

(2005) 09 AHC CK 0095

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3585 of 2002

Kumari Garima Singh and Others

APPELLANT

Vs

The Executive Officer, Nagar Palika Parishad, Nagar Palika Parishad

RESPONDENT

Date of Decision : 20-09-2005

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 34(1), 73, 73(1), 73(2), 74

Citation : (2005) 6 AWC 5923

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Ashok Khare, Anil Kumar Pandey, Santosh Kumar and Avinash Kumar Verma, for the Appellant; Vashishta Tiwari and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—In writ petitions 3300 of 2001, 4469 of 2001, 4474 of 2001, and 4475 of 2001 petitioners have prayed for quashing orders dated 4.12.2000 passed by Chairman, Nagar Palika Parishad, Deoria restraining petitioners from working in Nagar Palika Parishad Deoria and signing the attendance register. They have prayed for directions to permit them to work as teachers in Shishu Mandir Montesary Vidyalaya Nagar Palika Parishad, Deoria (Writ Petition No. 3300 of 2001); Drivers (Writ Petition No. 4469 of 2001); Beldar, (Writ Petition No. 4474 of 2001); Mali, Malaria Karamchari and Safai Nayak (Writ Petition No. 4475 of 2001).

2.The order dated 4.12.2001 was passed, as the Chairman has raised a doubt over the validity of their appointments made by outgoing Chairman, Nagar Palika Parishad. It is contended in writ petition that the successor in office of the Chairman had initiated an enquiry and that pending the enquiry the petitioners could not be stopped from functioning. The Court while issuing the interim orders in all the writ petitions, staying the operation of the order dated 4.12.2000, left it open to the Nagar Palika Parishad Deoria, to conclude the enquiry and to take

action in accordance with the law. In case any adverse action was to be taken, it was made open to the petitioners to take such legal proceedings by means of filing of appeal etc. as was permissible in law. The petitioners were also directed to cooperate in the enquiry.

3. The enquiry with regard to the appointment was entrusted to a Five-Member Committee headed by Smt. Neera Singh, Member Nagar Palika Parishad, Deoria. The other members of the Committee included Dr. Anand Kishor Gupta, Engineer Water Works-, Sri J.P. Tiwari, Sanitary Inspector; and Sri Rajesh Misra and Sri Ravi Shanker Srivastava both members of the Nagar Palika Parishad, Deoria. The Committee submitted its report dated 4.7.2001 with the finding that the appointments of all the 21 employees of the Parishad by the outgoing Chairman Dr. Shiv Hari Singh, were illegal and irregular. The proceedings of appointments were initiated without seeking permission of the District Magistrate and issuing any advertisement. There is no record of their appointments available in the Nagar Palika Parishad. They had never worked in the office of Nagar Palika Parishad. The Officiating Executive Officer, who is the appointing authority u/s 74 of U.P. Municipalities Act 1916 (in short the Act) had no role in these appointments and that the petitioners had given inconsistent statements with regard to their selections. The District Magistrate was not even informed with the proceedings, and that five non-centralise employees of the Parishad had misused their positions and taken financial benefits in such appointments.

4. In writ petition No. 3585 of 2002, these 21 appointees have challenged the orders by which after the enquiry the services of all the petitioners, were terminated by common order dated 17.7.2001.

5. Sri Ashok Khare, Senior Advocate appearing for the petitioners submit that appointments were made in accordance with the provisions of Section 73, 74, 77 of the Act. An advertisement was published in daily news paper "Akash Marg" and "Seema Raksha", on 25.7.2000 inviting applications for vacant posts of Drivers, Tax Collector, Assistant Teachers, Safai Nayak, Peon, Jamadar, Health and Malaria Gang, Mali, Gang Beldar. All the petitioners applied and were issued admits cards for appearing in the interviews on 5.9.2000, and after selections, appointments letter were issued to them on 30.9.2000. Petitioners 1 to 3 were appointed as Assistant Teachers in Montessori Schools run by the Parishad, petitioner 4 was appointed as Driver, petitioners 5 & 6, Gang Beldar, petitioners 7 and 8 as Peons and petitioners 9 to 11 as Malies. The petitioners 12 was appointed as Chaukidar, petitioners 14 to 18 as Gang Beldars and petitioners 19 to 21 as Safai Nayak. The approval for their pay was granted on 25.11.2000. Subsequently the elections of Nagar Palika Parishad were declared and the new Chairman namely, Shri Ramayan Rao was elected as Chairman. Immediately after taking oath he directed the Heads of Department on 4.12.2000 to stop the petitioners from functioning.

6. It is submitted that show cause notices were issued to the petitioners to appear before the enquiry committee. The notice to that effect was published in

"Rashtriya Sahara" dated 11.2.2001. The petitioners appeared before the enquiry committee on 19.2.2001 and their statements were recorded. The petitioners, however, have not been supplied with copies of their statements. They were not allowed to cross examine Sri V. Narain Yadav, Manoj Kumar, Kamleshwar, Suresh Rai and Purshottam Singh and were not allowed to look into the records. Fresh show cause notices issued on 17.7.2001 and the petitioners were directed to appear before the Executive Officer on 24.7.2001. They appeared and filed their replies. The copy of the enquiry report was not provided to the petitioners. Sri Ashok Khare submits that the denial to give copy of the report amounts to denial of the principle of natural justice. The Board had already taken decisions in its general body meeting on 16.7.2001, without giving any opportunity to the petitioners to put-forth their version before the Committee. The petitioners' services were terminated without application of mind by non-speaking, cryptic orders. He further submits that the decision of the Divisional Commissioner relied upon in the report was not concerned with the appointments. The powers given to the Divisional Commissioner u/s 34 (1) of the Act, are in respect to limited category of cases. The enquiry committee did not follow any procedure serving principles of natural justice and that the orders are grossly arbitrary and are liable to be set aside. Sri Vashishta Tiwari, learned counsel appearing for the Nagar Palika Parishad submits that the outgoing Chairman tried to fill up the vacancies just before his term was going to expire. He did not adopt any procedure provided u/s 73 (2) of Municipalities Act 1916. These appointments could only be made by the Executive Officer and not by the Chairman. A Clerk was allowed to officiate as Executive Officer, which is a Class I Gazetted post in the Nagar Palika Parishad, Deoria. The District Employment Officer verified that the petitioners were never enrolled in his office and that the news paper namely "Akash Marg" and "Seema Raksha" have no circulation at all. The Chairman did not follow any method of selection. The entire proceedings were held at the residence of outgoing Chairman. In their submissions before the Committee petitioners admitted that they cannot recognize the members of the Selection Committee. In fact no selection was held and no records of selections are available in the office of Nagar Palika Parishad.

7. Sri Ashok Khare submits that the records establish that a bundle of papers proceedings were found abandoned, of which FIR was lodged. The news papers are recognised by the Information and Public Relations Department of the Government of Uttar Pradesh.

8. I have carefully gone through the record and findings of the enquiry committee. Section 74 and 75 of the Act, provides for appointment and dismissal of permanent superior staff and permanent inferior staff. In case of appointments on posts in the non-centralised services, carrying scale of pay equal to higher than lower scales of pay admissible to the clerical staff the appointing authorities is the President of the Municipal Board. In other case the appointing authority to the service covering scale of pay lower than scale of pay referred in Section 74, is the Executive Officer. Section 73(1) provides for appointment of persons in

educational establishments of a municipality by such authority as may be specified by the State Government and different authorities specified for different classes of posts on the establishment. Sub-Section (2) of Section 73 of the Act provides that the State Government may make rules regulating the recruitments, punishment, appeals and other conditions of service of persons appointed to the educational institutions. All the appointments as such are required to be made under the Rules which may be made by the State Government.

9. The Nagar Palika Parishad, Deoria passed a resolution on 5.5.2000 amongst others, to fill up the vacancies of substantive posts. The members of the Parishad, however, made representations to the Commission of the Division on 25.11.2000 that the posts are proposed to be filled up without any resolution. The Commissioner, Gorakhpur Division, Gorakhpur by his order dated 21.6.2000 stayed the proceedings dated 5.5.2000. The appointments were not notified to the Employment Exchange and the news paper namely "Akash Marg" and "Seema Raksha" are unheard of. These have absolutely no circulation in Deoria. The registration of the news papers with the Information and Public Relations Department for the purposes of publishing State sponsored advertisement does not certify its circulation. It has been held by this Court that public employment can be offered only by making wide advertisement giving opportunity to all those who are eligible for such employment. The advertisements made in the news paper having no recorded circulation casts a doubt over the entire process of selections. A perusal of the photocopies of the news papers and their printing shows that these were published only for some specific purpose like in the present case.

10. The enquiry officer after recording statement of the petitioners found that inspite of the stay of the resolution by the Commissioner and the orders of the State Government restraining the local bodies for making any appointment, until the daily wages are regularized, the advertisements were issued in news paper having no circulation at all. No intimation was given to the District Magistrate and the Employment Exchange. The record of the selections were not available in the office of the Nagar Palika Parishad. There is nothing to show that any selection committee was constituted and the number of candidates who applied for interview. The select list and appointment letters were also not available. The Chairman of the Selection Committee namely Sri Vibhooti Narayan Yadav admitted that one of the selectee namely Sri Om Prakash Yadav is his son. Senior Nagar Swastha Adhikari Dr. R.C. Gupta, Sanitary Inspector Sri Tiwari and Sri Chhtridhan Prasad the other members admitted that they had never seen the appointees. The dispatch clerk Sri Purshottam Singh stated that 100 admits cards were issued whereas only 50 applications were received. The Principal of the Montessori schools stated that she has no knowledge of these appointments.

11. The Enquiry Committee found that according to the statement of the petitioners the written examination of 100 candidates was held on 5.9.2000. They were interviewed and the result was declared on the same day and that

they had immediately joined. Sri Purshottam Singh, Despatch Clerk stated that a new dispatch register was prepared for the purpose. A letter was issued from the office of Dr. Shivdhari Singh on 11.5.2000 for publication of advertisement. The reports were prepared and all the proceedings were alleged to have taken place from the residence of the Chairman. It clearly establishes that the appointments were not made by any following any method of open selections. Apart from this the enquiry committee found most of the petitioners are related to the employees of the Parishad. Sri Surendra Singh was personal driver of Dr. Shidhari Singh.

12. The record clearly establishes that the outgoing President of the Nagar Palika Parishad in order to fill up the substantive posts adopted a wholly illegal procedure, to make clandestine appointments. The prescribed procedure for selection was not carried out and the favourites were appointed in a great hurry. The appointees did not work in the Nagar Palika Parishad even for a day. The record of the selection proceedings was not available in the office of the Parishad. It was there(sic) planted to be recovered.

13. The enquiry committee also found that the petitioners had misbehaves and threatened the officers of the Nagar Palika Parishad during the process of the enquiry.

14. I find that the petitioners were given adequate opportunity to represent their case before the enquiry committee. They could not establish the validity of their appointments. Sri Vashishta Tiwari informs that the FIRs have been lodged against the employees who had taken part in the clandestine operation of the selections and recovery notice have also been issued against them. Let the law takes its own course.

15. All the writ petitions are consequently dismissed.