
(2006) 10 DEL CK 0184

In the Delhi High Court

Case No : Writ Petition (C) 1164 of 1989 and 16201-03 of 2006

Dr. Gurcharan Singh and Others

APPELLANT

Vs

MCD and Others

RESPONDENT

Date of Decision : 30-10-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2006) 92 DRJ 480

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Rasmeet K. Charya, in WP C 1164/1989 and 16201-03/2006 and Romesh Gautam, in W.P.C 2252/198, for the Appellant; Debarati Banerjee in WP (C) 1164/1989 and 16201-03/2006 and Debarati Banerjee, Shyam Babu, for R-3 and R-4, Vageesh Sharma, for R-6 and R-7, Rajat Aneja, for R-8 and Vikaram Nandrajog, for R-9 and R-11 in W.P.(C) 2252/1989, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The writ petitioners in these two proceedings under Article 226 of the Constitution of India challenge the appointment to the posts of Vaid by the Respondent Municipal Corporation of Delhi ("MCD") pursuant to a Circular dated 9.2.1989. The selection/ recruitment process adopted by the MCD is attacked as malafide, illegal and unfair whereby ineligible candidates were allegedly appointed, contrary to the recruitment rules.

2. All the Petitioners claim to have more than 5 years of experience, at the relevant time, in the beginning of 1989. They allege that after 1.1.1986, pursuant to the fourth Pay Commission Report Ayurvedic Physicians had to be treated at par with Allopathic Physicians. On 30.6.1988, MCD Respondent issued Circular for filling vacancies in the post of Vaid; however no public advertisement was issued, and requisitions were made from the Employment Exchange. It is alleged that one petitioner, Dr. Gursharan Singh, came to know on 29.7.1988 about the vacancies and applied, on that date, through Regd. post

A.D. He was eligible as he was below 30 yrs of age, the date of birth being 4.10.1958; he possessed the requisite qualification and 5 years of experience. It is alleged that other Petitioners also applied, but their applications were returned on the ground that they could not be considered directly. No appointments were, however made. On 9.2.1989, another, impugned Circular was issued for posts of Voids and requisition sought for only from the Employment Exchange. No advertisement was issued, granting opportunity to outside candidates, to compete in the process, despite the fact that as per Recruitment Regulations, the posts were to be filled by direct recruitment. The other petitioner, Dr. Ramesh Chander's application was considered, and he was called for interview, but not selected.

3. The petitioners allege that the Selection process is illegal and suffers from several infirmities. As per the Rules the appointment is through direct recruitment. However, no advertisement or publicity through newspapers etc was given to enable outsiders to apply for the posts. This violated Articles 14 and 16 of the Constitution of India. It is alleged that requisition was only sought from the Employment Exchange. It is alleged that the list of those considered and selected clearly shows candidates who directly applied, without sponsorship by the Employment Exchange, were considered. Yet, applications of petitioners were refused on grounds of not being recommended by the Employment Exchange. It is also alleged that Petitioner Nos. 1 & 2 (in Dr. Gursharan Singh's petition) too were registered with the Employment Exchange but were not considered. Likewise, Petitioners 3 & 4, though being Scheduled Caste candidates, were refused consideration on the ground that they had applied directly.

4. It is alleged, in addition that apart from considering candidates who had applied directly, and who were not sponsored by the Employment Exchange, the MCD committed an illegality in appointing several candidates, who did not even possess the minimum eligibility experience of five years, mandated by the rules, and in the notifications. These, it is averred, constituted fatal infirmities in the recruitment process, which has to be quashed on the ground of violation of Articles 14 and 16 of the Constitution of India.

5. The Minutes of Selection Board Meeting held on 10,17 and 19 April 1989 annexed Along with Addl. Affidavit of MCD shows that the Commissioner of MCD approved "all the candidates sponsored by EE in the year 1988 and March-April 1989 and departmental candidates and others who have applied within the prescribed period, should be considered to have a wider field of choice," (para 7) as per the approval of Commissioner the petitioners should have been considered. As on 29.7.1988 Petitioner No. 1 was below 30 years of age and Therefore eligible and the other petitioners who were fully qualified and eligible could not be denied consideration.

6. The petitioners have also relied upon the minutes of Selection Board Meeting held on 10,17 and 19 April 1989 annexed Along with Additional Affidavit of MCD. It shows that MCD requisitioned candidates from Employment Exchange on

23.3.1988, 5.5.1988, 20.8.1988 in terms of circular dt. 30.6.1988 and then on 6.2.1989 in terms of circular dt. 9.2.1989. However suitable candidates were not available. The Employment Exchange by letter No. 164 dated 7.3.1989 informed that they were not having candidates with requisite experience. Yet, instead of advertising in newspapers and giving wide publicity, giving opportunity to outside candidates for the post of Vaid- (a direct recruitment post-), MCD resorted to appointing persons with lesser experience i.e. Shri Saranjit Singh and Smt. Nishi Goel, who were ineligible, and also overaged candidates, at its whims and fancies clearly violating the Rules, thus rendering the selection arbitrary and illegal.

7. The MCD, in its counter affidavits, has stated that the two notifications/circulars, seeking applications from eligible candidates possessing the requisite qualifications and experience, issued on 30-6-1988 and 6-2-1989, had spelt out that the cut off date for receipt of the applications were 18th July 1988 and 15th March, 1989, respectively. It is alleged that Dr. Ramesh Chand Sharma's application was entertained, and he was allowed to participate in the recruitment process, but was found not suitable. As far as Dr. Gursharan Singh is concerned, the MCD avers that he was overaged, and could not Therefore claim to be aggrieved by the process. With regard to the rest of the petitioners, it is alleged that since none of them were departmental candidates, or were sponsored, their candidatures could not be considered, and the MCD cannot be blamed for that.

8. It is urged that the posts of Vaid, Hakim and Homeopathic doctor are Category "B" posts, which can be filled by the Commissioner, and no involvement of UPSC is required. The Commissioner MCD is the appointing authority. MCD does not deny that Dr. Pratibha Sharma and Dr. Raj Mann were invited to attend the recruitment process upon their applications being received. Dr. Mann was working with the Haryana Government.

9. The allegations of illegality, arbitrariness and violation of Fundamental Rights are denied. It is denied that Respondent No. 3 has been appointed although she has crossed the prescribed age. It is further denied that as a cover she was appointed as a temporary Compounder for four months since November, 1988 i.e. after the last date prescribed for receipt of application. It is further denied that consideration of her application or appointment as a Vaid by the answering respondent is illegal, arbitrary or in violation of Fundamental Rights of the petitioner. MCD submits that applications were first invited by the respondent through Circular dated 30.6.88 and a letter was written to the Employment Exchange on 5.5.88. But since sufficient names were not received, another circular dated 9.2.89 and letter to Employment Exchange dated 6.2.89 was written inviting applications for appointment as Vaid. The last date of receipt of applications was 15.3.89 and Respondent No. 3 had been appointed as a Compounder on compassionate grounds in accordance with the policy of the MCD before that date. It is denied that Respondent No. 3 had crossed the age prescribed in the Recruitment Regulations when she was appointed. MCD avers that she was eligible fulfilling qualifications as well as age as prescribed for

departmental candidates and she was selected on the basis of her performance. For the post of Vaid, she applied as a departmental candidate, although on compassionate basis and was considered as such by the Selection Board.

10. It is denied by MCD that no panel was prepared. At the time when interviews were held there were 8 vacancies and a panel of 16 including 8 vacancies which existed at that time was prepared. The petitioner (Dr. Gursharan Singh) had not been selected, and as such, he was not included in the panel. The post of Vaid is a "Selection" post and the selection has been made on the basis of the qualifications and performance in the interview. It is denied that the petitioners were the best qualified persons. It is denied that the appointments were malafide, or were otherwise not in accordance with the law.

11. The MCD filed an additional affidavit on 25-1-1991, pursuant to an order of court dated 22-10-1990, in WP 1164/1989. They enclose four charts, indicating details of persons called for interview, and who among them had applied directly/through employment exchange, their relative particulars, ages, experience, etc. The same are reproduced below, for easy reference, in relation to the selected candidates, i.e contesting private respondents, who were appointed:

TABLE

Respondents	Date	Total	Whether Direct,	(Selected candidates)	Registration
experience	Departmental	or through	Employment	Exchange	Pratibha Sharma
Respondent 3	15.3.1984	4 yrs	8 months	Departmental	

Raj Mann Respondent 4	22.5.1984	4 yrs	9 months	Direct	
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Chander Ketu Respondent 5	31.12.1984	4 yrs	3 months	Direct	
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Nishi Goel Respondent 6	14.9.1987	1yr	6 months	Direct	
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Saran Jit Singh Respondent 7	30.6.1986	2 yrs	8 months	Emp.Exchange	
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Anita Choudhary Respondent 8	3.3.1984	4yrs	8 months	Emp.Exchange	
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Pradeep Goel Respondent 9	11.7.1984	4 yrs	8 months	Direct	
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Rajni Mahajan Respondent 10	22.5.1984	4 yrs	9 months	Emp.Exchange	
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Bir Pal Singh Respondent 11	31.12.1985	3 yrs	2 months	Direct	Krishanlata Sharma
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Respondent 12	1.1.1987	2 yrs	2 months	Direct	
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12. The contesting private respondents too have filed their returns. They have denied that their appointments were illegal. It is alleged that upon becoming aware of the vacancy position, they filed the applications within time, and having regard to their exceptional merit, and suitability, the Commissioner made a specific order that they ought to be considered by the Selection Committee, particularly since the Employment Exchange could not sponsor the requisite

number of suitable candidates.

13. Ms. Rasmeet Charya and Shri Romesh Gautam, learned Counsel reiterated the contentions made in the petitions. It was also submitted that the MCD is taking contradictory statements in counter/ reply filed in the proceedings wherein it stated "Petitioners were neither departmental candidates nor sponsored by EE Therefore not considered" (Para 4,6, 10) while in the additional affidavit filed by the respondent MCD in August, 2006 it is admitted that "As per Recruitment Regulations the method of recruitment is by Direct Recruitment and applications were invited from the Departmental candidates as well as from EE, outside candidates who submitted their application within time were also considered". This, it is submitted, clearly shows malafides on part of the MCD; that no rules were followed and selection made amongst departmental candidates, direct applicants and through Employment Exchange but the petitioners were denied the right to be considered, though, as per Rules recruitment was permissible only through direct recruitment.

14. Counsel submitted that petitioner No. 1 (Dr. Gursharan Singh) was refused to be considered being overage born on 4.10.1958 while several candidates selected at No. 2,8,13,14 were above 30 years of age on the date of appointment; their date of birth was 1955, 1956 & 1957. Counsel submit that Minutes of Selection Board Meeting held on 10,17 and 19 April 1989 shows that the Commissioner of MCD approved "all the candidates sponsored by Employment Exchange in the year 1988 and March-April 1989 and departmental candidates and others who have applied within the prescribed period, should be considered to have a wider field of choice." As per the approval of Commissioner the petitioners should have been considered as on 29.7.1988; the said Petitioner was below 30 years of age; Therefore eligible and other petitioners who were fully qualified and eligible could not be denied consideration, being "outside" candidates.

15. Learned Counsel submit that the reason for not publishing advertisements, i.e. that non-availability certificate was not issued by the Employment Exchange, as required by Government instructions, seeks to hide the fact that Employment Exchange by letter No. 164 dt. 7.3.1989 informed that it did not have candidates with requisite experience. However, instead of issuing advertisement in newspapers and undertaking wide publicity giving opportunity to outside candidates for the post of Voids the MCD resorted to appointments of persons with lesser experience, as well as ineligible, overage candidates at its whims and fancies clearly violating the Rules and rendering the selection arbitrary and illegal to favor some vested interests.

16. It is submitted that keeping in view the above submissions the Court by its common order dated 6.3.2001 in C.M. No. 10621/2000 reserved 5 posts of Voids for the 5 petitioners in both the petitions till the final disposal of the writ petition. Till date the posts are lying vacant. This fact finds mention in the advertisement in Employment News dated 22-28 October 2005 issued by UPSC while finalizing

results of recruitment to post of Medical Officers (Ayurvedic) wherein it is stated:

(Recruitment to remaining 6 unreserved posts has been kept in abeyance till the final disposal of writ petitions CWP No. 670/2004 & CMP No. 3644/2004, CWP No. 2252/1989 & CMP No. 10621/2000 and CWP No. 1164/1989).

Counsel state that in another writ petition vide W.P(C) No. 670/2004 filed by Sh. Rajpal Parasher for the same post of Ayurvedic Vaid this Court reserved one post of Medical Officer (Ayurvedic) by its order dated 26.3.2004 in C.M. No. 3644/2004 which also finds mention in UPSC advertisement. Pursuant to the same the respondent MCD offered the post of Medical Officer Ayurvedic (Vaid) to Sh. Rajpal Parasher with immediate effect while giving continuity of service Along with notional seniority. Sh. Rajpal Parasher was also one of the candidates who had applied for the same selection which is subject matter of the present writ proceedings and his name finds mention on Page 109 of the writ petition. The petitioners in both the petitions are eligible and should be considered for appointment to the posts of Medical Officer Ayurvedic (Vaid).

17. Counsel contend that it is settled law, as laid down by the Supreme Court that if the selection process suffers from serious irregularities and lapses the entire selection stands vitiated and is to be held illegal. Reliance has been placed on the judgments in Suresh Kumar and Others Vs. State of Haryana and Others, , National Fertilizers Ltd. and Ors. v. Somvir Singh 2006 VI A.D (S.C.) 577 Raj Kumar and Others Vs. Shakti Raj and Others, . It is contended that even where persons hold posts for 5-15 years or more, selections/appointments have been cancelled since appointments made without following rules and proper selection process are a nullity and in fact back door entries.

18. The counsel relied on the decision of the Supreme Court in Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, , to say that public authorities or the State are under a duty to give wide publicity to all desirous of participating in the selection process, with the aim of enlarging the scope of recruitment, so that the best talent is attracted. The petitioners also rely on the judgment in Raj Kumar and Others Vs. Shakti Raj and Others, ; Suresh Kumar and Others Vs. State of Haryana and Others, National Fertilizers Ltd. and Ors. v. Somvir Singh 2006 VI A.D(S.C.) 577. The MCD gave a go bye to this requirement, and even to the rule of confining appointments from amongst those sponsored by the Employment Exchange. It acted with blatant favouritism and appointed those who had applied directly, without reference to any advertisement, or without being sponsored by the Employment Exchange. Likewise, the appointment of candidates who did not possess the prescribed five years eligibility qualification, and its refusal to consider the application of a candidate who had the necessary experience, and was within the age prescribed, as on date of application, were arbitrary and unreasonable actions, which vitiated appointment of the private contesting respondents.

19. It is lastly contended that this Court has powers under Article 226 to mould the relief as held in the case of M.A. Murthy Vs. State of Karnataka and Others, where the Supreme Court in such situation looking at the peculiar circumstances of the case did not set aside the appointments of respondents and by working out equities, in the interest of substantial justice adopted a different recourse by treating the petitioners as appointed with effect from the date of selection of the respondents for the purpose of fixing seniority and continuity of service but without financial benefits.

20. Ms. Amita Gupta, learned Counsel for MCD and M/s Shyam Babu, Vikram Nandrajog, Rajiv Aneja and Yogesh Sharma, learned Counsel appeared for the contesting private respondents. According to Ms. Gupta, MCD informed the selection board that the matter was placed before the competent authority i.e the Commissioner, who approved that all candidates sponsored by the Employment Exchange in the year 1988 and March-April, 1989 and departmental candidates and others, who had applied within the prescribed period, should be considered to have a wider field of choice. Accordingly, the Selection Board interviewed/considered 69 candidates, who appeared before it for the Unani Hakim and 34 candidates, who appeared for the post of Homoeopathic Doctor and after assessing their suitability for the post, a panel of 8 candidates for the post of Unani Hakim and a panel of 5 candidates for the post of Homoeopathy Doctors. Two Scheduled Caste candidates were available for the post of Vaid and no SC/ST candidate was available for the disciplines of Unani Hakim and Homoeopathic Doctor.

21. It was further submitted that since sufficient candidates with required experience were unavailable, candidates with lesser experience were considered; and Candidates at Sl. No. 5 and Sl. No. 7 of the panel for the post of Vaid, though they possessed less experience, were included in the panel, as their overall performance were found to be exceptionally good.

22. It was submitted that the non-advertisement of vacancies was not a fatal infirmity, that at any rate, the reasons given are bona fide, and have to be accepted. Counsel also contended that assuming though not admitting that some of the candidates were not entitled to be considered, sheer passage of time, eliminated the objection. Also, it would be highly inequitable to invalidate the appointments at this stage.

23. Counsel for the MCD contended that though five posts have been reserved, and kept vacant, the petitioners cannot claim a vested right, and their candidatures would have to be considered, having regard to the qualifications, and experience. No blanket direction can and ought to be issued, to appoint them.

24. There is no dispute in these proceedings that the posts in question, i.e Vaid/ Unani Hakim/ Homeopathic doctors, as per the relevant recruitment rules, are to be filled by direct recruitment. The MCD asserts that being a Category B post,

consultation of the UPSC is not necessary. The rules prescribe, inter alia, that the candidates should possess the prescribed qualifications, and also have five years experience (for the post of Voids). The maximum age prescribed is 30 years, with a five year relaxation for general, departmental candidates.

25. Before entering a discussion on the merits, it would be necessary to notice the Minutes of the Selection Board proceedings, relevant parts of which are extracted below:

(Extracts of Minutes of the Meeting of Selection Board held on 10th, 17th and 19th April, 1989 to select candidates for appointment to the posts of Vaid/Unani Hakim/Homoeopathic Doctors on regular basis in the pay-scale of Rs. 2000-3500

"XXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXXXXXX

5.The Board adopted the following criteria for evaluating the performance of the candidates and assessing their suitability for the posts:

i) Educational Qualification: Maximum Marks: 10

5 marks for possessing the minimum qualification and 1 mark each for subsequent qualifications, if any, subject to maximum of 10 marks.

ii) Experience: Maximum marks: 10

1 mark for every year of experience subject to

maximum of 10 marks.

1.Performance in the Interview: Maximum marks: 10

Total maximum Marks: 30.

6. The Selection Board was informed that initially applications were invited for all the three grades vide Circular No. 4(1)/CED(M)/86/12497-552 dated 30.6.88 and Employment Exchange was also requested vide letter dated 23.3.88, 5.5.88 and 20.8.88 to sponsor suitable number of candidates. However, as the applications/number of candidates sponsored by the Employment Exchange was less, the applications were again invited vide Circular No. F.2(56)/CED(M)/7/R/89 dated 9.2.1989 and Employment Exchange was also requested vide letter No. F.2(56)/CED(M)/89/4332 dated 6 February, 1989 to send more names. The Employment Exchange vide their letter No. 164 dated 7.3.1989 informed that they were not having candidates with requisite experience. They were, Therefore, requested vide our letter No. F.2(56)/CED(M)/89/7916 dated 8.3.89 to forward names of candidates with lesser experience, as the posts could not kept vacant in public interest.

7. The Board was also informed that the matter was placed before the competent authority i.e the Commissioner, who approved that all candidates sponsored by the Employment Exchange in the year 1988 and March-April, 1989 and departmental candidates and others, who have applied within the prescribed

period, should be considered to have a wider field of choice.

8. Accordingly, the Selection Board interviewed/considered 69 candidates, who appeared before it for the Unani Hakim and 34 candidates, who appeared for the post of Homoeopathic Doctor and after assessing their suitability for the post, a panel of 8 candidates for the post of Unani Hakim and a panel of 5 candidates for the post of Homoeopathi Doctor, as indicated in Annexure "A", Annexure "B" and Annexure "C" respectively in the order stated therein. Two SC candidates have been available for the post of Vaid and no SC/ST candidate was available for the disciplines of Unani Hakim and Homoeopathic Doctor.

9. As enough candidates with requisite experience were not available, candidates with lesser experience have also been considered and candidates at Sl. No. 5 and Sl. No. 7 of the panel for the post of Vaid, though possess less experience yet they have been taken on the panel, as their overall performance have been found exceptionally good.

26. The factual narrative thus reveals that the MCD issued two notifications, one in June 1988, and the other in February 1989, for filling up the posts. The notifications inviting applications from eligible candidates was not published in newspaper; other than those sponsored by the Employment Exchange were not aware of the vacancies. Some departmental candidates had applied. Besides them several other "direct" applicants approached the MCD. The Employment Exchange had in fact intimated that sufficient number of candidates were not available. The Commissioner MCD however approved the consideration of candidates with lesser experience (despite the requirement in the rules) and also stated that those who had otherwise applied "directly" without sponsorship by the Employment Exchange could be considered. This eventually led to the appointment of several applicants.

27. The chart produced along with the MCD's affidavit dated 25-1-1991 shows that five out of ten selected candidates who were appointed, had applied directly, without being sponsored by the Employment Exchange. Likewise, at least four of them had less than four years' experience, and could not have been even considered. Consideration of such candidates, who had less than the requisite experience, is contrary to Article 16 of the Constitution of India (See Indian Airlines and Others Vs. S. Gopalakrishnan, ; N. Suresh Nathan and another Vs. Union of India and others, ; Gurdial Singh and Another Vs. State of Punjab, and Anil Kumar Gupta and Others Vs. Municipal Corporation of Delhi and Others, .

28. The guarantee of equal opportunity in matters of public employment is not an empty one. It is not without any reason that the law insists that all candidates similarly circumstanced, in regard to experience, and qualifications, should be given the same chance to compete, so that the best among them is selected and appointed. Public employment is not largesse, which can be dispensed with on individual choice or discretion; every authority entrusted with the task of recruitment has to ensure that a fair chance is given to all, that can be possible,

only if all are made aware in a transparent and non-arbitrary manner. The Supreme Court had, in *Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others*, , commented as follows:

This Court in *Union of India v. N. Hargopal* noted the contention of counsel appearing for respondents therein that excluding the candidates who were not sponsored through medium of employment exchange and restricting the choice of selection to the candidates sponsored through the medium of employment exchange, would offend the equality clause of Articles 14 and 16 and held that the contention was attractive and it was not open to the Government to impose restriction on the field of choice. But in view of the fact that even the paper publication would not reach many a handicapped who would be unable to have access to the newspaper, it was held that the sponsorship through the medium of employment exchange would not violate Articles 14 and 16. On the other hand, it would advance the rights to the handicapped. In that view, this Court upheld the restriction imposed by the State and Central Governments to consider the cases of the candidates through medium of employment exchange, while holding that such a restriction was not intended to be applicable to the private employment as held in para 6 of the judgment.

5. Shri Ram Kumar, the learned Counsel for the State, contended that in view of the above decision, the direction issued by the Tribunal is not in accordance with law. On the other hand, S/Shri Shanti Swarup and L.R. Rao, the learned Counsel appearing for the respondents, contended that the restriction of the field of choice to the selected candidates sponsored through the medium of employment exchange prohibits the right to be considered for employment to a post under the State and many people cannot reach the employment exchange to get their names sponsored and the employment exchanges are not adopting fair means and procedure to send the names strictly according to seniority in their record. So, the better course would be to adopt both the mediums, viz., of employment exchange and publication in the newspaper as that would subserve the public purpose better.

6. Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In

addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates.

The law was again reiterated in *Raj Kumar and Others Vs. Shakti Raj and Others*, in the following terms:

the necessary requirement should be that they should necessarily not only notify but also call the names from employment exchange; in addition they should give wide publicity in the media inviting applications from qualified persons for selection. Instead, they have adopted the procedure under the 1955 Rules. They did not call the names from the employment exchange and conducted the examinations for them. After the selection of the candidates, names of selected candidates were called from the employment exchange. Obviously, the successful candidates in the written examinations were asked to approach the employment exchange of the circle concerned and, accordingly, names came to be sponsored. The procedure adopted is clearly illegal denying equal opportunity to many a candidate waiting in the register of the employment exchange concerned. Therefore, the Government hereafter should strictly follow the procedure by not only calling their names from the employment exchange, but also by publishing in the local and national newspapers and giving wide publicity in the media as well as getting the written examination and the interview conducted by the SSSB; marks should be awarded strictly according to the procedure.

29. Long ago, in *B.S. Minhas Vs. Indian Statistical Institute and Others*, the Supreme Court had emphasized about the need to give due publicity in the following manner:

Compliance with this bye-law also seems to be necessary in the name of fair-play. If the vacancy in the post of Director had been publicised as contemplated by bye-law 2, all the persons eligible for the post may have applied and in that case, the field of consideration would have been enlarged and the Selection Committee or the Council would have had a much larger field from which to choose the best available person and that would have removed all doubts of arbitrariness from the mind of those eligible for the post.

30. The recruitment process in this case suffered from several infirmities, i.e the selection was undertaken without due notification of vacancies either by way of advertisement in newspaper or otherwise as the appointments to post of Vaid was to be made only by way of direct recruitment. The action of the respondents violated Articles 14 & 16 of the Constitution of India as opportunity was denied to the petitioners and several others to apply for the post. Several instances were shown, as per the reply filed by MCD, that several candidates were selected,

despite their applying directly, without reference to Employment Exchange. Several petitioners were however denied consideration on the ground that they had applied directly and were not sponsored by Employment Exchange. Likewise several candidates with inadequate experience, etc. were selected and appointed to the posts of Vaid. The entire recruitment process was Therefore beset with incurable infirmities.

31. The above discussion however, does not end the dispute. The appointed candidates have been now working for the last 17 years; those who did not possess experience have gained it. Yet, at the same time, it would be a travesty of justice if the petitioners, who have battled all these years, and were kept away from the recruitment process for no fault of theirs, are denied any relief.

32. The Supreme Court, in some judgments, has indicated that the facts of each case would dictate the equities to be taken into consideration, and the issuance of appropriate orders. Thus, in *Buddhi Nath Chaudhary and Others Etc. Vs. Abahi Kumar and Others*, , and *Roshni Devi and Others Vs. State of Haryana and Others*, , the court did not annul or invalidate the select list, despite infirmities; instead, the appointments were left undisturbed, and suitable directions were issued. This approach was also approved in *Anil Kumar Gupta and Others Vs. Municipal Corporation of Delhi and Others*, . Therefore, I am of the opinion that even while taking care that the interests of the said candidates who have been functioning for these long years, is not affected, the petitioners should not be made to suffer. On a balance of the relevant considerations, Therefore, I am of the opinion that this is a fit case for appropriately directing the MCD to consider the petitioner's candidatures, with a view to selecting them, on application of the criteria evolved to select and appoint candidates pursuant to the notification dated 6-2-1989, as against five vacancies lying unfilled, pursuant to interim orders of this Court.

33. In the light of the foregoing discussion, the following directions are issued:

1)The MCD shall consider the candidature of the petitioners, as against the five vacancies which are lying unfilled in the cadre of Vaid, in accordance with the notification issued on 6-2-1989, and the criteria settled by the Selection Committee which recommended the impugned appointments. MCD shall consider granting weightage to the petitioners for the experience gained by them, during the intervening period;

2)The petitioners shall be called for interview, and also asked to produce their certificates and testimonials within six weeks from today;

3)The results of the process shall be made known to the petitioners within ten weeks from today, directly to them. Consequential orders shall be issued within four weeks thereafter.

4)In the event of selections, the petitioners shall be shown at the end of the selection list, and their appointments shall relate back to the last date of

appointment of the selected candidate in the panel prepared in 1989. The MCD shall issue/grant benefit of notional pay fixation, without arrears of pay, to the petitioners.

5)The appointments of the selected candidates are left undisturbed.

34. The petitions are Therefore entitled to succeed to the extent indicated. Rule made absolute in the above terms. No costs.