
(2006) 02 AHC CK 0129
In the Allahabad High Court
Case No : Writ Petition No.3477 of 2005 (S/S)

Lalit Kumar and Others

APPELLANT

Vs

King George'S Medical University, Lucknow and Others

RESPONDENT

Date of Decision : 13-02-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 02 AHC CK 0129

Hon'ble Judges : Rajiv Sharma, J

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Heard Sri Anupam Mehrotra for the petitioners. Sri I.B. Singh for respondent No.1, learned Standing Counsel for respondent No.2; Sri D.B. Singh and Sri Jyotinjay Verma appearing for respondents No.3 to 12.

2. By means of the Govt. Order dated 3.5.2003, 275 different categories of posts were created, out of which 10 posts are of Ambulance Driver. On 20.10.2004 and 22.10.2004, the aforesaid posts was published in the daily newspaper and in the said advertisement, it was specifically provided that the selection would be made on the basis of meritcuminterview in accordance with the provisions of Uttar Pradesh Procedure for Direct Recruitment for Group "C" posts (Outside the purview of the Uttar Pradesh Public Service Commission) (First Amendment) Rules, 2003 (hereinafter referred as Rules, 2003). Pursuant to the aforesaid advertisement in the newspaper, the petitioners, who were working in King George's Medical University (hereinafter referred as "KGMU") as Ambulance Driver on contract basis through an agency for the last two and half years, applied for appointment on the post of Ambulance Driver as they were duly qualified and fulfilled all requisite conditions, as published vide aforesaid advertisement. It has been submitted that apart from the petitioners, 600 other candidates had applied for the aforesaid ten posts of Ambulance Driver. All the applicants including the petitioners were called for interview on 29th and 30th March 2005. The result of which was declared on 19.4.2005 but none of the

petitioners was selected instead Respondents No.3 to 12 were declared successful in the selection and they were offered appointments and in pursuance thereof, they have also joined as Ambulance Driver on 23.4.2005.

3. Being aggrieved by the aforesaid action, the petitioners have preferred the present writ petition inter alia on the ground.

(1) The impugned selection and appointments of respondents No.3 to 12 as Ambulance Driver is patently unlawful and unsustainable and is vitiated by arbitrariness favouritism.

(2) The provisions as envisaged in the Rules, 2003 has not been followed in so far as:

(a) No requisition to the Employment Exchange as required under Rule 5(1)(ii) of Rules, 2003 was called for.

(b) Nothing has been done as prescribed under Rule 5(1) except the advertisement.

(c) No requisite form was published as prescribed under Rule 5(2).

(d) Physical standard was prescribed under Rule 5(30(a) 2 but no valuation was done as required under Rule 4(a).

(e) The Committee has not been constituted as provided under Rule 6(v).

(f) There was also violation of provision of Rule 8 which provides the candidate to permit to inspect the records pertaining to selection process and marks awarded by Selection Committee in accordance with Rule 5.

(3) It is practically not possible for holding the interview of 600 persons within two days for ten posts, which has been published.

(4) There was no resolution of the Executive council for authorizing Prof. Rama Kant to act as Chairman of the Selection Committee as required under Section 25(1)(vii) of the KGMU Act.

In support of his submissions. Mr. Anupam Mehrotra has placed reliance on following cases

1. (1979) (3) SCC 165, Swaran Lata v. Union of India.

2. (1995) (3) SCC 486, Madan Lal v. State of J & K.

3. (1998) (3) SCC 694, Union of India v. N. Chandrashekharan.

4. (1995) Supp. (1) SCC 206, Satpal v. State of Haryana.

5. (1997) (9) SCC 527, Raj Kumar v. Shakti Raj.

6. (1981) (1) SCC 722, Ajay Hasia v. Khalid Mujib.

7. (1994) (4) SCC 165, Krishan Yadav v. State of Haryana.

8. (2001) (10) SCC 51, Maharashtra SRTC v. Rajendra Babu.
9. (1990) (3) SCC 157, NT Devin Katti v. Karnataka PSC.
10. (1990) (2) SCC 669, AP Public Service Commission v. B. Sarat Chandra.
11. (1990) (1) SCC 411, P. Mahendran v. State of Karnataka.

4. The counteraffidavit has been filed by respondent No.1 as well as on behalf of respondents No.3 to 12. In the counteraffidavit filed on behalf of respondent No.1, the averments made in the writ petition have been denied and it has been further stated that the KGMU invited applications for various posts including car drivers through newspapers. The Uttar Pradesh Procedure for Direct Recruitment for Group C Posts (Outside the purview of the Uttar Pradesh Public Service Commission) 2002 does not apply to those Group C posts, whose minimum academic qualification is lower than intermediate Examination, whereas the qualification for the post of car driver and ambulance driver is Class VIII passed. The petitioners also participated in the selection and at the time of the interview or thereafter, they did not raise any grievance nor they moved any complaint before the authorities of the KGMU, Lucknow and on being unsuccessful in the selection, the petitioners preferred the instant writ petition with ulterior motive. It has been further stated that in making the selection for the post of drivers, the provisions of the rules have been followed. The posts in question were created by the State through the Govt. Orders which in itself has sanctity of law. The candidates who applied for the post of ambulance driver or any other post procured the forms from the office of the Finance Officer, KGMU, Lucknow on payment of requisite fee. Thus the procedure is neither discriminatory nor it caused prejudice to any candidate including the petitioners on being unsuccessful in the selection. Sri A.K. Bhasin, who issued the experience certificate to the petitioners filed as Annexure 5 to the writ petition, is not competent authority to issue such certificate to any person. The selection was made in fair and transparent manner and the petitioners were not found suitable by the Selection Committee.

5. In the counteraffidavit filed on behalf of respondents No.3 to 12, almost the similar pleadings have been taken as averred in the counteraffidavit of respondent No.1 it has been stated that the petitioners have no right to challenge the selection held in pursuance of the advertisement issued. The opposite parties are having required qualification as well as required experience and they have been rightly selected by the Selection Committee.

6. During the course of hearing, learned counsel for KGMU has mentioned the procedure which has been adopted by the KGMU in the selection of respondents No.3 to 12 and as such this Court has asked the counsel for respondent No.1 to file an affidavit indicating the procedure which has been adopted. Accordingly, a supplementary counteraffidavit has been filed stating therein that vide U.P. Act No.8 of 2002 the KGMU was upgraded as Medical University w.e.f. 16.9.2002, which is now known as KG Medical University, Lucknow. Section 42(8) of KGMU

Act, 2003 provides that the First Statutes of the Medical University shall be made by the State Government by notification, and as long as the first Statutes are not so notified, the Statutes of Lucknow University as in force immediately before the appointed date, in so far as they are not so inconsistent with the provisions of the Act, subject to such adaptation and modification whether by way of repeal, amendment or addition as may be necessary or expedient as State Government may by notification provide, continue in force and any such adaptation or modification shall not be called in question. In the matter of selection on the posts in question the criteria and procedures have been followed which were being followed by the Lucknow University and KGMC in their earlier time.

7. An affidavit in reply to the supplementary affidavit of respondent No.1 has been filed by the petitioner stating therein that the averments to the effect that provisions of Act 2003 are not applicable to the ambulance driver is contrary to the law laid down by the Apex Court insofar as such a change in the Rule that has been advertised is not permissible. It has also been stated that the selection made only on the basis of interview is also not sustainable.

8. After hearing the rival submissions of the learned counsel for the parties and perusal of the records as well as the law relied upon by Sri Anupam Mehrotra, counsel for the petitioners, and Sri I.B. Singh and Sri Jyotinjay Verma, counsel for the opposite parties, I find that specific averments with regard to favouritism and nepotism are made in the writ petition. It has been mentioned that all the appointed persons are some way known to the doctors and members to the administrative side of the KGMU. For example, Sri Veer Bhan Singh (respondent No.3) was the personal car driver of Sri Mahendra Bhandari, V.C. KGMU, Sri Sudhir Kumar Shukla (respondent No.4) is brother of car driver of Prof. Rama Kant, Chief Superintendent of Hospital (CSH), KGMU. Sri Veer Singh (respondent No.5) was personal car driver of Prof. S.C. Tewari, Department of Psychiatry, KGMU & Proctor, KGMU; Sri Praveen Kumar Yadav (respondent No.8) is son of car driver of the Finance Officer, KGMU; Sri Goswami Arun Kumar Bharti (respondent No.9) is brother of official driver of Sri R.P. Goswami, Registrar, KGMU; Sri Madan Siddhartha (respondent No.11) was personal car driver of Prof. Sandeep Kumar, Department of Surgery, KGMU and Sri Vimlesh Chand (respondent No.12) was personal car driver of Dr. S.N. Shankhwar, Asstt. Prof., Urology, KGMU.

9. A counteraffidavit has been filed by Sri S.D. Maurya, Finance Officer of King George's Medical University, who is also looking after the work of Registrar of King George's Medical University, denying the said averments of the writ petition. It has been stated that Sri Veer Bhan Singh neither was nor has been personal driver of the Vice Chancellor King George's Medical University. Sri Sudheer Kumar Shukla is not related with prof. Ramakant; Sri Veer Singh was not personal car driver of Prof. S.C. Tiwari. Sri Praveen Kumar Yadav though engaged but he had to appear before the Ophthalmic Department, Department of Surgery, Department of Medicine and Radiology for medical examination and

his medical examination report does not show any sort of infirmity. Sri Goswami Arun Kumar Bharti is not brother of driver of Sri R.P. Goswami, the then Registrar. It has further been stated that Sri Goswami has been transferred on 7.5.2005, whereas the writ petition has been filed on 18.5.2005. It has further been stated that none of the doctors against whom the allegations of appointment have been made, are members of the Selection Committee. Thus there is no question of influencing the selection process.

10. A rejoinder to the said counteraffidavit has been filed and the averments with regard to favouritism and nepotism have been reiterated to be true and correct. It has further been stated that Sri Praveen Kumar Yadav does not have any experience as Ambulance Driver and but he is visually handicapped. He cannot differentiate between colours and cannot even correctly tell the numbers. After his selection and appointment as Ambulance Driver, Sri Praveen Kumar Yadav failed in the vision test of Eye Department of King George's Medical University and was declared visually handicapped. But the affidavit which has been filed by Sri S.D. Maurya, Finance Officer, is contrary to the record. On perusal of the averments of counteraffidavit and affidavit, it is not clear whether any appointment of opposite parties No.3 to 12 so made is out of favouritism and nepotism.

11. It is not disputed that in the advertisement published it has specifically been provided that the recruitment shall be made in accordance with the provisions of Rules 2003. The copy of the said Rules has been annexed as Annexure No.4A to the writ petition. On perusal of the advertisement as well as Rules, it is abundantly clear that none of the provisions of the Rules has been followed by the authorities in making appointment. Rule 3 of the aforesaid Rules provides for the minimum educational qualification.

12. Rule 5(1) lays down procedure for the direct recruitment.

13. Rule 5(1) (i) specifically provides for issuance of advertisement in daily news paper having wide circulation.

14. Rule 5(1)(ii) provides pasting of notice on the notice board of the office or by advertising through ration/television and other employment newspapers and;

15. Rule 5(1)(iii) deals with marks for academic qualification which is awarded to each candidate as enumerated in the aforesaid Rules.

Rule 6 of the aforesaid Rules deals with the constitution of the Committee.

Rule 7 deals with the requirement of fee which is to be deposited.

Rule 8 provides for inspection of the records by the candidates.

16. On perusal of the averments made in the supplementary as well as counteraffidavit it is abundantly clear that the selection has not been made in accordance with the provisions of Rules 2003 while making recruitment for the post of Ambulance Driver.

17. The Hon''ble Apex Court in Maharashtra SRTC v. Rajendra Babu, (2001) 10 SCC 51. N.T. Devin Katti v. Kamataka PSC, (1990) 3 SCC 157, AP Public Service Commission v. B.Sarat Chandra, (1990) 2 SCC 669 and P. Mahendran v. State of Karnataka, (1990) 1 SCC 411 has held that the criteria for selection cannot be changed after commencement of selection process (selection process commences on the date of advertisement and concludes with preparation of select list). Selection process must be completed in accordance with law as it stood at the time of commencement of selection process and the right of candidates is to be considered as per the rules existing at the time of applying for selection.

18. It is further not disputed that more than 600 persons have been interviewed on 29th and 30th March, 2005 by a single Committee. It is not practically possible to interview more than 600 persons in two days as it will take 2 to 3 minutes time on each candidate which is purely a technical post and in such a short duration, the personality of the candidate including of that technical quality cannot be adjudged. As per the provisions of Section 25(1) (vii) of King George's Medical University Act, there was no resolution of the Executive Council for authorizing Prof. Rama Kant to act as Chairman of the Selection Committee. As such the Selection Committee was not in accordance with the Rules.

19. In Raj Kumar v. Shakti Raj, reported in (1997) 9 SCC 527, the Hon''ble Apex Court has held that it is not practically possible to interview so many candidates and if interview held it will be a farce and mockery. Thus the interview was mere a farce and mockery and humanly impossible to interview more than six hundred candidates in two days. In the instant case, as per the Rule 5(4)(a) it specifically provides that a number of candidates to be called against the number of vacancies but in the instant case, more than six hundred candidates appeared and had been interviewed on the aforesaid two days. Admittedly, no marks have been awarded for academic qualification as required under Rule 5(1) (i) to (iii) of Rules 2003 but cent per cent marks have been reserved for interview.

20. The Hon''ble Apex Court in Ajay Hasia v. Khalid Mujib, reported in (1981) 1 SCC 722 has specifically held that the oral test should not be relied upon as an exclusive test, but it may be resorted to only as an additional or supplemental test. Allocation of more than 15% of the total marks for oral interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid. In the instant case, the selection is vitiated by favouritism and fraud. The law laid down by the Supreme Court for conducting fair selection as well as the rules adopted for impugned selection have been completely disregarded with impunity. The selection has been made only on the basis of interview, which fatally vitiates the selection with arbitrariness. Appointment and joining has been hastily granted to selected candidates without having regard for medical test and verification, which has led to unwholesome consequences such as appointment of respondent No.8 who is visually handicapped and Others who are not qualified for the post of Ambulance Drivers.

21. As regards the submission of Sri I.B. Singh that the unsuccessful candidate cannot challenge the selection, in support of his submission, he has placed reliance in a case *Om Prakash Shukla v. Akhilesh Kumar Shukla and Others*, reported in 1986 (Supp) Supreme Court Cases, 285. He says that the petitioners in the writ petition should not have been granted any relief insofar as they have appeared in the examination without protest. They filed the petition only after they had realized that they would not succeed in the examination. The facts of the cases relied by Sri I.B. Singh are not applicable in this case insofar as in the instant case, the selection has been challenged as the same was held in violation of conditions published and advertised. It has been specifically provided in the said advertisement that the recruitment shall be made in accordance with the provisions of Rules 2003.

22. In *Om Prakash Shukla's* case (supra) the relaxation of qualification has been challenged in the said case in the advertisement it has been specifically provided in the advertisement at the outset that the Commission shall have power to relax the qualification and any of the conditions. Subsequently after selection a grievance was raised against the conditions which has been relaxed. The grievance was rightly rejected, since the person aggrieved had participated in the selection knowing fully well since in the advertisement there is a condition vesting power with the Commission to relax qualification.

23. In case of *Madan Lal and Others v. State of J & K and Others*, reported in (1995) 3 Supreme Court Cases, 486, the selection was challenged by the candidates on the ground of arbitrariness in the preparation of merit on the basis of the marks awarded in the interview or defect in constitution of Selection Committee. Under the circumstances, the Apex Court has held that the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that this Court cannot sit as a Court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview nor can the petitioners successfully urge before the Court that they were given less marks though their performance was better.

24. In the instant case, as already stated herein above that the ground of challenge by unsuccessful candidates is to the effect that the selection is to be made in accordance with the provisions of Rules, 2003 but the same has not been adhered to while making the selection. As such the cases relied upon by Sri I.B. Singh have no relevancy in this case.

25. The Hon'ble Apex Court in *Swaran Lata v. Union of India*, *Madan Lal v. State of J & K* and *Union of India v. N. Chandrashekhara* has held that if relaxation or change is made in terms of the conditions, as stated in the advertisement, there is a duty cast to readvertise the post.

26. In the instant case, the rules under which the recruitment is to be made as

published in the advertisement have not been followed. Thus it is open for the unsuccessful candidates to challenge the selection.

27. In view of the aforesaid observations and discussions, the writ petition succeeds and is allowed. The selection process as well as the appointment orders issued on the basis of the recommendations by the Selection Committee are quashed.

28. It will be open for the opposite parties to make appointment either on ad hoc basis or for a fixed term till the new selection is made for the aforesaid posts of Ambulance Driver. The opposite parties are further directed to make fresh selection on the aforesaid posts of Ambulance Driver within a period of six months.

(Petition allowed)