(1997) 05 AHC CK 0090

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 21078 of 1986

Ant Ram and Ors. APPELLANT

Vs

Administrator City Board,Ghaziabad & Ors. RESPONDENT

Date of Decision : 02-05-1997

Acts Referred:

Citation : (1997) 05 AHC CK 0090

Hon'ble Judges : S.K.Phaujdar, J

Final Decision : Dismissed

Judgement

S. K. Phaujdar, J.—The three petitioners filed this writ petition under Article 226 of the Constitution of India against four respondents. Respondent No. 1 was the Administrator City Board, Ghaziabad. The other three respondents were Jagan Lal, Jagdish Prasad and Harishankar Sharma, all posted as Tax Inspectors under the City Board, Ghaziabad. The petitioners prayed for a writ of mandamus to direct respondent No. 1 to promote the three petitioners to the post of Tax Inspectors with effect from the dates they were entitled to be promoted. A further prayer was made for a writ of mandamus for directing respondent No. 1 not to allow respondents No. 2, 3 and 4 to work as Tkx Inspectors.

2. It was the case of the petitioners that they were working as bill collectors and tahbazari moharrir under the City Board, Ghaziabad. The board had published a seniority list on 311080 under which the petitioners were shown as senior to respondents No. 2 to 4 bearing the case of Jagan Lal who was shown senior to petitioner No. 3 (Bhagirath Singh). A copy of the seniority list was annexed as Annexure No. 1 to the writ petition. This seniority list was acted upon and was also confirmed by the High Court in connection with writ petition No. 2137 of 1984 decided on 6384. It was alleged that respondent No. 2 (Jagan Lal) belonged to revenue cadre and was posted as an Amin but respondents No. 3 and 4 (Jagdish Prasad and Han Shanker Sharma) belonged to ministerial cadre and were posted as storekeeper and L.M.C. clerk respectively. The three petitioners, however, belonged to revenue cadre. The post of L.M.C. clerk was

subsequently designated as L.T.C. Inspector. The dispute arose on account of alleged arbitrary action of the Administrator, City Board, Ghaziabad, who promoted unqualified juniors to work as Tax Inspectors ignoring the case of the petitioners. Reference was made to a Government Order dated 10450 (Annexure No. 2). The petitioners claimed that they were Intermediate passed and under the Government Order were qualified to be promoted as Tax Inspectors while respondents No. 2,3 and 4 were only High School passed and were not eligible for promotion as Tax Inspector.

3. It was further averred that on a representation by one Jagdish Dutta, the Commissioner of Meerut Division, had decided that Hari Shankar Sharma (respondent No. 4) belonged to ministerial cadre. It was further directed by the Commissioner, so far respondent No. 2 Jagal Lal was concerned, that if he was a junior he should be reverted. A copy of the order was annexed as Annexure No. 3. On 1821985 the Administrator directed that Hari Shankar Sharma should work as a clerk. This order is Annexure No. 4 to the writ petition. Respondents No. 2, 3 and 4 were working, according to the petitioners, without any legal authority as tax inspectors and the petitioners made representations to the Administrator. But, in spite of passage of long time, no order was passed on the representations. Subsequently on 25986 a notice was given to the Administrator. A copy of the notice is in Annexure No. 6 to the writ petition. Through this notice a demand was made to decide the matter of promotion to the post of tax inspectors within a month from the date of notice. The petitioners No. 1 and 2 were called for interview in 1982 for promotion as tax inspectors but on political pressure the interview was postponed and was never held in spite of repeated requests. It was asserted that the three vacant posts of tax inspector were already there. One more post became available on the reversion of one Inder Dayal. A further post was expected to be vacant on the retirement of B.S. Goel and that petitioners Ant Ram and Bhagirath Singh were persons of scheduled castes and scheduled tribes respectively and were entitled to promotion against reserved quota as well.

4. A counteraffidavit was filed by Hari Shanker Sharma (respondent No. 4). He asserted that he was appointed in the revenue cadre on 21970 as lekhpal which post was also known as L.M.C. clerk. One of the essential condition for appointment against that post was that the applicant should have passed the lekhpal examination. Hari Shankar Sharma claimed that he had passed the examination in 196970 but the certificate was not made available then. Subsequently he submitted the certificates and a copy thereof was annexed to the counteraffidavit. Papers were filed to show that for provident fund slip his post was shown as that of a lekhpal. Under the order of the Commissioner of Meerut Division, dated 19678 the post of Projection Inspector was named as Tax Inspector. The seniority list relied upon by the petitioners was prepared in the year 1980 covering the revenue employees/moharrirs and bill collectors who were lower in rank to rank of the lekhpal and as such there was no question of the name of Harishankar Sharma being shown in the list as he was a lekhpal. He

claimed by virtue of his initial appointment is revenue cadre which was a superior post in scale and rank was equivalent to the post of inspector, that Hari Shankar Sharma was senior to the three petitioners. The seniority list in question was totally irrelevant to assess the seniority of Hari Shankar Sharma. In the affidavit he described himself as a property inspector of the City Board Ghaziabad. He asserted that he was duly qualified for appointment as tax inspector and he was legally holding of office. He asserted further that the minimum qualification for appointment of octroi, tax or other revenue inspector was only a High School certificate. He claimed that he had passed an examination equivalent to Intermediate examination. He asserted further that the Commissioner had illegally held, upon representation of Jagdish Dutta, that

Hari Shankar Sharma belonged to the ministerial cadre. This finding was without any basis. This deponent preferred a claim petition before the Public Services Tribunal, Lucknow, against the order of the Commissioner. The Tribunal allowed the claim of the deponent and set aside the order of the Commissioner. The orders were annexed to the counteraffidavit. This deponent further stated that on his representation and on recommendation by the District Magistrate, Ghaziabad, the State Government directed that the post of lekhpal clerk in Nagar Palika, Ghaziabad, was to be converted as that of property inspector in the same scale. This deponent claimed that his case was not of a promotion on appointment and he was not covered by the Government order in annexure No. 2 to the writ petition.

5. A counter affidavit was filed on behalf of Jagan Lal (respondent No. 2). He made out a case that petitioners No. 1 and 3 (Ant Ram and Bhagirath) were appointed as bill collectors on 3371 and 12872 respectively. The other petitioner Ram Pal was appointed on 7779 as tahbazari moharnr. The seniority list relied upon by the petitioners was illegal and void. An officer incharge of the City Board could exercise the powers delegated to him by the Administrator. He was never delegated with the power to determine seniority of the employees or to prepare the seniority list. The concerned seniority list was not prepared with the consent of the administrator. Neither any objection nor any suggestion was ever invited. It was never placed in the notice board was never circulated in the office. Moreover there was error apparent on the face of it. The date of appointment was the basis of seniority. This deponent (Jagan Lal) was appointed as Amin vide letter No. 7369 and had joined on 77 69 and he should have been placed above the petitioners according to this date of appointment, in the seniority list. However his date of joining of the service was wrongly mentioned. A copy of his appointment letter was attached to the counteraffidavit. The averment in the writ petition that the seniority list was accepted in writ petititon No. 2137 of 1984 by the High Court was not accepted. The deponent asserted that he was not a party to the said writ petition and the decision could not be binding on him. The Administrator never accorded sanction to this seniority list. He asserted that not only himself but Jagdish Prasad and Hari Shankar Sharma also belonged to revenue cadre.

6. The respondent No. 1 also submitted a counteraffidavit which was sworn by the bill clerk Laxmi Narain. The deponent asserted that respondents No. 2 to 4 were legally working as a tax inspectors. It was stated that the post of tax inspector had been centralised and the appointment and other conditions are governed by the U.P. Palika (Centralise Service) Rules, 1966, Under these Rules the power of appointment vested in the State Government. It was further stated that with effect from 61286 the minimum qualification for the post of tax inspector was that the candidate must have passed on B.A. examination from any University. The deponent stated that the petitioner Ant Ram was not entitled to be appointed to the post of tax inspector. The power of appointment lay with the State Government.

7. There is yet another counteraffidavit on record filed on behalf of respondent No. 1 it was sworn by Surendra Kumar, Law Superintendent of the City Board, Ghaziabad. The appointment of the petitioners as bill collectors and tahbazari moharrir was not denied. The seniority list relied upon by the petitioners was not confirmed in writ petition No. 2137 of 1984. The order of the High Court on that writ petition was not annexed to the present writ petition. The respondent Jagan Lal according to his service book was appointed as an Amin in 1969. The respondent Jagdish Prasad was appointed as Girdawar/Amin on 18248 and was promoted as officiating tax inspector on 10750. The respondent Hari Shankar Sharma was appointed as Lekhpal on 21970 and thereafter worked as tax inspector (projection), on the basis of the order of the Commissioner who had from time to time sanctioned to creation of post of tax inspector (projection), temporarily. This deponent asserted that respondents Jagdish Prasad and Hari Shankar Sharma were appointed in the revenue cadre but on superior post than those occupied by the petitioners and as such the seniority list did not show his name. These two persons belonged to revenue cadre and Annexure No. 1 to the writ petition covered seniority only of moharrir and bill collectors. At the time of preparation of this list the respondents No. 3 and 4 were working on posts higher in scale and rank to that of moharrir and bill collector and accordingly their names did not appear in the list. The respondent No. 2, according to his date of appointment was senior to the petitioners. The deponent denied the averments that respondents No. 3 and 4 belonged to ministerial cadre. It was stated further that on representation of Hari Shankar Sharma the State Government by Government order dated 23786 accorded sanction and directed that in the same scale of pay the post of lekhpal clerk will now be known as property inspector. The assertion that only Intermediate passed employees could be promoted was not accepted. The concerned Government order provided the minimum qualification of appointment of octroi tax and other revenue inspectors and this qualification was passing the High School examination. There was, however, a direction that Intermediate passed candidates should be preferred. According to the Board records Hari Shankar Sharma filed a claim petition against the order of the Commissioner Meerut, on 20978 who had set aside the appointment of the petitioners to the post of tax inspectors (projection). The U.P. Public Services

Tribunal vide its order dated 21686 had set aside the order of the Commissioner and Tribunal held that the Commissioner had no jurisdiction to entertain the representation and to interfere with the appointment of respondent No. 4 to the post of Tax Inspector Projection. From the averments and the arguments of the parties it appears that the petitioners have firstly challenged the cadre of respondents No. 3 and 4 stating that they belonged to the ministerial cadre. They had further stated even for respondent No. 2, he was junior to petitioner No. 1 as per the seniority list annexed to the writ petition. They had further claimed that the petitioners Ant Ram and Bhagirath were entitled to promotion against reserved quota and vacancies were available in the City Board in the posts of Tax Inspector.

8. So far the cadre is concerned reliance was placed on a direction of the Commissioner, Meerut who had opined that the respondent Hari Shankar Sharma did not belong to the revenue cadre. This direction was, however, set aside by the Public Services Tribunal. Thus it may not be inferred merely from the directions of the Commissioner that Hari Shankar Sharma did not belong to the revenue cadre. The seniority list has been pressed with all force. It is true that this seniority list did not contain the names of the respondents No. 3 and 4. They had taken a plea that the seniority list was one for persons of lower cadre than the post occupied by respondents No. 3 and 4 and as such their names had not appeared in the list. A further objection was taken that the seniority list was not published under any authority. Nothing has been placed before this Court to show how and under what authority the seniority list was prepared. It \\vas argued that this seniority list was accepted in an earlier writ petition.

9. The copy of the order of the High Court in Civil Misc. Writ Petition No. 8261 of 1971 (Jagdish Dutta and another v. State of U.P and others) has been placed before me during arguments. It appears that the respondents or even the petitioners were not parties to the said writ petition. It was only decided in this case that the petitioners therein had a right to be promoted to the post of tax inspector in preference to the employees of the ministerial cadre. It was further observed that if any respondent was found to have been promoted from the ministerial service he should be reverted. The Court, however did not decide as to which of the respondents did really belong to the ministerial cadre. It was left for a decision by the Board. The writ petition referred to in the averments of the petitioners was Writ Petition No. 2137 of 1984. A copy of the order in this writ petition was filed before me. The High Court simply refused to interfere with the seniority list. It is not clear on what consideration the seniority list, relied upon the petitioners here, was confirmed by the High Court.

10. Reference was made to a decision of the Allahabad High Court in Special Appeal No. 11 of 1976 arising from the aforementioned Writ Petition No. 8261 of 1972. The appeal was preferred by the respondents in that writ petition. The appeal was dismissed. The Division Bench hearing the special appeal found that the City Board, Ghaziabad, had two distinct divisions of service, one consisting of

the revenue service and the other ministerial service. A question was raised whether the Government Order dated 10450 regarding promotion in different Departments of the Municipal Board. The appeal Bench confirmed the order of the Single Judge that the Government Order issued by the Government was adopted and confirmed by the Municipal Board and as a result of this resolution the Government Order became a service condition of the employees under the Board.

11. The Government Order spoken of in the writ petition and this order is in annexure No. 2 to the writ petition. It is dated 10 450. This Government Order was adopted by the Municipal Board and as per the High Court''s decision it became a condition of service for the City Board Employees. This Government Order indicates that the minimum educational qualifications for octroi and other revenue Inspectors was High School or equivalent examination but Intermediate passed candidate should be preferred. This Government Order further clearly indicated three classes of service, namely, revenue, ministerial and administrative, octroi, tax and revenue inspectors, the tax collectors, octroi moharrirs, toll and terminal tax, moharrirs, Amins etc. were placed in the revenue service. Head Clerks, Seasonal Clerks, Cashiers, Stenographers, other clerks, Departmental Accountants, Accounts Clerks, Storekeepers, Lighting Inspectors were placed under Ministerial Services. The Government order further directed that in the case of posts mentioned in the anncxures, promotion from the lower to the higher post is to be made in the same class of service. Thus it is clear that for a senior revenue post a person holding a junior post should be considered for promotion.

12. Even considering this position, the petitioners were bound to indicate that the respondents No. 3 and 4 did not belong to the revenue service. This, in my view, could not be brought on record. Undisputedly, reliance was placed on a decision of the Commissioner which was set aside by the Public Services Tribunal. I have already discussed the question of the validity of the seniority list. No doubt the High Court did not like to interfere with it but the objections now raised about competence of the officer published in the seniority list was not discussed by the High Court and as such it may not be advisable to rely upon this seniority list to exclude respondent No. 3 and 4 from the revenue cadre. So far the respondent No. 2 is concerned the papers of his appointment indicate that he was appointed even prior to the appointment of petitioner No. 1 but the seniority list did not give correct description of the date of appointment of respondent No. 2. This is another reason why the seniority list may not be acted upon.

13. It has been contended that several posts are lying vacant in the category of tax inspector and the petitioners are entitled to promotion to those posts and the petitioners Ant Ram and Bhagirath have a special claim to go against reserved quotas. There is, however, no indication as to what would be the number of the vacancies against such quotas.

14. The writ petitions stands dismissed upon the discussions made above with

the only observation that in case vacancies are still available and in case there are reservations for scheduled caste and scheduled tribes, the cases of the present petitioners be considered in the light of the assertions made in the writ petition.

