

(2006) 01 AHC CK 0239

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 17841 of 2002

Ajay Mishra

APPELLANT

Vs

Director General of Ordinance Services and The Commandant
Ordinance Depot

RESPONDENT

Date of Decision : 05-01-2006

Acts Referred:

Citation : (2006) 6 AWC 6565

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Rakesh Kumar, Ranjit Asthana, D.C. Tripathi, Purnanand Mishra, Party in Person, Ajay Mishra, Party in Person, Namwar Singh, Sanjiv Singh and Ranjit Saxena, for the Appellant; B.N. Singh, N.P. Shukla and A.K. Singh and S.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard learned Counsel for the parties. The counter and rejoinder affidavits have already been exchanged and with the consent of the parties, the writ petition being heard and decided finally under the Rules of the court at the admission stage.

2. The petitioner has challenged the advertisements dated 23rd July 2001 and 30th January 2002, (Annexure No. 5 & 7). However, a perusal of Annexure No. 5 shows that it is not an advertisement but the order dated 23rd October 2001 rejecting the representation dated 30th July 2001 of the petitioner against the selection held for the post of Messenger, in pursuance to the advertisements dated 14th February 2001 and 2nd June 2001. Similarly Annexure No. 7 is the order dated 30th January 2002, rejecting the petitioner's representation against his non-selection for the post of Messenger in pursuance to the advertisements dated 2nd June 2001 and 20th July 2001.

3. However, instead of dismissing the petition on this ground alone, the court has

considered the grievances of the petitioner on merits inspite of the aforesaid defects in the relief sought in the writ petition, which has not been rectified or corrected by the petitioner.

4. The case of the petitioner is that vide advertisement dated 14th February 2001, one post of Messenger was advertised and on 2nd June 2001 two posts of Messengers were advertised. It is further alleged that the Respondent No. 2, without making proper advertisement and following proper procedure, appointed illegally certain persons who are not eligible, in a hurried manner. The petitioner submitted that his mother made a complaint against the corrupt practices followed in making appointments, where after the petitioner also preferred a Writ Petition No. 27029 of 2001, challenging the entire selection, but the writ petition was dismissed vide judgment dated 25th July 2001, with the observation that the petitioner may make a comprehensive representation before the Respondent No. 1, and the concerned authority was directed to decide the same in accordance with law.

5. The petitioner claims that he made a representation in pursuance to the said order on 3rd August 2001, which was rejected, vide Annexure No. 5, which is an order dated 23rd October 2001, Similarly in respect to another advertisement for six posts of Messengers the petitioner approached this Court in Writ Petition No. 32001 of 2001, which was also dismissed by the Hon"ble Court vide judgment dated 8th October 2001, with the observation permitting the petitioner to make a representation which was to be decided by a competent authority in accordance with law. In pursuance to the said direction the petitioner made representation dated 19th October 2001, which has been dismissed by the authorities vide order dated 30th January 2002.

6. The contention of the learned Counsel for the petitioner is that in making the aforesaid selection no procedure has been followed and the entire selection is illegal, arbitrary and suffers from corrupt practices adopted by the respondents. It is also submitted that the selection has been finalized in a hurried manner, which shows malafide involvement of the respondent and vitiates the entire selection.

7. Counter affidavit has been filed on behalf of Respondent No. 1 & 2, stating that one post of Messenger was advertised on 14th February 2001, two posts of Messengers were advertised on 2nd June 2001, and six posts were advertised on 20th July 2001. A large number of candidates appeared on 2nd March 2001, in pursuance to the advertisement dated 14th February 2001, in which the name of the petitioner find mention at Serial No. 161. However, in the merit list the petitioner was placed at Serial No. 33. It is stated that about 200 candidates in all had appeared in the aforesaid selection and one Mohd. Ziya Khan who obtained highest marks has been appointed on the post of Messenger, since there was only one vacancy.

8. In respect to the advertisement dated 2nd June 2001, 205 candidates

appeared and the name of the petitioner was at Serial No. 17 of the list of the candidates who had applied in the said selection. One Shama Parveen secured highest marks and she was appointed on 1st October 2001. The petitioner is at Serial No. 17 in the reserved seat in respect to the advertisement dated 20th July 2001. It is stated that a screening test was held wherein about 99 candidates qualified but the petitioner could not qualify, therefore, he was not called for interview. It is submitted that in pursuance to the aforesaid selection also the selected candidates have already been appointed. It is further stated that on the complaint made by the petitioner the matter was examined again but nothing illegal was found in the aforesaid selection, hence the representation of the petitioner were rejected.

9. Rejoinder affidavit has been filed by the petitioner wherein the factum that the petitioner appeared and participated in all the selections as aforesaid has not been denied but it is submitted that the respondents have not filed documentary evidence to show that such a large number of candidates were interviewed, although they ought to have filed the documents.

10. The learned Counsel for the petitioner contended that since short time was allowed to appear in the selection and the selections have been finalized very hurriedly, it shows that the entire selection is malafide and vitiated. It is also stated that the name of the petitioner was also declared in the list of selected candidates along with Shama Parveen, but the petitioner has not been appointed and only Shama Parveen has been appointed. It is also submitted that respondents have selected their own wards and children and, therefore, the entire exercise is biased and malafide.

11. It is a settled law where a mala fide is alleged, the authority, who has passed the order, which is said to be the result of the mala fide exercise of power, has to be impleaded eo nomine. In the absence of such impleadment, the Court neither can look into the plea of mala fide nor can consider the issue raising mala fide.

12. In *State of Bihar v. P.P. Sharma* 1992 Supp (1) SCC 222 in para 55 of the judgment, the Apex Court held as under:

It is a settled law that the person against whom mala fides or bias was imputed should be impleaded eo nomine as a party respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made. Otherwise it itself is violative of the principles of natural justice as it amounts to condemning a person without an opportunity. Admittedly, both R.K. Singh and G.N. Sharma were not impleaded. On this ground alone the High Court should have stopped enquiry into the allegation of mala fides or bias alleged against them.

13. In AIR 1996 SC 326, *J.N. Banavalikar v. Municipal Corporation of Delhi*, in para 21 of the judgment, it has been held as under: -

Further in the absence of impleadment of the...the person who had allegedly

passed mala fide order in order to favour such junior doctor, any contention of mala fide action in fact i.e. malice in fact should not be countenanced by the Court.

14. In All India State Bank Officers' Federation and Others Vs. Union of India (UOI) and Others, the Hon''ble Apex Court has said where a person, who has passed the order and against whom the plea of mala fide has been taken has not been impleaded, the petitioner cannot be allowed to raise the allegations of mala fide. The relevant observation of the Apex Court relevant are reproduced as under: -

The person against whom mala fides are alleged must be made a party to the proceeding. Board of Directors of the Bank sought to favour respondents 4 and 5 and, therefore, agreed to the proposal put before it. Neither the Chairman nor the Directors, who were present in the said meeting, have been impleaded as respondents. This being so the petitioners cannot be allowed to raise the allegations of mala fide, which allegations, in fact, are without merit.

15. Recently in Federation of Railway Officers Association and Others Vs. Union of India (UOI), it has been held as under:

That allegations regarding mala fides cannot be vaguely made and it must be specified and clear. In this context, the concerned Minister who is stated to be involved in the formation of new Zone at Hazipur is not made a party who can meet the allegations.

16. In the present case, the plea of malafide has been raised without giving the details or relevant material and substantiating the same by furnishing the relevant documents. In the absence of any such material the said plea cannot be looked into and has to be rejected.

17. The learned Counsel for the petitioner further submits that the selection was held in a hurried manner. However, it is not disputed that in all the selections, a large number of candidates appeared including the petitioner and those who have been successful have been appointed. Once the petitioner has appeared in the selection, he cannot be allowed to challenge the same after being declared unsuccessful. No material has been placed on record by the petitioner to show that the selection is vitiated in law either for violation of any statutory provision or for any other reason.

18. In these circumstances, I do not find any merit in the writ petition and it is accordingly dismissed.

19. No order as to costs.