

(1996) 01 AHC CK 0072

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 19434 of 1994, Connected with C. M. W. P. Nos. 19435, 19437, 20539, 20540, 20549 of 1994

Rajendra Singh Yadav

APPELLANT

Vs

Executive Officer, Nagarpalika, Ferozabad and Others

RESPONDENT

Date of Decision : 12-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Municipal (Service and Appeal) Rules, 1967 — Rule 3
Uttar Pradesh Municipalities Act, 1916 — Section 76

Citation : (1996) 01 AHC CK 0072

Hon'ble Judges : R.K. Mahajan, J

Final Decision : Allowed

Judgement

R. K. Mahajan, J.—All these writ petitions are interconnected as they involve common question of law and the facts are almost common. The impugned order is of cancellation of appointments dated 751994 by the respondents. The question involve is whether the President of the Nagar Palika or the Executive Officer as the case may be without observing principles of natural justice could terminate their services. Whether the president had power to appoint them. I would like to, in brief mention few facts of every writ petition but the counteraffidavit is more or less the same.

Writ Petition No. 19434 of 1994 :

2. Shri Rajendra Singh Yadav, the petitioner, prays for quashing of the order dated 751994 by which his services as a "chaukidar" were terminated. The petitioner joined initially by virtue of an order dated 25101989 (Annexure No. 1 to the writ petition) and said order was issued by the Executive Officer, Nagar Palika, Ferozabad. He was appointed against a regular vacancy of Chaukidar Roop Ram. Initially he was appointed on 1771990 by acting Chairman vide Annexure No. 2 to the writ petition. It is alleged in para No. 4 of the writ petition that the State Government took a decision for abolition of octroi in the year 1990

and order dated 2481990 was issued informing the petitioner that certain employees of the octroi department have adjusted. Hence the service of the petitioner is not required. The petitioner represented the Labour Commissioner against the said order. He alleged that regular vacancy arose due to Ram Sanehi, Chaukidar and on his application he was appointed against a vacant post of Chaukidar by the Chairman on 1791992 (Annexure No. 5 to the Writ Petition). AB the Executive Officer was not working at that relevant time the petitioner, thereafter, joined on 1891992 and started working. The petitioner was confirmed on 8101993 by the Executive Officer vide Annexure No. 7 to the writ petition. Later on the petitioner's grievance is that his appointment was cancelled as socalled enquiry conducted by the Additional District Magistrate in which no opportunity was given to the petitioner. The petitioner has described cancellation of appointment as illegal, arbitrary and without observing the principle of natural justice. He has also pleaded that some employees, all mentioned in para No. 21 of the writ petition, Supatra Singh etc. have been retained, who were juniors to the petitioner and who were appointed in similar circumstances, whereas the petitioner has been terminated.

Writ Petition No. 19435 of 1994 :

3. By this writ petition the petitioner seeks to quash the order dated 751994 passed by the Executive Officer (Annexure No. 4j. The petitioner was appointed on the post of Tax Collector after the recommendation by the Selection Committee. Petitioner's allegation that he was appointed on the post of Tax Collector on account of promotion of Shri Devendra Kumar Jain vide Annexure No. 1 to the writ petition dated 18/19111992. He joined on 19111992. According to the petitioner he has been working satisfactorily and Executive Officer, Nagar Palika, Ferozabad issued a certificate regarding his work and conduct finding no fault. He was confirmed on 18111993 on the post of Tax Collector on the recommendation of the Executive Officer dated 10111993. The petitioner is working as such since 18111993, and regular service book has been made. He described the termination order dated 751994 illegal, arbitrary and without observing the principle of natural justice. The enquiry, if any, conducted by the Additional District Magistrate has been conducted against the principles of natural justice and he was not allowed to participate in it. He further alleges that several juniors who were appointed subsequently to the petitioner have been retained and he has mentioned the name of Surendra Pal Singh etc. in para No. 12 of the writ petition whereas he has been kicked off from the job. He seeks remedy by way of quashing the impugned order dated 751994.

Writ Petition No. 19437 of 1994 :

4. Similarly the petitioner Sanjay Kumar seeks to quash the cancellation of appointment order, dated 751994 on the ground that no opportunity of being heard was given before cancellation either by the Additional District Magistrate, who, conducted the enquiry, or by the President and has described the cancellation order arbitrary, illegal as the same has been passed without

observing natural justice. He was appointed against the permanent vacancy arose on account of death of Kailash Dutt Upadhyaya, Pump Attendant. He was appointed on 24111992 vide Annexure No. 1 to the writ petition. The petitioner's work was found to be satisfactory and he was confirmed on 111994 by the Executive Officer vide Annexure No. 2 to the writ petition. Thereafter his order was cancelled. He has also made a grievance like other colleague petitioners in other writ petitions that in para No. 12 of the writ petition he alleged the names of the persons who were appointed later have been retained in service and his service has been cancelled.

Writ Petition No. 20539 of 1994 :

5. The petitioners in this writ petition also seek quashing of the impugned order on the same ground as other colleagues in other writ petitions. They were appointed on the post of Cleaners (Class IV) on the recommendation of the selection committee against two vacant posts which were approved by the State Government on probation of one year on 1521993 vide Annexure No. 1 to the writ petition. They were appointed on substantive post on a probation of one year and they jointed their duty on 1521993. Copy of appointment letter is filed as Annexure No. 1 to the writ petition. They alleged that they are confirmed employees after completing one year of probation. They also alleged that cancellation of their appointment is illegal and against the principles of natural justice. They have also taken the point that their juniors have been retained but they have been deprived of the employment.

Writ Petition No. 20540 of 1994 :

6. The petitioners alleged that they were appointed as Safai Karamchari (on Class IV posts) by Nagar Palika, Firozabad after constituting a selection committee on 2151993. The Chairman, Nagar Palika issued appointment letter on 3151993 to the petitioners except to the petitioner No. 22, who was appointed on 331993. The appointment letter with respect to the petitioners annexed as Annexure No. 1 to the writ petition and with respect to petitioner No. 22 is Annexure No. 2 to the writ petition. They were appointed when the Executive Officer was not working in the Municipal Board. They joined services on 3151993 and the resolution to their appointment was also passed by the Board of Nagar Palika, Firozabad.

7. Petitioners appointments were cancelled on 751994 by the Executive Officer, Nagar Palika, Firozabad vide Annexure No. 3 to the writ petition. The petitioners have described these cancellation orders as arbitrary, illegal and without jurisdiction and principles of natural justice have also not been observed before cancellation of the appointment order. It appears from the allegation that the cancellation orders were passed as there is reference in the cancellation order that some enquiry was conducted by the Additional District Magistrate, Firozabad a petitioners were not associated. It is also alleged that several other employees who were similarly appointed have been allowed to continue and their names are

Jalim s/o Bhagwan Das, Anil s/o Rajjan and Smt. Sheela w/o Chunni Lai, as mentioned in detail in para No. 13 but they have been given unfair and discriminatory treatment. They were also appointed by Nagar Palika Chairman. They further alleged that they rendered services very satisfactorily and there was no complaint with respect to their conduct. So, on these facts they prayed that a writ in the nature of certiorari be issued quashing the impugned order, dated 751994.

Writ Petition No. 20549 of 1994 :

8. The petitioner like other petitioners seeks to quash the order or cancellation of appointment dated 751994. She was employed as a Safai Karamchari on 19111992 on substantive post on account of retirement of Shri Millee. Appointment order issued by the Chairman, Nagar Palika, Firozabad is Annexure No. 1 to the writ petition. At relevant time the Executive Officer, Nagar Palika was not working. It is alleged that the petitioner was confirmed on 2121994 by the Executive Officer, Nagar Palika, Firozabad by Annexure No. 2 to the writ petition. She alleges that she was properly selected on the recommendation of the selection committee but she has been terminated arbitrarily, illegally and without observing principles of Natural justice. The petitioner has further alleged that enquiry, if any, was conducted by the Additional District Magistrate was conducted at her back.

9. Counteraffidavit has been filed in writ petition No. 20540 of 1994 by the respondents. It is alleged that the petitioners were appointed at the instance of former President, Nagar Palika. There were no vacancies at all. The Chairman had no authority at all to appoint any person. There was no advertisement in the newspaper nor any name from the Employment Exchange were sponsored. In other words these appointments have been described as fraudulent and were done for ulterior motive. The Selection Committee was consisted of three elected members of the Board and no officer i.e., Executive Officer was appointed. It is also alleged that 78 daily wagers working in the Board for a very long were ignored by the respondents and the petitioners were kept illegally by the Chairman.

10. It is alleged that Shri Din Dayal, Executive Officer, was suspended on 2361993 for illegal appointment and other charges by the U. P. Government vide Annexure No. CA1 to the counteraffidavit. The appointments were cancelled and the enquiry was held by the Additional District Magistrate. The enquiry officer came to the conclusion that all norms and procedure have been violated while making appointments and in para No. 7 of the counteraffidavit it was alleged that it was found not necessary to give an opportunity of hearing for cancelling the same since the appointments were illegal. The respondents further alleged that as there is alternative remedy under Rule 3 of the U. P. Municipal (Services and Appeal) Rules, 1967 and since alternative remedy is available, writ petition is liable to be dismissed. Regarding the allegation that juniors have been retained while the petitioners have been kicked off, allegations have been denied. It is

averred that services of some juniors have also been terminated i.e., Vijai Laxmi, Zalim Singh etc.

11. The substance of the counteraffidavit in all the remaining writ petitions is the same as in the above writ petition and the main reason of the cancellation is that no normal procedure in appointment was followed. The appointments made by the Executive Officer are also vitiated on the ground that illegality and infirmity have been committed. The Chairman has no authority to appoint. It has been also pleaded that there is a letter from the Government that in view of abolition of octroi no appointments are to be made and preference should be given to the persons who have become unemployed on account of abolition of octroi. The Government order was issued on account of financial stringencies. It also refers that no appointment can be made without the permission of the State Government. The aforesaid Government Order is Annexure No. CA2 to the counteraffidavit in writ petition No. 20540 of 1994.

12. I have heard the counsel for the parties at length, Shri, Ashok Bhushan, Counsel for the petitioner has submitted that principles of natural justice have been violated by terminating the services of the petitioners in the garb of cancellation of appointment. He submits that at least petitioners must have been heard by the Additional District Magistrate, who was a competent authority at that time for issuing the cancellation order. He further contended that the order involves civil consequences and requirement of fair procedure was essential.

13. The Standing Counsel has submitted that since the appointments were made by the President/Chairman, who had no authority to make such appointment under Section 75 of the U. P. Municipalities Act, 1916. He further submitted that the function of the Executive Officer was carried out by the Health Officer when the Executive Officer was not available. He further submitted that since the appointments are based on fraudulent device and no procedure was followed and on the recommendation of the Additional District Magistrate, who conducted the enquiry, they were cancelled. He further submitted that Hon'ble High Court already dismissed Civil Misc. Writ Petition No. NIL of 1994 Naresh Kumar v. Municipal Board, Nagar Palika, Firozabad, on 931994. The order reads as under :

"After hearing the learned counsel for the petitioners I am satisfied that he has miserably failed to establish any legal right. Accordingly the writ petition, being devoid of merits, is dismissed.

Sd/Hon. M. P. Singh, J.

931994."

14. The aforesaid order was challenged before Division Bench in Special Appeal No. 301 of 1994 Naresh Kumar v. Municipal Board (Nagar Palika), Firozabad, and it was also dismissed. The order in Special Appeal reads as under :

"The appointment of the appellant was made by the President of the Municipal Committee who was admittedly not the competent appointing authority. No

occasion arises for interference in this Special Appeal.

1 Dismissed.

Sd/Hon. S.S. Sodhi, C.J.

Sd/Hon. Palok Basu, J.

1111994."

15. That Standing Counsel also pointed out that the Civil Misc. Writ Petition No. 20885 of 1994 *Jai Prakash v. The Collector, Administrator, Nagar Palika, Firozabad*, was also dismissed. The order reads as under :

"The petitioner claims to have been a permanent employee, whose services have been terminated. There is alternative remedy available under Section 76 of U. P. Punishment and Dismissal of permanent inferior staff in U. P. Municipalities Act. Since there is alternative remedy already available, this Court decline to interfere on the ground of alternative remedy. Petition is dismissed summarily."

16. Shri Ashok Bhushan, counsel for the petitioner has quoted authorities on the principles of natural justice and only reference would be made to relevant authorities. AIR 1991 SC 309 *Sharvan Kumar Jha v. Ram Sewak*, In this case it was observed that the teachers were appointed by the District Superintendent of Schools. Appointments were cancelled by the Government that District Superintendent of Schools have no authority. It was held that prior opportunity of hearing should have been given. Direction was issued that Secretary, Education or his nominee should give opportunity and give finding whether appointments were validly made or not.

17. Another ruling which he has relied upon is Patna High Court 1991 (5) SLR 720 *Bachchu Narain Singh v. State of Bihar*. The appointments were cancelled after seven months as it was found that the selection committee which selected the petitioner was not legally constituted. It was held that cancellation of appointment without observation of principles of natural justice is illegal and reliance was placed on AIR 1991 SC 309.

18. The Standing counsel has quoted the judgment reported in 1991 (2) UPLBEC 745 *Bharat v. Nagar Palika, Azamgarh*. It has been further submitted that person comes to get a relief, must come with clean hands and his claim must not be based on falsehood and court process should not be misused.

19. After hearing the counsel for the parties I am of the opinion that the petitioners should have been given right to be heard before cancellation of their appointments on the following reasoning's and also relying upon the Supreme Court and Patna Judgment (supra).

20. The act of cancellation involved civil consequences and it deprives the petitioners from their livelihood. They were not party to the irregular appointments and assuming if they are party it does not mean that they should

not be given an opportunity to be heard, even a murderer, their before his conviction is given right to be heard. Right to be heard is a rule of law enshrined in Article 14 of the Indian Constitution and which is a basic feature of Indian Constitution. I would like to quote now regarding right to fair hearing from Administrative Law by Wade, Vth Edition page 471 :

?Scope and limits of the principle. *Ridge v. Baldwin* reinstated the right to a fair hearing as "a rule of universal application" in the case of administrative acts or decisions affecting rights ; and, in Lord Loreburn's oft-repeated words, the duty to afford it is "a duty lying upon every one who decides anything. The decision gave the impetus to a surge of litigation over natural justice, in which the courts have been able to consider many of its facts and to build up something like a canon of fair administrative procedure. For the most part the numerous decisions have served only to show the correctness of the above quoted words, sweeping though they are."

Again on page 442 it is observed that:

"As the authorities will show, the courts took their stand several centuries ago on the broad principle that bodies entrusted with legal power could not validly exercise it without first hearing the person who was going to suffer. This principle was applied very widely to administrative as well as to judicial acts, and to the act of individual ministers and officials as well as to the acts of collective bodies such as justices and committees. The hypothesis on which the courts built up their jurisdiction was that the duty to give every victim a fair hearing was just as much a canon of good administration as of good legal procedure. Even where an order of determination is unchallengeable as regards its substance, the court can at least control the preliminary procedure so as to require fair consideration of both sides of the case. Nothing is more likely to conduce to good administration. Again on page 447 it is observed that :

"The character of the authority was not what mattered : what mattered was the character of the power exercised. If adversely affected legal rights or interests, it must be exercised fairly.

Again on page 501 of the same book it is observed that :

?But since the law lacks any mechanism for restoring his employment specifically, it cannot supply an effective remedy. In the case of offices, membership, status and so forth it is able to do so ; and it would seem right therefore to protect the officer or member against wrongful deprivation of every kind and to accord him the procedural rights without which deprivation is not fair and lawful. Whether he is removable for cause at pleasure should in principle make no difference."

Again on page 506 of the same book it is observed that:

"In truth the lesson of the most of cases that have been brought before the courts is that exceptions are conspicuous by their absence whichever genuine

administrative power has been exercised under statute with any serious effect on a man's property, liberty or livelihood, Where a right to be fairly heard has been denied, it is more probably a case of a bad decision than of a true exception. The rule must come close to deserving the judicial tributes quoted earlier : "a principle of universal application" "a duty lying upon every one who decides anything."

21. These principles have been contained in Article 14 of Indian Constitution and Article 21. In *Maneka Gandhi's case* AIR 1977 SC 597 it was laid down that no body's liberty can be deprived without a fair procedure established by law. In this case petitioner's livelihood had been deprived of without even giving a notice of termination or one month notice or wages as required under Section 25F of Industrial Disputes Act, 1947 and other local acts, rules etc. The petitioners have served for more than one year. The requirement of notice is essential in the facts and circumstances of the case. Taking another aspect of the case that the President has no power to appoint or irregularity, was committed by the Executive Officer in appointment and fair procedure) was not adopted in appointment. Be as it may, since they were continued in service for a considerable period, it was essential for Additional District Magistrate as well as other authorities to give them notice and also to give opportunity of participating in the enquiry. There is nothing on record to show that they were given notice or they were given opportunity to take part.

22. The decision relied upon by the Standing Counsel of this Court had not been disposed of on merits at all and as such principle of *resjudicata* shall not apply to the petitioners who were not party in the original petition.

23. The decision of Division Bench 1994 UPLBEC (*supra*) is also not applicable in the facts and circumstances of the case as in the present case the petitioners have served more than one year and some of them were confirmed. The appointments were also made either by the president or by the Executive Officer. The ruling is also not applicable in view of the Supreme Court dictum AIR 1991 SC 309.

24. The contention of the learned counsel for the respondents that they were not appointed by the valid authority is again contentious matter and it requires adjudication by fair procedure to the persons affected as their case is that they were validly appointed by the president when Executive Officer was on leave. In some cases appointments were made by the Executive Officer.

25. The petitioners are poor workers and if they were kept by the President it was not their fault but they should not have been kicked off from the service without serving notice etc. Similar principles apply to all the other workers. Some of the workers served against a permanent post. It is again a matter of adjudication when there were permanent posts existing against which they were employed and whether they were given employment against non existing post.

26. Learned counsel for the respondent's submission that there was an

alternative remedy available under the rules mentioned (supra) and as such the petition is not maintainable. I am afraid to agree with the contention of the respondents' counsel as it is a case of cancellation of appointment. The alternative remedy in the facts and circumstances is not efficacious, convenient and speedy. Rule 3 of the U. P. Municipal (Services and Appeal) Rules, 1967 provides regarding imposition of penalty and not cancellation of appointment. So on this score also it is not a case for alternative remedy.

27. I, therefore, for the reasons recorded that principles of natural justice have not been observed relying upon Supreme Court dictum and other authorities quoted hold that orders of termination of services are bad in law and the impugned orders are quashed, as the fair procedure has not been observed. The petitions are allowed. No order as to costs.