

(2009) 07 AHC CK 0153

In the Allahabad High Court

Case No : Writ Petition No. 1009 (S/S) of 2009 With Writ Petition Nos. 7767, 6944, 6554, 6481, 6491, 6520, 7131, 7212, 7395, 6790, 6591, 7130, 8210, 7854, 8208, 7327, 6797, 7808, 7311, 7899, 6446 (S/S) of 2008 and Writ Petition Nos. 787, 199, 192, 973, 170, 638, 60

Sohan Lal Gupta and others APPELLANT

Vs

State of U. P. and others RESPONDENT

Date of Decision : 24-07-2009

Acts Referred:

Citation : (2009) 07 AHC CK 0153

Hon'ble Judges : Shabihul Hasnain, J

Final Decision : Allowed

Judgement

Shabihul Hasnain, J,

1. This is a bunch of writ petitions, relating to selection of ""Safai Karmi" in different districts of Uttar Pradesh. This portion of the Bunch relates to District Sultanpur and since common question of facts and law are involved in these petitions, they are being decided together, the leading case being Writ Petition No.1009 (S/S) of 2009, Sohan Lal Gupta and others Vs. State of U.P. and others.

2. Petitioners have challenged the order of the State government dated September 25, 2008, as contained in Annexure No.1 and the order passed by the District Panchayat Raj Officer, Sultanpur dated September 27, 2008 contained as Annexure No.2 to this writ petition. Both these orders have been passed to the effect that the entire list of selected ""Safai Karmi" has been cancelled on the basis of inquiry report sent by the District Magistrate, Sultanpur dated September 25, 2008.

3. The petitioners were selected in the selection held on the basis of advertisement issued by the District Panchayat Raj Officer, District Sultanpur on June 28, 2008 for 2542 posts of ""Safai Karmi" in district Sultanpur. The select list was published on 19.9.2008 in the newspapers in which the names of the

petitioners were given according to their merit position. The entire select list has been cancelled by the single order to the detriment of the petitioners. The main argument in this matter is that the selection of thousands of candidates was cancelled in one stroke without there being sufficient material before the authorities to take such a decision. Challenge has been made through this writ petition to the cancellation on the ground of arbitrariness, malafide, undue haste, non application of mind and undue influence.

4. Dr. L. P. Mishra and Sri Rakesh Kumar Chaudhary, who is the counsel in most of the writ petitions including the leading one, mentioned above, addressed this Court for the petitioners and the Additional Advocate General, Sri Jaideep Narain Mathur assisted by Sri Manjeev Shukla, learned Standing counsel advanced his arguments on behalf of opposite parties.

5. The exercise of appointment of "Safai Karmi" was undertaken at the State level and since the execution was to be done at the District level, hence the selection in different Districts were undertaken on different dates but the cancellation has been done almost simultaneously. For proper adjudication of the case, it is necessary to understand the circumstances under which the whole exercise was carried out. The directions and the Government Orders which were issued from time to time need to be looked into. Simultaneously, the nature and contents of the complaints also require to be seen. It is, therefore, imperative to narrate a few facts in chronological order and the same are being placed as below:

The State Govt. by a Government Order dated 1.3. 2008 issued by Chief Secretary, Govt. of U.P. decided to sanction one post each of "Safai Karmi" in every revenue village with the total number of 1,08,848 in the State in the pay scale of Rs.2550552660603200 on temporary basis for maintaining cleanliness in the villages. The object for creating the post given in the Government Order is to provide facilities of development in the villages and to stop migration to the urban areas. It was found necessary to provide proper drainage and cleanliness of the villages, for which no appointments were made so far and which effect the public health, sanitation and for prevention of communicable diseases. The Government Order provided that these posts shall be created on temporary basis up to 28.2.2009 unless they were cancelled earlier. The "Safai Karmi" was ordered to be treated to be the employee and to be appointed by the respective Gram Panchayat. The service rules providing for process of appointment and other service conditions were to be notified separately.

6. By the Second Govt. Order dated 11.4. 2008 the State Govt. provided that the "Safai Karmi" shall be full time employee. Their appointment shall be made by the District Level Officer, District Panchayat Raj Officer. By a third Government Order dated 6th June, 2008 the State Government notified that the method of appointment of "Safai Karmi" shall be the same as it is prescribed in the GroupD Employees Service Rules, 1985, as amended from time to time.

7. The GroupD Employees Service Rules, 1985 do not provide for any written examination. The selections after wide advertisement are based only on the marks obtained by the candidates in interviews to be awarded by the selection committee constituted under Rule 6 of the said Rules.

8. Sri Rakesh Kumar Chaudhary urged that the District Panchayat Raj Officer, Sultanpur issued an advertisement inviting application for selection and appointment on the post of "Safai Karmi" in District Sultanpur. A total number of 2542 posts were advertised for the whole District of Sultanpur. Out of 2542 posts 534 posts were reserved for the candidates belonging to scheduled caste, 50 posts for scheduled tribes, 687 posts belong to other backward classes categories. 20 percent posts in each category were also reserved for women candidates. The aforesaid advertisement was published in daily news paper of June 20, 2008.

9. District Magistrate, Sultanpur constituted four selection committees known as GroupA, B, C and D vide his order dated 8.8.2008. In each selection committee there was one Chairman and two Members. In GroupA Mr. Vimal Chandra Srivastava, Chief Development Officer was the Chairman and Mr. Heera Lal, who was Chief Revenue Officer, Sultanpur was appointed to head the selection committee; of GroupB, Mr. P. K. Sharma, Deputy Director, Agriculture and Mr. Vinod Singh Gaur, District Development Officer, Sultanpur were nominated Chairman of GroupC and D respectively. The District Magistrate nominated the Chief Development Officer, Sultanpur as over all incharge of the selection of the "Safai Karmi" in District Sultanpur.

10. There was a mandatory provision that all the candidates will be required to qualify the practical test i.e. cleaning of drainage as well as cleaning of roads etc. as well as cycling. However, lady candidates were exempted from cycling. For practical test the Executive Officer In charge, Sultanpur and District Sports Officer, Sultanpur were nominated and it was directed by the Chief Development Officer, Sultanpur vide order dated August 10, 2008 that they will hold a practical test of cleaning drainage and road etc. along with their supporting officers/employees. The schedule for test as well as interview was from 18.8.2008 to 23.8.2008 and 250 posts/candidates allotted to each Group i.e. A, B, C and D. On 18.8.2008 interview of 205 candidates was also under taken by the BoardB headed by Sri Heera Lal, Chief Revenue Officer. Two other members who were in the Board of Mrs. Heera Lal were Mr. R. S. Garg, Soil Conservation Officer and Mr. A. N. Pandey, District Agriculture Officer, Bahraich. After completion of the interview on 18.8.2008 an amendment for BoardB was made by the District Magistrate, Sultanpur and vide order dated 18.8.2008 Mr. Ram Pher Ram, Block Development Officer, Bazar Shukul, Sultanpur was appointed as Chairmen of GroupB in place of Mr. Heera Lal, Chief Revenue Officer. It has been argued that call letters were issued on 6.8.2008 to the petitioners as well as other eligible candidates and they appeared before the Board concerned for the test and for the practical test drainage/nalah/road and cycling etc. and after qualifying the

test they appeared for interview before the respective Board on the respective dates.

11. On 9.9.2008 a meeting of the Chairman/Members of the four groups including the Chief Development Officer was held in which the direction of the State Government with regard to present selections were discussed and it was decided that the candidates who could not qualify the practical test and cycling test may not be declared successful.

12. It is argued that on 18.9.2008, the selection list of the "Safai Karmi" in District Sultanpur was prepared and the same was sent by the Chief Development Officer, Sultanpur to the District Panchayat Raj Officer, Sultanpur on 19.9.2008.

13. It is also stated in para 17 of the writ petition that although there were 2542 posts advertised by District Panchayat Raj Officer but later on when it was pointed out by the revenue authorities of the District that there were only 2527 revenue villages, the selection list of only 2527 candidates was declared on 19.9.2008. Separate selection list for each category candidate was prepared in which 1263 candidates were declared successful in general category, 682 candidates in other backward class category, 531 candidates in schedules caste category and 51 candidates in scheduled tribe category. A corrigendum was also issued on the same very day i.e. on 19.9.2008 by which six candidates who were either over age or under age were excluded from the select list and in their place six candidates who were just below the select list were included. The full selection was completed on 31.8.2008 and the result was declared on 19.9.2008. It is this final selection which has been done away with by a single stroke of pen on the basis of an inquiry report. The inquiry report has also been challenged in this writ petition.

14. On 20.9.2008 the District Magistrate, Sultanpur received some complaints from the political leaders belonging to ruling party that grave irregularities have been committed in the selection and it should be cancelled. The persons who have made a complaint can be categorized as below:

A. The State Minister of Tourism, who is an MLA from District Sultanpur and belongs to Bahujan Samaj Party,

B. Mr. Bhagelu Ram, MLA, Kadipur, Sultanpur, belonging to Bahujan Samaj Party,

C. Mr. Aashish Shukla, Leader of Bahujan Samaj Party of Sultanpur and Vice Chairman of Khadi Board.

D. Mr. R. K. Bhim, District President of Bahujan Samaj Party and Leader of District Sultanpur and also Vice Chairman of Forest Corporation of Uttar Pradesh.

15. These complaints were made either to the District Magistrate Sultanpur or directly to the Chief Minister.

16. The District Magistrate, Sultanpur vide order dated 20.9.2008 appointed a

committee headed by Mr. Heera Lal, Chief Revenue Officer, Sultanpur while Mr. Ram Kumar, Divisional Forest Officer, Sultanpur and Mr. Akhilesh Tiwari, Additional District Magistrate (Administration), Sultanpur were appointed as Members. The aforesaid orders also contained a direction that the appointment letters to the selected candidates be not issued till the completion of the inquiry. The committee constituted by the District Magistrate, Sultanpur for inquiring the complaints made by political leaders of the District Sultanpur submitted its report in shortest time i. e. on 25.9.2008. The inquiry report has been annexed in the leading writ petition being the Writ Petition No.1009 (S/S) of 2009. A perusal of the said inquiry report goes to show that there are mainly three grounds on which the committee has submitted its report. The first ground of attack is that there were only 2491 inhabited villages and 36 villages which are not inhabited i.e. there are only 2527 revenue villages. The selection was made only for 2527 posts while the advertisement was made for 2542 posts on the basis of the information given by the Board of Revenue.

17. The second ground was that the respective Boards appointed by the District Magistrate did not have the right to declare the select list. It should have been declared only by the the appointing authority i. e. District Panchayat Raj Officer. The third ground appears to be an extension of second ground. The ground No.4 which is actually the ground No.3 speaks about the violation of women reservation, freedom fighter quota and physically handicapped quota.

18. The complete exercise of cancellation of the entire select list of the "Safai Karmi" is based on the inquiry report submitted by the District Magistrate, Sultanpur to the State Government. A perusal of the inquiry report shows that it has been signed by three members" committee headed by one Sri Heera Lal, the Chief Revenue Officer, Sultanpur, Sri Akhilesh Tiwari, Additional District Magistrate (Administration), District Sultanpur and Sri Ram Kumar, Divisional Director of Forest, Social Forestry, District Sultanpur on 25.9.2008. The inquiry report is addressed to the District Magistrate and it starts with the observation that it has submitted its reply in pursuance of the order of the District Magistrate No.3002/4SDDM/09, dated 20.9.2008. It further states that the committee of the undersigned is expected to inquire into the irregularities committed during the selection process of the "Safai Karmi" in District Sultanpur. The two grounds mentioned are that the selection was not made according to the standards fixed and further that the forged experience certificates were annexed. By narration of these two facts the committee has almost fixed the term of reference for the inquiry committee. It is interesting to note that the inquiry officers have not touched the points raised in the term of reference at all. They have given finding on other subjects except forged certificates.

19. A counter affidavit has been filed by the learned Standing counsel Sri Manjeev Shukla, sworn by one Sri R. P. Misra, presently posted as District Panchayat Raj Officer, Sultanpur on behalf of the opposite parties. The main contention of the State is that the selection held was infested with malpractices

and irregularities. The rules and guidelines were not followed, norms were flouted by the selection committees constituted by the District Magistrate. The select list was published by the selection committees itself. This was the job under the rules of the appointing authority, the District Panchayat Raj Officer, which was bypassed. The number of posts declared by the State Government was unilaterally changed. All these activities point to a concerted effort to any how induct the ineligible candidates hence, the only remedy open for the opposite parties was to go for general cancellation of the select list.

20. Sri J. N. Mathur, learned Additional Advocate General has forcefully argued that the petitioners are only selectees and they do not have any right to approach this Court and the writ petitions are not maintainable. He submits that since no appointment was made hence they are not the employees of the State and, as such, no right was ever created in their favour. He further argued that the State Government has every right to cancel any examination/select list before giving regular appointment to any candidate. Right to hold an examination does not necessarily carry a handicap that appointment has compulsorily to be given. The State Government was well within its right to cancel the select list and the same has been done after proper inquiry. He further submits that the inquiry was made by a three member committee and it is on the basis of the inquiry that the order for cancelation was issued. Sri Mathur has tried to establish that the charges levelled in the inquiry report have been conclusively proved and there is no ambiguity or lack of clarity in the inquiry report.

21. On the side of the petitioners, reliance was placed on a decision of Hon. Apex Court reported in 2001 AIR SCW 2329 Munna Roy vs. Union of India, in which in para 2 of the judgment the Apex Court has held as under :

"The High Court while interfering with the order of the Tribunal has taken into consideration the fact that mere inclusion of a person's name in the list does not confer any right and therefore, mandamus cannot be issued. The aforesaid enunciation as a proposition of law cannot be disputed. However, if the Administrative Authority takes a decision and the reasons for such decisions are erroneous then such a decision can be interfered with by Court of Law".

".....We have no hesitation to come to a conclusion that the reasons which weighed with the authorities to quash the selection are not germane and must be held to be arbitrary and irrational."

22. In Union of India and others vs. Rajesh P.U., Puthuvalnikathu and another reported in (2003) 7 SCC 285, their Lordship's of Hon'ble Supreme Court laid down as under :

"On a careful consideration of the contentions on either side in the light of the material of the materials brought on record, including the relevant portions of the report said to have been submitted by the Special Committee constituted for the purpose of inquiring into the irregularities, if any, in the selection of candidates,

filed on our directions which report itself seems to have been also produced for the perusal of the High Court there appears to be no scope for any legitimate grievance against the decision rendered by the High Court. There seems to be no serious grievance of any malpractices as such in the process of the written examination either by the candidates or by those who actually conducted the. If the Board itself decided to dictate the questions on a loudspeaker in English and Hindi and none of the participants had any grievance in understanding them or answering them, there is no justification to surmise at a later stage that the time lapse in dictating them in different languages left any room or scope for the candidates to discuss among them the possible answers. The posting of invigilators for every ten candidates would belie any such assumptions. Even that apart, the Special Committee constituted does not appear to have condemned that part of the selection process relating to conduct of the written examination itself, except noticing only certain infirmities only in the matter of evaluation of answersheets with reference to correct answers and allotment of marks to answers of some of the questions. In addition thereto, it appears that the Special Committee has extensively scrutinized and reviewed the situation by reevaluating the answer sheets of all the 134 successful as well as the 184 unsuccessful candidates and ultimately found that except 31 candidates found to have been declared successful though they were not really entitled to be so declared successful and selected for appointment there was no infirmity whatsoever in the selection of the other successful candidates than the 31 identified by the Special Committee. In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an allpervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to week doubt the beneficiaries of one or the other irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or the other reasons. Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation. In short, the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational.

23. In Director, SCTI for Medical Science and Technology and another vsd. M. Pushkaran (2008) 1 SCC448, Hon"ble Apex Court has ruled as under :

"The law operating in the field in this behalf is neither in doubt nor in dispute.

Only because the name of a person appears in the select list, the same by itself may not be a ground for offering him an appointment. A person in the select list does not have any legal right in this behalf. The selectees do not have any legal right of appointment subject, inter alia, to bona fide action on the part of the State. We may notice some of the precedents operating in the field.

24. Their Lordships, referring the decisions operating in the field, in *Shankarsan Das vs. Union of India* (1974) 3 SCC 220, in which it has been held that unless the relevant recruitment rules so indicates, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reason, *R.S. Mittal vs. Union of India* 1995 Supp.(2) SCC 230, which lays down that ".....It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims" as well as in *Food Corporation of India vs. Bhanu Lodh* (2005) 3 SCC 618 in which in para14 of the report it has been provided that merely because vacancies are notified, the State is not obliged to fill up the vacancies unless there is some provision to the contrary in the applicable rules. However, there is no doubt that the decision not to fill up the vacancies has to be taken bona fide and must pass the test of reasonableness so as not fail on the touchstone of Article 14 of the Constitution, further held as under

"It is, therefore, evident that whereas the selectee as such has no legal right and the superior court in exercise of its power of judicial review would not ordinarily direct issuance of any writ in absence of any pleading and proof of mala fide or arbitrariness on the part of the employer. Each case therefore, must be considered on its own merit".

"The application of law would, therefore, depend upon the facts situation obtaining in each case. The judgment of the High Court in view of the aforementioned authoritative pronouncements cannot be said to be perverse. The respondent was to be offered with the appointment at a point of time when no policy decision was taken. There was, thus, no reason not to offer any appointment in his favour. Why the select panel was ignored has not been explained. Even the purported policy decision was not in their contemplation. We, therefore, do not see any reason to interfere with the impugned judgment".

25. In *Sadananda Halo and others vs. Momtaz Ali Sheikh and others and other connected matters* reported in (2008) 4 SCC 619, Hon"ble Apex Court laid down as under :

"We have already shown in the earlier part of our judgment that there were proper advertisements issued and reasonable procedure was chalked out in the earlier meetings held by the authorities, even the guidelines were defined and

the interviews proceeded along those guidelines. A mere expression of doubt only on the ground of large number of candidates appearing and their not being objectively and properly tested without any further material, in our opinion, cannot by itself render the whole selection process illegal".

"We also do not approve of the approach adopted by the learned Single Judge of the High Court as going all the way into the facts and the microscopic details not via the pleadings of the parties but on the basis of an unnecessary investigation. We also disapprove of the logic of relying on the finding arrived at only on the basis of sample survey. Such selection of large number of candidates could not have been set aside on the basis of sample survey. No evidence was available before us as to the proportion of this so called "sample survey".

26. It is a matter of coincidence that almost a similar situation has cropped up in the case of cancellation of appointment of constables in the Civil Police Recruitment, which were being heard and were finally decided on 8.12. 2008. The special appeal preferred against which was dismissed on 4.3.2009. On being approached in the contempt matter, Hon"ble Supreme Court directed the State Government to comply with the orders passed by this Court in Writ Petition No.45645 of 2007. In this case Hon"ble Single Judge of this Court has raised a few question while reaching to the conclusion in allowing the writ petition and quashing the Govt. Order cancelling the recruitment by various Recruitment Board, in para 70, 71, 72 before reaching the conclusion in para 74 of the judgment, which are worth repeating here :

"70. There is another aspect to this issue. It is suspected that large number of the candidates had paid illegal gratification to the officers to secure their selection. Who is the greater sinner?"

"71. The hapless unemployed youth who is open to allurements or, the well established, secured with regular salary and highly educated officers, who are in a dominant position?"

"72. Law of nature and gravity, both have at least one principle in common. All things travel from above to the ground below. All reforms and cure for malady has also to percolate from above".

"74. Suspicion, however, strong, cannot replace proof. Suspicion is a slippery floor, one must not tread it unless wiped clean by hard facts in the nature of proof. In such a enormous exercise, with time constraints, there are bound to be errors, basic and peripheral, human or otherwise. Till motive is correlated to errors, other than peripheral or human, it would not be safe to base any action which leads to civil consequences. Except for suspicion, there is no shred of evidence connecting any of the selectees to the errors".

27. Paragraph 1 of the inquiry report is an introduction to the scheme of selection of "Safai Karmi" and it is only a description containing allegations which need not be discussed here. In the later half of the first paragraph it has been

alleged that vide Government Order No.2Sha/480/0802/34/2008 (s) dated 12.6.2008, 2542 revenue villages were identified and accordingly 2542 "Safai Karmi" were proposed to be appointed on the equally sanctioned number of posts. These posts were advertised which was also mentioned in the advertisement that the number of posts can increase or decrease later on. The District Panchayat Raj Officer, vide his letter dated 15.9.2008 written to the District magistrate informed that on the basis of data collected from the Tehsildar, 2491 villages are inhabited and 36 villages are not inhabited and there are a total of 2527 revenue villages in District Sultanpur. Consequently, appointment has to be made only on these posts. The select list was also declared for only 2527 posts. The allegation by the committee is that since the State Government had created 2542 posts for 2542 revenue villages based on the report from the Board of Revenue then why the number were changed without the permission of the State Government to 2527. Meaning thereby that there was discrepancy in the number of posts sanctioned by the State Government and the number of selected candidates of the posts at the District level. It is interesting to note that the number of persons selected is lower than the number of posts sanctioned by the State Government. Anyway, the allegation is that the orders of the State Government have been flouted at the District level but at the same, the committee goes on to say that when 36 villages were declared not inhabited then why selection of "Safai Karmi" was made for those villages. The committee asks the question whether the selection of "Safai Karmi" was made for cleaning of the paddy fields ? After these observations the committee declares that in this manner the orders of the State Government were flouted and this was a grave irregularity.

28. Learned counsel for the petitioner Sri Rakesh Chaudhary tried to engage the attention of the Court towards this finding. I have also gone through this part of the paragraph many times but the real intention of the committee has not become clear to this Court. On one hand, the committee alleges that how could the number of posts and the select list be reduced from 2542 to 2527, on the other hand, it questions as to how the people have been selected for the villages which are not inhabited. The allegation and the question are contrary to each other. In case 36 posts were not to be included then the number of posts will be further reduced from 2527 to 2491. Learned counsel for the petitioners argues that no benefit can accrue to any member of the selection committee by reducing the number of posts. Had it been the argument of the committee that less number of posts were sanctioned and higher number of selections have been made then a case for extraneous consideration could have been made out but here is a paradox. The State Government has sanctioned 2542 posts but selection has been made only on 2527 then what motive can be attributed to the process of selection. Moreover, the committee has not attributed any motive in its report. The committee while sending the inquiry report has not clarified as to what prejudice has been caused to whom and in what manner.

29. After a detailed argument the only question which comes out of this

discussion is that there is nonapplication of mind by the inquiry officer and something has been said just for the sake of saying something. Even if this argument is taken on face value that the order of the State Government has been flouted at the District level by reducing the number of posts from 2542 to 2527 only a case of disciplinary action against the officer concerned can be made out but there can hardly be any occasion for canceling the whole selection. Moreover, it was clarified in the advertisement itself that the number of vacancies can increase or decrease. Under the circumstances, no justification for cancellation of the whole examination can be put forward.

30. Para 2 of the inquiry report points out the irregularities that the manner prescribed in the rules was flouted to the extent that the appointing authority was not allowed to declare the results and instead the selection committee has declared the results.

31. According to notification dated 18.7.2008, the District Magistrate was given the authority to appoint the selection committees, if he so chooses, for the purpose of selection. In case of District Sultanpur four selection committees were made. The allegation is that the selection committees after making the selection should have forwarded the combined merit list to the District Panchayat Raj Officer. In this particular case, it is not clear that how the select list was published. The District Panchayat Raj Officer showed his ignorance as to how this select list was published. The inquiry committee has not given any finding to the effect that the selection committees appointed by the District Magistrate bungled with the select list. There is no allegation that the selection committee has not selected the right persons. It has nowhere been said that the selection was made because of any incompetent handling by the selection committee or due to undue influence or due to illegal gratification. Where it is said that the select list has not been declared by District Panchayat Raj Officer and instead by selection committees itself then it is also necessary that corollary allegation be leveled that the result prepared by the selection committee was defective. It is necessary to say that the selection committees have wrongly appointed the person and hence the select list is bad. Cancellation of the entire examination is a huge proposition. Thousands of selectees can not be thrown out of the window only on the ground that the result has been declared by Mr. X instead of Mr. Y unless there is allegation of bungling and other charges against the list so prepared. Only this ground that the list has not been declared by proper person who was authorized, will not make the cancellation of entire examination valid. Each situation has to be seen under the circumstances and any proposition of law can not be adhered to in vacuum or isolation. The law has to be applied in the peculiar facts and circumstances of each case.

32. According to the inquiry committee there is a legal flaw in the declaration of the result. The legal position according to the inquiry committee is that according to Government Order the District Panchayat Raj Officer was the legally authorized person to declare the result. Government Order can not be violated

by the selection committees. The procedure could not have been daunted by the selection committees. The action of the selection committees declaring the result without intimating the District Panchayat Raj Officer can, of course, be taken cognizance of but in absence of allegations of malafides and corruption this action can only be termed as a mistake. It can be seen by the superior officers like the District Magistrate as any irregularity on the part of the selection committees because of misplaced enthusiasm or a genuine misunderstanding of their duties. This was a mistake which could have been set right by issuing a corrigendum or by taking some action against the selection committees by issuing warning or adverse entry etc. but the act of canceling the whole examination can not be justified. The examinees can not be punished for the fault of the examiners. There is no case or argument that the persons belonging to the select list were, in any manner, involved in getting the list published by the selection committees instead of District Panchayat Raj Officer. There is no allegation of any undue pressure being exerted on the selection committees by the persons of the select list. There is no allegation or evidence to prove that the select list was published due to any manipulation made by the person so selected. It has also been argued that why the Chief Development Officer, who was made the overall in charge of the entire selection process by the District Magistrate did not supervise it so that the result was declared by the District Panchayat Raj Officer. Under the circumstances, the allegation of inquiry committee in absence of additional allegations of malpractice against the selection committees does not hold much water.

33. Para3 of the inquiry report is only an extension of para2. The allegation leveled in para2 has been enlarged a bit in paragraph 3. Dealing both the provisions in a comprehensive way, I am convinced by the arguments of learned counsel for the petitioner, Sri Rakesh Kumar Chaudhary that declaration of the result by the selection committees was only a procedural mistake. Since there are no allegation of malpractice against the selection committees hence the opposite parties can not justify their decision to cancel the entire examination. At least on the basis of the material available before them in form of this inquiry report, it was not enough to prove the decision of cancellation of the entire examination. Hence the allegations of the inquiry committee in para 2 and 3 fail to hold fort in favour of the cancellation of the examination.

34. In para4, which is the last paragraph of the report, a very cursory allegation has been levelled without giving any data or number. The allegation has been levelled that certain quotas have not been filled properly. Interestingly enough, the inquiry committee states in same breath that perhaps this happened because the whole process of selection was being done in a hurried manner. There was a direction from the State Government to complete the process urgently and there were several representations by different organization. Hence perhaps due attention could not be given to these quotas. The question arises that if a particular quota was not filled according to norms, should the entire selection be cancelled? The persons belonging all the categories duly selected be punished

only because certain quotas remained unfilled or filled or not filled according to norms. The proposition becomes more vulnerable when it is not backed by any documentary or numerical evidence. This paragraph is as vague and cursory as the whole inquiry report which can not be relied upon and can not be allowed to become a basis for cancelling the whole selection specially when the report further says that they could not see any note regarding reservation of not sheet of any of the selectees.

35. It is very important to note that on 24.9.2008, the Chairman of the committee Mr. Heera Lal issued a press note inviting evidence from all concerned with regard to complaints and the time was given upto 29.9.2008. This document has been annexed as SA2 in the writ petition No.6446 (S/S) of 2008.

36. The argument raised by Sri Rakesh Kumar Chaudhary is that when Chairman of the inquiry committee on 24.9.2008 has issued public notice inviting information from the public regarding complaints it could safely be assumed that the inquiry report in question was not in existence till that date. The inquiry report has been submitted by the District Magistrate, Sultanpur on the very next date i. e. 25.9.2008. This is ample proof that the inquiry report was prepared in a hush without really going into the matter, without seeing the documents, without examining the witnesses, without even talking to the persons who have made the complaints, without taking the statements of the complainants and without application of mind, which can not be justified.

37. Finally, it has also been pointed out that the members of the inquiry committee have not come to any definite conclusion about the selection being bad. They have only expressed a tentative opinion that the selection process appears to be vitiated.

38. Learned counsel for the petitioner Sri Rakesh Kumar Chaudhary has drawn the attention of the Court to one more aspect of the matter. In Annexure No.18 of the instant writ petition he has annexed a bunch of letters written by different politicians who are incidentally the complainants also. On page89 of the instant petition is a letter written by one Sri Chandra Prakash Mishra "Matiyari", M.L.A., BSP from Gauriganj, Sultanpur. It contains a two page list of about forty three candidates who were supposed to be selected. On page92 a covering letter along with list of candidates has been sent by Sri R. K. Bheem, who is the Zila Adhyaksh of BSP, District Sultanpur written to the Hon"ble Chief Minister, Uttar Pradesh Government, Lucknow with a recommendation to accommodate the said candidates. On page 94 the same Sri R. K. Bheem again wrote a letter annexing a list of 126 candidates to be inducted as "Safai Karmi". It has been mentioned in the letter that these people are grass root workers/office bearers/workers of BSP and belong to schedule caste hence the District Magistrate/Chief Development Officer, Sultanpur be directed to get them appointed as "Safai Karmi". Again on page98 and page102 a list of recommended candidates by Sri R. K. Bheem has been annexed. The aforesaid recommendations have been made along with roll numbers of the candidates and their parentage to the

officers concerned. The inquiry officer does not say anything about these recommendations which goes to show that the purpose of the inquiry committee was to collect evidence to enable the State Government to cancel the examination instead of finding out the truth.

39. Ironically, there is nothing to distinguish between the persons who have made illegal recommendations and the persons who have made the complaints. To a certain extent, their names are available on both the sides. On one hand, these people tried to get their wards appointed illegally applying pressure tactics using the name of their party and their post; on the other hand, they dashed off letters to the Chief Minister alleging malpractice and irregularities in the said selection. Any inquiry conducted on the behest of such characters can only be termed as motivated. No credence can be given to these complaints and no reliance can be placed to the consequential inquiry. It appears that the complaints were made by the jilted agents of those who had undertaken task of getting their wards selected. After failing in their mission, they had no option except to get the whole edifice destroyed on which they had built their castles in the air. The whole exercise of cancellation stings of malafide and self interest as against majority, clarity and public interest.

40. One more aspect which needs to be taken into account is the term of reference of the inquiry. As has been mentioned above, right from the beginning of the inquiry report, the inquiry committee has stated that the District Magistrate directed them to inquire into the matter on two counts. Firstly, the the selections were not made according to norms fixed; secondly, fake experience certificates were used by the candidates. After reading the inquiry report several times, this Court has not been able to find any mention about fake experience certificates. Not a single name or a person has been mentioned who is alleged to have annexed the fake experience certificate. Even the names of the complainant is not there in the inquiry report. Nobody has been questioned or cross examined. Similarly, no light has been thrown on the issue of substandard selection. Inquiry report does not contain anything at all with regard to terms of reference made to the committee. Two main ground for which the inquiry was constituted has not been dealt with at all by the inquiry committee. Under such circumstances, nonapplication of mind by the inquiry committee is but obvious.

41. On the basis of the aforesaid discussions it is manifestly clear that the inquiry conducted by the committee is totally an eye wash. It is motivated and designed on the behest of political and powerful public representatives. The persons, who made the complaint did not want a clear inquiry instead wanted cancellation of the select list. The purpose of these political persons/complainants was to get their wards appointed on the said posts. For this purpose an inquiry report was needed to enable the officers to cancel the select list and hence a sham inquiry was conducted and desired order of cancellation was passed.

42. The time which was taken by the inquiry committee for conduct of the inquiry was absurdly short. The District Magistrate, Sultanpur relying on the

complaints of political leaders of the ruling party, constituted a committee on 20.9.2008 for inquiry into the complaints. The Chairman of the committee Mr. Heera Lal on 24.9.2008 issued a press note inviting evidence from all concerned with regard to complaints till 29.9.2008. The inquiry committee submitted its report to the District Magistrate, Sultanpur on 25.9.2008 without even waiting for the response from the public. The inquiry report which was submitted to the District Magistrate on 25.9.2008 was sent to the Government on the same day by the District Magistrate. It has also been alleged that the letter of the District Magistrate did not contain the inquiry report. The State Government on the same very date passed a predetermined order cancelling the entire selection and directed the District Magistrate, Sultanpur to hold the fresh selection by constituting new committee. No time has been taken by the State government, to apply its mind on the inquiry report. The state Government wrote back to the District Magistrate, Sultanpur vide its letter No.2966(1)/3312008, that on the basis of the inquiry grave irregularities have been found in the selection of "Safai Karmi" in District, Sultanpur and the selection has been recommended to be cancelled. He further directed that fresh selection be made as early as possible after cancellation of the said select list. The District Panchayat Raj Officer, Sultanpur vide its office notification dated Separately 27, 2008 cancelled the select list in toto. The efficiency and speed shown by the aforesaid authorities in cancellation speaks volumes about the sanctity of the process. The arbitrariness is hopelessly obvious and stinks of malafide.

43. Inquiry in which thousands of candidates had applied can not be completed within this short period of time. Proper information to the public at large and the minimum time required for their response has not been given in this inquiry. The swiftness shown in cancellation only confirms the suspicion.

44. Therefore, it can safely be said that the inquiry is vitiated because it is not possible to conduct an inquiry of such a magnitude within five days. The sheer volume of inquiry would have bogged down the officers for months together if it had to be conducted impartially and empirically. It can safely be assumed through the discussions made above that the cogent and reliable material was not available before the State government on 25.9.2008 when the decision for cancellation of the selection of "Safai Karmis" was taken by them. The action was taken simultaneously by the State Government, the District Magistrate and the District Panchayat Raj Officer on the 25.9.2008 for cancelling the selection of "Safai Karmi" of District Sultanpur. These orders, in view of the discussions made above, are arbitrary, malafide and unreasonable, therefore, unsustainable.

45. Consequently, all the writ petitions succeed and are allowed. The impugned order of the State Government dated 25.9.2008 and order of District Panchayat Raj Officer dated 27.9.2008, contained in Annexure Nos.1 and 2 respectively to the instant writ petition, are hereby quashed.

46. The respondents are directed to give appointment in pursuance of the select list dated 19.9.2008 of the District Sultanpur within a period of one month from

the date a certified copy of this order is placed before the authorities concerned.

47. There will be no order as costs.