

(2001) 08 AHC CK 0075

In the Allahabad High Court

Case No : Special Appeal No's. 149 and 150 of 1998

Sadiq Ali and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 29-08-2001

Acts Referred:

Uttar Pradesh Group D Employees Service Rules, 1985 — Rule 16, 32

Citation : (2001) 4 AWC 2755 : (2001) 91 FLR 906 : (2001) 3 UPLBEC 2652

Hon'ble Judges : S.K. Sen, C.J;R.K. Agrawal, J

Bench : Division Bench

Advocate : Ashok Khare, P.N. Ojha and K.D. Tewari, for the Appellant; A.K. Singh and Brief Holder Ran Vijay Singh, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Agrawal, J.—These two special appeals have been filed by the appellant-writ petitioners against a common judgment and order dated 22.1.1998 passed by the learned single Judge whereby the writ petitions filed by the appellants-writ petitioners have been dismissed.

2. We have heard Shri Ashok Khare, learned senior counsel assisted by Shri P.N. Ojha on behalf of the appellant-writ petitioners in both the special appeals and Shri Ran Vijay Singh, learned standing counsel for the respondents.

3. Briefly stated facts giving rise to the present special appeals are that the appellant-writ petitioners joined as class IV employees on different class IV posts, such as ward boys, sweeper-cum-chaukidars and chaukidar-cum-sweepers at the places of their posting in the month of June, 1996 in pursuance of the different orders of appointment dated 7.6.1996 passed by Dr. Yashpal Singh. the then Chief Medical Officer, Padrauna, now Kushinagar. When they were not getting their salary. Sadiq Ali and 7 others filed Civil Misc. Writ Petition No. 34448 of 1996 seeking writ of mandamus commanding the respondents not to interfere with the performance of their duties on the posts on which they have

been appointed, and the respondents be directed to pay regular monthly salaries to them along with arrears. During the pendency of the writ petition, their appointments were cancelled vide order dated 27.3.1997 passed by the State Government as communicated by orders dated 9/10.4.1997 by the Chief Medical Officer, Padrauna. A notice was also published in Dainik Jagran on 13.4.1997 to the effect that the services of all the class IV employees who were appointed in pursuance of the appointment letters, signed and issued by Dr. Yashpal Singh, the then Chief Medical Officer, shall stand cancelled. Ram Pratap Singh and 8 others filed Civil Misc. Writ Petition No. 15657 of 1997, challenging the order of cancellation of their appointments. In the earlier writ petition also, the cancellation of the appointment of the writ petitioners-therein, had been challenged.

4. An order was issued by the State Government on 20.9.1995 for filling up the then existing class IV vacancies in the Medical Health Department of the State. It was contemplated and directed that in making such appointments, policy of reservation in favour of Scheduled Caste/Scheduled Tribes and other backward classes shall be kept in view, This Government Order was addressed to the Director General, Medical Health and a copy thereof was endorsed to all the Chief Medical Officers in Uttar Pradesh. In pursuance of the aforesaid Government Order, the Chief Medical Officer, Padrauna initiated proceedings for recruiting the candidates for class IV posts in the pay scale of Rs. 750-940. The vacancies in class IV cadre comprised of the posts of ward boys, sweepers and chaukidars. An advertisement inviting the applications was published in the local newspaper "Siddha Bhumi" on 29.10.1995. Applications were invited by 4.11.1995. Interviews were held in the month of January, 1996 by a selection committee constituted for the purpose and on 9.7.1996 appointment letters were issued to the successful candidates. In respect of one of the candidates, appointment letter was issued on 15.6.1996. All the selected candidates, who were 80 in number (37 chaukidar-cum-sweepers and 43 others class IV employees) joined in the month of June, 1996 itself. The grievance of the petitioners is that inspite of the fact that they have been duly selected after completing all the requisite formalities and have been continuously working from the date of their joining, their salary was not released and that subsequently, their services were terminated abruptly in pursuance of the Government Order dated 27.3.1997 passed by the State Government.

5. Shri Ashok Khare, learned senior counsel submitted that all the appellants-writ petitioners were appointed after following due procedure of law and had also joined the respective posts in pursuance of the appointment letter issued to them by the competent authority. According to him, all the posts were advertised in the daily newspapers, interview was held by the selection committee and the appellant-writ petitioners had appeared in the interview and only thereafter, they had been given appointments. He further submitted that the appellants-writ petitioners ought to have been afforded opportunity of hearing prior to cancellation of their appointments, and in the absence of the same, the order

cancelling their appointments are in gross violation of principle of equity, fair play and natural justice, hence the same are liable to be set aside. He also submitted that the appointing authority in respect of the appointment of the appellant-writ petitioners, is the Chief Medical Officer and, therefore, the State Government could not have cancelled their appointments. In support of this plea, he relied upon the decision of the Hon. Supreme Court rendered in the case of Basudeo Tiwary Vs. Sido Kanhu University and Others, . He also submitted that the Rule 32 of the Group "D" Employees Service Rules. 1985, (hereinafter referred to as the Rules) empowers the State Government to relax the operation of any Rule and, therefore, if any of the procedure prescribed under the Rules have not been followed then it would be deemed that the same has been relaxed.

6. Shri Ran Vijay Singh, the learned standing counsel, however, submitted that the procedure prescribed in the aforesaid Rules, having not been followed while making selection of Group D employees on class IV posts by the then Chief. Medical Officer, Padrauna, the entire selection process conducted by him was arbitrary and full of favouritism. According to him, the constitution of selection committee as provided under Rule 16 of the Rules was not proper inasmuch as no officer belonging to Scheduled Caste/Scheduled Tribes nominated by the District Magistrate concerned was present in the selection committee. He further submitted that newspaper in which the posts were advertised, did not have a wide circulation and only a weeks time was given in the advertisement for making application which itself shows that the Chief Medical Officer was in a hot haste to fill up the posts as he was on the verge of retirement. He further submitted that on the basis of complaints made by the local and responsible persons, the State Government conducted an enquiry by the Joint Secretary. Medical and Health wherein it was found that in fact no person belonging to Scheduled Caste/Scheduled Tribe was nominated by the District Magistrate and the person Robin Prasad who is said to have attended the selection committee as nominated by the District Magistrate had admitted in his statement in the said enquiry that he had not received any order of the District Magistrate in writing and the Chief Medical Officer had informed him that there is no necessity of silling in the selection committee and taking interview as he will adjust two of his nominees who have been adjusted/accommodated in the appointment. The enquiry officer further found that grave and serious irregularities were committed by the Chief Medical Officer and thus, he submitted that the State Government had rightly cancelled all the appointments made by Dr. Yashpal Singh. In such a situation there is no question of affording any opportunity of hearing to the appellant-writ petitioners. In support of the aforesaid plea, he relied upon the following decisions :

(1) Krishan Yadav and another Vs. State of Haryana and others, ; (2) Biswa Ranjan Sahoo and Ors. v. Sushanta Kumar Dinda and Ors., JT 1996 (6) SC 515 ; (3) State of M.P. and Others Vs. Shyama Pardhi etc. etc., : (4) Hanuman Prasad and Ors. v. Union of India and Anr. 1996 (8) SC 510.

7. In the case of Krishna Vadau (supra), the Hon''ble Supreme Court had set aside the entire selection and the appointment after finding the whole examination and interview having termed to be a fraud. The relevant paras 20 and 21 of the judgment rendered in the said case are reproduced below :

"20. It is highly regrettable that the holders of public offices both big and small have forgotten that the offices entrusted to them are sacred trust. Such offices are meant for use and not abuse. From a Minister to a menial every one has been dishonest to gain undue advantages. The whole examination and the interview have turned out to be farcical exhibiting base character of those who have been responsible for this sordid episode. It shocks our conscience to come across such a systematic fraud. It is somewhat surprising the High Court should have taken the path of least resistance stating in view of the destruction of records, it was helpless. It should have helped itself. Law is not that powerless.

21. In the above circumstances, what are we to do? The only proper course open to us is to set aside the entire selection. The plea was made that innocent candidates should not be penalized for the misdeeds of others. We are unable to accept this argument. When, the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place as "fraud unravels everything." to put it in other words, the entire selection is arbitrary. It is that which is faulted and not the individual candidates. Accordingly, we hereby set aside the selection of Taxation Inspectors."

8. In the case of Biswa Ranjan Sahoo and others v. Sushanta Kumar Dinda and Ors. (supra), the Hon''ble Supreme Court has held that no notice is required to be issued to the persons affected in the case of mass scale malpractice in the selection process. In para 13 of the said judgment the Hon''ble Supreme Court has held as under :

"13. A perusal thereof would indicate the enormity of malpractices in the selection process. The question, therefore, is : whether the principle of natural justice is required to be followed by issuing notice to the selected persons and hearing them? It is true, as contended by Mr. Santosh Hegde, learned senior counsel appearing for the petitioners, that in the case of selection of an individual his selection is not found correct in accordance with law, necessarily, a notice is required to be issued and opportunity be given. In a case like mass malpractice as noted by the Tribunal, as extracted hereinbefore, the question emerges : whether the notice was required to be issued to the persons affected and whether they needed to be heard? Nothing would become fruitful by issuance of notice. Fabrication would obviously either be not known or no one would come forward to bear the brunt. Under these circumstances, the Tribunal was right in not issuing notice to the persons who are said to have been selected and given selection and appointment. The procedure adopted are in flagrant breach of the Rules offending Articles 14 and 16 of the Constitution."

9. In the case of State of M. P. and Ors. v. Shyama Pardhi and Ors., the Hon''ble

Supreme Court has held that the question of violation of principle of natural justice does not arise in a case where the persons are not possessing the prerequisite qualifications prescribed by the statutory rules. In para 5 of the said judgment, the Hon"ble Supreme Court has held as under :

"5. It is now an admitted fact across the Bar that the respondents had not possessed the prerequisite qualification, namely, 10+2 with Physics, Chemistry and Biology as subjects. The Rules specifically provide that qualification as a condition for appointment to the post of A.N.M. Since prescribed qualifications had not been satisfied, the initial selection to undergo training is per se illegal. Later appointments thereof are in violation of the statutory rules. The Tribunal, therefore, was not right in directing the reinstatement of the respondents. The question of violation of the principles of natural justice does not arise. The ratio of *Shrawan Kumar Jha v. State of Bihar*, strongly relied on, has no application to the facts of this case. That was a case where the appellants possessed initial qualifications but they did not undergo the training. Since the appointment was set aside on the ground of want of training, this Court interfered with, directed the Government to reinstate them into service and further directed them to send the appellants therein for training.

10. In the case of *Hanuman Prasad and Ors. v. Union of India and Anr.*, the Hon"ble Supreme Court has held that if the authorities have taken the decision on the basis of the report submitted by the investigating agency, containing proof in support of the allegations of malpractice committed in writing the examination, no prior opportunity need be given in such cases. In para 4 of the said judgment, the Hon"ble Supreme Court has held as under :

"4. It is then contended that though the selected candidates have no vested right, they had got a legitimate expectation for appointment when they were selected for being appointed. They should be given prior opportunity and also know the reasons for cancellation. In support of this contention, he placed reliance on paragraph 8 of the judgment of this Court in *Asha Kaul and Anr. v. State of Jammu and Kashmir and Ors.*, JT 1993 (2) SC 688. It is unexceptionable that when duly constituted selection committee makes recommendation for appointment of the selected candidates the candidates do not get any vested right or legitimate expectation until they are given appointment according to the Rules ; they have a chance to be appointed as have been selected by the recruitment agency. In that case, the Government had cancelled the select list without any reasons. This Court has laid the above Rule in that backdrop. The ratio therein has no application for the reason that after the perusal of the report submitted by the investigating agency, the competent authority had cancelled the selection so that the regular and proper examination could be conducted giving opportunity to every one in a fair manner. No prior opportunity need be given in the case of mass copying. It is not the case where a named candidate committed copying. Accordingly, we do not find any illegality in the order passed by the Tribunal."

11. It may be mentioned here that the State Government, on the basis of complaint made by the local persons, had instituted an enquiry and the Joint Secretary, Medical and Health Government of U. P., namely, Shri Ramesh Kumar Goyal, conducted the enquiry, and submitted the report dated 25.7.1997 a copy whereof has been filed as Annexure-14 to the affidavit of Sadiq AH filed in support of the stay application in Special Appeal No. 150 of 1998 wherein irregularities in the selection have been pointed out. The relevant paragraph of the said report is reproduced below :

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12. On the basis of the statement recorded by the enquiry officer, the enquiry officer came to the conclusion that Shri Robin Prasad was not present at the time of interview which casts suspicion on the entire selection and further from the report dated 25.7.1996, it is abundantly clear that the entire selection process was a total farce. Dr. Yashpal Singh, the then Chief Medical Officer who was at the verge of retirement and was going to retire on 31.8.1996 made appointment without even properly constituting the selection committee and also gave appointments to persons who were placed much lower in the list by ignoring the claim of those persons who were much above them. The appointment orders are said to have been issued in the month of June, 1996 whereas the interview was held in January, 1996 and Dr. Yashpal Singh was going to retire on 31.8.1996.

13. The question is as to whether in such circumstances, it was necessary on the part of the respondents to give opportunity of hearing to the appellant-writ petitioners or not. We are of the considered opinion that on the facts of the present case, no notice or opportunity of hearing was required to be given to the appellant-writ petitioners. As held by the Hon"ble Supreme Court in the case of Biswa Ranjan Sahoo and others (supra) that in case where the mass scale malpractices are committed, no notice is required to be given. Similar view has been taken by Hon"ble Supreme Court in the case of Hanuman Prasad and others (supra). The Hon"ble Supreme Court in the case of Krishna Yadav and other (supra) has held that where the whole examination and interview have turned out to be farcical exhibiting base character of those who have been responsible for this sordid episode, the only course open is to set aside the entire selection. In the case of State of M. P. and Ors. v. Shyama Pardhi and Ors., the Hon"ble Supreme Court has held that the question of violation of principle of natural justice does not arise in a case the selected candidates who have been sent for training do not possess requisite qualification. So far as the case of Basudeo Tiwary v. Sido Kanhu University and Ors., relied upon by Shri Ashok Khare is concerned in the aforesaid case, the Hon"ble Supreme Court was considering Section 35(3) of the Bihar Universities Act. 1976 which reads as under :

"35. (3) Any appointment or promotion made contrary to the provisions of the Act, Statutes, Rules or Regulations or in any irregular or unauthorized manner shall be terminated at any time without notice."

In para 12 of the said judgment, Hon"ble Supreme Court has held as under :

12. The said provision provides that an appointment could be terminated at any time without notice if the same had been made contrary to the provisions of the Act, Statutes, Rules or Regulations or in any irregular or unauthorized manner. The condition precedent for exercise of this power is that an appointment had been made contrary to the Act, Rules, Statutes and Regulations or otherwise. In order to arrive at a conclusion that an appointment is contrary to the provisions of the Act, Statutes, Rules or Regulations, etc., a finding has to be recorded and unless such a finding is recorded, the termination cannot be made, but to arrive at such a conclusion necessarily an enquiry will have to be made as to whether such appointment was contrary to the provisions of the Act etc. If in a given case such exercise is absent, the condition stands unfulfilled. To arrive at such a finding necessarily enquiry will have to be held and in holding such an enquiry, the person whose appointment is under enquiry will have to be issued a notice. If notice is not given to him, then it is like playing Hamlet without the Prince of Denmark, that is, if the employee concerned whose rights are affected is not given notice of such a proceeding and in conclusion is drawn in absence, such a conclusion would not be just, fair or reasonable as noticed by this Court in D.T.C. Mazdoor Sabha case. In such an event, we have to hold that in the provision, there is an implied requirement of hearing for the purpose of arriving at a conclusion that an appointment had been made contrary to the Act, Statute, Rule or Regulation etc. and it is only on such a conclusion being drawn, the services of the person could be terminated without further notice. That is how Section 35 (3) in this case will have to be read."

14. The principle laid down in the aforesaid case would not be applicable to the facts of present case inasmuch as the appointment of the appellant-writ petitioners have been cancelled on the ground that the selection process itself was farcical and as such the question to give opportunity of hearing would not arise.

15. In view of the foregoing discussions, we do not find any merit in these special appeals and they are dismissed. However, the parties shall bear their own cost.