
(2008) 10 AHC CK 0100
In the Allahabad High Court

Rajesh Kumar Srivastava and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 17-10-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Citation : (2009) 1 AWC 239 Supp : (2009) 1 AWC 239

Hon'ble Judges : V.M. Sahai, J; Pankaj Mithal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V.M. Sahai and Pankaj Mithal, JJ.—Under challenge in this special appeal is the judgment and order of the learned single Judge dated 29.4.2007 passed in Civil Misc. Writ Petition No. 3790 of 2004, Rajesh Kumar Srivastava and Ors. v. State of U.P. and Ors. concerning selection and appointment of class - IV employees and a driver of the judgship of the district Kaushambi. The writ petition of the appellants herein was dismissed by the learned single Judge and the selection of the respondents No. 4 to 25 was held to be valid.

2. Two separate advertisements were issued by the District Judge, Kaushambi on 28.5.2003. The first advertisement, apart from inviting applications for the posts of Stenographers and Clerks, sought to fill up 21 posts of class - IV employees. The second advertisement was in respect of a solitary post of driver.

3. The advertisement for the post of class - IV employees provided that the "minimum qualification for applying for the said post is class - VIII pass or an equivalent qualification thereto with good knowledge of Hindi and ability to read and write numbers in English. For the purpose of selection it was also provided that for testing knowledge of Hindi a written test shall be held on 6th July, 03 which shall be followed by an interview on 7th July, 2003.

4. The advertisement for the post of driver provided that the driving test shall be held on 30.6.2003 and on the same day a test of knowledge in Hindi and

interview would be conducted. Thus, the selection of the driver was based upon written test of knowledge in Hindi, driving test and interview.

5. In pursuance of the above advertisement a total of 3786 candidates applied, including the petitioners who are appellants here in this appeal. They had earlier worked in the judgeship on ad hoc/temporary basis but their services were terminated on 20.5.2003. They were allowed to continue in service under the orders of this Court passed in earlier writ petition No. 24090 of 2003 and were also permitted to participate in the selection. The District Judge constituted a committee consisting of three judicial officers Sri Amarjeet Singh, Additional District Judge, Sri Mahipat Singh Verma, Chief Judicial Magistrate and Sri P.C. Dwivedi, Civil Judge for the purposes of selection. For the class - III employees the written test was held as scheduled and the candidates were interviewed on 12/13.7.2003. Finally, a select list of 41 persons was notified on 31.7.2003. As regards driver the driving test as well as a very short written test was conducted on 11.7.03. It appears that no interview was taken. Fifteen candidates appeared in the test and the select list was declared on 31.7.2003 in which respondent No. 25 was declared successful and selected.

6. Against the aforesaid selection certain complaints were received by the High Court on administrative side. Accordingly, report from the District Judge was called for and the District Judge after enquiry submitted a report on 4.11.2003. On further query a supplementary/second report was made by the District Judge on 27.11.2003 whereupon the High Court permitted the selection to be completed by offering appointments to the selected candidates. Consequently, appointments were made by order dated 14.1.2004 and the appellants were discharged from service. In the aforesaid background, the appellants filed writ petition praying for quashing the order dated 14.1.2004 terminating their services, select list dated 31.7.2003 and consequent appointment letters issued to the selected candidates on 14.1.2004.

7. In the writ petition the selection was challenged inter alia on the grounds that the same is in violation of the statutory rules; the original select list had been lost; answer books of the candidates were not properly evaluated and each member of the selection committee has not given separate marks to the candidates in interview. Apart from taking the above grounds, a ground for regularisation was also raised, though no specific prayer in that regard was made in the writ petition. The learned single Judge in dismissing the writ petition and upholding the selection and appointments of the respondents 4 to 25 held that the appellants are not entitled for regularisation under the U.P. Regularisation of Ad hoc Appointments (on Posts outside the purview of Public Service Commission) Rules, 1979, as amended from time to time, lastly on 20.12.2001, inasmuch as the Rules provided for regularisation of service of only those persons who were appointed prior to 30.6.98 in which category none of the appellants fell. It was also held that no rule has been violated in making the selection and the irregularities pointed out in the selection are not material to

vitiating the entire selection.

8. We have heard Sri T.P. Singh Senior Advocate assisted by Sri Siddharth Singh learned Counsel for the appellants, learned standing counsel for respondent No. 1, Sri Rajiv Gupta, learned Counsel for respondents No. 2 and 3, Sri H.R. Misra Senior Advocate assisted by Sri Somesh Khare and Sri Satish Chaturvedi for respondents No. 4 to 25.

9. In this appeal basically two points have been urged. First, the advertisement provided for a written test, which was conducted but the same was made redundant as all the candidates were called for interview. Secondly, no short-listing was done before interviewing the candidates. In interview 2741 candidates who took the written examination were called, out of which 2423 appeared and during the time available it was practicably impossible to interview such a large number of candidates.

10. The court on earlier occasion had summoned the record of the selection which has been produced. We have carefully gone through the record as well as the two reports submitted by the District Judge.

11. The first report of the District Judge reveals that the original select list prepared by the selection committee is not traceable and available but the select list which was notified was in consonance with the original select list and was not different as per the report of the members of the selection committee and there is no reason to disbelieve the members of the selection committee. The report further states that a written test for testing the knowledge of Hindi language was conducted and the candidates took the dictation. The answer sheets were examined, the mistakes committed by the candidates were encircled but no marks were awarded to any of the candidate. All the candidates were called for interview and in the interview marks were awarded out of a maximum 50 marks. In interview consolidated marks were awarded and there was no division of marks under different heads.

12. It also states that the members of the selection committee have not awarded separate marks to each of the candidates. On the basis of interview marks alone the merit list was prepared and the names of the selected candidates were notified.

13. The supplementary report of the District Judge dated 27.11.2003 again admits that no marks to any candidate was awarded in the written test as in the advertisement the maximum marks were not disclosed. Therefore, the selection was made only on the basis of the interview in which basically a personality test with regard to appearance, mannerism, conduct and the way of answering the questions was adjudged. The selection committee awarded grades A = 10, B = 20, C = 30, D = 40 marks to the candidates appearing in the interview. These marks were recorded on a rough sheet prepared by the Chairman of the selection committee which was signed by the other two members also and on that basis the marks awarded were entered into a register which was also duly

signed by all the three members of the committee.

14. We have ourselves examined the answer books of the written examination of the candidates and found that no marks have been awarded to any of the candidates.

15. A preliminary point arises as to the locus of the appellants, who are unsuccessful candidates, to challenge the aforesaid selection. In this connection reliance has been placed upon a decision of the Supreme Court reported in *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, wherein it was held that a selection should not be set aside where the candidates challenging the selection themselves appeared in the examination without protest and have raised the challenge after realising their failure in examination. Again in *Munindra Kumar and others Vs. Rajiv Govil and others*, the Supreme Court accepted the above principle but ruled that such candidates can not be estopped from challenging the rules of selection which are said to be arbitrary and violative of Article 14 of the Constitution of India. The same principle without any discussion has been reiterated in *Union of India (UOI) and Others Vs. S. Vinodh Kumar and Others*, There is no dispute to the proposition of law that ordinarily the unsuccessful candidate who have participated in the selection without any protest, have no right to challenge the advertisement or the selection process.

16. However, the above proposition is not of universal application. It is not applicable where the vires of the rules is under challenge as has been observed in *Munindra Kumar (supra)*. It has also no application where the unsuccessful candidates challenges the selection of a unqualified selected candidate to a public office as has been held by a Division Bench of this Court in writ petition No. 9990 of 1992 of *Dr. Syed Ahasan and Ors. v. Aligarh Muslim University and Ors.* decided on 23.2.07 and followed in 2007(3) ADJ 114 , *Aejaz Ahmad and Ors. v. Aligarh Muslim University and Ors.* Even the latest decision of the Apex Court reported in *Sadananda Halo and Others Vs. Momtaz Ali Sheikh and Others*, lays down that the above general principle is not free from exceptions. Now in the instant case the appellants have participated in the selection process as per the procedure prescribed and notified. However, undisputedly, the prescribed procedure though adopted but was given up as selection was alone on the basis of interview without taking into account the marks of the written test. In these circumstances their case falls within the exceptional category and they are entitle to maintain the writ petition. It was only alter selection that serious illegalities about the change in the process of selection after the candidates were examined and interviewed were detected.

17. Apart from the above, this is a matter concerning the appointments of employees in the subordinate judiciary of the State which works under the supervisory jurisdiction and administrative control of the High Court. The Lucknow Bench of the Allahabad High Court in the case of *Dinesh Kumar v. State of U.P.* 2006(1) ESC 666 following the decision in the case of *District and Sessions Judge, Baghpat v. Ratnesh Kumar Srivastava* 2005(1) ESC 724 held

that as the High Court exercises supervisory jurisdiction over the subordinate courts and while exercising such jurisdiction under Article 227 of the Constitution of India it is not necessary for this Court to dismiss a writ petition on the ground that the petitioners, who are unsuccessful candidates in the selection have no locus standi when an action challenging the selection on the ground of serious illegality, irregularity, fraud or misconduct alleged to have been committed by the District Judge or the members of the selection committee either on administrative or judicial side is brought to the notice of the court.

18. In view of aforesaid, the preliminary objection raised on behalf of the selection committee is over ruled and the petition at the behest of even the unsuccessful candidates under the facts and circumstances of the case is held to be maintainable.

19. We are conscious that The U.P. Subordinate Civil Courts Inferior Establishment Rules, 1955 read along with Subordinate Civil courts Ministerial Establishment Rules, 1947 which governs the selection and appointment of class - IV employees of the district judgship are silent about the method and manner of making the selection and, therefore, it is open for the District Judge concerned to adopt any fair and suitable method or criteria for the selection which may be adhered to with impartiality. A perusal of the advertisement, in unequivocal terms establishes that the District Judge had decided to hold a written test to judge the knowledge of Hindi language of all the candidates and then to hold the interview. Therefore, on the face of it written test and interview were both mandatory for making the selection and it was not open to the District Judge or the selection committee to deviate from the procedure so prescribed.

20. In the instant case, though both the written test and interview were conducted, but admittedly the answer books of the written test were not evaluated by awarding marks and all the candidates who took the written test, i.e. 2741 candidates were called for interview. No short listing on the basis of said written test was done. Thus, making the written test wholly redundant and an exercise in futility.

21. Non awarding of marks in written test amounts to not holding of any written test as advertised. This leads to a conclusion that the procedure which was laid down in advance for the selection was given up in between and was changed affecting the selection materially. A candidate who participated in the selection under a bona fide belief that the merit will be judged on the basis of composite marks obtained by him in the written test as well as interview was left in a lurch, e.g. a candidate doing extremely well in the written test and securing less marks in interview would have qualified the merit list for selection on the basis of aggregate. However, when the marks of the written test have not been counted and the selection has been made solely on the basis of the marks obtained in the interview, a candidate performing extremely well in written test but not performing so well in interview will stand to loose his chance for selection. Thus, such a deviation from the procedure laid down before the selection resulted in

materially affecting the result of the selection. A three Judges Bench of the Apex Court recently in *K. Manjusree Vs. State of A.P. and Another*, *K. Manjusree v. State of Andhra Pradesh and Anr.* categorically ruled that the selection criterion which has been prescribed in advance cannot be changed afterwards. This decision has been followed by the Supreme Court in the case of *Hemani Malhotra Vs. High Court of Delhi*, wherein while considering the recruitment process it was held that changing rules of the games either during the selection process or when it is over is not permissible under law. In other words, when the procedure for selection specifically provides for selection on the basis of merit to be drawn after written test and interview it is not fair, proper and legally permissible to deviate from the said procedure and to make selection on the basis of interview alone.

22. It is also settled by catena of authorities that ordinarily candidates only to a maximum of twice or thrice the number of vacancies may be called for interview. A five Judges Bench of the Apex Court in *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, while dealing with the selection made by the Haryana Public Service Commission with regard to the Punjab Civil Services ruled that where there is a composite test consisting of written examination followed by interview the number of candidates to be called for interview should not exceed twice or at the highest thrice the number of vacancies to be filled on the basis of the written examination. Therefore, calling for interview of 1300 candidates satisfying the minimum eligibility requirement was not proper when the number of vacancies to be filled up was only 61, but the same would not vitiate the selection unless something more is shown to be lacking.

23. In another decision of the Supreme Court *Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another*, it has been laid down that where selection is solely on the basis of the interview it is mandatory to fix a limit of candidates to be called for interview on some rational and objective basis. It is for this reason that in the present case a written test was conducted but the same was given a go bye. Thus, frustrating the purpose of conducting written test.

24. Apart from the above, admittedly 2423 candidates had appeared in interview and the interviews were held on 12th and 13th July, 2003 only and that too not for the entire day. Therefore, during the time available for the interviews it was not possible to interview such a large number of candidates, i.e. 2423 by the selection committee. The members of the selection committee have jointly awarded marks to all the candidates. A three Judges Bench of the Supreme Court in the case of *Satpal and Ors. v. State of Haryana and Ors.* 1995(supp.)(1) SCC 206 has held that where the number of candidates to be interviewed in a single day is between 400 - 600 the selection process on the face of it is arbitrary.

25. A faint effort has been made to suggest for speedy completion of interviews all the three members of the selection committee separately interviewed the candidates. This is still worse as it erodes the sanctity of constituting a selection

committee who are supposed to interview candidates together. Such a suggestion can not otherwise be accepted on the face of the reports of the District Judge which states that after the candidates were interviewed they were awarded marks collectively by the members of the selection committee and the mark sheet so prepared was signed by all the three members.

26. Learned Counsel for the appellant has submitted that in so far as the selection on the post of driver is concerned, initially one Manoj Kumar son of Jamuna Prasad was declared selected but subsequently the name of Dharmendra, respondent No. 25 was substituted.

27. Error in this regard has been explained sufficiently. There was no candidate with the name of Manoj for the post of driver and it was only on account of clerical error that his name was declared, whereas actually Dharmendra was selected.

28. However, from the perusal of the record, we find that the candidates for the post of driver were also not awarded any marks in the written test and only a note was made that some of them had little knowledge of general Hindi and some other had no knowledge. There is nothing on record as to who took the driving test. Above all, none of the candidates were subjected to interview though it was specifically provided for in the advertisement.

29. To sum up for the purposes of selection the written test was rendered completely meaningless and the manner in which the interviews of such a large number of candidates were conducted in the short span of time speaks for itself that the interviews were only an eye wash. There were no interviews for the post of driver. As such there was no selection.

30. Thus, in our considered opinion, the entire selection in the present case stands vitiated for the reason that the rules of the game agreed upon were changed in between without informing the candidates and secondly it was not humanly possible to hold interviews of more than 2000 candidates in two days by the selection committee, particularly when the selection had to be made solely on the basis of the interview. This leads us to an inevitable conclusion that the selection as a whole is farce, sham and illusory in nature which cannot be given a legal sanction. Accordingly, it stands vitiated under law.

31. Learned Counsel for the selected candidates in the last urged that as they have worked for more than four years the equity is in their favour and their appointments ought not be quashed. They are not the persons responsible for the wrong procedure adopted in the selection. The submission may not be completely devoid of some merit but nonetheless sympathy and compassion has no place where the action is *ex facie* found to be arbitrary under law. Equity only follows the law and cannot over ride such an arbitrary action in making the selection.

32. In *K.S. Bohir v. State of Maharashtra and Ors.* 2007(10) SCC 264 the

Supreme Court observed "compassion and sympathy have no role to play where rule of law is required to be enforced". It further provides that adjusting the equities in exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India is one thing but it would not mean to act contrary to law. The Apex Court in an earlier decision reported in State of U.P. and others Vs. U.P. State Law Officers Association and others, has observed that there need not be any legal anxiety to save engagements that are the product of spoiled system as no element of public interest is involved in saving them. Therefore, in view of above, we are unable to extend any equitable relief to the respondents No. 4 to 25 in protecting their appointments which are based upon a selection which we find stands vitiated under law.

33. There is another reason for not extending the equitable relief in this matter. The matter concerns the subordinate judiciary which works under the supervisory jurisdiction of this Court. The judiciary is supposed to act as a role model and set examples before all other public offices. As such, we cannot permit such an malady to creep in and to root itself deep into the judicial system.

34. In the end, we can not refrain over selves in mentioning that right under the nose of the High Court selections are being made arbitrarily very often without any sense of responsibility. In respect of this very advertisement of the Judgeship of Kaushambi wherein selection of class - III employees was made the same was struck down by this Court vide judgment and order dated 25.5.06 with exemplary cost of Rs. 50,000/- each to be paid by Sri C.B.D. Mishra, then District Judge Kaushambi and Sri Krishan Chandra, Chairman of the selection committee. The court therein had taken note of series of writ petitions filed regularly challenging the selection of class III and IV employees of the various District Judgeships and which have been allowed quashing all such selections. Despite the note of caution sounded therein it appears that no one has learnt any lesson and there is no sign of improvement.

35. The menace of such illegal and arbitrary selection for whatever reasons has acquired alarming proportion and has almost continued unabated. Therefore, it requires to be dealt with an iron hand forthwith. Conscious of the fact that we are not supposed to legislate, but in order to control the malady of such unlawful selection at least in subordinate judiciary, in exercise of supervisory jurisdiction, we consider it suitable in the fitness of things to lay down the following guidelines to facilitate fair selection by supplementing the Rules in the area in which they are silent.

1. A selection committee of three persons headed by the District Judge] concerned and two senior most judicial officers of the judgeship be constituted in every judgeship.
2. First of all, every year all class - III posts within the promotional quota from amongst the class - IV employees be filled up and the process in this regard be completed latest by 31st December every year

3. Thereafter, all the vacancies of class - III and class - IV posts in each judgship, as far as possible, may be advertised in a district level newspaper in the month of January/February every year so that the selection process is completed by 31st of March every year.

4. The selection process should be based upon a written test of maximum 75 marks to test the workable knowledge of Hindi followed by an interview of maximum 25 marks.

5. On the basis of merit in written test candidates to a maximum of thrice the number of vacancies advertised to be filled up, should ordinarily be called for interview.

6. A combined merit list on the basis of the marks obtained in written test and interview should be drawn along with a waiting list of equal number of candidates as the vacancy advertised and then the selection be made from the said merit list.

36. Accordingly, with the above observation and guidelines, this special appeal succeeds and is allowed. The judgment and order of the learned single Judge in writ petition No. 3790 of 2004 Rajesh Kumar Srivastava and Ors. v. State of U.P. and Ors. is set aside and the entire selection of class - IV employees of the Judgship of Kaushambi pursuant to the advertisement dated 28.5.2003 are quashed. The selection process shall be completed afresh after fresh advertisement in accordance with law within a period of four months from today in this particular case. In the advertisement it shall be provided that those candidates who participated in the earlier selection need not apply afresh and they shall be permitted to participate in the fresh selection.

37. The original record is returned to the judgship.

38. A copy of this judgment be placed before the Registrar General for necessary follow up action and circulation of guidelines to all District Judges.