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**(1990) 12 AHC CK 0062**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 11112 of 1990**

Nand Lal Prasad

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

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**Date of Decision :** 13-12-1990

**Acts Referred:**

**Citation :** (1990) 12 AHC CK 0062

**Hon'ble Judges :** S.C.Mathur, J

**Final Decision :** Dismissed

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## Judgement

S.C. Mathur, J.—This petition is directed against order dated 481990 passed by Zila Harijan Evam Samaj Kalyan Adhikari, Faizabad, opposite party No. 2, whereby the petitioner's appointment made on 851990 to the post of ChowkidarcumSweeper has been cancelled.

2. There is no dispute about facts. By order dated 851990 the petitioner was appointed as ChowkidarCumSweeper. At the time of appointment the petitioner was aged 36 years 4 months and 7 days. Admittedly the maximum age for recruitment was 35 years. It appears that while appointing the petitioner the fact that he was overage was overlooked and appointment order was issued. As soon as the error was detected the order of cancellation was passed.

3. The learned counsel has challenged the order on the ground of violation of principles of natural justice. In support of the plea he has cited 1985 U.P. Local Bodies and Educational Cases 22 Girish Chandra and others v. Union of India and others. This was a case in which the order of cancellation was made after two years and that too on the representation of Employees' Union who alleged that irregularities had been committed at the selection. Admittedly the petitioners in that case were not given opportunity to show that there was in fact no irregularity in the selection. In that case there was dispute on facts on which there was scope for the petitioner to show that they were right and not those who alleged that a wrong had been committed. In the present case there is no dispute on facts and, therefore, the authority relied upon has no application to

the facts of the present case.

4. There is another way of looking at the problem. When ineligible candidate is appointed, an eligible candidate who could have been appointed in his place suffers prejudice. Such a candidate could have approached this Court to challenge the appointment of the petitioner. If such a candidate had approached this Court the Court would have quashed the order of appointment of the petitioner on the ground that he did not possess the eligibility qualification prescribed by statutory Rules. If petitioner's appointment could have been quashed by this Court in the circumstances mentioned herein there is no occasion to quash the order passed by the administrative authority itself thereby doing justice to the person who could not be appointed in view of the illegal appointment of the petitioner.

5. The learned counsel for the petitioner, however, submitted that the petitioner did not suppress anything and that he mentioned his correct date of birth in his application for appointment. It may be that the petitioner did not suppress any material fact but if eligibility qualification have been prescribed by statutory Rules the said qualifications will have to be fulfilled by the candidate selected for appointment. The learned counsel for the petitioner has not invited my attention to any Rule whereunder the eligibility qualification could be waived. In the absence of any provision for waiver and in the absence of any order waiving the prescribed qualification the appointment of the petitioner was itself invalid and declaration of that invalidity by the impugned order cannot be faulted.

It is stated on behalf of the petitioner that prior to his appointment in Harijan and Samaj Kalyan Department he served as ChowkidarcumSweeper in the Forest Department of the Government from April, 1988 to July, 1989. According to the petitioner this factor entitled him to relaxation in the maximum age qualification. Learned counsel for the petitioner has not placed before me any Rule or order of the Government whereunder relaxation in maximum age qualification was required to be given in view of the services rendered by the petitioner in the Forest Department.

7. The petitioner has also sought a writ of mandamus to command the opposite parties to pay his salary from 851990. In case the petitioner has discharged duties in pursuance of the appointment given to him on 851990 he cannot be deprived of salary for the work actually done him. Accordingly, if the petitioner discharged duties from 851990 to 4101990 he will be entitled to salary. Since the petition is dismissed at the admission stage I am not making any observation regarding payment of salary for this period. The concerned authorities will, however, examine this grievance and act in accordance with the observations made herein.

8. In view of the above the petition is dismissed.