

(2013) 11 AHC CK 0187

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 47309, 25876, 31766, 23497, 27977, 34923, 35293, 35294, 34316, 23499, 36384, 47714, 48185, 51780, 51714, 53395, 56111, 62180, 36731, 39976, 41395, 41684, 42774, 47139, 55759 and 57010 of 2013

Girdhari Lal Swarnkar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Citation : (2014) 1 ADJ 368 : (2014) 102 ALR 451 : (2014) 2 AWC 1214 : (2014) 2 ESC 664 : (2014) 1 UPLBEC 657

Hon'ble Judges : Arun Tandon, J;Anjani Kumar Mishra, J

Bench : Division Bench

Advocate : S.K. Mishra and D.P. Shukla, for the Appellant;

Final Decision : Allowed

Judgement

1. By the Court.--We have heard Sri Mool Behari Saxena, learned counsel, on behalf of the petitioners in the aforesaid bunch of writ petitions, and Sri Kamrul Hasan, Chief Standing Counsel and Mrs. Subhash Rathi, Additional Chief Standing Counsel on behalf of the State-respondents. This bunch of the writ petitions have been filed either by the various chairman"s of the Nagar Panchayats Nagar Palika Parishad, or by its members.

2. The basic grievance in all these writ petitions is with regard to the orders issued by the State Government directing the District Magistrate to authorize officers working under him in other departments to look after the office of the Executive Officer of Nagar Panchayats, Executive Officer of Nagar Palika Parishads, as the case may be. The petitions also question the consequential orders issued by the concerned District Magistrate.

3. On behalf of the petitioners, it is vehemently contended before us that the Government Order dated 4.11.2012, directing the District Magistrate to authorize

officers of the other departments to look after the duties and responsibilities of the office of Executive Officer, of Nagar Panchayats/Nagar Palika Parishads is patently illegal and contrary to the provisions of the U.P. Palika Centralised Service Rules, 1966, (herein after referred to as the Rules, 1966). It has the effect of jeopardising the entire functioning off the Nagar Panchayats and the Palika Parishads. In fact, the Rules, 1966, contemplate appointments on substantive basis/temporary basis or by way of deputation. In a given set of facts, the State Government has further been empowered to make officiating/temporary appointments, but there is no power with the State to direct District Magistrate to authorize his subordinate officers to discharge the duties and responsibilities of Executive Officers. The orders impugned are in breach of the statutory Rules.

4. It is pointed out that under the U.P. Municipalities Act, 1916, the Executive Officers are required to perform statutory duties. The posts of Executive Officer under the Municipalities Act has to be filled in accordance with the Rules, 1966, including adhoc/temporary appointment. These Rules do not authorise the State Government to issue orders for giving dual charge or of authorizing officers of other departments, who are not members of the U.P. Palika Centralised Services to act as Executive Officer of the Nagar Palika Parishads/Nagar Panchayats. It is also stated before this Court that the State Government has not made appointments on substantive basis under the 1966 Rules for decades together. A situation has been created whereunder as against the sanctioned cadre strength of 423, only 186 persons appointed on the substantive basis are working as Executive Officer of Nagar Panchayats. It is stated that there is an acute shortage of officers in the cadre of Executive Officers in the State of U.P.

5. These writ petitions highlight that the State Government has been issuing orders from time to time for giving charge of the office of Executive Officer to persons who are not members of the Centralised Services.

6. Having regard to the seriousness of the allegations made in the present writ petitions, this Court vide order dated 2.11.2013 called upon the State Government to explain as to why appointments by way of promotion/direct recruitment are not being made on the posts of Executive Officer within the centralised services cadre on substantive basis. The Court also required the State to explain as to what steps have been taken to fill the vacancies by direct recruitment, as well as by promotion, as per the Rules, 1966.

7. An affidavit has been filed by the Principal Secretary, Urban Development, who is present in the Court, today. On the basis of the record, which is available, it is stated by the Chief Standing Counsel and the Additional Chief Standing Counsel that the cadre strength of the Executive Officer Nagar Panchayats is 423, as against this cadre strength, as on date only 186 persons are working after being appointed on substantive basis. It is stated that in the exercise of powers u/s 69B of the U.P. Municipalities Act, 1916, the State Government has framed U.P. Palika Centralised Service Rules, 1966, and the post of Executive Officer of Nagar

Panchayat is included in Schedule III to the Rules, 1966. In terms of Rule 6 of the aforesaid Rules, 50 percent of these posts are required to be filled in by promotion and 50 percent by direct recruitment.

8. The procedure for direct recruitment is provided for under Rule 19 while the procedure for promotion is provided for under Rule 20 of the said Rules. Direct recruitment has to be made on the recommendation of the U.P. Public Service Commission, Allahabad (UPPSC), while promotion on the post of Executive Officer, Nagar Panchayat, is to be made from among the members of the Centralised Services working in the next lower cadre.

9. According to the affidavit of the Principal Secretary, there is no cadre inferior to the cadre of Executive Officer within the centralised services so as to be the feeding cadre for the promotion to the post of Executive Officer. Therefore, no promotions could be lawfully made. The Court has been informed that on 9.7.1997, 34 officers working in various Nagar Panchayats were granted promotions under Rule 20, but, subsequently, the State Government, realised that these promotions were illegal as the persons who were given promotions were not members of the Centralised Services and, therefore, not within the zone of consideration, as per Rule 20. These promotions/appointments were accordingly cancelled by the State Government vide order dated 27.4.2006.

10. The aforesaid order of cancellation has been challenged by means of Civil Misc. Writ Petition Nos. 50291 of 2006, 51499 of 2006 and 51884 of 2006. In all these writ petitions, interim orders have been passed by this Court and the petitions are pending.

11. It is also stated that an exercise for direct recruitment was undertaken by the UPPSC in the year 2007. The result of the said selections is ready, but, in between Civil Misc. Writ Petition No. 65848 of 2010 was filed before this Court, which has been disposed of vide order dated 25.10.2013, with a direction upon the State to either permit provisionally all such candidates to appear in recruitment/selection in question who were eligible on 1st July of the year(s), in which recruitment did not take place, subject to final decision to be taken by competent authority under Rules 1992, or to defer recruitment pursuant to the advertisements 2008 and 2013, till the aforesaid decision is taken and thereafter to abide by such decision.

12. Because of the aforesaid directions, the Under-Secretary of the UPPSC had written a letter to the State Government and the Director, Local Bodies, on 26.11.2013, informing that the decision of the State Government in the matter is still awaited, and further that a SLP has been filed against the orders of the High Court which is likely to be come up for consideration before the Hon"ble Supreme Court in the last week of November, 2013.

13. On behalf of the State, reference has also been made to the letter of the Government dated 4.7.2013, addressed to the Director of the Local Bodies, wherein restructuring of the posts of Executive Officer has been recommended

with a direction that the appointment in the said cadre be made by direct recruitment only. It is stated that necessary amendment in the Rules is still awaited.

14. In the said factual background, it is stated that as on date neither it is possible for the State to make appointments by way of promotion or to make appointments by direct recruitment on substantive basis and, therefore, the State has no other option but to resort to the arrangement, as has been directed under GO/letter dated 11th April, 2013.

15. Having heard the learned counsel for the parties and examined the record of the present writ petitions, as also the affidavit filed by the Principal Secretary, we have no hesitation to record that the State Government has been more than lethargic in the matter of substantive appointments on the posts of Executive Officer within the cadre of U.P. Palika Centralised Services Rules, 1966.

16. The Rules, 1966, provided for 50 percent posts of the Executive Officer of Nagar Panchayats to be filled by direct recruitment and 50 percent to be filled by way of promotion. Rule 20, lays down the criteria for promotion, Officers working in the next lower centralised services posts are to be considered for such promotion. Despite repeated query by this Court, neither the Chief Standing Counsel nor the Additional Chief Standing Counsel nor the Principal Secretary, Urban Development, could point out as to what would be the feeding cadre within the meaning Rule 20 for promotion on the posts of Executive Officer of Nagar Panchayats.

17. This position was known to the State for last 46 years, that is, from the date the Rules, 1966, were enforced. Despite there being power with the State Government to modify/amend the Rules or to relax the rule causing undue hardship in a given set of facts, (reference Rule 41 of Rules, 1966) absolutely no effort has been made to improve the situation and to ensure that promotions are made on substantive basis against the posts within 50 percent of quota for promotion? It is only when this Court insisted as to why appointments are not being made by promotion, that all kinds of excuses, including the legal impediments, have been pleaded.

18. Similar is the situation with regard to appointment by direct recruitment as provided for under Rule 19 of the Rules. We have been informed that the last direct recruitment on the posts of Executive Officer was made sometime in the year 2006, when hardly 46 persons were appointed, though the number of vacancies was much large.

19. The office of the Executive Officer of Nagar Panchayat/Nagar Palika Parishad is a statutory office under the Municipalities Act. Large number of statutory responsibilities and duties are required to be performed by the Executive Officer including financial transactions.

20. Even accepting for a moment that there are some legal impediments in the

matter of appointment by promotion and direct recruitment in accordance with the Rule 19 and Rule 20 of the Rules of 1966 against the substantive vacancies, yet nothing has been done to resort to the power under the Rules to provide for appointment by deputation (Reference Rule 6) for meeting such a situation.

21. We may reproduce to Rule 6 of the U.P. Palika (Centralised) Services Rules, 1966, in this regard, which reads as follows:

6. Source of recruitment, absorption and determination of service of existing officers and servants.--(1) Subject to the provisions of sub-rule (2)-

(i) the posts mentioned in Schedule I shall be filled in by promotion in the manner laid down in Rule 20:

(ii) the posts mentioned in Schedule II shall be filled in by direct recruitment in the manner laid down in Part V of these Rules;

(iii) the posts mentioned in Schedule III shall be filled in equally from two sources and in the manner mentioned above, so, however, that the odd post, if any, shall be filled in by promotion:

Provided that if suitable candidates are not available in the number required under this sub-rule of recruitment by promotion or by direct recruitment, as the case may be, the deficiency may be made good from the other of the two sources or a temporary appointment may be made by deputation from amongst the officers serving under Government...

[Emphasis provided]

22. The State has failed to act as per the Rules 1966 and has not made substantive appointments nor on deputation for decades together against available vacancies within the cadre strength.

23. We further find that under Rule 31 of the 1966 Rules a power has been conferred upon the State Government to make ad-hoc and/or officiating appointments. Although this Rule 31 overrides the provisions of Rule 21, it does not override the provisions of Rule 6, including the proviso thereto.

24. State Government has also not exercised its power under Rule 31 and has rather adopted a novel method of giving charge of the office of the Executive Officer, Nagar Panchayat, by asking the District Magistrate to authorize employees working under him to look after the work of Executive Officers of Nagar Panchayat with the condition that such charge be not given to employees of Nagar Palika Parishad/Nagar Panchayats.

25. The 1966 Rules contemplate appointment by way of deputation in case requisite number of officials appointed on substantive basis are not available within the cadre, or, appointments on adhoc/officiating basis under Rule 31. The 1966 Rules do not contemplate any officer of other department being asked to look after the work of Executive Officer alongwith his duties of the original post

held by him, and, that too, under the order of the District Magistrate.

26. It is also worthwhile to refer to Rule 40(2) of the 1966 Rules which provides that the State Government can act on its own only in respect of the matters which are not covered by the Rules.

27. As has already been noticed above all, the exigencies, which can arise due to number of officers, being not available within the centralised cadre, is taken care of under Rule 6(1), proviso. In any case, under Rule 31, wherein temporary/ad-hoc appointments can be made. No Government Order can be issued, authorising the District Magistrate to assign the duties and responsibilities of the Executive Officer to the persons working under him. The Government Order dated 11.4.2013 is in breach of the 1966 Rules and totally uncalled for. We record that Government Order dated 11.4.2013 is in breach of the statutory provisions and has the effect of belittling the local self-governance, as is contemplated under the Constitutional Amendment Act of the year 1994.

28. The U.P. Palika (Centralized) Service Rules, 1966, do not contemplate any delegation of powers by the State Government in the matter of appointment upon the District Magistrate or any other authority. Therefore, the Government Order impugned also suffers from the vice of excessive delegation.

29. We, therefore, quash the GO/letter of the State Government, dated 11th April, 2013, as a result whereof all consequential orders issued by the District Magistrates authorising officers subordinate to them to discharge the functions and responsibilities of Executive Officer of the Nagar Panchayats/Nagar Palika Parishads stand nullified and are quashed.

30. We further issue following directions:

The State Government may-

(a) resort to the provisions of Rule 6, proviso, of the 1966 Rules for making appointments on deputation on the posts of Executive Officer, Nagar Panchayats/Nagar Palika Parishads, throughout the State of Uttar Pradesh, wherever required:

or

make adhoc-officiating appointments on the posts of EO, if required, in accordance with Rule 31 of the 1966 Rules;

(b) take a decision in respect of the advertisements made in the years 2008 and 2013 in the light of the directions issued in Civil Misc. Writ Petition No. 65848 of 2010, vide order dated 25.10.2013, within 4 weeks from the date a certified copy of this order is filed before the Secretary concerned; and

(c) initiate the process of direct recruitment against available vacancies within 4 weeks of receipt of a certified copy of this order against the available vacancies within the cadre strength, and, if required, make necessary amendment(s) in the

1966 Rules, so as to ensure that the process of recruitment is not delayed any further.

All the aforesaid writ petitions are allowed.