

http://www.tehelka.com/story_main41.asp?filename=Ne070309seats_of.asp

Seats Of Nepotism

Rules have been bent to appoint well-connected persons in the Allahabad and Lucknow High Court Benches, reports **SRAWAN SHUKLA**

ON APRIL 17, 2004, when the Allahabad High Court (AHC) put out an advertisement for 79 clerical vacancies, 23-year-old DK Pandey thought himself as good a candidate as any for a government job with a pay packet in the Rs 3,050 to Rs 4,590-plus-allowances range. He applied along with over 32,500 others. They didn't stand a chance. Not for a lack of qualification, or even because of the competition involved. Instead, it was the entrenched nepotism at the AHC that would effectively choke any possibility of a normal applicant's advance.

Courts of contention

The Lucknow Bench of the Allahabad High Court is also under fire for 'illegal' clerical appointments

JUDGING THE JUDGES

Actions of two former CJs are being scrutinised by the judiciary

Sunil Ambwani

In his order on Pandey's petition, he spoke of 'nepotism'

Tarun Agarwala

His stay order on hasty recruitment was overturned by a Constitutional Bench

Vishnu Sahai

Acting Chief Justice when appointments were made in 2004

Tarun Chatterjee

Was Chief Justice when ad-hoc appointments were made in 2004

RELATIVE CONTROVERSY

Relatives of HC officials who have been appointed

Anand Pal Singh, Son of Balwant Singh, Section Officer, Accounts

Santosh Kumar, Son of Anmol Tiwari, Asst Registrar (Protocol)

Sharad Kumar, Son of Harish Kumar Srivastava, Stamp Reporter

Sandeep Kumar Ojha, Son of KD Ojha, Jt Pvt Secretary to then CJ

Samya Deep, Son of PK Ganguli, Jt Pvt Secretary to then CJ

B Pandey, Related to CL Pandey, President, Bar Association

Tej Singh, Brother of Hem Singh, Junior Vice-President, Employees' Union

AK Srivastava, Brother-in-law of YK Srivastava, Senior Vice-President, Employees Union

AK Singh, Nephew, Jokhan Singh, Principal Private Secretary to CJ

Nanda Priya, Daughter of CP Bharti, Assistant Registrar, HC

Puja Srivastava, Daughter of Sushil Srivastava, Asst Registrar, High Court

Rohit Kumar Singh, Nephew of Swatantra Singh, ex-High Court Registrar

Abhishek, Son of Kailash Nath, Bench Secretary, High Court

KS Bedi, Nephew of KS Rakra, then Registrar General, later HC judge

The advertisement, it turned out, was just a formality. Instead of holding the mandatory written examination to begin the selection process, the AHC filled the posts with ad-hoc appointments made under the then Chief Justice and the then Acting Chief Justice, using the extraordinary powers bestowed on them by Rules 41 and 45 of the service Rules of 1976. This was done in total disregard of the Supreme Court ruling that states that these powers "are not unguided and unlimited, and have to be exercised keeping in view the Constitutional rights of the citizens and also be in consonance with the law". As many as 50 ad-hoc appointments were made in the

clerical cadre of the High Court services. The strategy is one that has been used in government offices time and again: make ad-hoc appointments of well-connected persons and later regularise their services bypassing further screening. But Pandey chose to fight back, filing a writ petition in 2004, challenging the appointments' legality. His petition has blown the lid off a continuing recruitment scam at the AHC, with Pandey alleging that a whole host of senior judicial officers in the AHC, from judges to Bar Association and Employees' Union office-bearers, are actively engaged in securing employment for their wards, relatives and acquaintances through backdoor channels in both the Principal and the Lucknow Bench of the court.

Founded in 1869, the AHC is the country's largest high court and, after the Calcutta High Court, the second oldest. Of its sanctioned strength of 95 judges, 54 currently work in Allahabad and 18 on the court's Lucknow bench; 23 posts are vacant. The AHC has an exclusive bureaucracy with nearly 2,500 officers and employees, headed by the Registrar-General.

Following Pandey's example, three petitions have been filed since 2004 before the AHC, all raising questions over an illegal involvement in recruitments on the part of at least two judges, a dozen court bureaucrats, a personal secretary to former Chief Justices and the top office-bearers of the Bar Association and the Employees' Union. It is also alleged that a former Chief Justice and an ex-Acting Chief Justice may have connived in these unfair and arbitrary appointments. One such case was filed by 26-year-old Yogesh Verma, who is the son of a sub-inspector in the Provincial Armed Constabulary and, like Pandey, another aggrieved applicant. For three years, he tried to persuade the AHC authorities to hold a qualifying exam for the court's clerical cadre. When pleading failed, he filed a public interest litigation in 2007, challenging the appointments of 18 relatives and acquaintances of persons placed with the court.

"I was well prepared for the exams, but merit, it seems, has no takers in court," Verma rues. The case has got nowhere so far — for the last two and a half years, Verma and his counsel have made the rounds of the Lucknow Bench for the listing of the PIL, to no avail. "The PIL had deliberately been put in cold storage as it would have exposed the corrupt administrative practices prevailing in the High Court," alleges Yogesh's counsel, Dinesh Chandra Verma. Pandey's petition was to take several curious twists and turns. While the defence not only argued that ad-hoc appointments were within the rights of the Chief Justice, it also submitted that the Rules of 1976 had been amended and clerical posts had been upgraded to those of Assistant Review Officers (AROs). The 2004 advertisement, thus, stood cancelled and, accordingly, a fresh one was issued on July 31, 2006, for the recruitment of 150 AROs.

Pandey stuck to his guns, however, and challenged the contention, stating that neither had an amendment been made to the Rules of 1976 nor had clerical posts been abolished till date. His stand has been vindicated by a recent Government Order, No 3,477, dated February 5, 2009, by which 77 new clerical posts have been sanctioned for the High Court. "The 2006 advertisement was issued to cover up the ongoing recruitment scam," says Om Prakash, an AHC employee who has waged a long battle against nepotism in the court. "Why were ad-hoc appointments allowed against regular vacancies in the first place?"

It is a question Justice Sunil Ambwani raised in his order in Pandey's case, dated July 27, 2007. Putting to scrutiny the need for ad-hoc appointments when regular selection was pending, Justice Ambwani observed: "A large number of appointments have been made in such unexplained exigencies that are likely to raise apprehensions in the minds of aspirants and to believe that the only method of appointments in the High Court is to gain proximity to the Chief Justice." He also went on to remark: "These ad-hoc appointments were not made by following any process of selection and were secured only by pleasing the then Chief Justices."

Justice Ambwani's order confirms the nepotism prevalent in the AHC. "Adhocism raises suspicion and adhocism laced with favouritism confirms arbitrariness," was the judge's conclusion. BY THIS time, however, the AHC and its Lucknow bench had already regularised some of the contentious ad-hoc appointments, even though Pandey's petition was still being heard. Among

those regularised against the rules were made permanent employees were Ashutosh Kumar Singh, Nanda Priya, Puja Srivastava (2004 batch) and Abhishek and Karamjeet Singh Bedi, both of the 1999 batch and nephews of then Registrar General KS Rakra, who was later elevated as a High Court judge. Karamjeet was later promoted as Review Officer.

These promotions caused sufficient annoyance among those whose seniority had been affected by the elevation of Abhishek and Karamjeet to prompt another writ petition to be filed, this one in 2007, by Raj Kumar Yadav and 11 others, challenging the backdoor appointments. The matter came before the court of Justice DP Singh who, in an interim order on April 21, 2007, ordered the sealing of all records pertaining to the two appointments. Since then, there has been no headway in the case.

“Our fight against the backdoor appointments and the arbitrary promotion of those close to power will continue until we get justice and the practice is ended in the Allahabad High Court,” vows Ajit Singh Gaur, a co-petitioner in the case.

ANOTHER CASE to come out of the irregularities in AHC recruitments pertains to 355 Class IV court staff vacancies sanctioned by the Mulayam Singh Yadav Government on December 10, 2004. Within three days, the then Acting Chief Justice Vishnu Sahai had filled these vacancies, arbitrarily appointing casual and daily wage Class IV employees working in the courts and at the residences of various judges.

Taking suo-motu notice of the irregularities in the appointments, a Division Bench comprising Justice VM Sahai and Justice Tarun Agarwala had strong observations to make. “Out of 355 posts, 192 posts have been earmarked for the Lucknow Bench. It is surprising that about 19 judges hold court at Lucknow and about 56 judges at Allahabad but the number of daily wage Class IV employees is, alarmingly, very high at Lucknow... It is not known how these persons have been recruited and appointed as daily wagers and who was responsible for their recruitment.”

The Division Bench went on to stay the recruitment proceedings in its interim order of December 17, 2004. The Bench fixed the next hearing in the case for December 20, 2004, during which the Registrar General was to place records of the appointments before the court. Before that could happen, however, a hastily put together five-member Constitutional Bench got the Division Bench's interim order vacated. The Constitutional Bench then allowed the regularisation of the services of all the Class IV appointees, subject to the final orders in the case. The matter, however, never came up for hearing again — for obvious reasons. When TEHELKA contacted him, Justice Sahai said he would not like to offer any comment on the Division Bench judgment. “We are not supposed to comment on our own judgments,” he said.

Interestingly, the formalities for all these appointments were completed during the court's winter vacation just before the retirement of then Acting Chief Justice Vishnu Sahai on December 29, 2004. Suspecting trouble, then Registrar Swatantra Singh went on leave and then Joint Registrar US Awasthi completed the appointment formalities.

“I don't remember anything about it,” claims Singh, who, ironically, is now Deputy Lok Ayukta, responsible for probity in public office. Awasthi is a little more forthcoming, telling TE HELKA that “those posts were filled before the retirement of then Acting Chief Justice Vishnu Sahai”. But he pleaded ignorance of any irregularity. Approaching the AHC Registrar General, BK Dixit, yields little as he refused to comment. The Registrar, Lucknow Bench, SVS Rathore, had only this to say: “The matter did not pertain to my period. I will have to check the records.”

Given the sluggish progress of the cases filed against the AHC's nepotistic practices, most people associated with the court are cynical about the possibility of any change. “The practice of backdoor entry through ad-hoc appointments has been on for years. What's new in it?” asks a former Registrar, speaking on condition of anonymity. “Even if someone did let the cat out of the

bag, who will dare to stand in the witness box against the honourable chief justices and judges, both retired and serving?”

Faced with the daunting edifice of the court establishment’s machinery, petitioner Raj Kumar Yadav wants to know why alternative routes to securing justice cannot be availed of. “The courts have ordered many CBI probes into various recruitment scams in the country. Why are they not ordering one into the scam within their own walls?” he wants to know.

Are the chief justices and judges of the High Courts above the law? Do they have unlimited powers to make a mockery of the law they are suppose to protect? Will there not be a loss of public faith in the rule of law if such arbitrary orders continue unchecked? These are some of the questions that those whom the AHC unjustly denied employment opportunities want answered.

WRITER’S EMAIL

srawan@tehelka.com