
(1999) 06 KAR CK 0017

In the Karnataka High Court

Case No : Writ Petition No"s. 20312 to 20316 of 1997

S. Ganeshan and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-06-1999

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2000) ILR (Kar) 298 : (2000) 5 KarLJ 338 : (2000) 4 KCCR 177 SN

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : M/s. N.R. Naik and Associates, for the Appellant; Sri Sanjay Gowda, for Sri N.S. Srinivasan, for the Respondent

Judgement

Tirath S. Thakur, J.—The short question that falls for consideration in this petition is whether, a selection which is affected by gross irregularities and is made in breach of the procedure and the norms prescribed therefore can be cancelled even after those selected by any such process have been appointed against the available posts. The question arises in the context of the selection of the petitioners and their consequent appointment against the post of Assistant Sub-Inspectors, Protection Force (ASIPF) having been annulled on the basis of an enquiry into allegations of large scale bungling in the making of such selections. The petitioners have questioned the order setting aside the selection, the panel drawn on the basis of the same and the promotion orders issued in their favour. The controversy arises against the following backdrop:

2. The petitioners were working in the Railway Protection Force as Head Constables. A "limited Departmental Competitor" for filling up 18 vacancies in the cadre of Assistant Sub-Inspectors, was conducted by a Selection Committee comprising the Senior Security Commissioner, Chennai Division, the Divisional Security Commissioner, Tiruchchi Division and Assistant Security cum Technical Assistant to the Chief Security Commissioner, Chennai. In response to a notice issued by the Selection Committee as many as 132 candidates submitted their

willingness to appear for selection out of which 51 only turned up for the written examination. Thirty candidates eventually emerged successful to appear for viva voce out of those who have appeared in the written test. The Selection Committee based on the proceedings conducted by it prepared a list of 18 candidates who were provisionally empanelled in terms of the Chief Security Commissioner's letter dated 31st of July, 1996, including the petitioners, all of whom were sent for undergoing the promotion course. The empanelled candidates were in due course promoted to officiate as Assistant Sub-Inspectors in the pay scale of 1320-2040 although the promotions were stated to be provisional in nature. Complaints were in the meantime received by the Railway Board as also the Railway Ministry, in which serious allegations about large, scale irregularities in the conduct of the examination were made. These complaints were referred to the Vigilance Department of the Southern Railway Administration for enquiry, which revealed the following:

- (i) Errors in totalling of marks awarded to the candidates;
- (ii) Errors in awarding marks for the record of service;
- (iii) Additions, subtractions, overwritings and corrections of marks in different handwriting and with different pens without initials of the concerned officials;
- (iv) Awarding of marks for extra answers; and
- (v) Same answers evaluated differently and different marks given in case of different candidates.

3. The Vigilance Squad also reported that the Selection Committee had overlooked the procedure and the norms prescribed for making a proper selection with the result that candidates whose name could not otherwise figure in the panel were selected while those whose names should have figured were missing from the select list. On receipt of the report from the Vigilance Squad, the Chief Security Commissioner, has by an order dated 23rd of July, 1997, annulled the selection proceedings, the panel and the promotion orders issued by him giving rise to the present writ petitions.

4. Counsel appearing for the petitioners contended that the selection process had been conducted in accordance with the norms prescribed and that the irregularities if any in totalling or in awarding of marks, additions or subtractions, were not relatable to the answer scripts of the petitioners. He urged that any such errors found in regard to the answer scripts of candidates who did not find place in the list, could not affect the validity of the selection or justify the cancellation of the promotion orders specially after the petitioners had undergone the training prescribed for the same. He submitted that the Chief Security Commissioner, had while approving the panel prepared by the Selection Committee and issuing orders of promotion satisfied himself about the validity and regularity of the selection so that there was no room for any further enquiry into the allegations made either by the Vigilance Squad or by the Chief Security

Commissioner himself.

5. Counsel appearing for the respondents on the other hand contended that the entire selection process conducted by the Committee was on a fair and independent enquiry found to have been affected by gross irregularities which rendered the said process nothing but a farce. He submitted that any such selection which was vitiated by serious irregularities and breach of procedure affecting eligible candidates, could not possibly create any right in favour of those who had become the beneficiaries of such a process. Reliance was placed by him upon a decision rendered by a Single Bench of the High Court of Madras, in the case of *T. Wilson and Others v Chief Security Officer and Others*, besides a decision of the Supreme Court in *Bihar Public Service Commission and Another v State of Bihar and Others*.

6. In order that a selection conducted by a statutory body creates a legally enforceable right in favour of a person who emerges successful in the same, it is necessary that the selection is not vitiated by any fraud or irregularity of procedure affecting the rights and the entitlement of other candidates who had applied and competed in the same. A selection which is vitiated on account of any such irregularities, fails to carry conviction about its fairness and objectivity and is therefore not enough to sustain the appointments made on the basis thereof. Just as no mistake can possibly create a right in favour of any person who has benefited from the same, fraud, and mischief affecting the very sanctity of the process of selection would also vitiate the end result. The decision of the Supreme Court in *Bihar Public Service Commission's case*, referred to earlier is in my opinion directly on the point. Reference may also be made to the decision of the Apex Court in *State of Punjab v Jagdip Singh and Others*, where it was held that a correction of an order did not amount to reduction in rank to attract Article 311 of the Constitution.

7. The validity of the cancellation order was examined by the Madras High Court in *T. Wilson's case*, supra. Relying upon the decisions of the Supreme Court in *Ashwani Kumar and Others v State of Bihar and Others*, *Hanuman Prasad and Others v Union of India and Another*, *Roshan Lal Tandon and Others v Union of India and Others*, the Court held that the selection conducted by the Committee was affected by gross irregularities which was sufficient for the respondents to annul the same and undo any injustice to those who were entitled to be considered fairly but had been denied such a consideration on account of departure from the procedure and the norms prescribed. The Court observed:

"By applying the above principles to the facts and circumstances of the present case, I am satisfied that the contentions of the petitioners are not sustainable in law as their very entry in the promotion panel and the consequential promotion and appointment as ASIPF are tainted with illegality and fraud. The fact that the petitioners were brought on the promotion panel and thereafter they were sent to the training would only intend to confer eligibility on the petitioners for being brought on the list, but would not imply that any indefeasible right had been

created in their favour as their very entry in the panel is found to be illegal and fraud. The petitioners are, therefore not entitled to justify their claim falling back on such promotional panel, in which case, the principles of natural justice were not required to be followed".

8. It is not in the instant case disputed that Vigilance Squad had established serious irregularities in the face whereof it is not possible to attach any credibility or a weight to the select list prepared on the basis thereof. What was however argued was that the petitioners were not in any way responsible for such irregularities nor was it shown that the irregularities had benefited the petitioner individually. The question however is not whether the petitioners were themselves responsible for committing any one of the irregularities that have vitiated the selection process. The question is whether there were serious irregularities which affected the sanctity of the selection process itself, regardless of who was responsible for such irregularities and violation of the procedure and the norms. If on account of the breach of the procedure and the norms prescribed as also the irregularities referred to earlier the selection process was itself suspect the same could have been annulled even when an investigation into the complaints did not establish the complicity of anyone of those who had benefited from such a selection. In the interest of parity of the selection process and with a view to maintain the faith and confidence of those who participated in the same, it is essential that the selections are conducted fairly, objectively and by reference to norms and procedure which are themselves transparent and non-discriminatory. Once it is noticed that the selection process does not ensure the selection of the best candidates on account of violation of any such norms it is not only open to the authority, but incumbent upon it to annul any such selection and ensure that no injustice is caused to anyone who may have on the basis of a fair selection succeeded in getting an appointment. I therefore see no reason why a selection process which suffered from such serious infirmities should be allowed to sustain the orders of promotion in favour of the petitioners. Just because the petitioners had undergone the training course prescribed and secured a provisional or officiating appointment, against the posts would not in my opinion be sufficient for this Court to overlook the kind of violations that have taken place. This is especially so when the cancellation of the selection and the promotion orders is not so far removed in point of time from the making of the selection or the promotion orders so as to render any such action unfair, arbitrary or irrational.

9. Before parting, I cannot help observing that even when the Vigilance Squad has found large scale irregularities in the process of selection resulting in not only litigation on the subject but also delay in the making of fresh selections, there is no indication either in the objections filed by the respondent or otherwise as to the action taken by the authorities against those who were responsible for committing such irregularities, The nature of the irregularities as seen earlier is such that the same may have in all likelihood been inspired by extraneous considerations. While recommending cancellation of the selections and the

promotion orders, the Vigilance Squad should have gone a step further in identifying the culprits who were responsible for committing the same so that appropriate disciplinary action could be taken against those who had not only committed a breach of faith and defrauded the entire system. It is still open to the authorities to look into this aspect if no action has already been taken against the guilty, for otherwise the message which the respondents may send across would be that even when the officers entrusted with the job of making the selections, commit a breach of trust and brazen faced irregularities they can still go scot-free.

10. With the above observations these writ petitions fail and are hereby dismissed but in the circumstances without any orders as to costs.