

(2001) 08 DEL CK 0076

In the Delhi High Court

Case No : Civil Writ Petition No. 4004/98

Kashinath Prasad and Others

APPELLANT

Vs

Housing Urban Development Corporation and Others

RESPONDENT

Date of Decision : 17-08-2001

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16

Citation : (2001) 08 DEL CK 0076

Hon'ble Judges : Sanjay Kishan Kaul, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. S. Ravinder Bhat, Mr. Naveen Nath and Mr. Lalit Mohini Bhat, for the Appellant; Mr. Rajinder Dhawan, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The Petitioners who were employed in the Housing and Urban Development Corporation (HUDCO) respondent no. 1, in class IV position filed this petition seeking quashing of the selection proceedings held on 31st July, 1998 in respect of the post of EDP Assistant Grade-III as being violative of Article 14 and 16 of the Constitution of India and for a writ a mandamus to consider them for promotion to the said post.

2. After show cause notice was issued in the petition, counter affidavit was filed on behalf of the respondent. In the counter affidavit, inter alia, averment was made that none of the petitioners were graduates or holding any certificate in Data Entry Operations which was the qualification required for appointment to the post of EDP Assistant Grade-III.

3. The aforesaid fact was taken note of by the learned Single Judge in his order dated 16th July, 2001. It was further recorded in the order that the learned counsel for the petitioner in view of the averments made in the petition prayed that the same be treated as a public interest petition as the respondent authority had not conformed to a transparent method of recruitment. The reason in

support thereof as stated by learned counsel for the petitioner was that the appointed candidates had not come through the employment exchange and there had been no public advertisement for the post. It was alleged that this was done only to accommodate kiths and kin of senior employees of the respondent. In view of this contention the petition was placed before us for hearing as a public interest petition.

4. Learned counsel for the petitioner has contended that there has been no transparency in the procedure followed by the respondent authority, which according to the petitioner is an authority within the meaning of Article 12 of the Constitution of India. Mr. Ravindra Bhatt, learned counsel for the petitioner contended that even though the petitioners were not qualified to be appointed, the matter required to be investigated by the court, in view of the manner of recruitment by respondent no. 1. Learned counsel for the petitioner contended that the complete procedure followed by the Respondent was a sham and interviews were held within a period of one hour. This aspect was disputed by Mr. Dhawan, learned counsel for the respondent who draw our attention to para 7 of the counter affidavit wherein it is stated that 47 persons including the candidates working in HUDCO appeared for the written test. Thereafter interview started at 3.00 P.M. The allegation of relationship between the persons recruited and senior officials of the respondent has also been denied.

5. Mr. Bhatt, learned counsel for the petitioner referred to the rejoinder filed on behalf of the petitioner where details of alleged nepotism and favoritism have been given by the petitioners. A perusal of the same shows that there is no direct relationship and certainly it could not be contended that a person who is even remotely related to any one in the respondent organisation has no right to be considered for appointment. However, a specific reference was made to two such illustrations. This first is of Sundip Gupta, who is stated to be the son of sister-in-law of Sh. P K Aggarwal, Deputy Chief(Finance). Mr. P K Aggarwal was part of the Selection committee. The second illustration is of Dolly Sharma, show is stated to have been considered on compassionate grounds and was the daughter of late Sh. B N Thapliyal. Sh. Thapliyal had retired from the service of respondent no. 1 and had subsequently died.

6. Learned counsel for the respondent however, submitted that the selection process should not be interfered with on the basis of the aforesaid allegations. Mr. Dhawan contended that the persons called for interview and appointed were meritorious candidates and were ad-hoc employees of respondent no. 1 authority. In the petition there being no challenge to the ad-hoc employment of these recruited persons for the previous period, Therefore, it was urged that no relief could be claimed by the petitioner. Learned counsel for the respondent urged that most of the candidates were in fact over qualified but higher qualification could not be a disadvantage to the candidates and for that proposition he placed reliance on the decision of Supreme Court in referred to the judgment of Mohd. Riazul Usman Gani and Others Vs. District and Sessions

Judge, Nagpur and Others, . Learned counsel for the respondent further contended that even though the Supreme Court came to the conclusion that the appellants in that case had been wrongly denied their right for being considered for the post of Peon, since the selection process had already been completed and candidates from select list were being posted, the Supreme Court did not disturb the appointment of the candidates already selected. The position was stated to be similar in the present case. Learned counsel for the respondent also referred to the judgment of the Supreme Court in Dr. (Mrs.) Meera Massey, Dr. Abha Malhotra and Dr. S.C. Bhadwal and Others Vs. Dr. S.R. Mehrotra and Others, to advance the same contention that once the appointees are possessed with requisite qualification, the appointments including the appointment of one whose selection by the Committee was doubtful was left undisturbed with the further observation that the same should not be treated as a precedent. Mr. Dhawan, learned counsel for the respondent also referred to the judgment in Santosh Gupta Vs. State Bank of Patiala, to contend that since the persons recruited were working as ad-hoc employees, their termination would have given rise to proceedings under the Industrial Disputes Act, as it would amount to retrenchment.

7. We have considered the submissions advanced by the learned counsel for the petitioner and the respondent. A perusal of the qualifications of the persons recruited does not show that there is lack of qualifications insofar as these candidates are concerned. It is also an undisputed position that none of the petitioners met with the requirement of the minimum educational qualification. The basic procedure for recruitment of the other persons to the posts has been followed by the respondent. Most of these persons had been working with respondent no. 1 organisation of a number of years. However, one aspect which needs to be considered is the grievance made in respect of the two candidates recruited. In so far as the candidate Ms. Dolly Sharma is concerned, the only issue raised was whether the benefit of compassionate appointment should have been granted to a child of an earlier employee, who had already retired. Respondent no. 1 authority has granted this and we are not inclined to interfere with the same. However, insofar as the candidate Mr. Sundip Gupta is concerned, the allegation is of relationship with a member of the selection committee stated to be son of his sister-in-law.

8. We are constrained to comment on the aforesaid though we are not inclined to set aside the selection of the candidates, keeping in mind the submissions of respondent and the judgments of the Supreme Court cited at bar. The fact remains that something did happen which was not desirable. The selection process should be transparent and should leave no doubt in the minds of the candidates who are left out. Even though the candidate in question has one of the highest level of qualifications it would have been appropriate for the member of the selection committee to recede himself, in view of the relationship, even though the candidate was not a direct relation of the member of the selection committee. It is thus advisable that for future the selection process should be

made more transparent and the constitution of the selection committee should be such as to inspire a greater level of confidence inasmuch as no person who is even indirectly related to the candidates to be considered should form a part of the selection committee.

9. In making the aforesaid observations and not proceeding any further we have also taken into consideration the fact that the petitioners themselves are not qualified for the post, the petitioners never challenged the ad-hoc appointment of the persons now recruited, who had worked for a number of years on an ad-hoc basis and lastly the fact that really speaking the present petition was never filed as a public interest petition nor were the ingredients of a public interest petition pleaded or agitated. It is only when the petitioners found that they were not entitled to any relief, insofar as their seeking appointment with respondent no. 1 to the post in question was concerned that they requested to treat it as a public interest position.

10. The petition is dismissed with the aforesaid observations. All interim orders stand vacated. The parties are left to bear their own costs.