
(2009) 03 AHC CK 0019
In the Allahabad High Court

Ram Prakash Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 309

Citation : (2009) 3 AWC 2333

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—The seven writ petitioners in Writ Petition No. 11394 of 2008; the writ petitioner in Writ Petition No. 30321 of 2008 and the writ petitioner in Writ Petition No. 45381 of 2008 were declared successful amongst the 11 candidates for recruitment on the reserved posts of clerks in the backlog vacancies in the office of the District Panchayat Raj Adhikari, Basti. By these writ petitions they have prayed for direction to set aside the order of the Principal Secretary, Panchayat Raj Anubhag-1, Government of U.P. dated February 20th, 2008 by which entire selections have been cancelled and for consequential reliefs.

2. Shri Vijai Mahendra has appeared for petitioners in Writ Petition No. 11394 of 2008 ; Shri Arun Kumar has appeared for Shri Bharat Nath Yadav, the petitioner in Writ Petition No. 30321 of 2008 and Shri D.K. Singh for the petitioner in Writ Petition No. 45381 of 2008. Standing Counsel appears for State-respondents. Shri Ashok Khare, senior advocate assisted by Shri Manoj Kumar has appeared for Shri R. B. Sahu, then District Panchayat Raj Officer, Basti arrayed as respondent No. 6 in the writ petitions. The counter and rejoinder-affidavits have been exchanged. With the consent of the parties the matter was finally heard.

3. The U.P. Procedure for Direct Recruitment for Group "C" Posts (Outside the Purview of the U.P. Public Service Commission) Rules, 2002 notified under Article 309 of the Constitution of India provides for the determination of vacancies and

the procedure for direct recruitment to Group "C" posts in the State of U.P. The rules were amended by the first amendment to the Rules in the year 2003.

4. There were nine backlog vacancies of O.B.C. category and two in the Scheduled Castes category in the office of the District Gram Panchayat Adhikari in district Basti. The petitioners alongwith about 1600 candidates applied for selections in the pursuance to the advertisement for appointments. A list of the applicants was prepared in the descending order of quality point marks in order of merit, for being invited for interviews, which were held from 28.12.2007 to 16.1.2008 by a selection committee constituted in accordance with Rule 6 of the Rules of 2002, which included the Chairman, an officer belonging to the O.B.C. category and one of Scheduled Castes category nominated by the District Magistrate.

5. The quality point marks were processed with the help of the computers. On the basis of the marks awarded by the Selection Committee in interviews 11 persons including the petitioners in their respective categories were declared to be selected. Four candidates including Km. Lalita Maurya were issued appointment letters, but their joining reports were not accepted. It appears that some complaints were made alleging unfairness in the process of selections. The sources of the allegations made by the complainant have not been disclosed in the counter-affidavit filed by Shri B.S.B. Kumar presently posted as District Panchayat Raj Officer, Basti.

6. A report was submitted by the members of the selection committee namely the Sub-Divisional Officer, Basti Sadar, the District Samaj Kalyan Adhikari, Basti, the District Backward Class Welfare Officer, Basti and the District Employment Officer, Basti to the District Magistrate on 5th February, 2008 regarding some irregularities in the selections. It appears that before this report was submitted on 5th February, 2008 the District Magistrate had by his letter dated 4.2.2008 constituted a committee consisting of the Chief Development Officer of Basti as Chairman, Addl. District Magistrate (F & R), and the Chief Treasury Officer as the members and that on their report Shri Ram Babu Sahu, the then District Panchayat Raj Officer was placed by the Addl. Director, Panchayat Raj, U.P. under suspension and that the entire selection was cancelled by the State Government giving rise to these writ petitions. Shri Anil Kumar Srivastava, Junior Clerk and Shri Ajay Pratap Narain, the Computer Operator were also alleged to be guilty and that the District Magistrate by order dated 28.2.2008 directed a first information report to be lodged in the matter on the directions issued by the State Government, and forwarded by the Director, Panchayat Raj, U. P.

7. The members of the selection committee in their report to the District Magistrate on 5.2.2008 stated that they held interviews on 11 days between 28.12.2007 to 16.1.2008 and had provided the broad sheet/tabulation chart every day to the District Panchayat Raj Officer for safe keeping. After the interviews were over, the marks given to the candidates for their achievements and sports were verified to the criteria for award of marks provided in the

Government order dated 20.7.2002. The District Employment Officer, Basti, who was also a member of the Selection Committee found that no marks could be given to the 72 candidates on their sports, on which certificates of six candidates were selected. During the interviews it was found that there were five mistakes in the award of marks on the basis of educational qualification, which was, however, corrected immediately. Thereafter the Selection Committee advised the District Panchayat Raj Officer to correct the marks and to reduce the marks awarded to 72 candidates of their achievements in sports, and to provide final list for signatures by all the members of the Selection Committee. It was reported that Shri R. B. Sahu, District Panchayat Raj Officer was not available at Basti for about 10 days, and that whenever an attempt was made to contact him on his cell phone, he always excused himself on the ground that he is either busy in some interviews or is at Lucknow. The members of the selection committee found the final result published in daily newspaper "Dainik Jagran" on 5.2.2008 at page No. 13. They reported that the District Panchayat Raj Officer did not show to them the final list, nor got it signed from them and that whenever the District Panchayat Raj Officer was requested to show the final list for signatures, he did not show any seriousness in the matter. All the members of the selection committee reported that the procedure adopted by the District Panchayat Raj Officer was doubtful, irregular and suggested that he had adopted illegal means in preparing the list, by making manipulations in final select list.

8. The Enquiry Committee constituted by the District Magistrate reported to him in their report dated 6.2.2008 that Shri R. B. Sahu did not appear before them in the entire enquiry proceedings, and did not co-operate in the matter. The enquiry committee came to know about the final result in the newspaper "Dainik Jagran" on 5.2.2008 directing the selected candidates to join within a week. The members of the Selection Committee had immediately written to the District Magistrate pointing out to the irregularities in the selections in award of marks and the efforts of the District Panchayat Raj Officer to keep the members of the selection committee, in dark about the final list, which was not signed by them. The enquiry committee found that there were irregularities in the procedure of dispatch of appointment letters. Smt. Usha Devi, the dispatcher stated that she did not dispatch any dak on 29.1.2008 except by Challan Nos. 4501, 4502 and 4503. The establishment clerk Shri Anil Kumar Srivastava had stopped dispatch from Challan Nos. 4504 to 4515 and had himself dispatched these letters but that these dispatches were not made upto 3.1.2007, Smt. Usha Devi was on leave on 1st February and 3rd February, 2008 and that when she came back on 4.3.2008, she found the dispatches in the register. The Enquiry Committee found that the appointment letters were not dispatched on 29th January and that the requisite postage was not purchased for sending them by registered post. The Establishment Clerk had purchased these stamps from his own pocket and had shown these letters to be dispatched on 2.2.2008. There were receipts of Railway Mail Service dated 2.2.2008, whereas Shri Anil Kumar Srivastava was not required to do the job of dispatcher in the department.

9. The Enquiry Committee further found that the appointment letters were typed by Shri Ajay Narain Pandey, Junior Clerk/Computer Operator, at the residence of the Deputy Director, Panchayat Raj on 27.1.2007 and had thereafter deleted the typed material both from the computer as well as "recycle bin". Shri Ajay Narain Pandey has accepted these facts in his statement.

10. The Enquiry Committee thereafter found that out of 11 posts, 7 belonged to the category of Other Back Ward Class including the two reserved by women candidates of Other Backward Class and 2 Scheduled Castes, but that separate merit lists were not prepared for each category. The selection committee had decided to make category wise list, which was ignored by the District Panchayat Raj Officer. It further found that out of 11 selected candidates Shri Umesh Chandra was given two marks on the basis of a district level participation in the sports affecting the merit list. Similarly Km. Reeta Choudhary, a woman candidate of Other Backward Class category was awarded four marks, whereas she was a State level player and could be awarded only three marks. In this manner the select list was affected. The enquiry committee, thereafter, observed that in the same manner some persons were given higher marks and some were removed from the list. Shri Kamal Pati at Serial No. 679 was given 39 marks by three members of the selection committee and one more member gave him 34 marks, whereas District Panchayat Raj Officer gave him only five marks. Ms. Sweta Kumari was given 33, 30, 30 and 39 marks respectively by the members of the Selection Committee, whereas the District Panchayat Raj Officer gave her only six marks, as compared to this Km. Lalita Maurya at Item No. 1169. She was given 24, 28, 27 and 21 marks by the members, whereas District Panchayat Raj Officer has given her 47 marks making a big difference in the award of marks, which could not be justified. If this fact is correlated with one extra mark given to Reeta Choudhary on account of her sports certificate, it was apparent that after the members of the selection committee had given their marks in the interviews, the District Panchayat Raj Officer on his own had made an attempt to give benefit to some candidates. The Committee found that the irregularity in award of marks and the lack of transparency in preparing results was to give benefit to some candidates. The act of getting the appointment letter typed from some other place and the irregularity in dispatch coupled with the fact that select list was not signed by the members of the selection committee shows that the entire proceedings were illegal and in a manner, which suited the District Panchayat Raj Officer. The Committee held Shri R. B. Sahu, the District Panchayat Raj Officer, Shri Anil Kumar Srivastava, Establishment Clerk and Shri Ajay Pratap Pandey, Junior Clerk/Computer Operator to guilty of the illegalities and sealed the entire records.

11. In the order dated February 20, 2008 cancelling the entire results, the State Government has taken into account all these facts and has more particularly categorized these irregularities as follows:

1. The Incharge District Panchayat Raj Officer did not get the signatures of all the

members of the selection committee on the final select list ;

2. The Incharge District Panchayat Raj Officer acted with ulterior motive in keeping all the records of selection at his residence instead of keeping them in his office ;

3. The irregularities in dispatch of the appointment letters ;

4. The conspiracy and unfair procedure adopted in preparing the appointment letters and in getting them signed, lacked transparency ;

5. The preparation of the merit list without following the categories of reservation in accordance with the decision taken by the Selection Committee;

6. The award of marks to the selected candidates against Government order providing for award of marks on their achievements in sports affecting the merit list; and

7. Acting against the selection procedure and failing to take any steps against it.

12. On these facts the counsels appearing for the petitioners contend that quality point marks in descending order were given strictly in accordance with Rule 5 (3) of the Rules of 2002. The number of marks to be awarded on sports are provided for in the rules itself, and that there was no necessity to advert to the Government orders in that regard. Rule 5 (3) (c) provide for 5 marks, if a candidate had participated in international level sports : four marks for participating in national level sports ; three marks in State level sports and two marks in participating in University/College/School level sports. The selection committee was constituted strictly in accordance with Rule 6, which does not provide for signatures of all the members of selection committee on the final results, and for drawing category wise list for vertical and horizontal reservation. They would further submit that secrecy adopted by the District Panchayat Raj Officer in preparing the final select list and keeping it in safe custody and in getting appointment letter typed and dispatched could not be taken to be irregularities, which may vitiate the selection. The Rule 5 of the Rules of 2002 provides for complete procedure of selections. There is no complaint that advertisement was not carried out in daily newspaper having wide circulation and that vacancies were notified on the notice board and was not notified to the employment exchange. The marks of academic qualifications were correctly added and that wherever there was a mistake, the selection committee immediately corrected it. The marks for sports were awarded strictly in accordance with the Rule 5(3)(c) of the Rules of 2002, which provide for three marks for sportsman of State level as against 4 by the earlier Government order. Each member of the selection committee and the appointing authority was entitled to give the marks for interviews. There is nothing on record to show that any common basis or criteria was adopted by the selection committee in awarding minimum or maximum marks to any candidates. There is no provision of signing the final select list by all the members of the selection committee and

that they had no grievance with regard to marks awarded by them to the candidates. Learned Counsel for the petitioner would further submit and were supported by Shri Ashok Khare, senior advocate appearing for Shri R. B. Sahu, the then Panchayat Raj Officer arrayed as respondent No. 6 that the adherence to secrecy and the typing of the appointment letters on the computer of the Deputy Director of the same department and their dispatch, which were entered in the dispatch register was not a doubtful act at all. The attempt to maintain secrecy and transparency was wrongly taken to be an attempt to vitiate the selections. The entire approach of the enquiry committee as well as the State Government was illegal. The arrest of the respondent No. 6 and other two clerks have been stayed by this Court in Writ Petition No. 3303 of 2008. It is contended that the completely ex parte mala fide and baseless report was prepared on the dictate of the Private Secretary of the Hon"ble Minister, Director, Deputy Director and the District Magistrate, who were interested in selections of some persons. They could not lay their hands on the final select list and that the issuance of the appointment letters before they could influence the selections annoyed them.

13. It is further submitted by learned Counsels appearing for petitioners that out of 11 candidates in only two cases the District Panchayat Raj Officer as member of the Selection Committee had awarded lower marks and the mistake pointed out in one case for award of three marks for participation in State level sports in accordance with the Rule 5(3)(c) of the Rules of 2002, could not be taken as mass irregularities to cancel the entire selections. Where the allegations of illegalities did not affect the entire selection, the candidates, even if they do not have a right to be appointed were required to be given an opportunity of hearing. They would submit that cancellation of selection is violative of principles of natural justice.

14. Learned standing counsel on the other hand submits that the members of the selection committee themselves were aggrieved by the secrecy in preparing the final select list. The mistakes in calculation of marks were corrected but that there were wide ranging mistakes in the award of marks in the interviews and on the achievements on sports. The District Panchayat Raj Officer awarded lower marks to some candidates and that the fact that results were prepared and the appointment letters were typed out outside the office and were dispatched in clandestine manner vitiates the entire process of selection. He would submit that the inclusion of name of candidate, in the select list, does not give him an enforceable right to be appointed on the post. The District Magistrate was competent to enquire about the validity and transparency in selections and that the State Government did not commit any error in cancelling the selections. The standing counsel has relied upon Shankarsan Dash Vs. Union of India, followed in 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 support of his submissions that the State is not bound to select and appoint candidates, if the process is arbitrary and unfair.

15. Having heard learned Counsel for the parties and perusing the records, I find that any of the seven reasons or all of them taken together could not be the basis of the decision to cancel the entire election. There are no allegations on record that the selections for backlog vacancies were not widely advertised or that the selected persons did not belong to the categories for which the vacancies were existing. Further, there is no complaint that merit list in the descending order of the 1600 candidates was not prepared strictly in accordance with the marks awarded to them in their educational qualifications. The members of the selection committee observed that wherever the marks were found to be erroneously entered in the list the mistakes were immediately corrected. They did not report, that they did not have opportunity or did not award marks for interviews or that the marks awarded by them were not properly shown in the list. The Government order dated 20.7.2002 for award of marks for achievements on sports was superseded by the U. P. Procedure for Director Recruitment for Group-C posts (Outside the Purview of the U. P. Public Service Commission) Rules, 2002, which clearly provided in Rule 5 (3) (c) the number of marks to be awarded for achievement in sports. The members of the Committee did not agree on any common method of awarding marks in the interviews. They did not decide to award any minimum or maximum marks to the candidates and thus it was open to each of the members to award marks on their own assessments. The enquiry committee has found the variance of marks only in case of two candidates namely Kamal Pati and Sweta Kumari. In fact there are no allegations of mala fides or any undue favours raised against the District Panchayat Raj Officer, except in stating that he had awarded lesser marks to two candidates in interviews and had not corrected the marks for achievements in sports. Further, it is stated that he had maintained undue secrecy in preparing the final results by typing out the appointment letters and their dispatch.

16. No exception could be taken nor there were any directions given to the District Panchayat Raj Officer for keeping the records of selection only in his office. His concern in keeping the records of selections at safer place, could not be a ground to cancel the selection. Further, there is no allegation that the appointment letters were typed out at a private place. The District Panchayat Raj Adhikari used the computer of Deputy Director of his department for typing the appointment letters and thereafter deleting the entries on the computer to maintain secrecy. Thereafter he ensured that the establishment clerk of his office was engaged in dispatching the appointment letters. Purchase of stamps and the posting of the appointment letters by Railway Mail Service cannot be said to be an illegality. If the appointment letters were posted by a clerk other than the clerk, who was routinely doing dispatches, on the dates, when she did not affect the validity of the selections.

17. The Court finds that the District Panchayat Raj Officer took all reasonable care to avoid unfairness in selections. He was unnecessarily victimized by suspending him and thereafter in lodging an F.I.R. against him and clerks of his office. The Court prima facie finds that the entire action taken against the District

Panchayat Raj Officer and the clerks in his office, at the instance of some persons in the State Government, who have not been named, appear to be taken on their frustration in failing to break the secrecy. The members of the Selection Committee and the Enquiry Committee have not found any such illegality, which vitiates the selection or the selection of any candidate. They have failed to point out any violation of the Rules of 2002, which may have affected the final result. It is thus apparent that the District Magistrate was acting either at the behest of the Minister of the Direct Panchayati Raj, who did not succeed in getting their candidates appointed.

18. The selections in this case were made on the backlog vacancies, which were reserved for Other Backward Class and Scheduled Castes candidates. There is no allegation that the selected candidates exceeded the quota or that select list was not prepared category wise. There could be no irregularity assumed in the selections. There is no complaint of any person that select lists were not drawn in accordance with categories or that any person could not secure appointment or had suffered or account of failure to prepare the list category wise.

19. In *Baldev Singh Vs. State of Punjab*, the Supreme Court held that when no difficulty was pointed out in regard to the written examination and that objection was confined to exclusion of group of successful candidates in the written examination from the interview, there was no justification for cancelling the written part of recruitment examination. On the other hand, the situation could have been appropriately met by setting aside the recruitment and asking for a fresh interview of all eligible candidates on the basis of written examination, and select those, who on the basis of the written and the freshly held interview became eligible for selection.

20. In *Benny T.D. and Others Vs. Registrar of Cooperative Societies and Another*, the Supreme Court repealed a contention raised therein that in view of the findings of the Public Enquiry Commission that there has been tampering of marks in respect of several candidates, and as such there has been no fair and objective selection before the demand of annulment of the entire selection. The Court held that same could not be done, as the same would tantamount to gross violation of the principles of natural justice, which cannot be brushed aside on the ground that public interest demands annulment of the selection.

21. In *Onkar Lal Bajaj Vs. Union of India (UOI) and Another etc. etc.*, the Court dealing with en masse cancellation of the licences granted to the L.P.G. distributors as result whereof, unequals were said to have been clubbed by raising of arbitrary exercise of executive power, held it to be impermissible stating in para 45 that solution of resorting to cancellation of all was worse than the problem. Cure was worse than the disease. Equal treatment to unequals is nothing but inequality. To put both the categories tainted and the rest- on a part is wholly unjustified, arbitrary unconstitutional being violative of Article 14 of the Constitution.

22. In *Inder Preet Singh Kahloon v. State of Punjab* (2006) 2 SCC 356 : 2006 (5) AWC 5051 (SC), 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 en masse 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 en masse 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.

23. In the same report the Supreme Court observed in paras 71 to 73 that a decision to cancel the selection en masse 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.

24. A large number of selections are held in the State of U.P. every year for appointment in public services. These selections, taking into account the unemployment in the State, are so large that some irregularities may always be found after the selections are held. Unless these illegalities are of such a nature, which may affect the entire selections, the departments should not ordinarily interfere with the selection process. In the present case none of the irregularities

pointed out by the selection committee, enquiry committee and the State Government either taken singly or cumulatively have affected the selections. The officiating District Panchayat Raj Officer was unnecessarily victimized for maintaining secrecy in the procedure of selections.

25. All the three writ petitions are consequently allowed. The order dated 20th February, 2008 passed by the State Government is set aside. A writ of mandamus is issued to the respondents to issue the order of appointment and posting to the petitioners within a month. The petitioners are also entitled to costs of this writ petition from the State Government.