
(2015) 11 AHC CK 0026

In the Allahabad High Court

Case No : Writ - A Nos. 59355, 60075 and 66199 of 2012

Dilip Kumar Shukla and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-11-2015

Acts Referred:

Citation : (2015) 11 ADJ 713 : (2016) 1 AWC 755 : (2015) 4 UPLBEC 3195

Hon'ble Judges : M.C. Tripathi, J.

Bench : Single Bench

Advocate : Siddharth Khare and Ashok Khare, for the Appellant

Final Decision : Allowed

Judgement

M.C. Tripathi, J.—Heard Shri Ashok Khare, learned Senior Counsel assisted by Shri Siddharth Khare and Shri Nisheeth Yadav, learned counsel for the petitioners. Shri H.C. Pathak, learned Standing Counsel appears for the respondents.

2. As the controversy involved in all the writ petitions are similar, they are being decided by this common judgment.

3. The facts of Writ Petition No. 59355 of 2012 are being taken as leading case for deciding the writ petitions.

4. By means of present writ petition, the petitioners have prayed for following reliefs:-

"(a) a writ, order or direction in the nature of certiorari quashing the impugned order dated 12.10.2012 passed by Director of Education (Secondary), U.P., Lucknow (Annexure No. 10) as also the order dated 20.10.12 issued by the District Inspector of Schools, Sonbhadra (Annexure No. 11);

(b) a writ, order or direction of a suitable nature commanding the respondents not to cause any interference in the working of the petitioners as Class-IV

employees under them and to pay the petitioners their regular monthly salary on the said post regularly every month;

(c) a writ, order or direction of a suitable nature commanding the respondents to disburse to the petitioners the arrears of their salary from the date of their appointment till date, within a period to be specified by this Hon"ble Court."

5. It appears from the record that the District Inspector of Schools, Sonbhadra issued an advertisement, which was published in the news paper "Dainik Jagran" dated 27.05.2008 inviting applications for making appointments of 23 Class-IV employees in the district. The advertisement specified that the selection proceedings would be conducted on 18.6.2008 in the office of the District Inspector of Schools, Sonbhadra. All the petitioners being fully qualified and eligible had applied in pursuance to the aforesaid advertisement. Even though the advertisement had notified 18.6.2008 as the date of interview, the said interview stood adjourned and a notice to such effect was published by the District Inspector of Schools, Sonbhadra in the local newspaper. Thereafter, the selection proceedings were scheduled on 10.09.2008 and intimation thereof was given to the applicants by post.

6. All the petitioners participated in the selection proceedings. In the select list finalized by the District Inspector of Schools, Sonbhadra, the petitioners were included amongst the selected candidates for appointment. Based upon the aforesaid selection, appointment orders were issued to each of the petitioners in different colleges. The names of the petitioners were forwarded by the District Inspector of Schools, Sonbhadra to Principals of different institutions for issuance of appointment letters and ensuring joining of the selected candidates. Thereafter, appointment orders were issued to the petitioners either at the level of District Inspector of Schools, Sonbhadra himself or at the level of the Principal of the concerned Government Inter College in the year 2008. Pursuant to the appointment orders so issued, each of the petitioners joined at their respective place of posting and since then they have been continuously functioning and discharging duties. It is averred that the work and conduct of each of the petitioners has been fully satisfactory. Even though the petitioners have been appointed on the basis of regular selection and have been continuously working, no payment of salary has been made to the petitioners due to erroneous and misconceived objections.

7. The appointment orders issued to the petitioners by the District Inspector of Schools were referred to in the Writ Petition No. 28398 of 2008 by the persons, who were displaced employees of U.P. State Cement Corporation and whose services stood terminated on account of winding up of U.P. State Cement Corporation. The writ petition filed by them was with regard to claim of their absorption. On 13.6.2008 an interim order was passed in the aforesaid writ petition, which reads as under:-

"Heard learned counsel for the parties.

Let counter affidavit be filed by the respondents within a period of six weeks. Rejoinder affidavit, if any, may be filed within two weeks, thereafter.

List in the 3rd week of August, 2008.

As per learned counsel for the petitioners, the petitioners be accommodated in government institutions. In District Mirzapur as their services were terminated in institution run by U.P. Cement Corporation because of winding up of U.P. Cement Corporation. The posts have now been advertised for taking up candidates from open market by ignoring the cases of existing Class-IV workers, who had lost their jobs because of winding up of U.P. Cement Corporation. It would not be appropriate to recruit fresh hands after terminating the services of existing personnel, who have put in substantial period of service in the institution.

Accordingly as an interim measure, it is provided that the petitioners services shall not be dispensed with and in direct recruitment process the posts held by them shall not be filled."

8. Learned counsel for the petitioner submits that there exist no prohibition under the said stay order against the selection proceedings being held with regard to vacant post. It is specifically stated that the posts against which the petitioners have been appointed were never held by the petitioners of the aforesaid writ petition. Even otherwise the aforesaid controversy involved in writ petition No. 28398 of 2008 no longer survives in view of the fact that all the eight petitioners of the said writ petition have been granted absorption against different Class-IV posts and they are presently working and drawing salary. The absorption of such persons are made on the different posts other than the posts held by the petitioners. There exist no rational justification for not making payment of salary to the petitioners. Such inaction is despite repeated representations having been filed by the petitioners.

9. The payment of salary stood withheld on the objections contained in reference made by the Finance & Accounts Officer, Office of District Inspector of Schools, Sonbhadra by communication dated 9.6.2009 to the Director of Education (Secondary) seeking guidance with regard to releasing payment of salary to the petitioners. When nothing has been done with regard to release of salary of the petitioners, they were compelled to file a writ petition before this Court being Writ Petition No. 23869 of 2011 (Dilip Kumar Shukla & Ors. v. State of U.P. & Ors.), which was finally disposed of on 20.1.2012 with following observations:-

"1. The only relief sought in the writ petition is that the responders be restrained from causing any interference in the functioning of petitioners as Class IV employee and to ensure payment of salary to them month to month.

2. Heard Sri Ashok Khare, Senior Advocate assisted by Sri Siddharth Khare for the petitioners and learned Standing Counsel for the respondents.

3. The petitioners" claim that an advertisement was published on 27.5.2008 by the District Inspector of Schools, Sonbhadra (hereinafter referred to as "DIOS")

advertising 23 vacancies in Class IV. The last date of submission of application form was 12.06.2008 and the date of interview was notified as 18.06.2008. The petitioners appeared in the aforesaid selection and ultimately were appointed in various Government colleges by the letter of appointment issued by appointing authority. The names of selected candidates were recommended by DIOS to various Principals of Government colleges in District Sonbhadra for appointment whereafter the Principals issues appointment letters. All the petitioners were appointed in November, 2008 and pursuant thereto they have joined and are working. There is no reason entitling respondents not to pay salary to the petitioners yet their salary has been withheld pursuant to reference made by Finance and Accounts Officer (in the office of DIOS) by letter dated 9.6.2009 to the Director of Education (Secondary) and thereafter nothing has been done.

4. A counter affidavit has been filed by respondents stating that the then DIOS sought permission of Joint Director of Education, Vindhyachal Mandal, Mirzapur vide letter dated 20.05.2008 for making 26 appointments of Class IV posts under general quota. The permission, as sought, was granted by Joint Director of Education vide letter dated 22.5.2008. Thereafter advertisement was issued and it is claimed that 3194 applications were received by the last date i.e. 18.6.2008. During this period 8 employees of Cement Factory Inter College, Churk, Sonbhadra preferred writ petition No. 28398 of 2008 before this Court seeking their absorption as Class IV employees in Government colleges in which an interim order was passed by this Court on 13.6.2008 directing that 8 posts out of 23 shall not be filled up.

5. The selection thus proceeded, as claimed by DIOS but departmental received information that several malpractice and illegality were committed whereupon an enquiry was ordered to be conducted by Joint Director of Education, Jhansi Region Jhansi. It is said that enquiry officer has submitted report regarding selection proceedings and the matter is pending for final decision before Director of Secondary Education/State level.

6. Learned Standing Counsel submitted that enquiry officer found several irregularities and illegalities in the selection and therefore, respondents are not paying salary to the petitioners.

7. This Court has no reservation in observing that if there is any apprehension of malpractice in a selection, State is well within its right to proceed to conduct an enquiry but in the garb of such enquiry it cannot keep the matter pending sine die without any positive but quick decision. At least in a reasonable time the enquiry and the decision must have accomplished.

8. In the present case it is admitted by respondents that enquiry officer has submitted his report but final decision is yet to be taken by Director of Education (Secondary) and the State Government.

9. In view of the above, in my view, it would be appropriate to dispose of the writ petition in the following manner:

(i) The competent authority namely Director of Education (Secondary) and/or the State Government, as the case may be, shall take final decision in the matter of enquiry conducted in the selection and appointments of petitioners expeditiously but in any case not later than six weeks from the date of production of a certified copy of this order.

(ii) In case competent authority find that there was no irregularity in the selection and petitioners are entitled for payment of salary, their salary shall be released forthwith thereafter and entire arrears of salary shall be paid to them within a month from the date of taking such a decision.

(iii). In case competent authority takes decision otherwise, which is likely to cause prejudice to the petitioners in the matter of their appointment and continuance on the post, it shall take appropriate action in accordance with law after giving due opportunity of hearing to all the petitioners and other similarly situated persons.

10. I order accordingly.

11. No order as to costs."

10. In compliance of the aforesaid order, an order dated 12.10.2012 has been passed by the Director of Education (Secondary) holding that there exist no justification for payment of salary to the petitioners after treating the appointments of the petitioners to be irregular. The sole reason was recorded in the aforesaid order that after the conclusion of the selection proceedings, the Chairman of the selection committee prepared the final consolidated select list under her own signature alone and such final select list did not contain the signatures of the remaining two members of the selection committee. The orders impugned further records that the aforesaid amounts to a contravention of Group-D Employees Service Rules, 1985 and the Group-D Employees Service Rules, 2008. A disciplinary action was also recommended against Dr. Richa Gupta, the appointing authority. Pursuant to the order dated 12.10.2012, the District Inspector of Schools, Sonbhadra has proceeded to issue an order dated 20.10.2012 whereby the appointments of 26 persons mentioned therein have been cancelled.

11. Learned counsel for the petitioners submits that the orders impugned have been passed in an arbitrary and discriminatory manner and also in violation of the principles of natural justice. It is specifically stated that in the hearing fixed for 23.4.2012, no actual hearing took place apart from recording the presence of the petitioners. No hearing was accorded by the Director of Education. The order impugned relies upon the reports of the Joint Director of Education and the District Inspector of Schools and copies of enquiry reports submitted by the different authorities. Reliance so placed is totally ex parte to the petitioners as no copy thereof was supplied to the petitioners with opportunity to object the same.

12. The impugned order refers to Group-D Employees Service Rules, 1985 (in

short "the Rules of 1985"), which has been annexed as Annexure No. 12 to the writ petition. The procedure for selection is specified under Rule 19 of the Rules of 1985. Rule 19(4) of the Rules of 1985 provides that the names in the select list shall be arranged according to the marks awarded at the interview. Under Rule 19(2) and (3) thereof it has been provided that the members of the selection committee shall award their marks. There exists nothing under the Rules of 1985 either by way of explicit requirement or even by way of necessary intendment, which may require the final select list to be prepared under the joint signatures of all members of the selection committee. The preparation of the final select list by the appointing authority based upon the marks awarded by the members of the selection committee in no way contravenes any clause of the Rules of 1985. The entire selection has been conducted strictly in accordance with law and there is no infirmity in it.

13. Shri Ashok Khare, learned Senior Counsel submits that in the present matter the selection committee was constituted strictly in accordance with the Rules of 1985. The marks were awarded by all the three members separately. It is submitted that there is no provision of signing final select list by all the members of the Selection Committee. Neither at the time of enquiry nor through the counter affidavit any irregularity or infirmity has been indicated by the respondents to indicate that the members of the Selection Committee had not awarded the marks independently. Only infirmity has been indicated in the selection process that the final list-tabulation was signed only by the Chairman of the Selection Committee. Therefore, no inference can be drawn that the entire selection was vitiated only on this ground alone.

14. Learned counsel for the petitioners, in support of his submissions, has placed reliance in *Ram Prakash Singh & Ors. v. State of U.P. & Ors.*, [2009 (3) ADJ 42, the relevant portion of the judgment is reproduced as under:-

"On these facts the counsels appearing for the petitioners contend that quality point marks in descending order were given strictly in accordance with Rule 5(3) of the Rules of 2002. The number of marks to be awarded on sports are provided for in the rules itself, and that there was no necessity to advert to the Government orders in that regard. Rule 5(3)(c) provide for 5 marks, if a candidate had participated in international level sports : four marks for participating in national level sports; three marks in State level sports and two marks in participating in University/College/School level sports. The selection committee was constituted strictly in accordance with Rule 6, which does not provide for signatures of all the members of selection committee on the final results, and for drawing category wise list for vertical and horizontal reservation. They would further submit that secrecy adopted by the District Panchayat Raj Officer in preparing the final select list and keeping it in safe custody and in getting appointment letter typed and dispatched could not be taken to be irregularities, which may vitiate the selection. The Rule 5 of the Rules of 2002 provides for complete procedure of selections. There is no complaint that

advertisement was not carried out in daily newspaper having wide circulation and that vacancies were notified on the notice board and was not notified to the employment exchange. The marks of academic qualifications were correctly added and that wherever there was a mistake, the selection committee immediately corrected it. The marks for sports were awarded strictly in accordance with the Rule 5(3)(c) of the Rules of 2002, which provide for three marks for sportsman of State level as against 4 by the earlier Government order. Each member of the selection committee and the appointing authority was entitled to give the marks for interviews. There is nothing on record to show that any common basis or criteria was adopted by the selection committee in awarding minimum or maximum marks to any candidates. There is no provision of signing the final select list by all the members of the selection committee and that they had no grievance with regard to marks awarded by them to the candidates. Learned Counsel for the petitioner would further submit and were supported by Shri Ashok Khare, senior advocate appearing for Shri R.B. Sahu, the then Panchayat Raj Officer arrayed as respondent No. 6 that the adherence to secrecy and the typing of the appointment letters on the computer of the Deputy Director of the same department and their dispatch, which were entered in the dispatch register was not a doubtful act at all. The attempt to maintain secrecy and transparency was wrongly taken to be an attempt to vitiate the selections. The entire approach of the enquiry committee as well as the State Government was illegal. The arrest of the respondent No. 6 and other two clerks have been stayed by this Court in Writ Petition No. 3303 of 2008. It is contended that the completely ex parte mala fide and baseless report was prepared on the dictate of the Private Secretary of the Hon"ble Minister, Director, Deputy Director and the District Magistrate, who were interested in selections of some persons. They could not lay their hands on the final select list and that the issuance of the appointment letters before they could influence the selections annoyed them."

15. Per contra learned Standing Counsel has defended the impugned orders and stated that they had been passed strictly in accordance with law and there is no infirmity in them. He further submits that the subject selection was conducted by the three member committee nominated by the District Magistrate by order dated 14.08.2008. The aforesaid Selection Committee had proceeded with the selection proceedings from 8.9.2008 to 10.10.2008. Each members awarded marks on separate sheets and after keeping the sheets in envelope, the envelope of each members was kept in the safe custody of the then District Inspector of Schools-Chairman of the Selection Committee on each date and the almirah was sealed with the signature of the three members. The Chairman of the Selection Committee behind the back of the two members of the Selection Committee has broken the seal of the almirah and opened the envelope kept in the safe custody and after perusing the marks awarded by each members, she has prepared a final select list, which bears only the signature of the Chairman of the Selection Committee and the final select list bears no signature of other two members of the Selection Committee nominated by the District Magistrate.

16. Learned Standing Counsel also submits that the District Inspector of Schools has not complied the order dated 13.6.2008 passed by this Hon''ble Court in Writ Petition No. 28398 of 2008 in which the Court has directed that out of advertised posts eight seats will not be filled up by the recruiting authority, which is held by the petitioners in the aforesaid writ petition.

17. Heard rival submissions and perused the record.

18. The District Inspector of Schools, Sonbhadra had issued an advertisement, which was published in Hindi newspaper "Dainik Jagaran" on 27.5.2008 inviting applications for making appointment of 23 Class-IV employees in the district. Even though the advertisement notified 18.6.2008 as the date for interview, the said interview stood adjourned and a notice to such effect was published by the District Inspector of Schools, Sonebhadra in the local newspaper. Thereafter, the selection proceedings were scheduled on 10.9.2008 and the intimation thereof was given to the applicants by post. Admittedly all the petitioners participated in the selection process. The select list was finalised by the District Inspector of Schools and the names of petitioners were found in the select list. Based upon the selection, the appointment orders were issued to each of the petitioners for different Colleges and accordingly the name of the petitioners were forwarded by the District Inspector of Schools to the Principal of different institutions for issuing appointment letters and ensuring joining of the selected candidates.

19. It has also been brought on record to indicate that in pursuance of the appointment orders so issued each of the petitioners joined at their respective place of posting and since then they have been continuously functioning and discharging their dues. In compliance of the order passed by this Court in Writ Petition No. 23869 of 2011 (Dilip Kumar Shukla & ors vs. State of U.P. & ors), the present impugned order has been passed by the Director of Education (Secondary) holding that there exists no justification for payment of salary to the petitioners after treating the appointment of petitioners to be irregular.

20. A bare perusal of the impugned order as well as the record, it clearly gives an impression to the Court that the sole reason was recorded in the order dated 12.10.2012 that after the conclusion of selection process, the Chairman of the Selection Committee prepared the final consolidated select list under her own signature alone and said final select list did not contain the signature of remaining two members of the Selection Committee. The order impugned further records that the same was in contravention of Group "D" Service Rules, 1985 and Group "D" Service Rules, 2008 and as such the disciplinary proceedings were recommended against Dr. Richa Gupta, the then District Inspector of Schools, Sonebhadra-the appointing authority. Pursuant to the order dated 12.10.2012 the District Inspector of Schools, Sonebhadra had proceeded to issue an order dated 20.10.2012 whereby the appointments of 26 persons mentioned therein have been cancelled.

21. The Court had examined the records. Except the aforesaid allegation, no

other illegality, favouritism or nepotism has been alleged by the respondents and further no allegation has been levelled that the recruitment was manoeuvred for any extraneous consideration including monetary consideration. This is not the case that the recruitment were made without following the due procedures prescribed under the Rules, such as, the recruitment have been made without the mandatory advertisement or by overlooking the mandatory eligibility requirement. In other words the illegality to enable cancellation of the entire recruitment was only to the extent that the final select list was not prepared with the signatures of two other members whereas only the District Inspector of Schools, Sonebhadra had signed the same.

22. In the present matter, there was an open invitation through advertisement. Admittedly, the petitioners appeared in the selection process and finally, they were selected and accordingly appointment letters had also been issued in their favour. No plausible reasons were assigned by the respondents except the aforesaid infirmity, which has been alleged to suggest that at any point of time any extraneous considerations were there in the matter or the petitioners did not have the minimum eligibility for giving an appointment. Even no full fledged enquiry has been initiated in the matter. It is not the case of the respondents that the infirmities were so widespread and interwoven that it was impossible to segregate the tainted and untainted despite of conscious and bonafide efforts. A bare perusal of the record, it is apparent that in the present matter, no sincere efforts were made to find out whether the entire selection process was unfair, not transparent and was not held in accordance with law. It is not the case of the respondents that there were large scale and pervasive irregularities and illegalities in the matter and as such the respondents had decided as a policy matter to cancel the entire selection process. In pursuance of the advertisement, large scale of candidates had participated and finally the petitioners were selected, even in such situation the individual notices were also required to be issued to the petitioners prior to the cancellation of their appointments.

23. Learned Standing Counsel has placed reliance on the judgements reported in The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others, , 1992 AIR SC 952 , Karnataka Public Services Commission Vs. B.M. Vijay Shankar, Krishan Yadav and another Vs. State of Haryana and others, , Union of India (UOI) and Others Vs. Tarun K. Singh and Others, , Union of India and Others Vs. O. Chakradhar, , The State of Andhra Pradesh and Another Vs. T. Suryachandra Rao, and Inderpreet Singh Kahlon and Others Vs. State of Punjab and Others, .

24. A bare perusal of these judgements reveal that in cases where the entire selection was found to be vitiated/tainted and was cancelled, in such cases, it was not necessary to give individual notices. In cases where majority of examinees had adopted unfair means, the whole examination could be cancelled, as the law laid down by Hon''ble Supreme Court in Union of India and Others Vs. O. Chakradhar, . Even in that case no individual notice is required.

25. However, in the present case, the Court is of the view that the respondents could make every endeavour to scrutinize the records and it was expected from the respondents to provide an opportunity of hearing to the affected persons. But in the present matter, no detailed scrutiny has been made and at no point of time any allegation has been levelled against the petitioners that they were found unfit, ineligible and unsuitable for their appointment.

26. While passing the impugned order, a reliance has been placed on the judgment of this Court passed in Writ Petition No. 28398 of 2008, which no longer survives. In view of the facts enumerated as above in detail that all the eight petitioners of the said writ petitions have been absorbed against different Class-IV posts and the absorption of such persons are made on different posts other than the posts held by the petitioners and as such, there was no rational or justification for not making payment of salary to the petitioners. It is also apparent from the pleading that some disciplinary action has been initiated against Dr. Richa Gupta, the then District Inspector of Schools, Sonebhadra but nothing has been indicated either in the counter affidavit or by learned Standing Counsel regarding the outcome of the said disciplinary action against the erring officer, whereas learned counsel for the petitioner has vehemently submitted that nothing has happened against the said officer and at the cost of some infirmity or illegality made by the then District Inspector of Schools, Sonebhadra the entire selection cannot be cancelled.

27. In the matter, the marks were awarded by all the three members separately. The respondents have not brought on record to indicate or suggest that there is any provision of signing final select list by all the members of the Selection Committee. Neither at the time of enquiry nor in the counter affidavit any irregularity or infirmity has been indicated by the respondents to suggest that the members of the Selection Committee had not awarded the marks independently. The final list was prepared by the Appointing Authority based upon the marks awarded by the Selection Committee and as such it does not contravene any clause of the Rules of 1985. While passing the impugned order, nothing has been averred to indicate that while finalising the select list by the Chairman, the marks awarded by two other members, have been manoeuvred or marks have been increased or decreased and as per her own whims and fancies the final select list had been prepared.

28. In view of the above, the impugned orders cannot sustain and are hereby set aside. The writ petitions are accordingly allowed. The petitioners are entitled to be reinstated forthwith.

29. So far as Shri Dilip Kumar Shukla (since deceased)-petitioner No. 1 in Writ-A No. 59355 of 2012 is concerned, he has been substituted by his wife Smt. Seema Devi by order dated 6.10.2015 and at this stage there is no occasion for reinstatement of petitioner No. 1, as such Smt. Seema Devi wife of Shri Dilip Kumar Shukla will be entitled for all the consequential benefits as permissible in law.