
(2011) 09 AHC CK 0002

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 47872 of 2011

Pawan Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 11 ADJ 599

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Rama Nand Pandey and Pradeep Narain Pandey, for the Appellant;
Pradeep Upadhyay and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Heard learned counsel for the petitioner, learned Standing Counsel appearing on behalf of respondent Nos. 1 to 4 and Sri Pradeep Upadhyay, learned counsel appearing on behalf of respondent No. 5. The brief facts of the case are that for the post of Gram Rozgar Sewak, an advertisement was issued on 24.4.2010, both petitioner as well respondent No. 5 applied. In a meeting held on 2.7.2010 by the Administrative Committee of the Gram Panchayat, a proposal was passed in which the name of respondent No. 5 was placed at serial No. 1 on the basis of the merit and the name of the petitioner was placed at serial No. 2 in the merit list. The proposal was sent for approval to the District Development Officer. The aforesaid proposal was returned by the District Development Officer to the Block Development Officer, Block Mehdawal, Sant Kabir Nagar with the recommendation that the proposal of the Administrative Committee of the Gram Panchayat in favour of respondent No. 5 has not been approved by the Gram Panchayat as per the provisions mentioned in the Government Notification dated 23.11.2007, therefore, the same may be placed before the Gram Panchayat for further action. The aforesaid proposal was returned by respondent No. 4 to Gram Panchayat Adhikari for the follow up

action on 12.1.2011. A copy of the order dated 12.1.2011 is Annexure-1 to the counter-affidavit. It is mentioned here that meeting of Gram Panchayat was held on 2.2.2011 under the presidentship of Gram Pradhan. The letter of the District Development Officer dated 2.12.2010 has been considered. The application of respondent No. 5 has been cancelled on the ground that two dates of birth were mentioned and the application of the petitioner has been accepted and he has been selected for the post of Gram Rozgar Sewak. The minutes of the meeting dated 2.2.2011 is Annexure-3 to the counter-affidavit, filed by the learned Standing Counsel. A further meeting of the Administrative Committee of Gram Panchayat was held on 3.2.2011 in which in view of the resolution dated 2.2.2011 passed by the Gram Panchayat, the petitioner has been selected on the post of Gram Rozgar Sewak.

2. In paragraph-9 of the counter-affidavit, it is stated that the resolution dated 2.2.2011 of the Gram Panchayat and the resolution dated 3.2.2011 of the Administrative Committee of Gram Panchayat were submitted before respondent No. 4 by the Gram Panchayat Adhikari on 5.2.2011 for follow up action. Respondent No. 5, filed a complaint letter dated 15.2.2011 before the Block Development Officer, Block Mehdawal, Sant Kabir Nagar, challenging the resolution of Gram Panchayat selecting the petitioner for the post of Gram Rozgar Sewak in which certain allegations of mala fide have been made against Gram Panchayat Vikas Adhikari and a clerk of the district. The said letter has been endorsed by the Chief Development Officer, Sant Kabir Nagar stating there in that his marks are higher than the petitioner and in the merit list he was at serial No. 1. The Chief Development Officer has marked the said letter to the District Development Officer. The said letters are annexed as Annexures-4 and 5 to the counter-affidavit, filed by the State. Respondent No, 5 has also filed an affidavit dated 5.3.2011 before the Chief Development Officer, Sant Kabir Nagar about his date of birth stating therein that in High School certificate his date of birth is shown as 10.2.1990, which is the correct date of birth. The said affidavit is part of Annexure-5 to the counter-affidavit. It appears that in respect of date of birth, Khand Vikas Adhikari has made an inquiry through the Assistant Development Officer and in the inquiry report, it was stated that in the college record, the same date of birth is mentioned in Class VIII and IX, which is certified by the Principal of the college. It is further stated that on 2.7.2010, the Administrative Committee of Gram Panchayat has passed a resolution stating therein that respondent No. 5 obtained average 53.08% marks while the petitioner obtained average marks as 44.46% and on merit, the mark of respondent No. 5 is higher. It appears that the entire matter has been referred to the District Level Committee and the District Level Committee, on consideration of the entire facts and circumstances, approved the appointment of respondent No. 5 on the post of Gram Rozgar Sewak. Being aggrieved, the petitioner has filed the present writ petition.

3. Learned counsel for the petitioner submitted that in the resolution dated 2.2.2011 passed by the Gram Panchayat, the application of respondent No. 5 has

been rejected and the petitioner has been selected and the selection of the petitioner has been approved in a meeting of Administrative Committee of Gram Panchayat by the resolution dated 3.2.2011. There is no justification for appointing respondent No. 5 as Gram Rozgar Sewak. He submitted that under the Government Order dated 23.11.2007, the State Level Committee headed by the District Magistrate has only right to examine the eligibility of the candidate selected by the Gram Panchayat and if the candidate is eligible, his appointment is to be approved. It has further been clarified in Sub-clause (6) of clause (Kha) of the Rashtriya Gramin Rozgar Guarantee Yojna that the Committee has no right to grant approval to any body else at its own end. In case if the Committee is of the view that the candidate selected by the Gram Panchayat does not fulfil the eligibility, on the recommendation of the Committee, the Gram Panchayat may again select the candidate and, therefore, the District Level Committee has only right to examine the eligibility of the petitioner and cannot direct for appointment of respondent No. 5.

4. Learned Standing Counsel submitted that initially in a resolution dated 2.2.2011 the Administrative Committee of Gram Panchayat has passed a resolution in favour of respondent No. 5, which is to be approved by the Gram Panchayat and thereafter the matter was to be referred to the District Level Committee. While in the present case, in stead of approving the name, the Gram Panchayat has rejected the application of respondent No. 5 and selected the petitioner, who has not been selected by the Administrative Committee and subsequently on 3.2.2011 the Administrative Committee has approved the selection of the petitioner. He submitted that final authority for the approval and appointment is the District Level Committee, which is constituted by the District Magistrate, Chief Development Officer District Development Officer and District Panchayat Raj Adhikari and since respondent No. 5 has filed a complaint against the resolution of the Gram Panchayat dated 2.2.2011 and resolution of the Administrative Committee dated 3.2.2011 on which an inquiry has also been made. There were only two candidates, who applied for the post. Therefore, the District Level Committee examined the whole matter at its own end and selected respondent No. 5 as he was at serial No. 1 in the merit list. With regard to the discrepancy in the date of birth also, an inquiry was made and no discrepancy was found.

5. I have considered the rival submissions.

6. It would be appropriate to refer Clause (Kha) of the Rashtriya Gramin Rozgar Guarantee Yojna, which relates to the procedure of selection of Gram Rozgar Sewak:

7. Sub-clause (5) and (6) of the aforesaid Scheme are relevant for the purposes of the present case. Sub-clause (5) provides that the Administrative Committee of Gram Panchayat shall prepare eligibility list serial wise as per the merit and select the candidates who obtained higher marks and will get approval from the Gram Panchayat and in case if the candidates, who obtained the higher marks, is

not interested, the other candidates may be considered for the selection. Sub-clause (6) provides that the details of the selected candidates be produced before the Committee headed by the District Magistrate and the Committee will have only right to examine the eligibility of the selected candidates and in case if the candidates fulfil the eligibility, the Gram Panchayat shall appoint to such candidate. It further provides that the Samiti has no right to recommend the name of any other person at its own end and in case if the Committee comes to the conclusion that the selected candidates do not fulfil the eligibility, the same may be informed to the Gram Panchayat for further selection.

8. From the reading of the above selection procedure, it appears that the right of selection of a candidate is given to the Gram Panchayat and the Committee headed by the District Magistrate has been given right only to examine the eligibility of the selected candidates and the approval of the appointment.

9. In case if the District Level Committee comes to the conclusion that the candidates selected by the Gram Panchayat are not eligible either on the examination of the documents or of the complaints of anyone else, the District Level Committee can refer the matter to the Administrative Committee of Gram Panchayat expressing its opinion and asking the Administrative Committee of the Gram Panchayat to make a fresh selection in the light of the direction or observation. It is doubtful that the District Level Committee at its own ends select and appoint any other person other than the persons selected by the Administrative Committee.

10. From the procedure contemplated under the Government Order, it appears that the intent is to provide an exclusive power to Gram Panchayat to select the candidates and the Committee header by the District Magistrate is to act as a supervisory controlling authority over the Gram Panchayat having authority to give a final approval to the selection made by the Gram Panchayat so that the Gram Panchayat may not act in an unfair, arbitrary manner.

11. Now coming to the facts of the present case. In the present case, initial resolution of the Administrative Committee dated 2.2.2011 was in favour of respondent No. 5. There was no dispute that on merit respondent No. 5 stood at higher position than the petitioner. There were only two applicants for the post. When the matter has been referred to the Gram Panchayat, the Gram Panchayat should have granted the approval or rejected the approval or referred the matter to the Administrative Committee for fresh selection with the comments but should not have rejected the application of respondent No. 5 without giving any opportunity. This action of the Gram Panchayat was not justified. Since there were only two candidates, namely, the petitioner and respondent No. 5, admittedly, respondent No. 5 on merit stood at higher position, he has passed High School and Intermediate. The date of birth is mentioned in the High School Certificate, which has been admitted by respondent No. 5 and on enquiry found to be correct. Technically, the selection and appointment of respondent No. 5 by the District Level Committee may not be correct in view of the procedure stated

herein above, but otherwise the selection of respondent No. 5 cannot be said to be unjustified by the District Level Committee. In the facts and circumstances of the case, I do not see any reason to interfere in the matter under Article 226 of the Constitution of India. The writ petition fails and is dismissed.