reproduced hereunder:

"यदि एक वर्ष की अवधि में प्रतीक्षा सूची का उपयोग नहीं होता है तो जो भी रिक्तियां रह जायेंगी वह अगले वर्ष के लिए अग्रेनीत मानी जायेंगी"

20. The aforesaid office memorandum dated 29.08.1992 was further modified by way of clarification vide Government Order dated 31st January, 1994 to arrest the difficulties being faced in the matter of preparation and utilization of waiting list and this time vide its clause 5 it was provided that in the event names of the candidates placed in the select

list are notified by the department within a period of one year of publication of such waiting list and the Public Service Commission fails to make further recommendation within the life span of the waiting list i.e. one year, the waiting list in such eventuality would continue to remain valid even beyond a period of one year.

21. This above Government Order issued on 31.01.1994 came to be clarified and modified by another Government Order dated 24.09.1994 making it absolutely mandatory for the department to offer appointment to the candidates recommended by the Public Service Commission unless and until the institution/ organization in respect of which the vacancy was advertised has been completely closed down or in the event where the past requisition for selection has stood abolished or in the event the vacancy has already got filled up by making appointment under the order of the Court. Thus, it was directed that in such above exceptional circumstances only recommendation made by the Public Service Commission would not be binding. Paragraph 1 of the Government Order is reproduced hereunder:

"अधोहस्ताक्षरी को यह कहने का निदेश हुआ है कि लोक सेवा आयोग द्वारा आयोजित प्रतियोगितात्मक परीक्षाओं तथा अन्य चयनों के आधार पर चयनित अभ्यर्थियों को नियुक्ति प्रदान करने, कार्यभार ग्रहण करने, निश्चित अवधि में कार्यभार ग्रहण न करने पर अभ्यर्थन निरस्त किये जाने एवं प्रतिक्षा सूची के उपयोग हेतु समय निर्धारित करने आदि के सम्बन्ध में शासनादेश दिनांक 29 अगस्त, 1992 जारी किया गया था। उक्त शासनादेश के प्राविधानों के अनुसार कार्यावाही किये जाने में कतिपय व्यवहारिक कठिनाइयां शासन के संज्ञान में आ रही हैं. अत: शासन द्वारा उक्त व्यवहारिक कठिनाइयों के निवारणार्थ सम्यक् विचारोपरान्त निम्नलिखित निर्णय लिये गये हैं:-

(1) विभागों द्वारा उपलब्ध पदों की सही गणना सुनिश्चित करने के उपरान्त ही आयोग को अधियाचन भेजा जाये। अधियाचन भेजे जाने के उपरान्त अधियाचित रिक्तियों के विरुद्ध जो चयनित अभ्यर्थी सम्मिलित परीक्षा के आधार पर विभाग को उपलब्ध कराये जायेंगे, विभाग को उन्हें नियुक्ति प्रदान करनी ही होगी। सिवाय उन मामलों के जहां सम्बन्धित विभाग या संस्था या संगठन को पूर्ण रूप से समाप्त कर दिया गया हो या जहां एकल पद के लिए आयोजित चयन के आधार पर चयनित अभ्यर्थी आयोग ने संस्तुत किया हो वहां अधियाचित पद ही समाप्त कर दिया गया हो। सम्बन्धित विभाग या संस्था या संगठन को समाप्त किये जाने अथवा अधियाचित पदों को ही समाप्त किये जाने के निर्णय शासन द्वारा लिए जाने की दशा में अधियाचित पदों पर चयन की कार्यवाही तत्काल रोकने हेतु विभागों द्वारा आयोग से सम्पर्क किया जायेगा, और यदि चयनित अभ्यर्थी की संस्तुति विभाग में प्राप्त हो गयी हो, तो तत्काल आयोग को सूचित किया जायेगा ताकि यदि सम्मिलित प्रतियोगी परीक्षा के आधार पर चयन हुआ हो, तो आयोग द्वारा सम्बन्धित अभ्यर्थी के विषय में समय

से रिशफलिंग की कार्यवाही कर संशोधित संस्तुति या संस्तुतियां की जा सके। परन्तु जहां न्यायालय के आदेशों के आधार पर अधिवाचित पदों को अन्यथा भर लिया गया हो वहां आयोग द्वारा संस्तुत अभ्यर्थियों को नियुक्ति प्रदान किये जाने की बाध्यता न होगी।

(2) सम्बन्धित विभाग आवंटन प्राप्त होने के तीन माह के अन्दर नियुक्ति आदेश जारी करना सुनिश्चित करेंगे तथा अभ्यर्थी को कार्यभार ग्रहण करने हेतु एक माह का समय दिया जायेगा जो अपरिहार्य परिस्थितियों में एक माह तक और बढ़ाया जा सकता है। तत्पश्चात् अभ्यर्थी का अभ्यर्थन निरस्त करने का आदेश करते हुए अभ्यर्थन निरस्त करने सम्बन्धी आदेश की एक प्रति आयोग का अभ्यर्थन निरस्त किये गये अभ्यर्थी अभ्यर्थियों के स्थान पर प्रतीक्षा सूची से नाम शीघ्र उपलब्ध कराने के अनुरोध के साथ प्रेषित की जायेगी। उक्त आदेश की एक प्रति कार्मिक अनुभाग-4 को भी उपलब्ध करायी जायेगी।

(3) स्वास्थ्य परीक्षण तथा पुलिस वेरीफिकेशन समानान्तर रूप से किया जायेगा, जिससे इसमें विलम्ब न हो।

(4) प्रतीक्षा सूची प्रकाशित नहीं की जायेगी तथा बंद लिफाफों में आयोग में उपलब्ध रहेगी। आवश्यकतानुसार आयोग द्वारा प्रतीक्षा सूची में से अभ्यर्थियों के नाम शासन को यथासमय उपलब्ध कराये जायेंगे।

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

कृपया उपर्युक्तानुसार कार्यवाही प्रत्येक स्तर पर सुनिश्चित करायी जाये। उक्त आदेश तात्कालिक प्रभाव से लागू होंगे तथा इस सम्बन्ध में पूर्व में सभी शासनादेश निरस्त समझे जायेंगे।"

22. Both the Government Orders dated 31.01.1994 and 24.09.1994 were clarified in order to satisfy the queries vide another Government Order dated 23.09.1997. Clarification were made to the effect that in the event an appointment has been offered and appointed candidate resigned after giving joining then such vacancy would not be filled up by a candidate from waiting list even if the resignation has been received during the life spam of one year assigned to the waiting list. Paragraph 2 and 3 of the Government Order are reproduced hereunder:

"2. कतिपय स्रोतों से यह जिज्ञासा की जा रही है कि क्या कार्यभार ग्रहण करने के उपरान्त, प्रतीक्षा सूची की वैधता की समय सीमा के अंतर्गत त्याग-पत्र दे देने के कारण, घटित होने वाली रिक्ति के विरुद्ध प्रतीक्षा सूची से नियुक्ति प्रदान की जा सकती है?

3. उपर्युक्त के सम्बन्ध में सम्यक् विचारोपरान्त, शासन द्वारा निर्णय लिया गया है, कि चूंकि अभ्यर्थी के कार्यभार ग्रहण करने के उपरान्त सम्बन्धित रिक्ति आपूरित/समाप्त हो जाती है, अत: प्रतीक्षा सूची की समय सीमा के अंतर्गत भी त्याग-पत्र देने से घटित होने वाली रिक्ति के विरुद्ध प्रतीक्षा सूची से नियुक्ति प्रदान नहीं की जा सकती है। "

23. On 15.11.1999 another Government Order came to be issued revoking all the previous Government Orders providing for appointment upon recommendation made by the Public Service Commission and also regarding which the names were to be recommended from the waiting list. The government this time decided that there shall be no provision for waiting list except in case of single cadre post as advertised for appointment. The guidelines have been laid down for sending requisition to the Public Service Commission for selection and the recommendation to be made by the Public Service Commission to the department concerned for making appointment and the appointment to be offered to the selected candidates by the department. The entire Government Order dated 15.11.1999 is reproduced hereunder:

"लोक सेवा आयोग, उ० प्र० द्वारा आयोजित प्रतियोगितात्मक परीक्षाओं तथा अन्य चयनों के आधार पर चयनित अभ्यर्थियों को नियुक्ति प्रदान करने एवं प्रतीक्षा सूची से नाम मांगने सम्बन्धी, पूर्व में निर्गत शासनादेशों के अनुपालन में आने वाली कठिनाइयों को ध्यान में रखते हुए, शासन द्वारा यह निर्णय लिया गया है, कि एकल संवर्गों के पदों को छोड़कर, अन्य समस्त सम्मिलित सेवाओं एवं अन्य चयनों में प्रतीक्षा सूची का निर्माण नहीं किया जायेगा और न ही किसी प्रकार की रिशफलिंग की कार्यवाही की जायेगी।

2. उपर्युक्त के सम्बन्ध में पूर्व में निर्गत समस्त शासनादेशों को अवक्रमित करते हुए, शासन द्वारा लिये गये अन्य महत्वपूर्ण निर्णय निम्नवत् हैं :-

(1) किसी चयन वर्ष विशेष में घटित होने वाली रिक्तियों की सही गणना सुनिश्चित करने के उपरान्त ही आयोग को अधियाचन भेजा जाय। अधियाचन भेजे जाने के उपरान्त यथासम्भव रिक्तियों में कोई परिवर्तन न किया जाय।

(2) चयनित अभ्यर्थियों की संस्तुतियां प्राप्त होने के उपरान्त उन्हें कार्यभार अवश्य ग्रहण कराया जाय, सिवाय उन मामलों के जहां सम्बन्धित विभाग या संस्था या संगठन को पूर्णरूप से समाप्त कर दिया गया हो अथवा किसी न्यायालय द्वारा कोई अन्यथा आदेश दिये गये हों।

(3) सम्बन्धित विभागों द्वारा संस्तुतियां या आवंटन प्राप्त होने के तीन माह के अन्दर नियुक्ति आदेश जारी करना सुनिश्चित किया जाय तथा अभ्यर्थी को प्रथमत: कार्यभार ग्रहण करने हेतु एक माह का समय प्रदान किया जाय, जिसे अपरिहार्य परिस्थितियों में एक माह तक और बढ़ाने पर विचार किया जा सकता है।

(4) चयनित अभ्यर्थियों के चरित्र सत्यापन एवं स्वास्थ्य परीक्षण कराने के उपरान्त ही नियुक्ति पत्र जारी किए जाएं।

(5) निर्धारित अवधि में कार्यभार ग्रहण न करने वाले अभ्यर्थियों के अभ्यर्थन निरस्त करते हुए, घटित रिक्तियों को आगामी चयन वर्ष हेतु अग्रेनीत कर दिया जाय।

(6) चयन सूचीं का उपयोग उसी चयन वर्ष की रिक्तियों के विरुद्ध किया जाय, जिसके लिए अधियाचन भेजा गया हो/चयन किया गया हो।

3. उपर्युक्त आदेश तत्काल प्रभाव से प्रभावी होंगे।

4. उपर्युक्त आदेशों का प्रत्येक स्तर पर कड़ाई से अनुपालन सुनिश्चित किया जाय।"

24. One of the arguments advanced by learned Senior Advocate appearing

for petitioners was that this Government order that superseedes all the previous Government Orders and does away with the provision *qua* preparation of waiting list, it would only be applicable in those cases only where there are no statutory rules providing for preparation of waiting list, inasmuch as preparation of waiting list that is provided under the Government Order would be relevant to only single cadre post which is not the case in hand.

25. This Court finds merit in the submission advanced by Shri Khare that no amount of provision made or introduced under the Government Order which is a piece of subordinate legislation would override the statutory rules framed in purported exercise of power under the proviso to Article 309 of the Constitution. The sanctity attached to the Rules framed under Article 309 of the Constitution therefore cannot be taken way by an executive fiat issued at the behest of the Governor in the form of Government Order. My above view finds support by the judgment of Supreme Court in the case of **S.K. Naushad Rehman and others v. Union of India and others (2022) 12 SCC 1**.

26. Insofar as the issue of single cadre post is concerned as according to Shri Khare it would not amount to a number of vacancy including the vacancy in the cadre of its own, I find that in the judgment in the matter of **State of U.P. v. Karunesh Kumar and others (supra)** Supreme Court clearly observed that the Government Order is directed towards the single cadre post. Vide paragraph 28 the Court has held thus:

"28. Much reliance has been made on the Government Order passed on 15.11.1999. The said order is very clear on two counts. It speaks of the role being played by the Public Service Commission, and dispensing with the waiting-list except in case of selection to a single post. What is important to be noted is the selection and that too for a single post. It would only mean that selection of an individual to a post, which cannot be interpreted to mean a particular category of post or a single cadre post, as contended by the counsel for Respondents. The object is very clear that the exercise done in selecting a suitable candidate shall not go waste if that person is not actually selected for any reason, in which case

the next line would get in. Otherwise, the entire process would go to waste, making the recruiting agency to redo it all over for a single post."

27. Thus, taking together all the government order issued from time to time as have come to be mentioned and discussed hereinabove, I find all these to be related to preparation of waiting list in addition to the list of selected candidates but the latest Government order dated 15.11.1999 revoked the previous government Orders absolutely, making a mandate that no further waiting list shall be prepared. Under the circumstances, Shri Khare has rightly argued that the period of one year prescribed under various Government orders for the waiting list could not be relied upon once those Government Orders have stood repealed/ revoked by the Government order dated 15.11.1999. Thus, insofar as the question No. 1 and 2 are concerned, they stand answered in favour of the petitioners and against the Public Service Commission to the effect that the Public Service Commission was not justified in taking a stand that no waiting list could have been prepared in the face of statutory clause 15 of the Service Rules 1990 and so also the Government order dated 15.11.1999 is held to be not applicable to the case in hand.

28. Now dealing with the questions No. 3 and 4 as framed above, as they are related to each other I proceed to consider the same.

29. Insofar as the judgment in the case of **Sheo Shyam and others (supra)** is concerned, I find the Court was considering the office memorandum issued on 31.01.1994 and 14.01.1999 and then came to conclude that the period of one year would be reckoned from the last date of taking name of the waiting list and vide paragraph 10, 11 and 12 it held thus:-

"10. In the aforesaid background, in a case of this nature and in view of the peculiar nature of the fact situation noted above, it would be inequitable and unjust to compute the one-year period from the date when the first recommendation was made by the Commission. Undisputedly, appointments were made

till the end of 2001. Therefore, it would be proper to reckon the period from the last date when the recommendation was made. But another situation has developed subsequently. The State Government itself had requisitioned for fifty-six posts including the unfilled posts of the previous selection and examinations are stated to have been already held. The fate of the present eleven appellants has suffered a setback on account of the action of both the Commission and the State Government. If the Commission's stand is that the validity period of the waiting list is one year, it should have sought for clarification from the State Government as to why unfilled posts were included in the requisition, when its specific stand in the office memorandums referred to above was to the contrary. At the same time, the memorandums referred to above was to the contrary. At the same time, the State Government having taken a positive stand all through that the date of reckoning would be the last date on which the recommendation was made, it should not have included the unfilled posts in its requisition. The career of eleven candidates cannot be jeopardized in this battle of inconsistent and varying stands taken and moves adopted by the State Government and the Commission at different stages for different purposes.

11. Had the Commission on receipt of the office memorandum dated 14-1-1999 pointed out to the State Government that its view was not in line with the Commission's view that would have sorted out the areas of differences. Interestingly, in a particular case referred to by the appellants, the Commission accepted that the period was to be from the last date of recommendation. Though there cannot be any estoppel in law, yet a statutory body like the Commission cannot blow hot and cold in the same breath. There has to be consistency in its view. To rule out unfortunate situations like the present one being allowed to recur again, both the State Government and the Commission are required to be more vigilant and constructive in then approach. When dealing with the careers of large number of candidates, then stands have to be consistent and not varying to avoid giving room for unsavory suspicions and ensuring the system to work more transparently to add to its reputation and strength.

12. In the peculiar circumstances noted above, we direct that the appellants shall be considered by the Commission and the State Government and they would be appointed if otherwise found suitable and eligible after verification of such credentials, documents and background as are necessary to be done for appointment."

30. From the observations made in the above paragraphs, it is clear that the Public Service Commission there in that a case had also taken the stand that the life span of waiting list would be one year but the Court considered this matter in the light of the office memorandum dated 14.01.1999 the period would be reckoned only from the date of last recommendation made. This judgment has been relied upon by a Coordinate Bench of this Court in the matter of **Priyadarshani Singh (supra)** cited before me and is helpful to me. In arriving at a conclusion that period of one year should start from the date of last requisition sent by the Public Service Commission and not the first one. The co-ordinate Bench held that in view of the fact that rules framed under the proviso to Article 309 of the Constitution do not stipulate for the life span of the

waiting list to be prepared, this omission should be supplied by borrowing the principles laid down in common law. Interestingly the Court was considering Rule 15(3) of U.P. Subordinate Education (Assistant District Inspectors of Schools) Services Rules, 1992. Rule 15 (3) of those Rules are in themselves *pari materia* to Rule 15 (3) under consideration in this case. Paragraphs 35, 36, 37, 38, 39 of the judgment in the case of **Priyadarshani (supra)** are reproduced hereunder:

"35. Therefore, said submission Sri Ashok Khare is devoid of merit. However, this Court find substance in the submission of Sri Ashok Khare that Government Order cannot override the Ri les, 1992, and as Rule 15(3) stipulates for publication of a waiting list, the Commission should have complied with the Rule 15(3) while drawing panel of selected candidates.

36. In this respect, it would be apt to reproduce paragraph 29 of the judgement of the Apex Court in the case of S.K. Nausad Rahman:

29. Fifth, where there is a conflict between executive instructions and Rules framed under Article 309, the rules must prevail. In the event of a conflict between the Rules framed under Article 309 and a law made by the appropriate legislature, the law prevails. Where the rules are skeletal or in a situation when there is a gap in the rules, executive instructions can supplement what is stated in the rules."

37. Reference may also be had to paragraph 12 of the judgement of this Court in the case of Nadeem Anwar (supra) wherein this Court has held that a Government Order contrary to Rules cannot be enforced and has to be ignored.

38. Now, coming to the last submission of learned counsel for the respondents as the period of the select list is one year and one year period has expired, therefore, no such direction as sought by the petitioner can be issued. In this respect, it has been pointed out by Sri Ashok Khare that the period of one year shall be reckoned from the date of the last requisition. He further submits that the contingency to appoint from the waiting list will arise only after the candidates to whom offer of appointment was made did not join. In the instant case, the last appointment order is dated 21.4.2022 and the writ petition has been filed before the expiry of one year from he last appointment order dated 21.4.2022.

39. The Apex Court in the case of Sheo Shyam (supra) held that the validity of the period of the waiting list should be computed from the date of the last requisition sent and not from the date of the first requisition. In the instant case, the appointment letters were issued on 21.04.2022 and the last appointment letter was dated 23.3.2023, which is on page 57 of the short counter affidavit dated 11.4.2023, therefore the contention of respondents with regard to the lapse of select list is also misconceived in view of judgment of Apex Court in the case of Sheo Shyam (supra) "

31. As a rule of judicial propriety and discipline a Bench of same strength would be following the judgment delivered by Bench earlier or in the event it finds that judgment does not consider any particular rule or regulation it is but for such an inadvertence the law would have been different, it would refer it to the larger Bench. However, in the event there

is a judgment of a higher Court or higher Bench available, which has taken an otherwise view, then in such a case a Bench can always follow the law laid down by a higher Bench or higher Court, as the case may be, ignoring judgment of another Coordinate Bench given at an earlier point of time. The judgment of Supreme Court in the case of **Sheo Shyam (supra)** which has been followed by Coordinate Bench in Priyadarshani Singh had already been considered by a Bench of same strength of the Supreme Court in the matter of **Uttar Pradesh Public Service Commission v. Surendra Kumar and others (supra)** and considering the various Government Orders issued from time to time, it held that the time of waiting list would start from the date of substantive recommendations made. The Court in that case was considering the judgment of this Court dated 18.05.2018 whereby the order of the Public Service Commission refusing to send recommendation dated 23.07.2013 was quashed by the High Court and direction was issued to send recommendation. The Commission in that case had taken a stand that since first recommendation against substantive number of vacancies were made on 12.08.2010, therefore, the waiting list would start from the date of first recommendation dated 12.08.2010 and not the last recommendation dated 20.08.2012. Petitioners in that case before the High Court, who became respondents subsequently before the Supreme Court, had taken a plea that in the light of the judgment in the case of **Sheo Shyam (supra)** the period of waiting list should have been counted from the date of rejection. The argument advanced on behalf of these petitioners before the Supreme Court was that in the case of **Sheo Shyam (supra)** the office memorandum dated 14.1.1999 was under consideration which specifically provided time for the waiting list to start from the date of last of recommendations but the court held that by office memorandum

dated 15.01.1999 was not considered in the matter of 2010 selections and hence the Court distinguished the judgment of **Sheo Shyam (supra)** and held that the time of waiting list would start from the date of first recommendation which was made for substantial number of vacancies, vide paragraph 12 quoted above.

32. In view of the above, therefore, it is clear that the judgment in Sheo Shyam was distinguishable on facts for the reason that it was considering a particular office memorandum dated 14.01.1999 and interpreted the same. In Priyadarshani case Sheo Shyam case has been applied but after it in view of principle of law as was laid down in the judgment of **Surendra Kumar (supra),** now it cannot be said that the principle of law *qua* life span of waiting list which was discussed and followed in case of Sheo Shyam and others would be generally applicable. It is a well settled proposition of law that judgment of the Courts are not the elucid theorems of law. Each judgment is to be applied considering the setting of facts of the case in the case of **Chintels India Limited v. Bhayana Builders Private Limited (2021) 4 Supreme Court Cases 602**. It has been held thus:

"31. It is well settled that judgments are not to be construed like Euclid's theorems (see *Amar Nath Om Prakash* v. *State of Punjab* [*Amar Nath Om Prakash* v. *State of Punjab*, (1985) 1 SCC 345 : 1985 SCC (Tax) 92]), but all observations made therein must relate to the context in which they were made. In that case, the Court put it thus : (SCC pp. 362-63, paras 10-11)

"*10*. There is one other significant sentence in *Sreenivasa General Traders* v. *State of A.P.* [*Sreenivasa General Traders* v. *State of A.P.*, (1983) 4 SCC 353] with which we must express our agreement, it was said : (SCC p. 377, paras 26-27)

'*26-27*. … With utmost respect, these observations of the learned Judge are not to be read as Euclid's theorems, nor as provisions of a statute. These observations must be read in the context in which they appear.'

We consider it proper to say, as we have already said in other cases, that judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it

may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd.* v. *Horton* [*London Graving Dock Co. Ltd.* v. *Horton*, 1951 AC 737 (HL)] , Lord MacDermott observed : (AC p. 761)

'… The matter cannot, of course, be settled merely by treating the *ipsissima verba* of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge; …'

In *Home Office* v. *Dorset Yacht Co. Ltd.* [*Home Office* v. *Dorset Yacht Co. Ltd.*, 1970 AC 1004 : (1970) 2 WLR 1140 (HL)] Lord Reid said : (AC p. 1027)

'… Lord Atkin's speech [*Donoghue* v. *Stevenson* [*Donoghue* v. *Stevenson*, 1932 AC 562 : 1932 All ER Rep 1 (HL)] , AC at p. 580, All ER p. 11] … is not to be treated as if it were a statutory definition. It will require qualification in new circumstances.'

Megarry, J. in *Shepherd Homes Ltd.* v. *Sandham (No. 2)* [*Shepherd Homes Ltd.* v. *Sandham (No. 2)*, (1971) 1 WLR 1062] observed : (WLR p. 1069)

'… One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament."

And, in *Herrington* v. *British Railways Board* [*Herrington* v. *British Railways Board*, 1972 AC 877 : (1972) 2 WLR 537 (HL)] Lord Morris said : (AC p. 902)

'There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.'

11. There are a few other observations in *Kewal Krishan Puri case* [*Kewal Krishan Puri* v. *State of Punjab*, (1980) 1 SCC 416] to which apply with the same force all that we have said above. It is needless to repeat the oft quoted truism of Lord Halsbury that a case is only an authority for what it actually decides and not for what may seem to follow logically from it."

33. In view of the above discussions I can safely hold that judgment in the case of Priyadarshani case does not lay down good law, inasmuch it does not consider the subsequent judgement of the Supreme court in the case of Surendera Kumar (supra). Thus the argument of shri Khare, learned Senior Advocate that in view of the judgment of the Coordinate Bench the period of waiting list should be computed from the date of recommendation lastly made by the Public Service Commission on

10.01.2022 or for the matter 26.07.2024 and not from 28.05.2020 when the recommendations were made in respect of 560 vacancies, deserved to be rejected and is hereby rejected.

34. Insofar as the argument regarding life span of waiting list should be a reasonable period as three years is concerned, I consider it necessary again to examine the rules before arriving at conclusion. Service Rules 1990 that provide for recruitment on the post of Homeopathic Medical Officer and several other posts, Rule 14 becomes relevant. Rule 14 provides for determination of vacancies in the year of recruitment taking into account the rules of reservation as prescribed under Rule 6 and the vacancy so determined shall be communicated to the Public Service Commission for the purposes of selection. The year of recruitment is defined under rule 3 as a calendar year of 12 months starting from July first. However, the rules are silent as to whether the selection has to be held every year. Since the rules are silent, the question would arise as to when the selection list is exhausted before the next selection and if the next selection does not take place for a number of years why should the waiting list be not continued till fresh selection is held or for a period of three years as has been argued by Shri Khare.

35. Supreme Court in the case of **State of U.P. v. Vaibhav Dwivedi (2003) 12 SCC 62** has considered various government orders issued from time to time and the last being 15.11.1999 to determine the period of waiting list viz a viz the right of wait listed candidates to be appointed. Vide paragraph 7, 8 , 9 and 10 the court has held thus.

“The basic facts are not in dispute. What is in dispute is the construction of the 1994 notification and the 1999 notification. As far as the 1994 notification is concerned, it provided, inter alia:

"(2) The department concerned, within three-and-a-half months of obtaining/receiving the sanction of posts should issue the appointment letter after deciding so that the candidates should be given at least

one month's time to join the post which can be extended. Thereafter, the candidature of the appointed should be cancelled and the copy of such cancellation of appointment order should be sent to the Commission for obtaining the next suitable candidate existing on the waiting list in place of candidate/candidates so mentioned accordingly. A copy of this order will also be sent to Workman Section IV.

* *

(4) The waiting list will not be published and it is made available with the Commission and in case of necessity the names are recommended by the Commission.

(5) This waiting list will be considered to be valid for only one year, either it may relate to any such competitive examination which is being conducted every year or for any specific selection. In certain cases it has been found that on demanding names from the Commission for their vacant posts within the prescribed time from the waiting list maintained by the Commission the Commission fails to provide such names to fill up the vacancies, in such cases if the situation is found to be correct and the Commission had not provided the names of the successful candidates' waiting list, under such situations the existing waiting list will be considered as valid for more than one year.

(6) If the said waiting list is not utilised as the names of selected candidates are not demanded by the departments concerned from the Commission out of the waiting list in those cases the vacancies which were not filled up are retained for the next year to be filled accordingly."

8. Reading clause (2) of the notification, it is clear that the precondition for requisition being sent for obtaining the next suitable candidate from the waiting list was a failure of the candidate appointed to join the post for which the appointment letter was issued. In this case, according to the respondents, no appointment letter was at all issued even to the selected candidates till 2000.

9. The phrase "existing on the waiting list" in the second paragraph must be read as meaning a valid waiting list. In terms of paragraph (5) of the aforesaid notification, the waiting list would only be valid for one year, that one year being calculated from the date of publication of the results under paragraph (4). Even if one assumes that the validity of the period is to be calculated from the date of the appointment letters being issued on 18-8-1998, even then the life of the waiting list expired in August 1999. Therefore, by the time the appointment letters were issued and the vacancies arising out of non-joining by the selected candidates took place, there was in fact no valid waiting list.

10. The submission that a waiting list could be valid for a period extending one year on the basis of the language used in paragraph (5) is unacceptable. In the factual situation under paragraph (5), the State Government should have sent a requisition to the Public Service Commission for the names of the wait-listed candidates within the prescribed time namely, during the validity of the waiting list. If the Commission failed to provide names within the time prescribed only then the existing waiting lis would be considered as valid for more than one year. These factua preconditions have not been fulfilled in the present case. It is not the case c the respondents that the State Government had in fact sent a requisition to the Public Service Commission for recommendation of any names and that was on account of the failure of the Commission that the time had to b extended under paragraph (5).”

36. From the observations made by the Supreme Court and for the principles evolved in the aforesaid paragraphs, one should not have any doubt that waiting list meant to be prepared by the Public Service

Commission under the Government order or under the Rules, the life span of the waiting list would be one year even if there is no life span provided therein. Looking to the Government Order issued from time to time and the last one dated 15.11.1999 reproduced hereinabove, I find that this Government Order while revoking the earlier government orders it refers to the preparation of waiting list but insofar as the life span of the waiting list is concerned the Government order dated 15.11.1999 does not make any mention, of course it protects preparation of waiting list in matter of single cadre post.

37. Accordingly it can be safely concluded as that as far as the life of waiting list is concerned and while the Government order also permits preparation of waiting list in respect of selection *qua* single cadre post, the life span of waiting list would remain the same as has been provided lastly in the Government Order dated 31.01.1994.

38. Now the question is whether this provision contained under the government order can be borrowed herein or not when the rules are silent. It has been held in a number of decisions by this Court and also by the Supreme Court that the where the rules are silent and Government Orders, executive instructions and circulars letters have been issued then in such case these Government Order, circular letters and executive instructions will have the same force as statutory rules have. In the case of **State of M.P v. S.K. Dubey (2012) 4 SCC 578** it has been held as under:

"32. In Sant Ram Sharma [AIR 1967 SC 1910] this court negated the arguments advanced on behalf of the appellant therein that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the rules already framed. The Court stated (AIR p. 1914 para 7)

7. It is true that the Government cannot amend or supersede statutory rules by administrative instructions but if the rules are silent on any particular point the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already

framed.

The above legal position has been followed and reiterated by this court time and again. ".

39. In view of the above, I hold that the life span of the waiting list would be one year only and that too from the date of substantial recommendations made by the Public Service Commission against substantial number of vacancies under the Service Rule 1990.

40. In the given facts and circumstances of the case in hand since the recommendation was made against the substantive number of 566 on 28.05.2020 then the waiting list would start from 28.05.2020 and would last will 27.05.2020, much prior to the filing of present petitions, hence, the questions No. 3 and 4 stand answered against the petitioner.

41. An issue may arise that since the Public Service Commission did not prepare the waiting list why should its term start from the date of first recommendation and no from the date of last recommendation made on 10.01.2022. Since I have already held above that the Public Service Commission was not justified in not preparing the waiting list I could have directed for the same and those could have been adjusted and accommodated against the available vacancies but in the instant case I find that subsequently left over vacancies were requisitioned by the Public Service Commission on 27.05.2025 itself and rights have accrued to the selected candidates and hence, this relief now cannot be granted. Thus no such relief cannot be granted at this stage in this petition when neither the requisitions were challenged, nor subsequent selection was challenged.

42. However, directions are issued to the Public Service Commission to prepare waiting list in those cases where the statutory rules do provide in matter of selection upon requisitioned post as in the present case Service Rules 1990 provides.

43. With this aforesaid observations and directions all these petitions stand disposed of.

(Ajit Kumar,J.)

November 15, 2025
Nadeem

Digitally signed by :-
NADEEM AHMAD
High Court of Judicature at Allahabad