
(2009) 01 AHC CK 0154
In the Allahabad High Court

Ram Abhilash Maurya and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (2009) 2 AWC 1672

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—The petitioners applied and were selected as "Safai Karmis", a Group-D post in the State Government in pursuance to the advertisement dated June 16th, 2008 published by the office of the District Panchayat Raj Officer, Mirzapur in accordance with the U.P. Group "D" Employees Service Rules, 1985. By this writ petition they have challenged the order of the District Magistrate, Mirzapur dated 23rd September, 2008 by which he has cancelled the entire select list on the grounds disclosed in the report of the enquiry committee dated 22.9.2008 finding irregularities and "dhandhali" (corrupt practice) in the selection process. The affidavits have been exchanged and with the consent of the parties, the matter was heard.

2. Heard Shri Ashok Khare, senior advocate assisted by Shri Siddharth Khare, learned Counsel for the petitioners, Shri Jafar Naiyer, Addl. Advocate General assisted by Shri S. P. Kesarwani, Addl. Chief Standing Counsel appears for the State-respondents.

3. The State Government by a Government order dated March 1st, 2008 issued by the Chief Secretary, Government of U.P., decided to sanction one post of Sewa Karmi in every revenue village with total number of 1,08,848 post in the State in the pay scale of Rs. 2,550-55-2,660-60-3,200 on temporary basis for maintaining cleanliness in the villages. The object for creating the posts, given in

the Government order is to provide facilities of development in the villages, to stop migration to the urban areas. It was found necessary to provide for proper drainage and cleanliness of the villages for which no arrangements were made so far and which affects the public health and sanitation for prevention of communicable diseases. The Government order provides that these posts shall be created on temporary basis upto 28th February, 2009, unless they were cancelled earlier; the Sewa Karmi shall be employees of Gram Panchayat and shall be appointed by the respective Gram Panchayats. The service rules providing for the process of appointment and other service conditions were to be notified separately. By the second Government order dated April 11th, 2008 the State Government decided with the consent of the Governor of Uttar Pradesh that the Safai Karmi to be appointed vide sanction of the posts by Government order dated March 1st, 2008 will not be the employees of the Gram Panchayat. They shall be full time Government employees, who shall work under the Panchayati Raj Department. Their appointments shall be made by the District Level Officer (District Panchayat Raj Officer) and that service rules for their appointment and service conditions will be separately notified. The Government order dated March 1st, 2008 was modified accordingly.

4. By a third Government order dated June 6th, 2008 the State Government notified with the approval of the Governor of the State that the method of appointment of Sewa Karmi, in continuation to the directions given in Government orders dated 1.3.2008 and April 11th, 2008 shall be the same as it is prescribed in the Group "D" Employees Service Rules, 1985, as amended from time to time.

5. The Group "D" Employees Service Rules, 1985 did not provide for the method of recruitment of Safai Karmi. The sources of recruitment in Rule 6 for Sewakar included item (a) was by direct recruitment, whereas for Safai Jamadar in item (e) is to be appointed by promotion from permanent Safaikar. The educational qualifications for the post other than peon, messenger and cyclostyle operator is prescribed in Rule 10 which provides that there is no educational qualification required for the post but that preference shall be given to the person, who is educated and is able to atleast read and write Hindi in "devnagri script". The method of recruitment provided in Rule 16 includes constitution of committee, which includes (1) the appointing authority (2) if the appointing authority does not belong to Scheduled Castes or Scheduled Tribe, an officer belonging to Scheduled Castes and Scheduled Tribe, nominated by the appointing authority and (3) if appointing authority does not belong to O.B.C. and officer to O.B.C. nominated by the appointing authority with a proviso that if in the department or establishment no such appropriate officer of the categories is available, on the request of the appointing authority the District Magistrate shall nominate such officer and if no such officer is appointed then an officer, who may be nominated by the Commissioner. The process of recruitment under Rule 19 provides for determination of vacancies by the appointing authority in Sub-rule (1) to be sent to the employment office; for directly calling such of those, who are registered in

the employment office and publication of such advertisement on the notice board and in atleast one local newspaper. All the applications shall be placed before the selection committee. When selection committee receives under Sub-rule (2) applications for both general and reserved categories, it shall interview the candidates and make selection on various posts. Sub-rule (3) provides that selection committee shall for the purposes of giving weightage to the retrenched employees shall give 5 marks for one year of completed service and 5 more marks for completed service of the other full years but these marks shall not be more than 15. The number of candidates, who are selected in Sub-rule (4) shall not be more than 25% of the number of advertised vacancies and that select list will be prepared in accordance with the marks secured in the interviews.

6. The Group "D" Employees Service Rules, 1985 do not provide for any written examination. The selections after wide advertisement are based only on the marks obtained by the candidates in interviews to be awarded by the selection committee constituted under Rule 6 of the Rules.

7. The District Panchayat Raj Adhikari/Appointing Authority, Mirzapur advertised 2003 posts of Safai Karmi in the break up of 421 posts in General Category; 40 posts in Scheduled Castes/Scheduled Tribes category and 541 posts for Other Backward Class Category with horizontal reservation for women, physically disabled, dependents of freedom fighter and ex-army men to be filled up in accordance with the Group "D" Employees Service Rules, 1985. The advertisement dated June 16th, 2008 was published in daily newspapers with the circulation at Mirzapur. The Clause 3 of the general directions in the advertisement provided that in accordance with Rule 10 (2) of the Group "D" Employees Service Rules no educational qualification is prescribed for Safai Karmi but preference will be given to the person, who is educated and can atleast read and write Hindi in "devnagri script". Clause 4 of the general directions provided that in accordance with Rule 10 (6) of the Group "D" Employees Service Rules, 1985, it is necessary for a candidate for recruitment to any category of Group "D" post that he should have the knowledge of cycling. This condition, however, was not to be applied to women candidates.

8. The Group "D" Employees Service Rules, 1985 were amended by Notification dated July 18th, 2008. The amended rule inserted a new Sub-rule (6) and also added Sub-rule (8). It also amended Rule 16 providing for the constitution of the selection committee. The new Rule 10(6) provided that no person shall be eligible for appointment to the post of sweeper unless he is found to possess requisite knowledge pertaining to the work of sweeper and has good experience in that work. The new Sub-rule (6) is quoted as below:

(6) No person shall be eligible for appointment to the post of sweeper unless he is found to possess requisite knowledge pertaining to the work " of sweeper and has good experience of that work.

9. With regard to constitution of selection committee the new Rule 16 provided

as follows:

16. For the purpose of direct recruitment to any post, the concerned District Magistrate shall constitute a selection committee as follows:

(i) An officer nominated by the District Magistrate ... Chairman.

(ii) An officer belonging to the Scheduled Castes or Scheduled Tribes nominated by the District Magistrate, if the Chairman does not belong to Scheduled Castes or Scheduled Tribes. If the Chairman belongs to the Scheduled Castes or Scheduled Tribes an officer other than belonging to the Scheduled Castes or Scheduled Tribes or Other Backward Classes, shall be nominated by the appointing authority, if the appointing authority does not belong to the Other Backward Classes. If the appointing authority belongs to the Other Backward Classes an officer other than Other Backward Classes or Scheduled Castes or Scheduled Tribes shall be nominated by the appointing authority.

Provided that if such suitable officer is not available in his department or organization such officer shall, on the request of the appointing authority, be nominated by the District Magistrate and on failure to do so, by reason of non-availability of suitable officer, such officer shall be nominated by the Divisional Commissioner. Backward Classes shall be nominated by the District Magistrate...Member.

(iii) An officer belonging to the Other Backward Classes shall be nominated by the District Magistrate, if the Chairman does not belong to the Other Backward Classes. If the Chairman belongs to the Other Backward Classes, an officer other than belonging to the Other Backward Classes or Scheduled Castes or Scheduled Tribes shall be nominated by the District Magistrate...Member

Note.-The District Magistrate may for any special reason, constitute more than one selection committee.

10. The District Panchayat Raj Adhikari, Mirzapur took note of the amendment in the Rules made after the advertisement, in the interview letters to each of the candidate. In the interview letter sent to Smt. Rina Singh wife of Shri Bachchu Ram Singh, Roll No. 04255 dated 9.8.2008 she was asked to appear at Government Polytechnic Mirzapur Campus on 27th August at 9.00 a.m. for practical test of cycling, sweeping and thereafter interviews. She was required to bring her original certificate and a bicycle. The women candidates were not required to bring bicycle. The interview letter also provided for details of educational qualification, and certificate of date of birth, certificate of caste for reserved category, character certificate from two Gazetted Officers, a declaration that he is either married or unmarried and a certificate in sweeping work. A press notification was also published in daily newspaper requiring all the 11,639 candidates to appear in the campus of Government Polytechnic Mirzapur on the dates fixed from 18th August, 2008 to 1st September, 2008. Those candidates, who have not received interview letters could obtain their interview letters on

open counters from the office of the District Panchayat Raj Officer.

11. A select list of selected candidates and waiting list was published by the District Panchayat Raj Adhikari in daily newspapers "Dainik Jagran" dated 15.9.2008 giving the roll numbers of the selected candidates. The petitioners' roll numbers were included in the select list.

12. A newspaper report was published on 26.9.2008 to the effect that an order has been passed by the District Magistrate, Mirzapur cancelling the entire selection for appointment of Safai Karmis in district Mirzapur and that he had directed holding of fresh selection proceedings, giving rise to this writ petition.

13. The Court entertained the petition and passed an order on 18.10.2008 as follows:

Connect with Writ Petition No. 53110 of 2008.

The dispute in the present writ petition is with regard to selection and appointment of Safai Karmchari in District Mirzapur. The contention of the petitioner is that they appeared in the selection process alongwith other candidates and have been declared selected but have not been given appointments vide an order dated 23.9.2008. The entire select list has been cancelled by an order passed by the District Magistrate. It is contended that it is the District Magistrate and not the District Panchayat Raj Officer, who is appointing authority and such order could not have been passed by the District Magistrate and the same has been done in the direction issued by the higher authorities, without application of mind and without conducting any enquiry.

The submission of learned Counsel for the petitioners is that in similar circumstances, for a different district, where selection had been held and thereafter cancelled, the Lucknow Bench of this Court has passed an order on 23.9.2008 in Writ Petition No. 6022 (S/S) of 2008 and directed for issuance of appointment letters in favour of the selected candidates and allow them to work and pay salary. In the said writ petition, a further order has been passed on 30.9.2008 whereby the operation and implementation of the order dated 22.9.2008, passed by the respondents has been further stayed.

In my view, in the facts and circumstances of the present case, such a direction as has been prayed for does not deserve to be granted at this stage without calling for a counter-affidavit.

All the respondents, who are represented through learned standing counsel, may file counter-affidavit within a month. The petitioners shall have two weeks thereafter to file rejoinder-affidavit. List immediately thereafter alongwith connected writ petition.

However, keeping in view that the selection had already taken place, the results of which had been declared in which the petitioners were declared selected, it is provided that no fresh selection shall take place for appointment on the post of

Safai Karmachari in District Mirzapur, on which post the petitioners have already been selected. This order is being passed in the interest of Justice so that no third party rights be created if fresh selection process is permitted to be undertaken.

14. A counter-affidavit of Shri Bal Krishna Shukla, District Panchayat Raj Officer, Mirzapur was filed on 18.11.2008 stating therein that three committees were constituted by the District Magistrate, Mirzapur vide order dated 31.7.2008, 7.8.2008, 11.8.2008 and 20.8.2008 with each committee consisting of Chairman and two members. The petitioners and others participated in the selection process conducted by these committees under the Rules of 1985 as amended by 4th Amendment Rules, 2008 vide Notification dated 18.7.2008. It is stated in para 8 that on receipt of various complaints against the selection process a three member enquiry committee was constituted by the answering respondent No. 2 on 20.9.2008 to enquire into the matter and to submit its report. The said enquiry committee enquired into the matter and recorded its finding and came to the conclusion that in the selection process transparency has not been maintained and necessary norms have not been followed. The enquiry report dated 22.9.2008 has been annexed as Annexure S.C.A-2 to the counter-affidavit. The District Magistrate considered the enquiry report and after being satisfied cancelled the select list and directed for re-interview of the applicants in accordance with law vide impugned order dated 23.9.2008.

15. The enquiry report submitted by Shri Bans Gopal Maurya, Addl. District Magistrate (Relief), Mirzapur; Shri Dharmendra Prakash Tripathi, Chief Treasury Officer, Mirzapur and Shri Zia Lal Saroj, Addl. Sub-Divisional Magistrate (Sadar), Mirzapur dated 22.9.2008 would show that eight complaints were received regarding irregularities and malpractices in the selections. These complaints are detailed as follows:

1. A letter dated 17.9.2008 by a public representative stating that malpractices were practiced at a large scale in the committee in chairmanship of the Chief Development Officer with request to hold selection impartially;
2. A complaint by the correspondent Kaushambi King, dated 20.9.2008 with regard to appointment of Seva Karmis against the prescribed standards and ignoring the Halal, Dom, Valmiki, Sweeper, Hela caste in the process of recruitment;
3. A complaint by Shri Ram Siromani, a candidate dated 16.9.2008 alleging that the candidates with Sl. Nos. 977, 970 and 5604 have submitted false experience certificate and that he himself has worked in Zila Sahkari Bank, Mirzapur since 1998 as daily wager;
4. A complaint dated 29.9.2008 by U.P. Viklang Sewa Samiti regarding rejection of Shri Rajesh Kumar (Chamar) Sl. No. 08819 and that use of money in the selections;

5. A complaint dated 15.9.2008 by the candidates Ramesh Kumar, Suresh Kumar, Vijay Shyam with Roll Nos. 1208, 1472 and 8177 regarding appointment of persons with higher qualifications after taking Rs. 1 lac and for failing to consider the persons, who are less educated;

6. A complaint by Shri Sawan Kumar Shukla, Sl. No. 0681 dated 15.9.2008 regarding ignorance of Government orders in the selections;

7. A complaint by Shri Dhananjay Prasad, Sl. No. 00444 dated 17.9.2008 stating that he was eligible for Sewa Karmi but was not selected;

8. A complaint by Virendra Kumar, Kailash, Sanjay, Roll Nos. 06183, 10967, 08524 stating that he completes all the requirements and was eligible belonging to Scheduled Castes and was poor person but was not selected as did not have capacity to pay Rs. 2 lacs to the concerned officers; and

9. A complaint by Rajesh Kumar Chamar dated 9.9.2008 stating that the appointment were made on the basis of money.

16. After narrating the facts and the rules relating to selections the enquiry committee made observations in its conclusion that the selections were made in ignorance of the intentions of the Government for making selections from the person having sufficient knowledge and experience in sweeping and in failing to appoint the best candidates and also for failing to consider the necessary guidelines and in maintaining transparency:

1. The first of the three selection boards interviewed 3073 candidates and selected 700 candidates, the second board interviewed 3014 candidates and selected 614 candidates, the third board interviewed 3160 candidates and selected 689 candidates. All the three selection boards were separate but selected almost the same number of candidates, which is surprising facts and it cannot be ruled out that the each board had pre-determined the number of candidates to be selected;

2. The candidates, who have not succeeded were given 20 to 25 marks by the first committee. The second selection committee also gave 20 to 26 marks to the unsuccessful candidates. The third committee also gave 20 to 26 marks to unsuccessful candidates, whereas all the committees were functioning separately. Similar number of marks given to successful candidates prima facie does not appear to be possible and in the same manner all the three committees had given marks between 26 to 38 to the successful candidates. This average number of marks given by separate committees is a matter of surprise and was not naturally possible;

3. The three committees were constituted for the selections. Each of the three committees had three members and they had given separate marks. They did not carry out the tabulation by any other person and prepared the results by sitting together in which transparency was not maintained;

4. The caste wise selected and persons called for interview produced by the District Panchayat Raj Officer shows that out of 120 candidates of Hela castes 49 were selected; out of 102 candidates of Dhobi caste 15 were selected; out of 28 candidates of Kahar caste 5 were selected; out of 15 candidates of Valmiki 6 were selected and out of 18 candidates of Mushar caste 6 were selected. All these are professionally engaged as sweeper and are found to be sweeping but that they were not selected, which caused a surprise;

5. There were 541 posts reserved for Other Backward Class, as against which 851 persons of O.B.C. were selected, on account of which 310 candidates were brought into general category, which included 86 persons of Yadav caste, 42 of Kurmi caste, 44 of Bind caste and 42 of Koyari caste. These are not castes, which are traditionally engaged in sweeping work nor are seen to be working sweeping roads and drains. It is surprising as to how these castes were given a place in the unreserved category;

6. Roll Nos. 540 and 541, Roll Nos. 640 and 645, Roll Nos. 1151 and 1160, Roll Nos. 457 and 458 and Roll Nos. 353 and 356 are real brothers in general category, which shows that transparency was not maintained. Many Scheduled Castes candidates were available but were not selected;

7. The selection of a number of candidates of a special Yadav caste of village Tilathi, Anurudhpur, Purabpatti, Khamaria Kone, Jogiasbari, Bhogaon, Majhawa Tarash, Dubahi, Mahangipur, Rampur Dayal puts a question mark on the transparency of the selection. In the entire selection the selection of more number of candidates belonging to Yadav caste and failure to select candidates belonging to Hela, Valmiki and Mushar caste, which are engaged in sweeping work is surprising in itself; and

8. In the General and Backward Category 25% are Yadav, 20% Kurmi, 40% Kshatriya, 40% Brahmins were selected, whereas only 33% Mushar, 15% Dhobi, 16% Kahar, 12% Chamar and 16% Bind, which creates doubts in the selections as it cannot be said that the forward castes have more experience and knowledge in sweeping work.

17. The District Magistrate accepted the conclusions drawn in the inquiry report. By his order dated 23.9.2008 he has cancelled the selections and has directed fresh interviews to be taken by the District Panchayat Raj Officer in accordance with the rules giving rise to these writ petitions.

18. Shri Ashok Khare, learned Counsel appearing for the petitioners submits that the exercise of powers in cancelling the selection is wholly arbitrary, unreasonable and is violative of Articles 14 and 16 of the Constitution of India. He would submit that the records of the selections in which three committees had interviewed 11639 candidates could not be completed by the enquiry committee in 48 hours. The enquiry committee was constituted on September 20th and submitted its report on September 22nd, 2008 and on the next day the entire selections were cancelled. He submits that the complaints related to

violation of procedure of selections, acceptance of money in consideration of selections, forged certificates of experience, and ignorance of certain categories of sweeper castes namely Hela, Valmiki, sweeper etc. The committee exceeded the nature of complaint. It, however, did not find or report any violation of selection procedure or irregularities committed by the selection committees. The enquiry committee has not recorded any findings with regard to exchange of money of any other extraneous consideration in selections. The entire findings are based upon the statistics namely the number of successful candidates and the award of marks by the respective committees. The other findings are based upon the ignorance of certain communities traditionally engaged in sweeping work and the selection of large number of Yadav, Kurmi, Kshatriya and Brahmin candidates as against the castes belonging to sweeper community. He would submit that the enquiry committee mainly proceeded on the basis that the persons of community, who were traditionally engaged in sweeping work were ignored by the selection committee. The entire observations are based on facts, which could not be collected, assimilated and concluded within short period of 48 hours and in any case the findings on its own do not justify the conclusion of any irregularity in the selection. He would submit that though a candidate interviewed, and included in the select list does not have a right to be appointed, the State Government must show good and valid reasons for cancellation of the select list. The posts are still existing and that afresh interviews have been ordered from the amongst same candidates. The respondents are not permitted in law to proceed with fresh selections unless the procedure for appointment was not followed or there is any finding that the selection committee committed such manifest errors, which will vitiate the entire selections.

19. Shri Ashok Khare further submits that the experience in the work of sweeping and cycling was only the eligibility and that there was no criteria fixed either in the rules or by the State Government or the appointing authority in the method and manner of awarding the marks in interviews. If all the three committees followed the same pattern would rather show transparency in the selections. The U.P. Public Service (Reservation for S.C., S.T. and O.B.C.) Act, 1994 was applicable to the selections and provided for selection of 50% of the candidates in general category, 27% for O.B.C. categories and 23% for S.C./S.T. categories. There was no preference or reservation provided for the castes, which are traditionally engaged in sweeping and thus the selection of a little larger percentage of higher castes as compared to Dalits would not by itself conclude that the selections were vitiated. The selection of number of candidates of particular caste would not by itself vitiate the selections as in such case no irregularity can be assumed.

20. Shri Jafar Naiyer, Addl. Advocate General appearing for the respondents submits that the empanelment in the select list does not give right to appointment. The District Magistrate as appointing authority under the amended rules had a right to question the validity and transparency of the selections. He submits that the committee did not carry out any test in sweeping and cycling

and that award of equal number of marks to the unsuccessful and successful candidates and the ignorance of the candidates of the caste traditionally engaged in sweeping vitiated the entire selections. There were computer records prepared by the office of the District Panchayat Raj Officer from which the enquiry committee could easily find the caste composition of the candidates. The posts of sweepers are generally filled up by the persons traditionally engaged in such work. The selection of large number of candidates of higher caste would show that the committees did not carry out their function properly and that the criteria of selections was not in accordance with the intention of the Government in appointment of Safai Karmis in the village panchayats. He has relied upon the judgments in Rural Litigation and Entitlement Kendra, Dehardun and others Vs. State of U.P. and others, Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others, ; K. Jayamohan Vs. State of Kerala and another, ; Munna Roy Vs. Union of India (UOI) and Others, ; All India SC and ST Employees Assn. and Another etc. Vs. A. Arthur Jeen and Others etc., Food Corporation of India and Others Vs. Bhanu Lodh and Others, and State of M.P. and Others Vs. Sanjay Kumar Pathak and Others, , in submitting that the inclusion of a candidate in the select list does not give him an indefeasible right to be appointed on the post. The District Magistrate was competent to enquire about the validity and transparency in selection and that he has rightly placed reliance upon the report of the enquiry committee regarding the irregularity in selections. The petitioners will get a fresh chance to be interviewed in which they will have to produce experience certificates and will be considered for appointment on their own merits.

21. The appointment on civil posts must be made fairly and strictly in accordance with the statutory rules. In the present case the post of Safai Karmis would fall within the category of posts of Sweepers provided in Rule 6 (a) of the Group "D" Employees Service Rules, 1985 notified under Article 309 of the Constitution of India. Rule 6 provided for direct recruitment to these posts for which the qualifications are prescribed under Rule 10. Sub-rule (2) of Rule 10 provides that no educational qualification is required for any other category namely the categories other than peon, messenger and cyclostyle operator, who are required to have passed Class 5 examination but that preference will be given to a person, who is educated and can atleast read and write Hindi in Devnagri script. Sub-rule (6) provides that for the Group "D" post it is necessary that the person should know cycling but that condition would not be applicable to women candidate. The literacy with the proficiency in cycling except for women was the only requirement under the rules for selection by the selection committee to be constituted by the District Magistrate with the representation of O.B.C. and Scheduled Castes and Scheduled Tribes. There is no criteria fixed for selection of selection committee or for award of marks in the interviews. The State Government in sanctioning post of Safai Karmis did not prescribe any special criteria or preference to be given to any caste in selections. The U.P. Public Service Reservations for O.B.C, S.C. and S.T. Act, 1994 was applicable providing

for vertical reservation for general category 50%, O.B.C. at 27% and S.C./S.T. at 23%. If a reserved category candidates had scored more marks in the open general competition, as against general category, he was to be adjusted in accordance with Sub-rule (3) of Rule 3 of the Act of 1994 in General category. There was no preference to be given to any particular caste in any category in vertical reservation.

22. There was no allegations of corrupt practices made in any complaint nor the enquiry committee found that any member of the selection committee was interested or had demanded and taken money for selecting the candidates. No material has been produced before the Court to support the allegations that the selection committee had accepted bribes in selecting the candidates. The Court is as such left with the findings of the enquiry committee, which has relied upon the statistics indicating equal number of marks given by each committee to successful and unsuccessful candidates and the selection of large number of candidates of the castes, which are not traditionally engaged in sweeping the roads and drains, and a further complaint that a large number of persons belong to Yadav and Kurmi castes, which fall in the O.B.C. category and a special category of Yadav caste of particular village were more in the numbers of those, who were selected. There is no such allegations that there was predominance of such castes in the selected candidates. Even according to the enquiry committee these castes had larger representation in selections.

23. A suspicion or a doubt based on the marks awarded by the selection committees and the selection of candidates of a particular castes to be marginally higher than other castes, could not by itself be a ground for cancellations of the candidates enmasse.

24. The Court is not concerned here with the experience of the selected candidates in sweeping work as the selections will be based on the rules prevalent on the date, when the posts were advertised. The Rules of 1985 did not provide for experience of sweeping work as essential condition, or eligibility to apply for selections. The candidates, however, were required to submit certificates to prove that they had experience in sweeping work. It is reported that many of the candidates produced false certificate. This, however, was not a ground on which the enquiry committee found the selections to be affected. The enquiry committee has not suggested that any of the candidate did not have the knowledge and experience as sweeper or that they were not interviewed by the selection committee.

25. In case the State Government intended to give preference to any particular castes, which are traditionally engaged in sweeping work, they could have indicated such preference or weightage in the Government orders or in the amendment to the rules, which came after the posts were sanctioned. There was no such preference indicated by the State Government either in the Government orders or in the amended Rules. The selection committees, therefore, were at liberty to select candidates in accordance with the reservations provided under

the Act of 1994. The selection committees were not required nor had decided to adopt any criteria of awarding marks. They could, therefore, either independently or by meeting together to maintain uniformity and transparency decide a criteria and also the number of marks to be awarded for selecting candidates. The fact that committees awarded average marks and did not go below 20 marks and exceed 38 would rather show that the selection committees were conscious of awarding the number of marks for the purposes of selections and ruled out the award of very low and very high marks to avoid any arbitrariness in the award of marks by any committee. This effort of the selection committee to maintain transparency in selection could not be treated as a surprising fact and for holding that the respondents committed irregularities in selections. The U.P. Public Service Commission also follows this practice to avoid any discrimination.

26. There are no allegations with regard to any individual giving bribe or any member of the selection committee preferring a particular candidate. Further there are no allegations that any particular candidate or the candidates of any particular caste or castes were awarded higher marks. Where the selections were to be made of such a large number of persons, the selection of few brothers, without any prohibition of any relationship amongst candidates, also could not be a ground to hold that the selections suffered from any such irregularities, which will vitiate the entire selections.

27. In *Inderpreet Singh Kahlon and Others Vs. State of Punjab and Others*, , the Supreme Court held that sufficient materials should be collected to be gathered through investigation in fair and transparent manner, and that the illegalities must go to the root of the matter vitiating the entire selection process, and the appointees in majority must be found to be part of the fraudulent purpose or may themselves must be found to be corrupt, to cancel the selections. The Supreme Court observed that High Court should also consider the consequence of enmasse cancellation of selection. It carries a big stigma particularly, when the cancellation of selection is directed on the serious charges of corruption. For the misdeeds of some candidates, honest and good candidates should not suffer in enmasse cancellation. In the interest of all concerned and particularly in the interest of honest candidates the State should have undertaken the task of finding out the illegalities in respect of each selections. The unscrupulous candidates should not be allowed to damage the entire system in such a manner, where innocent people also suffer great ignominy and. stigma. The State also must not leave any stone unturned to bring the guilty to book. If there is any stigma, no officer howsoever high should be spared.

28. In the same report the Supreme Court observed in paras 71 to 73 that a decision to cancel the selection enmasse should not be taken in undue haste. It was found that a note containing 90 pages was sent to the Chief Secretary of Punjab on 22.5.2002 and that service of all the officers were terminated on the next day. The undue haste was beyond anticipated apprehension. It was necessary for the State to show as to how records moved so as to satisfy the

conscience of the Court that there had been proper and due application of mind on the part of authorities concerned. An action taken in undue haste may be held to be mala fide vide *Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others*, . The basic principle underlying the rule is that justice not only be done but must also appear to be done. This rule is not confined to the cases, where judicial power is exercised. It is appropriately extended to all the cases, where an independent mind has to be applied to arrive at a just and fair decision between rival claims of the parties, vide *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, It was held in this case, that justice is not function of the Courts alone; it is also the duty of all those, who are expected to decide fairly between contending party. The strict standards applied to authorities exercising judicial powers are being increasingly applied to administrative bodies, and it is vital to maintain rule of law in welfare of the State, where the jurisdiction of administrative bodies is increasing at a rapid pace that the instrumentality of the State should discharge their functions in a fair and just manner.

29. There appears to be no reason underlying the cancellation of selection in the order of the District Magistrate. The report of the selection committee goes to show that the object of the selections was to find whether the persons belonging to castes traditionally engaged in sweeping work have been considered for selections, which appears to be intention of the Government spelled out from the order of the District Magistrate. It is apparent that the District Magistrate was looking into and was fishing to find out the percentage of representation of Dalit castes traditionally engaged in sweeping work in the selections. When he found that a large number of other backward castes community namely Yadavs and Kurmis and a special caste of Yadav had larger representation, he considered the ground to be sufficient to cancel the selections. The consideration was entirely unfair and had no relation with the irregularities, manipulations or corrupt practices in the selections. The District Magistrate had not recorded any such finding that these castes were intentionally ignored in selections or that selection committees had purposefully given preference to any castes in the selections. A public selection of such magnitude could not have been cancelled on these considerations.

30. The caste system is a slur on the present day society. Instead of adopting it as an indicator for positive action for the underprivileged and traditionally neglected sections of the society, it has become a political weapon to manipulate power. The so called "social engineering" in winning elections and the desire to uplift society, should not be used to divide the society and to harm it irreparably. The reservations in public services may have justification and valid in our constitutional scheme but the executive actions based only on caste considerations are not to be validated by the Courts, on the test of equality. In twenty first century, the jobs in civil services should not be categorised or justified on the basis of castes. Every person, subject to valid reservation rules has a right to equality in public employment. The sweeping and cleaning jobs can

be performed equally well by the persons, who do not belong to the castes traditionally engaged in the work in the villages. The people of our country have to look forward and strive to be a class less society. We have to rise above the narrow thinking and walk together to build India as a great nation, with equal opportunities of development for all its citizens.

31. In the facts and circumstances of the case, I have no hesitation in holding that the order passed by the District Magistrate accepting the report of the selection committee was arbitrary, unreasonable and is violative of Articles 14 and 16 of the Constitution of India.

32. All the writ petitions are allowed. The order of the District Magistrate, Mirzapur dated 23.9.2008 (Annexure-12 to the writ petition) cancelling the selections of "Safai Karmis" in the District of Mirzapur and directing fresh interviews to be held after accepting the report of the enquiry committee is quashed. The respondents are directed to give appointments in pursuance of the select list dated 14.9.2008, published on 15.9.2008 in the newspapers. , There shall be no order as to costs.