

(1994) 04 AHC CK 0006

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 13574 of 1994

Thakur Prasad Gupta and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-04-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Department Patraul Service Regulations — Regulation 10(5), 20, 20(5)

Citation : (1994) 2 AWC 1187

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : H.N. Singh and Ravi Ranjan, for the Appellant;

Final Decision : Dismissed

Judgement

S.R. Singh, J.—Cancellation of a select list prepared on 31-7-1986 and rejection of representations preferred against the cancellation are sought to be quashed by means of this writ petition under Article 226 of the Constitution. The Petitioners amongst others were selected for appointment to the post of "Sinchpal" and the select list was drawn on 31-7-1986. However, appointments on the basis of the said select list were not made and it was decided to hold a fresh selection as suggested by the District Magistrate, Deoria vide letter dated 25-8-1986. The Petitioner No. 1 had earlier filed a writ petition, it being writ petition No. 11386 of 1987 for issuance of a writ of mandamus directing the Respondents to issue letters of appointment based on the afore stated selection. The writ petition was disposed of vide judgment and order dated 12-4-1989 with an observation that the Chief Engineer (Gandak) Irrigation Department, Gorakhpur could be approached by means of a representation to be decided by him, as far as possible, within a period of two months from the date of filing representation. The Chief Engineer was required to dispose of the representation by means of a reasoned order. The Chief Engineer however rejected the representation by a non-speaking order dated 17-11-1990. Thereafter another

writ petition, it being writ petition No. 352 of 1991 was filed on behalf of the Petitioners. The said writ petition was allowed with special cost assessed at Rs. 4,000/- to be paid by the Chief Engineer and the order dated 17-11-1990 of the Chief Engineer was quashed and the Chief Engineer was directed to decide the representation by speaking order. The representation has thereafter been rejected but by means of reasoned order dated 17-6-1993 which is under challenge in the instant writ petition.

2. A perusal of the impugned order dated 17-8-1993 would indicate that the decision to make fresh selection was taken by the Respondents, inter alia, on the grounds that the Rules regarding reservation in favour of scheduled caste candidates were not observed by Selection Committee; that selection list was signed by the Chairman alone and it was not signed by the two members nominated vide letter dated 2-4-1986; that the work charged and other employees working in the work charged establishment of department, though eligible, were not considered by the Interview committee even though they appeared before it and the selection in question had been made in negation of their rights. The questions which arise for consideration are: whether the Petitioners acquired any right to be appointed as Sinchpal" on the basis of select list in question? Whether the decision taken by the department to cancel the selection and to hold a fresh selection is justiciable and if so on what ground?; and thirdly, whether non-observance of audi alterem partem rule of principle of natural justice, in the instance case, vitiated the decision taken by the Respondents to hold fresh selection in supersession of the selection on the basis of which the select list of 31-7-1986 was drawn.

3. It is now settled by catena of decisions that mere selection does not confer any right of appointment. In *Rejendra Nath Gupta v. U.P. Hand-loom Corporation* 1985 UP LB EC 1481 a Division Bench of this Court has held as under:

...The selection, it is well settled, does not clothe the Petitioners with the legal right to get them selves appointed by the Corporation.

4. In *Jatinder Kumar and Others Vs. State of Punjab and Others*, where selection had been made by the Public Service Commission, the State Government did not find it self in agreement with the recommendation of the Commission. It was held by the Supreme Court that" the Appellants could not assert legal right to be given appointment on the strength of the selection or recommendation made in their favour..."

5. In *Shankarsan Dash Vs. Union of India*, the Supreme Court has ruled as under:

It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no

legal duty to fill up all or any of the vacancies...

6. In *State of Bihar and others Vs. The Secretariat Assistant Successful Examinees Union 1986 and others*, , the Supreme Court has reaffirmed the above proposition in the following words:

It is now well settled that a person who is selected does not, on account of being empanelled alone, 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 be appointed unless relevant service rule says to the contrary.

7. In *Dr. H. Mukherjee Vs. Union of India and Others*, the Supreme Court has reiterated the above principle in following words:

It seems well settled that the function of the Public Service Commission being advisory, the Government may for the valid reasons to be recorded on the file, disapprove of the advice or recommendation tendered by the commission which decision can, if at all, be tested on the limited ground of it being thoroughly arbitrary, mala fide or capricious. I

8. In *S. Govindaraju Vs. Karnataka S.R.T.C. and Another*, , it has no doubt been observed that, "once a candidate is selected and his name is included in select list for appointment in accordance with regulations he gets a right to be considered for appointment as and when vacancy arises." These observations were however, made by the Supreme Court in the peculiar facts and circumstances of that case and cannot be taken as laying down the law that mere selection clothes the selected candidate with a right to be appointed. All that the Supreme Court has observed in the peculiar facts and circumstances of that case is that a selected candidate only gets a right to be "considered" for appointment as and when vacancy arises. In that case the Appellant was selected for appointment as conductor and was included in Badli list of workers and In pursuance thereof he was given appointment and was allowed to continue for more than one year. While he was in continuous service an order terminating his services was issued in accordance Regulation 10(5) of the relevant Regulations. The Supreme Court held in that case that the termination of services would result in deletion of the name of the selected candidate from the select list resulting in forfeiture of his chance of appointment. It was not a case where select list was cancelled. The decision taken in the aforesaid case, in my Opinion, does not help the Petitioners.

9. It is thus clear that the Petitioners acquired no right to be appointed to the post of "Sinchpal merely on the basis of select list drawn pursuant to the selection in question and that cancellation of selection made for recruitment is justiciable on the limited ground of it being thoroughly arbitrary, mala fide or capricious, or in the ground that under the relevant Service Rules a select list once drawn, becomes absolute and binding or and creates a right, in favour of the selected candidates, to be appointed. On the facts stated in the impugned

order dated 17-8-1993 it cannot be said that cancellation of empanelment of 31-7-1986 suffers from vice of mala fide or arbitrariness and my attention was not invited to any provision Irrigation Department Patraul Service Rules, 1953 according to which the Petitioners could be said to have acquired any vested right merely on the basis of selection and empanelment in the select list. In my opinion the grounds disclosed in the impugned order justified cancellation of the select list dated 31-7-1986 and no exception of the impugned order can be taken in exercise of the power of judicial review of an administrative order vested by the Constitution in this Court under Article 226 of the Constitution which admittedly is supervisory in nature as distinguished from an appellate power. The question No. 1 and 2 formulated in the beginning of the judgment stand answered accordingly.

10. Coming now to the 3rd question as to whether the Petitioners were entitled to be afforded an opportunity of hearing before the decision could be taken to hold fresh selection in supersession of the previous one, the learned Counsel for the Petitioner vehemently placed reliance on a decision of Brother M.P. Singh, J. in writ petition No. 7098 of 1985 Trioki Nath v. Pramukh Abhyanta (Ram Ganga Anubhag) Sinchai Vibhag, U.P. Lucknow and Ors. decided on 12-3-1993. In that case the learned Judge, after referring to the decision of the Supreme Court in S. Govinda Raju v. Karnataka SR TC and Ors. (supra) has observed as under:

It is open to the appointing authority not to appoint a person if found Undesirable. That decision is to be taken very carefully on the basis of substantial material before it. But before cancelling the select list the principle of natural justice has to be followed.

11. In the case of S. Govinda Raju (supra) the Supreme Court has no doubt observed, "In such a situation even though the Regulations do not stipulate "for affording any opportunity to the employee, the principles of natural justice would be attracted and the employee would be entitled to an opportunity of explanation, though no elaborate enquiry would be necessary." But the said observations were made in the back ground of the observation that "there is no dispute that the Appellant's services were terminated on the ground of being found unsuitable for the appointment and as a result of which his name was deleted from the select list and he forfeited his chance for appointment It is obvious that the select list was not cancelled but as a result of the order impugned in that case the selected candidate was to lose his chance for appointment. The decision in S. Govinda Raju's case (supra), therefore, cannot be taken as an authority in support of the submission that a candidate once selected for appointment must be given an opportunity before the selection if cancelled.

12. The principle of law expounded by the Supreme Court in Karnataka Public Service Commission and others Vs. B.M. Vijaya Shankar and others, is fully applicable to the facts of the present case and in my opinion audi-alterem-partem rule of principle of natural justice is not attracted in a case like the one in

hand, the principle is thus:

...Natural justice is a concept which has succeeded in keeping the arbitrary action within limits and preserving the rule of law. But with all the religious rigidity with which it should be observed, since it is ultimately weighed in balance of fairness, the courts have been circumspect in extending it to situations where it would cause more injustice than justice. Even though the procedure of affording hearing is as important as decision on merits yet urgency of the matter or public interest at times require flexibility in application of the rule as the circumstances of the case and the nature of the matter required to be dealt may serve interest of justice better by denying opportunity of hearing and permitting the person concerned to challenge the order itself on merits not for lack of hearing to establish bonafide or innocence but for being otherwise arbitrary or against rules. Present is a case which, in our opinion, can safely be placed in a category where natural justice before taking any "action stood excluded as it did not involve any misconduct or punishment.

13. In view of the above discussion in case of Triloki Nath (supra) relied upon by the Petitioner is of no avail. Judicial review of cancellation of select list is permissible on the ground of malafide or arbitrariness or breach of Statutory Rules and not on the ground of violation of audi alterem partem rule of natural justice which, as held above, stands excluded in a case like the one in hand.

14. Before parting with the case it may be observed that the court is conscious of its own view expressed in Pradeep Kumar Misra v. U.P.S.R.T.C. (1991) 2 UP LB EC 796, wherein it has been observed that, "once a candidate is selected in a particular trade in the manner prescribed by Regulation 20 of the Regulations, he acquires a right to get appointment against the vacancies accumulating/accruing during the period, the select/waiting list remains in animation under Regulation 20(5) of the Regulations.", These observations were made in the backdrop of the fact that the select list was not cancelled and that although the vacancy had occurred during subsistence of the select list, the Petitioner was not appointed merely because of imposition of ban on appointment by the State Government and the question was whether the appointment could be made after the ban was lifted. Therefore, the decision in Pradeep Kumar Misra (supra) too is not applicable to the facts of the present case.

15. In view of the above discussion, I find no merits in this writ petition and it is accordingly dismissed in limine.