

(2013) 08 AHC CK 0030

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11551 of 2013

Smt. Gyan Wati

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-08-2013

Acts Referred:

Citation : (2013) 101 ALR 666 : (2014) 4 AWC 3601 : (2013) 4 UPLBEC 3067

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : M.C. Chaturvedi and Sri Rajendra Sonker, for the Appellant; Hariom Singh and Sri V.S. Parmar, for the Respondent

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—This writ petition is directed against advertisement dated 4.1.2013, published by District Programming Officer, District Kanpur Nagar, respondent No. 3, for recruitment/selection of Angan Bari Karyakatri (worker) in various Gram Panchayat of Ghatampur Block, district Kanpur Nagar. In this case, dispute relates to village panchayat Sajeti. It is said earlier an advertisement was published on 31.1.2011 for the aforesaid post and some others pursuant whereto, the petitioner applied, selected and recommended by respondent No. 4. A complaint was made by respondent No. 5, Smt. Ram Shree, wife of Dharendra Singh, regarding income certificate of petitioner, whereupon an inquiry was made by Naib Tehsildar, Ghatampur, District Kanpur Nagar. He submitted report dated 2.6.2011 verifying genuineness of income certificate having been issued by Tehsildar Ghatampur to petitioner, verifying her income as Rs. 18,000/- per annum. It appears that another report was also submitted by Naib Tehsildar on 15.10.2012 wherein also income certificate of the petitioner was certified to be genuine. Since no letter of appointment was issued to petitioner, she submitted an application on 6.11.2012 but instead of passing any order thereon, the impugned advertisement has been published. The petitioner has been informed, that the aforesaid advertisement has been published in view of the Government

Order dated 4.9.2012 (Annexure 10 to the writ petition).

2. The case set up by petitioner is that once the selection is finalized, if there is any fault/delay on the part of respondent authorities in issuing appointment letter, that will not provide a ground to cancel entire selection and to proceed for selection afresh in the light of new policy formulated by Government Order (for short "G.O.") dated 4.9.2012.

3. A detailed counter-affidavit has been filed on behalf of respondents No. 3 and 4. It is said that for selection and appointment of Angan Bari Karyakartri, procedure and other details were provided in G.O. dated 16.12.2003 (Annexure CA-2 to counter-affidavit), which was amended to some extent by G.O. dated 21.2.2007 (Annexure CA-3 to the counter-affidavit). In accordance therewith a selection was made after advertising vacancies, on 31.1.2011, and select list included the name of petitioner. However, a complaint dated 2.4.2011 was received regarding income certificate and, therefore, a selection committee, while forwarding names of other selected candidates of different centers, to District Magistrate, made an endorsement and kept petitioner's matter in abeyance.

4. The Child Development Project Officer, Ghatampur directed Tehsildar to make verification of income certificate of petitioner. While the aforesaid inquiry was still continuing, in the meantime, a G.O. dated 4.9.2012 was issued by State Government whereby all the selections made before issuance of aforesaid G.O. were cancelled, as a result whereof, earlier selection was cancelled and the respondents have proceeded to make a fresh selection by issuing impugned advertisement in the light of G.O. dated 4.9.2012.

5. The short question up for consideration in the matter is whether G.O. dated 4.9.2012 can justifiably cancel earlier selection proceedings and direct for a fresh selection in respect of earlier existing vacancies.

6. There are two aspects to be considered in this regard. Firstly, what has been said by G.O. dated 4.9.2012 with respect to previous selection, which is sought to be cancelled and secondly, whether it is legally permissible or not.

7. It is not in dispute that G.O. dated 4.9.2012 has been issued in supersession of all existing Government Orders. It lays down procedure for selection and appointment of Angan Bari Karyakartri. A modified procedure has been laid down in the aforesaid G.O. From a bare reading, it however, does not show that it has any retrospective effect, inasmuch as, earlier existing G.Os. have been superseded by the aforesaid G.O. and from a bare reading, it is evident that supersession is prospective.

8. Now the last paragraph which relates to cancellation of selection reads as under:

(emphasis added)

Please get ensured strict compliance of this Government Order and, if any selection proceeding has already been initiated in the District, after issuance of this Government Order, the same shall be cancelled. All the District Magistrates are expected to get the aforesaid G.O. implemented under their efficient guidance and effective control with full responsibility. (English translation by Court)

9. What has been said therein is that the selection proceedings in a district, if has commenced earlier, after issuance of the aforesaid G.O. dated 4.9.2012, such selection proceedings shall be cancelled. Selection procedure is prescribed in para 3 in the earlier G.O. dated 16.12.2003, which lays down a detailed procedure with respect to selection, needs to be followed by selection committee, constituted in para 4 thereof. Bal Vikas Pariyojna Adhikari of the concerned Block under Child Development Project, would be the Chairman of Selection Committee which will have 5-6 members who are also detailed in para 4 of the aforesaid G.O. The selection committee shall prepare a list of selected candidates and the concerned Bal Vikas Pariyojna Adhikari shall proceed to issue letter of appointment on honorarium basis to the selected persons. Para 3 provides that there shall be no necessity of prior approval of any senior officer, on recommendation made by Selection Committee but a copy of select list shall be forwarded to District Magistrate and Chief Development Officer on the same date on which it is prepared.

10. The subsequent G.O. dated 21.2.2007 which supposedly has made some amendment in the procedure of selection laid down in the G.O. dated 16.12.2003 only provides that selection shall be finalised by concerned selection committee as per G.O. dated 16.12.2003 but before issuing "appointment letter", Bal Vikas Pariyojna Adhikari shall obtain approval of District Magistrate through District Project Officer. Therefore, so far as selection procedure is concerned, that by itself does not require any prior approval of District Magistrate, so as to attain finality but that selection shall be acted upon by issuing appointment letter only after approval is obtained from District Magistrate. In the present case, entire selection procedure is over, as is evident from respective pleadings and what is awaited is only approval of District Magistrate for appointment. It is strange to find that a select list was finalized by selection committee as long back as on 26.3.2011 and thereafter for the last more than 1? years, it continued to await approval of District Magistrate. It is true that the District Magistrate was examining complaint made by one of candidates, not selected, who had complained about genuineness of income certificate of petitioner, a selected candidate, but the fact remains that this inquiry continued to remain pending for almost 1? years. In the meantime, impugned G.O. has come and going behind the aforesaid G.O., entire selection has been cancelled so as to issue a fresh advertisement, which is impugned in the instant writ petition.

11. A Division Bench of this Court while construing last paragraph, as quoted above, of G.O. dated 4.9.2012, in Smt. Sangeeta Yadav And Another v. State of

U.P. And Others, (Special Appeal No. 49 of 2013 decided on 6.2.2013), held that there is nothing in the aforesaid G.O. which would apply to cancel selection, which has been finalized, though no appointment has been made. In my view, a careful reading of G.O. dated 4.9.2012 makes it very clear that intention of Government is only to cancel such selection proceedings which have just commenced before issuance of G.O. dated 4.9.2012 but where selection has been completed by selection committee and only the matter relating to appointment is pending before District Magistrate, for his approval, such cases would not be covered by the aforesaid G.O.

12. One of the reasons which can justifiably be found in adopting the aforesaid interpretation, is that, the purpose of appointment of Angan Bari Karyakartri would be frustrated if the process of selection is kept pending for years together and no actual appointment is allowed to be made. After all selection of Angan Bari Karyakartri is proceeded with a basic objective and purpose for which such appointment has been found necessary. Process of selection is only a method to find out a right person who has to be given responsibility of executing the basic plan/purpose/objective. If execution of such plan etc. is made to await the very selection for years to come, it shall obviously frustrate its very purpose. No doubt, there is stress on the words that "selection process has commenced" but as a matter of fact, the intention of State Government is that it is with respect to only those cases, where selection process is at the stage of commencement, and not, where the entire selection has completed at the level of selection committee and a select list has been communicated to District Magistrate concerned. Only a formal approval by District Magistrate is pending and that too, for appointment, which is not to be made by selection committee. It is different aspect that finding some procedural or otherwise substantive irregularities in the selection, the District Magistrate may decline to approve selection and order for fresh selection. That would be a different case but otherwise, a selection which has already commenced and completed, the selection committee in that case would become functus officio. Its role is over after submission of select list to District Magistrate. Such a select list, in my considered view, would not be covered by the last para of G.O. dated 4.9.2012.

13. Principles of interpretation require that there should not be any addition, subtraction or reduction of any word, if the language of a provision is simple and very clear, but interpreting a provision, the Court must also take into consideration the intention and purpose, for which, the provision has been enacted. Where the language of statute is capable of more than one construction, purposive interpretation shall be given to make the scheme of the statute reasonable, rational and functional, which would aid in achieving real objective. I, therefore, find no hesitation in holding that in the facts and circumstances of present case, and the stage, where selection has already reached, it would not be governed by the last para of G.O. dated 4.9.2012. The District authorities have completely misdirected themselves in assuming that selection in question shall stand cancelled by G.O. dated 4.9.2012 so as to justify

fresh selection in accordance with this new G.O.

14. There is another legal angle which is directly involved in the matter. When a vacancy occurs, general principle is that it shall be filled in, according to the procedure applicable at the time when the vacancy occurred. In the present case, relevant facts have been disclosed by respondents in the counter-affidavit, demonstrating that vacancy occurred admittedly in July, 2010. It has been stated in para 4 of counter-affidavit that the petitioner Smt. Gyanwati was earlier selected as Angan Bari Karyakartri on 30.10.2004. She joined the aforesaid post on 6.11.2004 but subsequently she resigned from the said post on 21.7.2010 which resignation was accepted by competent authority on the same day, i.e., 21.7.2010. At that time, the procedure laid down vide G.Os. dated 16.12.2003 and 21.2.2007, was operating and applicable. The respondents rightly, therefore, proceeded to make selection and appointment in accordance with the aforesaid procedure. Subsequent G.O. dated 4.9.2012, therefore, cannot be applied to the vacancies which occurred earlier and the same has to be filled, in accordance with the procedure operating and applicable at the time of occurrence of vacancy.

15. The Apex Court in the case of Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, , it was observed:

9. Having heard the Counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Register Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the respondents Nos. 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by Counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.

(emphasis added)

16. In A.A. Calton Vs. Director of Education and Another, and P. Ganeshwar Rao and Others Vs. State of Andhra Pradesh and Others, , the same view was reiterated. Again in B.L. Gupta and Another Vs. M.C.D., , the Apex Court in para 9 of the judgment held as under:

When the statutory rules had been framed in 1978, the vacancies had to be filled only according to the said Rules. The Rules of 1995 have been held to be prospective by the High Court and in our opinion this was the correct conclusion. This being so, the question which arises is whether the vacancies which had

arises earlier than 1995 can be filled as per the 1995 Rules. Our attention has been drawn by Mr. Mehta to a decision of this Court in the case of N.T. Devin Katti v. Karnataka Public Service Commission. In that case after referring to the earlier decisions in the cases of Y.V. Rangaiah v. J. Sreenivasa Rao; P. Ganeshwar Rao v. State of A.P. and A.A. Calton v. Director of Education it was held by this Court that the vacancies which had occurred prior to the amendment of the Rules would be governed by the old Rules and not by the amended Rules. Though the High Court has referred to these judgments, but for the reasons which are not easily decipherable its applicability was only restricted to 79 and not 171 vacancies, which admittedly existed. This being the correct legal position, the High Court ought to have directed the respondent to declare the results for 171 posts of Assistant Accountants and not 79 which it had done.

(emphasis added)

17. Following the aforesaid decisions, a Division Bench of this Court (of which I was also a Member) took similar view in Ram Prakash and others v. Farrukhabad Gramin Bank, Farrukhabad and others, (Writ Petition No. 13347 of 2001, decided on 8.5.2007).

18. In certain cases, an explanation has been carved out where amendment in the rules, providing procedure for selection has been made with retrospective effect, otherwise the amended procedure would be applicable to the vacancies occurring after such amendment and not to the earlier ones.

19. In the present case, learned Standing Counsel could not dispute that the Government Order in question is prospective in nature and supersedes existing erstwhile Government Orders from the date of issuance of G.O. dated 4.9.2012 and not from an earlier date. That being so, vacancies which occurred earlier, i.e. before issuance of G.O. dated 4.9.2012, are liable to be filled in, according to procedure laid down in the previous Government Orders and not by the subsequent G.O.

20. It is true that in the present case, validity of last para of G.O. dated 4.9.2012 in so far as it covers certain cases of earlier vacancies, has not been challenged. But, that will not help the respondents in any manner, for the reason that this Court is not striking down the last paragraph of G.O. dated 4.9.2012, but a reasonable plain reading thereof and also the legal exposition of law as discussed above, is sufficient to make its construction in the manner, that, it shall operate only in those cases where selection has not been finalized upto the stage of preparation of select list and submitted to the District Magistrate, rendering the selection committee functus officio. Approval of District Magistrate would only make the way clear to Zila Vikas Pariyojna Adhikari to proceed to make appointment but approval of District Magistrate as such, will not empower selection committee to treat it as continuing. Since this Court is making a purposive reasonable construction of the G.O. dated 4.9.2012, and not striking it down, the factum that the petitioner has not challenged its validity, will be of no

help to the respondents.

21. Moreover, the fact remains that the authorities themselves did not pass any order, which they ought to have, in order to avoid any confusion or misconception/misinterpretation, in respect of earlier selection, wherein the petitioner was already selected.

22. Further in the writ petition the reasons have been assigned by the petitioner for not making any specific plea for challenging the G.O. dated 4.9.2012, by stating in para 17 thereof that G.O. dated 4.9.2012 has been held contrary to the Central Government's circular dated 3.6.2011 and holding that the State Government cannot issue any order which would be contrary to the circular formulated by the Central Government. Reference has been made of a Division Bench decision of Lucknow Bench of this Court, in *Provincial Child Development Project Officers' Welfare Association v. State of U.P. and others*, (Service Bench No. 9 of 2013), decided on 7.1.2013. However, a careful reading of Division Bench decision shows that only a part of G.O. dated 4.9.2012 has been quashed, i.e., only to the extent of reservation and not in its entirety. Hence, this shall not help the petitioners at all.

23. Be that as it may, since the law is well-settled that vacancies occurring earlier should be filled in by the procedure laid down under the statute, operating at the time of occurrence of vacancies, G.O. dated 4.9.2012, need not be quashed to the extent it provides in the last para. Considering prayer (b), the respondents need be directed to consider the matter of appointment on the post of Angan Bari Karyakartri at village panchayat Sajeti, Ghatampur Block, district Kanpur Nagar in the light of selection made according to procedure laid down, applicable at the time of occurrence of vacancy, without being influenced by any subsequent CO., laying down different procedure or method and the discussion made above.

24. In view of above discussion, the writ petition succeeds and is allowed. The impugned advertisement dated 4.1.2013 (Annexure-9) to the writ petition, published by District Programming Officer, District Kanpur Nagar, respondent No. 3, insofar as it pertains to the post of Angan Bari Karyakartri, which is subject-matter of dispute in the present writ petition, is hereby quashed. The respondent competent authority is directed to consider the claim of petitioner for appointment to the post of Angan Bari Karyakartri in the light of her selection made pursuant to advertisement made on 31.1.2011. However, it is made clear that this order shall not preclude the competent authority to examine the matter, with respect to genuineness of any document relating to eligibility etc. of petitioner and if anything is found wrong, therein appropriate order may be passed by it, giving reason(s), after observing principles of natural justice.

25. The writ petition stands decided accordingly in the manner as said above. No costs.