

(2003) 11 AHC CK 0052

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 18873 of 1986

Satyendra Dwivedi and Another

APPELLANT

Vs

Administrator, Nagar Mahapalika and Another

RESPONDENT

Date of Decision : 24-11-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Uttar Pradesh Municipal Corporation Act, 1959 — Section 107(3), 107(4)

Citation : (2004) 1 UPLBEC 588

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : Navin Sinha, S.N. Verma, A.N. Singh, B.P. Srivastava, Arvind Verma, Sharad Malviya, K.N. Tripathi and Sharad Verma, for the Appellant; M.C. Chaturvedi, Addl. Chief Standing Counsel, Ashok Mohiley and S.S. Sharma, S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—In this petition the prayer has been made for issuance of writ of mandamus directing the respondents to announce the result of the selection held on 30th December, 1985 and 11th February, 1986 to the post of Naib Moharrirs and to pass the consequential order regarding the appointment of the petitioners.

2. Heard Sri S.N. Verma learned Senior Advocate with Sri Navin Sinha learned Senior Advocate with Sri Arvind Verma and Sri Sharad Malviya learned Counsel for the petitioners and Sri. M.C. Chaturvedi, learned Addl. Chief Standing Counsel for the State and Sri Ashok Mohiley, learned Senior Advocate for Nagar Mahapalika Allahabad.

3. The brief facts necessary for adjudication of the present writ petition are that the petitioners No. 1 and 2 were originally appointed as peon in Nagar Mahapalika, Allahabad in the year 1977, later on petitioner No. 1 and petitioner No. 2 were appointed as Naib Moharrir by order dated 12.12.94 and 12.1.1985 respectively on ad-hoc basis till regular appointments to the said post are made,

subsequently they were reverted to their substantive post. The recruitment to post of substantive vacancy of Naib Moharrir, started after inviting applications from the departmental candidates as well as from open market and the petitioner Nos. 1 and 2 amongst others were called for interview on 12.2.1986 and 30.12.1985 respectively. The petitioner appeared before the Selection Committee, duly constituted as per the provision of Section 107 (4) of U.P. Nagar Mahapalika "Adhiniyam" (now U.P. Municipal Corporation Act), 1959, in short called "Adhiniyam". The said Committee was comprised of one Sri R.C. Sharma, Deputy Administrator, the Chairman of Mukhya Nagar Lekha Parikshak, Sri Ram Kumar Bajpai, Mukhya Nagar Lekha Parikshak and Sant Ram Gupta, Up-Nagar Adhikari. The relevant Section 107 (4) of the Adhiniyam and Rules 17, 18 and 19 of the Nagar Mahapalika Niyamawali, 1952 are reproduced as under--

"107. Appointment of Post.--(1)..... .(2).....(3).....

(4) The Selection Committee referred to in Sub-section (3) shall consist of the Mukhya Nagar Adhikari or his nominee, the Mukhya Nagar Lekha Parikshak and Head of the Department for which the appointment is to be made. The Mukhya Nagar Adhikari and, in his absence, the member designated by him for the purpose, shall be the Chairman of Selection Committee.

"Provided that the Committee referred to above which may be substituted in connection with the appointments of officers and servants immediately subordinate to the Mukhya Nagar Adhikari or the Mukhya Nagar Lekha Parikshak, shall consist of the Mukhya Nagar Adhikari or the Mukhya Nagar Lekha Parikshak, as the case may be, as Chairman and two other officers of the Corporation who shall be nominated by the Executive Committee as member."

"17. By direct recruitment.--Where appointment to a post under Sub-section (3) of Section 107 is to be made by direct recruitment, the Selection Committee constituted under Sub-section (4) of the said selection shall decide whether the selection shall be made by holding an interview, or a written examination or both."

"18. (i) The Appointing Authority shall invite the names of candidates from the District Employment Exchange and affix on the notice-board of the Mahapalika, a notice specifying the details of the posts and the qualifications required for the posts and send one copy to each of the departments of the Mahapalika for the information of such servants who fulfil the qualifications required for the posts. A reasonable time-limit shall be fixed by the Appointing Authority for the receipt of names from the District Employment Exchange and the applications from the servants of the Mahapalika.; Where no name is forwarded by the District Employment Exchange or application received from any servant of the Mahapalika within the fixed time or if the number of names forwarded by the District Employment Exchange and the applications received from the servants of the Mahapalika is less than four times the number of vacancies notified, the Appointing Authority shall invite applications directly by advertisement in

prominent daily newspapers including local newspapers, if any. The applications received, including the names forwarded by the District Employment Exchange, shall be scrutinised by the Appointing Authority and a list of the applicants qualified for the posts shall be prepared and placed before the Selection Committee along with the applications in original and the particulars sent by the District Employment Exchange.

(ii) The applications shall be in the form prescribed by the Appointing Authority and obtainable from the Mukhya Nagar Adhikari.

(iii) In case a written examination is to be held, the Selection Committee shall lay down the syllabus in consultation with the Appointing Authority who shall make all necessary arrangement for holding the examination."

"19. After the selection has been made by the Committee, the Mukhya Nagar Adhikari or the Mukhya Nagar Lekha Parikshak, as the case , may be, shall make the appointment in accordance with the recommendations of the Committee."

4. According to the petitioners the Selection Committee decided that the departmental candidates, like the petitioners would only be interviewed and the selection process was concluded and merit list was drawn, however, the result of the selection was not declared for reasons best known to the respondents.

5. The respondent Nagar Nigam contended in the counter-affidavit that the original records and merit list was misplaced somewhere for that a First Information Report was also lodged, however, in Paragraph No. 11 of the counter-affidavit it was categorically admitted that" duplicate copies/proceedings are available in the office of Nagar Mahapalika, Allahabad" The duplicate records pertaining to the selection in question were produced before this Court for perusal at the time of hearing, which were returned to learned Counsel for the Nagar Nigam.

6. In order to appreciate the stand taken by the Nagar Nigam reference may be made to the contents of Paragraphs of 7, 8, 10, 11 of the counter-affidavit filed on behalf of the Administrator, Nagar Mahapalika, Allahabad :

"7. A selection for 19 vacant post of "Naib Moharrir" was held and the petitioners were called for interview."

"8. It is true that the petitioners appeared before the said Selection Committee which consisted of Sri R.C. Sharma, Deputy Administrator as the Chairman of the Selection Committee, Sri Sant Ram Gupta, Up-Nagar Adhikari and Sri Ram Kumar Bajpai, Mukhya Nagar Lekha Parikshak as members."

"10. The original file which contained the results of the Selection Committee proceedings and other connected papers have been stolen from the office of the Administrator, Nagar Mahapalika, Allahabad and is not traceable since 26th of September, 1988. A F.I.R. to that effect was lodged with the then Administrator of Nagar Mahapalika, Allahabad on the 9th of October, 1986. The duplicate copy

of the proceedings are available in the office of the Nagar Mahapalika, Allahabad which shows that the Selection Committee had not taken any decision that for departmental candidate only interview would be held. The said decision was taken by Sri J.N. Dwivedi, Administrator, only this much is admitted that the petitioners were examined by means of interview alone."

"11. The Selection Committee had submitted its recommendation to the Appointing Authority i.e., the Administrator, Nagar Mahapalika, Allahabad who at the relevant time was Sri J.N. Dwivedi. But, as already stated above, it is submitted that the original file of the Selection Committee and other connected papers were stolen from his office on the 26th of September, 1986 and since then it is not traceable. A report to that effect was lodged by him with the police and that is why results could not be declared."

7. According to the petitioners the Nagar Nigam has neither indicated its unwillingness expressly to make appointment nor has denied the existence of vacancies to the post of "Naib Moharir" as in reference to the contents of Para 7 of the counter-affidavit 19 posts of Naib Moharir were available due claim and legal right of the petitioners are being ignored for no fault. It was not asserted by Nagar Nigam that the said selection process was ever cancelled or revoked for any reasons, whatsoever, or that the posts in question were ever filled up by any subsequent selection.

8. A supplementary affidavit on behalf of the Nagar Nigam was subsequently filed stating that with the abolition of "Octroi Department", the post of "Naib Moharir" was also abolished which according to the petitioner is wholly misconceived inasmuch as the post of "Naib Moharir" was not a post relatable to only Octroi Department, as this post also exist in the Tax- Department of the Nagar Nigam as the subsequent change in the events would not have any bearing on the merits and claims of the petitioners because had the petitioners been appointed even in the "Octroi-Department" like other employees they could also have been absorbed like other similarly placed persons in other department of the Nagar Mahapalika/Nagar Nigam.

9. On behalf of the petitioners it was argued that in 1995(2) SCC 230, R.S. Mittal v. Union of India, where the person after being selected and put in the panel of the selected candidates was not to be denied the appointment without a proper reason, however, in peculiar facts and circumstances relief was refused by the Supreme Court by observing in Para 10 as below --

"10. Although a person on the select panel has no vested right to be appointed to the post for which he has been selected, the Appointing Authority cannot ignore the select panel or on its whims decline to make the appointment. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him, for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present

case, there has been a mere inaction on the part of the Government. No reason, whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to the candidate at Sl. No. 1 of the select list within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified."

10. It was also argued on behalf of the petitioners that in *Munna Roy Vs. Union of India (UOI) and Others*, , the Supreme Court after acknowledging that mere inclusion in select list does not confer any right to the Selectee and mandamus could not be issued but the Court could interfere when an administrative authority took a decision on erroneous reasons namely dubious method was suspected in the selection inasmuch as the candidate was a graduate, whereas, the minimum qualification for selection was matriculation and when the reason was described as arbitrary, irrational and not germane. In those circumstances, the decision to cancel the panel on this score could be set aside. In view of the observations made by the Supreme Court in *R.S. Mittal (supra)*, as well as in *Munna Roy (supra)*, the action of respondent in not declaring the result of selection in question and subsequently giving appointment to the petitioners is arbitrary inaction discriminatory as the same are in derogation to the spirit of Article 14 of the Constitution, as contended on behalf of the petitioners.

11. However, as contended on behalf of learned Counsel for Nagar Nigam that in absence of original records, documents the selection process could not be said to be complete and no direction could be issued to finalise the selection on the basis of duplicate records in peculiar facts and circumstances when the Selection Committee before it could finalise the selection and make recommendation became obsolete, therefore, for taking any further steps a fresh Selection Committee has to be constituted, which too, as well as Nagar Nigam are not under statutory obligation to declare the result in absence of original records/documents. Even after selection the petitioners do not acquire legal right of appointment even if vacancy is persisting for sometime. According to the respondents for the sake of argument even if the petitioners were recommended to the post of "Naib Moharrir" after declaration of the result of said selection in question, do not acquire any legal right merely because they were likely to be put in the panel of select list. According to the respondents, the selection in question has become obsolete and cannot be revived irrespective of the fact that subsequent selection for recruitment to the post of "Naib Moharrir" in Nagar Nigam had taken place or not.

12. In *Vinodan T. and Others Vs. University of Calicut and Others*, , the Supreme Court has held that the appointments to the vacancies must be made in accordance with law, if any, and the Appointing Authority cannot scrap the panel of select list during the period of its validity except for well-founded reasons. It is also observed in Para 14 as below--

"14. The principle that persons merely selected for a post do not thereby acquire a right to be appointed to such post is well established by judicial precedent. Even if vacancies exist, it is open to the authority concerned to decide how many appointments should be made."

13. In *S. Renuka and Others Vs. State of Andhra Pradesh and Another*, , the Supreme Court while acknowledging the decision made in above two cases *R.S. Mittal (supra)* and *Munna Roy (supra)*, has however held that no right accrues to a person merely because a person is selected and his or her name is put on a panel and the candidates have no right to claim the appointment.

14. In (2003) 2 UPLBEC 1697, *State of Andhra Pradesh and Ors. v. D. Dastagiri and Ors.*, the Supreme Court has taken the similar view and has held that no vested right accrue to the candidates to be appointed even if selection process was completed and the Supreme Court has observed in Para 4 as below --

"4. There is serious dispute as to the completion of selection process. According to the appellants, the selection process was not complete. No record has been placed before us to show that the selection process was complete, but, it is not disputed that the select list was not published. In Paragraph 16 of the counter-affidavit, referred above, the respondents themselves had admitted that the selection process was cancelled at the last stage. In the absence of publication of select list, we are inclined to think that the selection process was not complete. Be that as it may, even if the selection process was complete and assuming that only select list was remained to be published, that does not advance the case of the respondents for the simple reason that even the candidates who are selected and whose names find place in the select list, do not get vested right to claim appointment based on the select list. It was open to the State Government to take a policy decision either to have prohibition or not to have prohibition in the State. Certainly, the Government had right to take a policy decision. If pursuant to a policy decision taken to impose prohibition in the State there was no requirement for the recruitment of Constables in the Excise Department, nobody can insist that they must appoint candidates as Excise Constables. It is not the case of the respondents that there was any malafide on the part of the appellants in refusing the appointment to the respondents after the selection process was complete. The only claim was that the action of the appellants, in the appointing the respondents as Excise Constables, was arbitrary. In the light of the facts that we have stated above, when it was open to the Government to take a policy decision, we fail to understand as to how the respondents can dub the action of the respondents as arbitrary, particularly, when they did not have any right as such to claim appointments. In the absence of selection and publication of select list, mere concession or submission made by the learned Government Pleader on behalf of the appellant-State cannot improve the case of the respondents. Similarly, such submission cannot confer right on the respondents, which they otherwise did not have."

15. A person has a right only to be considered being eligible as per the Rules for

employment. He can raise the grievance provided a person having lesser merit in the same category is offered appointment.

16. Mere inclusion of the name of a candidate in the select list does not confer any right of appointment [vide Shankarsan Dash Vs. Union of India, ; Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others, Union of India Vs. S.S. Uppal and another, ; Hanuman Prasad and Others Vs. Union of India (UOI) and Another, ; Bihar Public Service Commission v. State of Bihar AIR 1998 SC 2280; Syndicate Bank and Ors. v. Shankar Paul and Ors AIR 1977 SC 3091 and Vice-Chancellor, University of Allahabad and Others Vs. Dr Anand Prakash Mishra and Others,

17. As there is no enforceable right to appointment, mandamus cannot be issued to the respondents to appoint petitioner [vide Punjab S.E.B. v. Seema 1999 SCC 629].

18. The Supreme Court in Union of India and Ors. v. Ishwar Singh Khatri and Ors. 1992 (3) SCC 84 , has held that selected candidates have right to appointment only against "vacancies notified" and that too during the life of the select list as the panel of selected candidates cannot be valid for indefinite period. Moreover, empanelled candidates "in any event cannot have a right against future vacancies". In State of Bihar and others Vs. The Secretariat Assistant Successful Examinees Union 1986 and others, the Supreme Court has held that "a person who is selected does not, on account of being empanelled along, acquire any indefeasible right of appointment". Empanelment is at the best a condition of eligibility for purposes of appointment and by itself does not amount to selection or create a vested right to the appointed unless relevant service rules provides to the contrary.

19. In Surinder Singh and Others Vs. State of Punjab and Another, the Supreme Court observed as under--

".....If the waiting list in one examination was to operate as infinite stock for power, there is danger that the State may resort to the device of not holding the examination for years together and pick-up candidates from the waiting list as and when required. The Constitutional discipline requires that improper exercise of power which may result in creating a vested interest and perpetuating the waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service.....Exercise of such power (to requisition the post) has to be tested on the touchstone of reasonableness....."

20. It is settled legal proposition that no relief can be granted to the candidate if he approaches the Court after expiry of the Select List. [Vide J. Ashok Kumar v. State of Andhra Pradesh and Ors. JT (1996) 3 SCC 320 ; State of Bihar and others Vs. Md. Kalimuddin and others, ; State of U. P. and others Vs. Harish Chandra and others, and State of U.P. Vs. Ram Sawrup Saroj, It has been held therein that if the selection process is over, select list had expired and

appointments had been made, no relief can be granted by the Court at a belated state.

21. However, in *Purushottam Vs. Chairman, M.S.E.B. and Another*, the Supreme Court has held as under :

"The right of the appellant to be appointed against the post to which he has been selected, cannot be taken away on the pretext that the said panel, in the meanwhile, expired and the posts had already been filled up by somebody, else. Usurpation of post by somebody else is not on account of any fault on the part of the appellant but on the erroneous decision of the employer himself. In that view of the matter, appellant's right to be appointed on the post has been illegally taken away by the employer."

22. The Supreme Court held that in such a situation the party should be given the relief. The aforesaid judgment had been delivered by a Bench consisting of two Hon''ble Judges of the Supreme Court and that too without taking note of the judgments referred to hereinabove.

23. A Bench of three Hon''ble Judges of the Supreme Court in *Sushma Suri Vs. Govt. of National Capital Territory of Delhi and Another*, dealing with a case wherein the Court had been approached at the stage when the process of selection had started but by the time the matter was decided, the selection process stood concluded and the appointments has been made, observed as under --

"However, we are not in a position to give any relief to the appellant before us now because when she commenced the litigation, the recruitment process was still going on and it had gone too far ahead. In fact, the same has been completed and selected candidates had already been appointed and they had reported for duty in different places and they are not impleaded as parties in these proceedings, it would not be proper to upset such appointment."

24. There can be no dispute that wherever there is a conflict in two judgments of the Court, the judgment of the Larger Bench would prevail. [Vide *Ramesh Shaw v. Distt. Magistrate, Burdwan and Anr.* AIR 1964 SC 335 ; *The State of U.P. Vs. Ram Chandra Trivedi*, ; *N. Meera Rani Vs. Government of Tamil Nadu and Another*, ; *N.S. Giri Vs. The Corporation of City of Mangalore and Others*, *Coir Board Ernakulam Kerala State and Another Vs. Indira Devi P.S. and Others*, ; *S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others*, *Lily Thomas, Vs. Union of India and Others*, and *S.H. Rangappa Vs. State of Karnataka and Another*,

25. Thus, in view of the above we are of the considered opinion that in view of the Larger Bench judgments no appointment can be made after expiry of the Select List.

26. The Court has no competence to issue a direction contrary to law. [Vide *Union of India and Another Vs. Kirloskar Pneumatic Company Limited*, ; *State of*

U. P. and others Vs. Harish Chandra and others, and Vice-Chancellor, University of Allahabad and Others Vs. Dr Anand Prakash Mishra and Others,

27. In State of Punjab and others Vs. Renuka Singla and others, dealing with a similar situation, the Supreme Court has observed as under --

"We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations."

28. Similarly, in Karnataka State Road Transport Corporation Vs. Ashrafulla Khan and Others, the Supreme Court has held as under --

"The High Court under Article 226 of the Constitution is required to enforce rule of law and not pass order or direction which is contrary to what has been injected by law,"

29. I have heard learned Counsel for the parties and I have perused the documents, I find that the petitioners were allowed to participate in the interview, however, for the non-availability of the original records pertaining the Selection, the then Selection Committee could not recommend the names of the candidates as an out come for issuing the appointment to the post of "Naib Moharrir". The selection in question was yet to be finalised and even after finalisation of the selection process if the petitioners were declared successful and was placed in the panel even then they do not have any legal right to the said post of "Naib Moharrir". In absence of original records and documents, when the earlier Selection Committee had become obsolete, and in absence of publication of select list, this Court is of the view that the selection process was not complete. It was open to Nagar Nigam/the respondents, to take a policy decision or to put restriction or to proceed further in respect of completion of selection, keeping in view the requirement, no body could insist upon that the respondents must complete the selection process and thereafter declare the result, it is not the case of the petitioners that there was any malafide on the part of the respondents in refusing the appointment to the petitioners after the selection process was complete, the only claim was that opposite parties/the respondents have failed to honour the recommendation of the Selection Committee in an illegal and arbitrary manner. In the light of the facts that when it was always open to take a policy decision by the Nagar Nigam, this Court fails to understand as to how the action of respondents could be arbitrary and illegal, when the petitioners have no right or claim for appointment. Be that as it may, even if selection process was complete and assuming that only select list was remained to be published that does not advance and strengthen the case of the petitioners for the simple reason that even if the candidates who are recommended, and shown selected and whose names find place in the select list, do not get vested right to claim appointment based on the select list. Even if the vacancies were available and it is presumed that the petitioners were put in select list, it was upto the respondents to decide how many appointments were

to be made, if at all, the respondents were to choose to issue the orders of appointment in favour of the selected candidates. In the present facts and circumstances the respondents cannot be compelled to declare the result and issue appointment orders. The Selection Committee constituted for the purpose now by efflux of time has also become non-existence or obsolete and no direction at this belated stage may be directed to be re-constituted. This Court has some reservation to give directions at this stage i.e., after 17 1/2 years for finalisation of the said selection by issuing a mandamus for declaration of result and to give appointments to the petitioners.

30. In these circumstances, the prayer made by the writ petitioners cannot be allowed in this petition. Therefore this Court is not invoking its extraordinary discretionary jurisdiction under Article 226 of the Constitution.

31. The writ petitions are dismissed.