

(1996) 12 AHC CK 0075

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 20480 of 1988

Pramod Kumar Tripathi

APPELLANT

Vs

U.P.Jal Nigam, Lucknow & Ors.

RESPONDENT

Date of Decision : 16-12-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 12 AHC CK 0075

Hon'ble Judges : S.K. Phaujdar, J

Final Decision : Allowed

Judgement

S.K. Phaujdar, J.—The matter had to be heard expane on 4121996 and 11121996 for the reasons as shown in the orders recorded on those dates.

2. The petitioner approached the court for a writ in the nature of certiorari for quashing the appointment of Naresh Kumar Lohani (respondent No. 5) as contained in annexure6 to the writ petitionand for a direction on the respondent Nos. 1 to 4 that the petitioner be appointed as Routine Grade Clerk (in short, RGC) in place of respondent No. 5.

3. It is the case of the petitioner that the State Government had constituted Uttar Pradesh Jal Nigam (for short, Nigam) under Section 3 of the U.P. Water Supply and Sewerage Act, 1976. The petitioner was appointed as an apprentice trainee under the Regional Chief Engineer (Hills) under the Nigam at Dehradun in 1983 and by a letter dated 1381984. He was given an appointment as an RGC in the office of the Executive Engineer, Temporary Project Division, of the Nigam at Almora. The appointment was initially given for the period of 2 months w.e.f; 181984. He worked upto 30th September, 1984and was also allowed to work as an RGC thereafter. He was given an assurance that his services would be regularised under the Nigam. The concerned Executive Engineer also recommended for regularisation of his service. There was a direction by the Superintending Engineer (Projects) that the matter of regularisation of the service of the petitioner be considered at the time when the RGC would be

appointed afresh. The petitioner continued in his work and sent many representations to the Nigam for his regularisation. A substantive vacancy occurred in the post of RGC with the promotion of the existing incumbent Anand Singh Rawat. Another post of RGC fell vacant with the promotion of Smt. Kamla Tewari, There were other posts also in that grade which fell vacant under the Nigam. The petitioner asserted that he was eligible and fit for being regularised against one of such posts. A test was held for appointment to the post of RGC and without prejudice to his rights otherwise, the petitioner took the test on 10th May, 1985. When the results were declared. The petitioner was shown in the second place according to merit the test was conducted by a selection committee consisting of three members, namely, Executive Engineer (Construction Division) Almora, Executive Engineer (sic), Almora and the Executive Engineer (Temporary Project Division), Almora, the result was duly published in the notice board of the respondents on 12th May, 1985 and a copy of the result was sent to the Superintending Engineer, Construction Division, Uttarakhand, Jal Nigam, Almora. A recommendation was made in the forwarding letter that the petitioner should be given priority in appointment as he had worked as an apprentice for a year. On 25.5.1985 under certain unavoidable conditions, the petitioner had to take leave and even thereafter he fell ill. He submitted medical certificates and applied for medical leave upto 30th June, 1985. When he reported to his office on 30th June, 1985, he was informed that the appointment in office had been made and the two persons who were appointed against the two vacancies were Mithilesh Kumar Upadhyaya and Naresh Kumar Lohani. This Naresh Kumar Lohani; is respondent No. 5 in this writ petition.

The petitioner went on to say that he approached the Superintending Engineer (Projects) and submitted before him that his services were wrongly terminated. It was contended in the writ petition that Sr: Naresh Kumar Lohani could not have been appointed as he was shown at the bottom of the merit list and the Superintending Engineer had arbitrarily appointed him. A copy of the letter of the Executive Engineer indicating the result of the test and the names of the candidates in order of merit was filed as Annexure 4 to the writ petition. The name of Sri P.K. Tripathi came in the second position indicating his total marks as 104. The name of M.K. Upadhyaya (who was appointed) was in the first position with the same total marks. The remarks column indicated that the petitioner had obtained higher marks in the written test and had passed Hindi Typing test but could not pass English typing test. A recommendation was there against his name that because this applicant had worked as an apprentice clerk and had also been working for about one year as a regular ROC. he should be given a priority. The name of Naresh Kumar Lohani was in the fifth position with 90 marks to his credit. It was indicated in the remarks column that Lohani's name came from the Employment Exchange. He got the pass marks in the written test and had also passed Hindi and English typing tests.

4. A counter affidavit was filed on behalf of Nigam. It was accepted that the petitioner was deputed as an apprentice trained clerk, as asserted. It was stated

that the petitioner left the training incomplete on his own will on 31784 and did not complete the said training period of one full year. In terms of the relevant Govt. Order he had no claim of being absorbed in regular service as RGC even after completion of apprenticeship. He had worked as an RGC till 31185 only against a temporary vacancy and it was clearly indicated to him that his temporary appointment could be terminated at any point of time without further notice. It was admitted that two posts of RGC fell vacant and those were filled in by the Superintending Engineer and the stopgap arrangements, A copy of the letter of the Executive Engineer on which the petitioner claimed to have been shown in the second position was described to be a false one. The letter in its nature being a confidential one, the petitioner could have no access to it. It was stated that after the selection process the two candidates found most suitable were given appointment and the same could not be challenged. Along with the counter affidavit the Nigam had appended annexure A3 which is a photocopy of the result of the test and interviews of the candidates which, according to the Nigam, would clarify the entire position.

5. Learned counsel for the petitioner had laid stress only on this Annexure A3 appended to the counter affidavit of the Nigam. This annexureA.3 indicated the marks obtained in different tests by the candidates including the present petitioner and the aforesaid Naresh Kumar Lohani (respondent No. 5). It appears that the candidates were tested under four heads:

TEST FULL MARKS

Written Test 100

Hindi Typing Test 50

English Typing test 25

GeneralTest 25

Total Marks 200

The first candidate Mithilesh Kumar Upadhyya obtained 48, 28, 11 and 17 with a total of 104 marks against the aforesaid full marks, respectively. Sri Pramod Kumar Tripathi, the petitioner, obtained 71, 17, 3 and 13, respectively, with a total of 104 marks. Sri Naresh Kumar Lohani obtained 41, 27, 12 and 10, respectively, with a total marks of 90. However, these marks were assessed differently giving full marks of 40, 50, 50 and 10 to written test, Hindi typing, English typingand General test respectively. The marks obtained by the candidates were reassessed according to the percentage and the marks of the petitioner were this assessed at 29, 17, 6 and totalling 57, while those of Naresh Kumar Lohani were assessed at 17.27.24 and 4 totalling 72, Under the revised assessment of marks N.K, Lotiani got a better position than the petitioner and was selected. This revision as per annexure. As was done because a Government order No. 27/2/1974 personal II dated 11101979 dictates that the total marks in Hindi typing should be 50. There was a note that it was collected from the

planning department that the English typing also would have 50 full marks for the test. There was no indication in the order that the full marks in written test was reduced from 100 to 40 and the percentage of marks obtained by the candidates was accordingly reduced. It appears and that was the argument of the learned counsel for the petitioner, that by manipulating the total marks without any legal foundation the marks obtained by the petitioner was brought down as "the total marks in which he had fared better were brought down arbitrarily only to accommodate R.K. Lohani.

6. The learned counsel submitted a copy of the Government Order dated 27219/4 as referred to in annexure A3 to the counter affidavit. It was indicated in clause 12 thereof that for direct recruitment an applicant should have passed the intermediate examination of the Board provided that for the purpose of typing a candidate should have a speed of 25 words per minute. In clause 16(4) it was indicated that the typing test in Hindi should be for 50 marks. There was nothing to indicate, that English Typing was a condition for appointment as RGC or that the full marks there of was fixed at 50.

7. This annexure A3 itself indicates that increase and decrease of the full marks on the subjects of the tests were made arbitrarily by the Superintending Engineer and by this manipulation N.K. Lohani was brought to a position higher than that of the present petitioner who had then occupied the second position entitling him to appointment in one of the two vacancies.

8. N.K. Lohani was noticed through the court and notice was served personally also, as per the affidavit of service, but he had not appeared. Even if he had appeared, he could have supported his appointment on the basis of Annexure A3 to the counter affidavit of the Nigam. In my view, the case of the petitioner was discriminated by an arbitrary action of the selection authority. The appointment of Sri Lohani has been made more than 10 years ago and it would certainly be a hardship on him if his appointment is now cancelled. It is, therefore, desirable that without disturbing the appointment of Sri Lohani the respondents 1 to 4 should be directed to appoint the petitioner as an RGC under the Nigam with immediate effect. Monetary benefits however, may be given to him from the date of his actual appointment, but keeping in view the situation existing on the date of selection, the petitioner must be given a seniority above Sri N.K. Lohani as an RGC.

9. In the aforesaid circumstances, the writ petition stands allowed. The respondent Nos. 1 to 4 are directed to appoint the petitioner as an RGC in the Uttar Pradesh Jal Nigam at Almora within one month of receipt of certified copy of this judgment if necessary, by ordering a supernumerary post to be absorbed against a vacancy whenever it occurs. Once the appointment is made, the petitioner shall be given seniority over Sri N.K. Lohani as an RGC.