
(2009) 06 AHC CK 0131
In the Allahabad High Court

Mulayam Singh and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 10-06-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 2 UPLBEC 1718

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Sharma, J.—These writ petitions involve common questions of fact and law, hence they are decided by a common order.

2. Heard Sri Ashok Khare, senior advocate , counsel for the petitioner and Sri Zafar Naiyyer, learned Addl. Advocate General assisted by learned Standing Counsel.

3. Through these petitions, the petitioners who were engaged as Safai Karmis in the Panchayat Raj Department, Firozabad have assailed various orders terminating their services. They have also challenged the directions contained in the government order dated 14.11.08 and similar government order directing the Divisional Commissioner to cancel all such appointments made on the post of Safai Karmis in the concerned district. The Divisional Commissioner has also issued further direction to the concerned District Magistrate, that is, District Magistrate (Firozabad) for ensuring compliance of the orders issued by the State Government for cancelling the appointments of the petitioners. The District Magistrate has been directed to initiate denovo recruitment process by constituting a Selection Board to make fresh recruitments on the post of Safai Karmis. It appears that action has been taken on a complaint made by a local M.L.A. and other political persons belonging to the Ruling Party. Being aggrieved by the action of the State Government and consequential orders issued by the

District Magistrate, the Chief Development Officer, District Panchayat Raj Officer etc., the present writ petitions have been filed.

4. The relevant facts of the case are as follows. On 1.3.2008, 108848 posts of Safai Karmis (Sweepers) were created in Panchayat Raj Department in the pay scale of Rs. 2550-3200 on temporary basis. These posts were created for carrying out the cleanliness operations in the rural areas. Vide order dated 6.6.08, the rules of Group "D" Employees Service Rules, 1985 as amended upto date were adopted for making appointments on the post of Safai Karmis. Directions were issued by the Director, Panchayat Raj Department, U.P. Lucknow to the District Panchayat Raj Officer to complete the recruitment process immediately and ensure compliance of the directions issued in this respect. In furtherance of these orders 828 posts of sweepers were advertised in the local newspapers having larger circulation in the area in district Firozabad. Advertisements were issued to appoint Safai Karmis in every village. The process of direct recruitment started. The Selection Committees were constituted. The petitioners submitted their applications in response to the advertisements and after preliminary scrutiny of the applications, they were called to appear in interview. Cycle riding tests were taken. They were interviewed in detail on different dates. After following a detailed process of selection, the petitioners were selected and appointed as Safai Karmis. Their names appeared on the select list which was also published and notified.

5. On 27.9.08 appointment letters were issued to the petitioners to assume charge as Safai Karmis within 15 days of the issuance of the appointment letter. Accordingly, they joined the posts in respective villages and they were allowed to assume charge of the post. Since October, 08, the petitioners have been discharging duties, functions and responsibilities of the post of Safai Karmis. It appears that some complaint was lodged by a local M.L.A. and other political persons belonging to Ruling Party. A two member committee was constituted to enquire into complaints. The Committee had reported that there was no illegality, irregularity in the selection process. The said committee was satisfied with the direct recruitment process and the appointment of the petitioners. It was also indicated that most of the candidates including the petitioner had assumed charge as Safai Karmis on 28/29 September, 2008. Since then they have been discharging the duties, functions and responsibilities of the post. Some of the candidates who were appointed as Safai Karmis on contract basis in the adjoining district had resigned and joined the regular post in Firozabad. The enquiry report which had approved the appointments of the petitioners was forwarded to the State Government by the District Magistrate, Firozabad. Surprisingly, this report was not appreciated by the State Government and the directions were issued to the Divisional Commissioner to cancel the appointment and to constitute a fresh selection board and to initiate denovo proceedings for making fresh recruitments on the post of Safai Karmis.

6. As per learned Counsel for the petitioner, the earlier direct recruitment process

had already been given effect to, implemented and it has exhausted on assuming the charge by the selected candidate. The petitioners were allowed to join their duties and they had started discharging their duties, functions and responsibilities of the post of Safai Karmis. The Committee had already scrutinised the procedure of direct recruitment, appointment etc. and found the same in order. As per learned Counsel for the petitioners, the committee had found no fault in the selection. There was no justification in cancelling the appointments of poor petitioners who were prepared to take up a menial odd job of scavenging, cleaning and sweeping lanes, bye lanes of revenue villages in the district.

7. As per learned Counsel for the petitioner, since the petitioners had worked for substantially long period rendering service, they are entitled for continuance in service. The action is wholly arbitrary, mala fide and appears to be punitive. The order has been passed by irrelevant considerations also as a local M.L.A. and other persons belonging to Ruling Party were not happy with the appointments of the petitioners and unnecessary complaints were made to unsettle the settled appointments. The Selection Committee was constituted by a high level responsible officer of the District. The detailed process of cycling test and interview preceded before issuing appointment letters. A legal right has been created in favour of the petitioner as they had assumed charge of the post and they became government servants. Much stress has been laid on the point that the procedure as prescribed under Group "D" Employees Service Rules of 1985 were followed before issuing appointment order. The District Authorities and the appointing authority had not applied their own mind, rather had acted at the dictate of the State Government.

8. A counter affidavit has been filed. Sri Zafar Naiyyer, Addl. Advocate General assisted by learned Standing Counsel has strongly opposed the writ petition. Learned Addl. Advocate General has submitted that serious irregularities, infirmities were found in the selection. A report was called from Commissioner, Agra Division who had got an enquiry conducted by the Chief Development Officer, Agra. The report was sent to the State Government on 1.10.08. The Government has acted on the report submitted by the Divisional Commissioner. It has further been placed on record that the report have in fact been submitted by a two Members Committee which consisted of the District and District Panchayat Raj Officer and these authorities were members of the Selection Board and as such the report appears to be biased. The Government had taken note of the fact that massive irregularities had taken place at the time of the recruitment. There was truth in the complaint of Sri Rakesh Babu, M.L.A., Tundala and as such the government has exercised its power under law to issue a direction to the Divisional Commissioner for cancelling the appointment. There was no illegality in the order of cancellation of appointments. All the appointments of the Safai Karmis in the district were cancelled. It was found that several candidates belonged to one family or were native of the same village. The subsequent enquiry report submitted by Chief Development Officer through

Divisional Commissioner was highlighted before the Court.

9. In rejoinder, Sri Ashok Khare, learned senior advocate had reiterated his submissions put forth in the petition. He has also placed on record two judgements rendered by this Court in the cases of Ram Abhilash Maurya and Ors. v. State of U.P. and Ors. (Writ Petition No. 53313 of 2008 connected with others writ petitions) decided on 23.1.09 and Hare Ram and Ors. v. State of U.P. and Ors. (Writ Petition No. 52693 of 2008) decided on 23.1.2009. This Court while dealing with similar matters relating to districts Mirzapur and Gorakhpur has quashed the similar orders cancelling the selection/appointment as Safai Karmis in the said districts. According to him, the controversy raised in the petition has already been set at rest in the above judgements. This Court has taken note of the directions contained in the government order ordering for cancellation of appointment and consequential order passed by the District Magistrate.

10. I have heard learned Counsel for the parties and perused the record. I have also gone through the two judgements rendered by this Court concluding the similar controversy raised by Safai Karmis of district Gorakhpur and Mirzapur. In the present case, the advertisements were issued in the local newspaper having wider circulation in the area. Several candidates responded and submitted their application. The direct recruitment process as prescribed under Group "D" Recruitment Rules, 1985 has been followed. A committee comprising of City Magistrate, District Panchayat Raj Officer etc. was constituted. It has also been brought to the notice of the Court that cycle test, physical endurance test was taken, candidates were interviewed, select list was prepared and notified and after following due procedure, the appointment orders were issued. Some of the petitioners in this case have joined and assumed charge of their posts. Their joining reports were accepted. After assuming charge of the post in a Govt. department, a candidate becomes a government servant. In fact there is force in the submission of learned senior advocate appearing for the petitioner that after assuming charge, the order of appointment had been implemented and it had exhausted itself. In such cases where the candidates had assumed charge, no question arises of cancelling the appointment when the order has already been given effect to. In such case the status quo ante cannot be restored. The Court has noted that no opportunity of hearing has been afforded to the candidates who assumed charge and started discharging duties, functions and responsibilities of the post. Principles of natural justice have been violated.

11. Bald, vague and sweeping allegations have been made in the complaint sent by the local M.L.A.. It is interesting to note that the two Members committee comprising senior officers of the District had found that all the appointments were in order. However, subsequently appointed one member committee (Chief Development Officers" committee) had not taken into account the details of the candidates screened in the direct recruitment process which was held at various centres in the district. As far as the allegations of extraneous considerations for making appointments is concerned, these have not been substantiated by placing

any evidence or material on record. In one of the above judgements cited above, this Court has held that where selections were to be made of such a large number of persons, selections of few brothers without prohibition of relationships amongst the candidates could not be a ground to hold that the selection suffered from irregularity or which may vitiate the entire selection. Applying the principle laid down by the Apex Court in *Inderpreet Singh Kahlon and Others Vs. State of Punjab and Others*, , the innocent persons who were properly and regularly selected recruited should not suffer as a result of mass cancellation of appointments. In the interest of all concerned particularly in the interest of honest candidates, the State Government should have undertaken the task of finding out the tainted one from amongst the lot leaving the appointment of untainted, honest candidate undisturbed. The unscrupulous candidate should not be allowed to damage the entire system where the innocent people would face evil consequences. Subsequently appointed committee had acted beyond the scope of reference. It had not given reasons as to why it had disagreed with the findings recorded by the earlier two member committee. As far as the candidates belonging to higher castes being appointed as Safai Karmis is concerned, there is nothing wrong unless there was any illegality, irregularity in the selection process. The appointments cannot be branded as illegal on this count alone. Whoever whether belonging to higher caste or lower caste if volunteers and comes forward to obtain a job of scavenging cleaning sweeping the lanes, bye lanes of a village cannot be denied employment as Safai Karmis. Father of Nation Mahatma Gandhi had the same vision The selection cannot be cancelled on this ground alone as the candidates belonging to upper castes were appointed as Safai Karmis. Every person subject to valid reservation rules has a right to equality in public employment. I agree with the opinion recorded by this Court (My Esteemed Brother My Lord Hon"ble Mr. Justice Sunil Ambwani) in the judgment dated 23.1.2009 that the sweeping and cleaning job can be performed equally well by the persons who do not belong to a particular caste traditionally engaged in such work in the villages. The people of our country have to look forward and have to strive to have a caste less society. We have to rise above such narrow thinking and walk together to build India a great nation with equal opportunity of development for all its citizens whether belonging to higher caste, backward caste or scheduled caste category or scheduled tribes. In the facts and circumstances, I am of the opinion that the impugned orders are wholly arbitrary, unreasonable and malafide. The directions are violative of the Articles 14 & 16 of the Constitution of India.

12. In view of above discussion, the petitions are allowed. The impugned orders are quashed. The petitioners shall be allowed to continue in the service as Safai Karmis. Since there is no infirmity and illegality in the selections, the candidates who have been selected should be issued letters of appointment and should be immediately permitted to join their duties. The petitioners who have joined the services shall also be paid their salary including their arrears of salary. The respondents are directed to issue appointment letters in pursuance of the select

list prepared and published in furtherance of the earlier advertisement.. Those who had assumed charge shall be paid salary from the date of assuming charge. The rest of the selected candidates shall be paid salary with effect from the date when they assume charge.