

Hare Ram and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Jan-23-2009

Reported in : 2009(2)AWC1594

Judge : Sunil Ambwani, J.

Appellant : Hare Ram and ors.

Respondent : State of U.P. and ors.

Advocate for Pet/Ap. : Shri. P. S. Baghel

Disposition : Petition allowed

Judgement :

Sunil Ambwani, J.

1. The petitioners applied and were selected as 'Safai Karmis', a Group-D post in the State Government vide select list published in daily newspaper 'Rashtriya Sahara' Gorakhpur dated 13.9.2008, after the interviews in response to the advertisement dated June 18th/19th, 2008 published by the office of the District Panchayati Raj Officer, Gorakhpur, in accordance with the procedure provided by the U.P. Group-D Employees Service Rules, 1985.

2. By these writ petitions the petitioners have challenged the orders of the Principal Secretary, Department of Panchayati Raj, Government of U.P.,

respondent No. 1 dated 22nd September, 2008 cancelling the entire select list on the report of the Commissioner, Gorakhpur Division, Gorakhpur dated 16.9.2008 submitted on the complaints received by him of the irregularities in the selections. The affidavits have been exchanged. With the consent of the parties the matter was finally heard.

3. Heard Shri P. S. Baghel, learned Counsel for the petitioner. Shri Jafar Naiyer, Addl. Advocate General assisted by Shri S. P. Keservani appeared for the State respondents.

4. The State Government by a Government order dated March 1st, 2008 issued by the Chief Secretary, Government of U.P., decided to sanction one post of Safai Karmi in every revenue village with total number of 1,08,848 post in the State in the pay scale of Rs. 2,550-55-2,660-60-3,200 on temporary basis for maintaining cleanliness in the villages. The object for creating the posts, 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 for proper drainage and cleanliness of the villages for which no arrangements were made so far and which affects the public health, sanitation and for prevention of communicable diseases. The Government order provided that these posts shall be created on temporary basis upto 28th February, 2009, unless they were cancelled earlier; the Safai Karmi was provided to be the employee of Gram Panchayat and was to be appointed by the respective Gram Panchayats. The service rules providing for the process of appointment and other service conditions were to be notified separately. The second Government order dated April 11th, 2008 the State Government provided with the consent of the Governor of Uttar Pradesh that the Safai Karmis to be appointed vide sanction of the posts by Government order dated March 1st, 2008 shall be full time Government employees, who shall work under the Panchayati Raj Department. Their appointments shall be made by the District Level Officer (District Panchayat Raj Officer) and that service rules for their appointment and service conditions will be separately notified. The Government order dated March 1st, 2008 was modified accordingly.

5. By a third Government order dated June 6th, 2008 the State Government notified with the approval of the Governor of the State that the method of appointment of Safai Karmis, in continuation to the directions given in Government orders dated 1.3.2008 and April 11th, 2008 shall be the same as it is prescribed in the Group-D Employees Service Rules, 1985, as amended from time to time.

6. The Group-D Employees Service Rules, 1985 did not provide for the method of recruitment of Safai Karmi. The sources of recruitment in Rule 6 for Sewakar included item (a) is by direct recruitment, whereas for Safai Jamadar in item (e) is to be appointed by promotion from permanent Safaikar. The educational qualifications for the post other than peon, messenger and cyclostyle operator is prescribed in Rule 10 and provides that there is no educational qualification required for the post but that preference shall be given to the person, who is educated and is able to atleast read and write Hindi in 'devnagri script'. The method of recruitment provided in Rule 16 includes constitution of committee, which includes (1) the appointing authority (2) if the appointing authority does not belong to Scheduled Castes or Scheduled Tribe, an officer belonging to scheduled castes and scheduled tribe, nominated by the appointing authority and (3) if appointing authority does not belong to O.B.C. and officer to O.B.C. nominated by the appointing authority with a proviso that if in the department or establishment no such appropriate officer of the categories is available, on the request of the appointing authority the District Magistrate shall nominate such officer and if no such officer is appointed then an officer, who may be nominated by the Commissioner. The process of recruitment under Rule 19 provides for determination of vacancies by the appointing authority in Sub-rule (1) to be sent to the employment office and for directly calling such of those, who are registered in the employment office; publication of such advertisement on the notice board and in atleast one local newspaper. All the applications shall be placed before the selection committee. When selection committee receives under Sub-rule (2) applications for both general and reserved categories, it shall interview the candidates and make selection on various posts. Sub-rule (3) provides that selection committee shall for the purposes of giving weightage to the retrenched employees shall give 5 marks for one year of completed service and 5 more marks for completed service of the other full years but these marks shall not be more

than 15. The number of candidates, who are selected in Sub-rule (4) shall not be more than 25% of the number of advertised vacancies and that select list will be prepared in accordance with the marks secured in the interviews.

7. The Group-D 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 Rules.

8. The District Panchayat Raj Adhikari/Appointing Authority, Mirzapur advertised 3,448 posts of Safai Karmis with vertical and horizontal reservations in accordance with the reservation rules, by an advertisement dated 18th/19th June, 2008. The Clause 3 of the general directions in the advertisement provided that in accordance with Rule 10 (2) of the Group-D Employees Service Rules no educational qualification is prescribed for Safai Karmi but preference will be given to the person, who is educated and can atleast read and write Hindi in 'devnagri script'. Clause 4 of the general directions provided that in accordance with Rule 10 (6) of the Group-D Employees Service Rules, 1985, it is necessary for a candidate for recruitment to any category of Group-D post that he should have the knowledge of cycling. This condition, however, was not to be applied to women candidate.

9. The Group-D Employees Service Rules, 1985 were amended by Notification dated July 18th, 2008. The amended rule inserted a new Sub-rule (6) and also added Sub-rule (8). It also amended Rule 16 providing for the constitution of the selection committee. The new Rule 10 (6) provided that no persons shall be eligible for appointment to the post of sweeper unless he is found to possess requisite knowledge pertaining to the work of sweeper and has good experience in that work. The new Sub-rule (6) is quoted as below:

(6) No person shall be eligible for appointment to the post of sweeper unless he is found to possess requisite knowledge pertaining to the work of sweeper and has good experience of that work.

10. With regard to constitution of selection committee the new Sub-rule (16) provided as follows:

16. For the purpose of direct recruitment to any post, the concerned District Magistrate shall constitute a selection committee as follows:

(i) An officer nominated by the District Magistrate...Chairman;

(ii) An officer belonging to the Scheduled Castes or Scheduled Tribes nominated by the District Magistrate, if the Chairman does not belong to Scheduled Castes or Scheduled Tribes. If the Chairman belongs to the Scheduled Castes or Scheduled Tribes an officer other than belonging to the Scheduled Castes or Scheduled Tribes or Other Backward Classes, shall be nominated by the appointing authority, if the appointing authority does not belong to the Other Backward Classes. If the appointing authority belongs to the Other Backward Classes an officer other than Other Backward Classes or Scheduled Castes or Scheduled Tribes shall be nominated by the appointing authority.

Provided that if such suitable officer is not available in his department or organization one such officer shall, on the request of the appointing authority, be nominated by the . District Magistrate and on failure to do so, by reason of non-availability of suitable officer, such officer shall be nominated by the Divisional Commissioner. Backward classes shall be nominated by the District Magistrate...Member.

(iii) An officer belonging to the Other Backward Classes shall be nominated by the District Magistrate, if the Chairman does not belong to the Other Backward Classes. If the Chairman belongs to the Other Backward Classes, an officer other than belonging to the Other Backward Classes or Scheduled Castes or Scheduled Tribes shall be nominated by the District Magistrate...Member.

Note.-The District Magistrate may for any special reason, constitute more than one selection committee.

11. The District Panchayat Raj Adhikari, Gorakhpur took note of the amendment in the rules made after the advertisement, in the interview letters sent to each of the

candidate. In the interview letters sent to Shri Hare Ram son of Shri Bhagwan Das, petitioner No. 1 he was asked to appear at Normal School, Munshi Prem Chandra Park, Gorakhpur at 8.30 a.m. on 3.9.2008 for cycle test, work inspection and for interviews. He was required to bring certificates relating to his age, educational qualification, experience of work and was required to bring a bicycle. The women candidates were not required to bring bicycles. A press notification was also published in daily newspaper requiring the candidates to appear for cycle test, work inspection and interviews giving their roll numbers at different places from, 25.8.2008 to 3.9.2008. The interview letters of the petitioners are annexed to the writ petition.

12. A select list of selected candidates and waiting list was published by the District Panchayat Raj Officer, Gorakhpur in daily newspaper Rashtriya Sahara dated 13.9.2008 giving the roll numbers of the selected candidates. All the petitioners were included in the select list.

13. The District Magistrate, Gorakhpur by his order dated August 6th, 2008 constituted six selection committees headed by Chairman and two members. Shri Virendra Verma, Deputy Director, Agriculture, Gorakhpur was the Chairman of the first committee; Shri Hansu Ram, Asstt. Director, Information, Gorakhpur was the Chairman of the second committee; the Asstt. Engineer, Minor Irrigation Gorakhpur was the Chairman of the third selection committee; Shri Seraj Ahmad, District Programme Officer, Gorakhpur was the Chairman of the fourth selection committee; Shri Manoj Kumar Misra, District Basic Education Officer, Gorakhpur was the Chairman of the fifth selection committee and Shri Harish Chandra Dubey, the District Welfare Officer for the Disabled was the Chairman of the sixth selection committee. The first and second selection committees were presided by the Chairman belonging to the Scheduled Castes, the third and fourth by the Chairman belonging to the Other Backward Castes, and that last two committees were chaired by the persons belonging to general category.

14. It appears that some complaints were received by the Commissioner, Gorakhpur Division, Gorakhpur. He wrote a letter on 10th September, 2008 to the District Panchayat Raj Officer, Gorakhpur that the members of the committees

have made certain demands from the candidates and that rules of reservations have not been followed and that until these complaints are enquired at his level, the result of the selections may not be published. A day before the receipt of the letter of the Commissioner, the District Pandhayat Raj Officer submitted a report on 9.9.2008 to the District Magistrate with the entire material relating to the selections. The District Magistrate was satisfied with the fairness in the selections and that by his order dated 9.9.2008 on the report signed by the Chairmen of the selection committees, recorded his satisfaction with the remark that if there is any error in the select list, it may be corrected. He directed the results to be declared. It is stated in para 12 of the writ petition that result was already prepared and was sent for publication in newspaper. By the time the District Panchayat Raj Officer received the communication from the Commissioner restraining him to declare the result, the results were already published in daily newspaper Rashtriya Sahara on 13.9.2008.

15. On September 14th, 2008 the Commissioner sent a letter to the District Panchayat Raj Officer/Appointing Authority, Gorakhpur stating that he has received some serious complaints on which he has passed orders restraining the publication of results and that he is required to seal the entire records and to put them in the double lock in the treasury at Gorakhpur upto 15.9.2008 and to appear before him with the compliance report.

16. The Commissioner, thereafter, based on the reports submitted by the District Panchayat Raj Officer and the Chairman of the selection committee, found that the serious irregularities were committed in the selections, forged experience certificates were accepted and that crores of rupees have been realised from the public in the selections. He recommended to the State Government on 16.9.2008 that the selections be cancelled.

17. The State Government accepted the report of the Commissioner, Gorakhpur Division, Gorakhpur and decided to cancel the results and to hold fresh selections. The State Government also decided to enquire into the matter by making a detailed enquiry. The decision of the State Government in its letter dated 22.9.2008 sent to the Commissioner, Gorakhpur Division, Gorakhpur is under

challenge in these writ petitions.

18. The Court entertained the writ petition and passed an order on 15.10.2008 as follows:

Connect with Writ Petition No. 53110 of 2008.

Sri Jafar Naiyyar, learned Additional Advocate General alongwith Sri M. C. Tripathi, learned Additional Chief Standing Counsel have appeared on behalf of the respondent Nos. 1 to 4.

Issue notice to the respondent No. 5. Fixing a date immediately after six weeks.

In response to an advertisement for appointment of Safai Karmchari issued by the District Panchayat Raj Officer, Gorakhpur, the petitioners alongwith several other persons had applied. The results of such selection was declared and published in the newspaper on 13.9.2008. The submission of the petitioners is that the selection was made in accordance with Group-D Employees Service Rules, 1985 and a selection committee was constituted in terms of Rule 16 of the said Rules which included nominees of the District Magistrate. By means of the impugned order dated 22.9.2008, passed by the State Government, which was done so in pursuance of some report of the Commissioner dated 16.9.2008, the entire selection of Safai Karmachari of district Gorakhpur has been cancelled and a direction has been issued for initiating fresh selection process for appointment of Safai Karmachari.

The submission of the learned Counsel for the petitioners is that in similar circumstances, for a different district, where selection had been cancelled, the Lucknow Bench of this Court has passed an order on 23.9.2008 and directed for issuance of appointment letters in favour of the selected candidates and allow them to work and pay salary. In the said writ petition a further order has been passed on 30.9.2008 whereby the operation and implementation of the order dated 22.9.2008, passed by the respondents has been further stayed.

In my view, in the facts and circumstances of the present case such a direction as has been prayed for does not deserve to be granted at this stage without calling

for a counter-affidavit.

The respondent Nos. 1 to 4 may file their counter-affidavit within a month. The petitioners shall have two weeks thereafter to file rejoinder-affidavit. List immediately thereafter.

However, keeping in view that the selection had already taken place, the results of which had been declared in which the petitioners were declared selected but are not being given appointment, it is provided that no fresh selection shall take place for appointment on the post of Safai Karamchari in district Gorakhpur, on which post the petitioners have been selected vide select list dated 13.9.2008. This order is being passed in the interest of justice so that no third party rights be created if fresh selection process is permitted to be undertaken.

On the next date, learned Additional Advocate General shall inform the Court of the action taken against the officials who were found responsible for the misdeeds, if any, in the selection process, as has been reported by the Commissioner in his alleged report dated 16.9.2008.

19. A counter-affidavit of Shri Om Prakash Srivastava, the District Panchayat Raj Officer, Gorakhpur was filed on 12th November, 2008 stating in para 8 that a total number of 355 candidates belonging to different castes and communities as well as leaders of different parties made complaints to the Commissioner, who is the competent authority of the concerned department of gross irregularities and corruption in the selections. On the basis of their complaints the Divisional Commissioner, Gorakhpur conducted an enquiry into the selection procedure and sent the report to the State Government. On the basis of the enquiry report submitted by the Divisional Commissioner, Gorakhpur to the State Government, the State Government has cancelled the entire selections. In para 9 it is stated that on 10.9.2008 the Commissioner wrote to the District Panchayat Raj Officer stating therein that result should not be declared till the enquiry was completed. A copy of the letter was also marked to the District Magistrate, Gorakhpur for compliance. On receiving the Commissioner's letter, the District Panchayat Raj Officer wrote back on 11.9.2008 to the Commissioner, Gorakhpur stating therein that he would not declare the result but also informed that he was kept outside the selection

process by the District Magistrate. In spite of these instructions the result was published in local newspaper on 13.9.2008. In para 26 of the counter-affidavit it is stated that the Commissioner, Gorakhpur Division has written letters dated 15.10.2008 to the State Government regarding the officers involved in corruption in selection process recommending their suspension and for taking disciplinary action against them. A copy of the letter dated 15.10.2008 recommending suspension of Shri Virendra Verma, Deputy Director, Agriculture, Gorakhpur, Shri Manoj Kumar Misra, Basic Shiksha Adhikari, Gorakhpur; Shri Seraj Ahmad, District Panchayat Raj Officer, Gorakhpur and Shri Harish Chandra Dubey, District Welfare Officer for the Disabled at Gorakhpur and have been annexed as Annexures-3 to 6 to the counter-affidavit. In para 27 it is stated that the District Magistrate, Gorakhpur, who also constituted selection committee has not been made party to the writ petition and thus the writ petition is liable to be dismissed on that ground. The State Government has also relied upon the letter of the District Panchayat Raj Officer dated 13.9.2008 to the Commissioner, Gorakhpur Division, Gorakhpur stating that he has come to know about the publication of results from daily newspaper Dainik Jagran on 13.9.2008 and that he has not received the concerned CD. and hard copy of the select list and records upto 5.00 p.m. on 13.9.2008. With the same letter he enclosed the original record in 166 pages and the notes totalling 19 pages on the left side of the file. He also enclosed the details of the interviews, examination of work in the selection committee wise, place wise and roll number wise.

20. The report sent by the Commissioner of Gorakhpur Division, Gorakhpur to the State Government discloses that he had received the following complaints regarding selections:

(a) A letter dated 7.9.2008 by Shri Kamlesh Prasad, District President, Bahujan Samaj Party stating that the District Magistrate is making selections of 3,500 Safai Karmis constituted selection committees with his favourite officers. The committees have selected only those candidates, who had paid Rs. 50,000 and Rs. 1 lac. The false experience certificates are accepted in the interviews. The persons deputed by Basic Shiksha Adhikari were sitting at the place of selection in Maruti car collecting money and were forwarding the names of the candidates on

slips of paper. The District Magistrate did not give any attention to the complaint of accepting crores of rupees. A request was made that the person appointed by Basic Shiksha Adhikari may not be appointed. The complainant also pointed out that the District Magistrate has not appointed any of the Addl. District Magistrates, Sub-Divisional Magistrates, Tehsildars and Block Development Officers in the committees. He appointed only those officers, who had bad reputation.

(b) The complaint dated 8.9.2008 received from Shri Devendra Pratap Singh, Ex-Chairman, Avasiya Parivar Janch Samiti stated that some members of the selection committee have extracted large amount from poor persons for giving them employment as Safai Karmis and that a number of poor candidates were left out as they have no money to pay. The District Basic Education Officer and the District Panchayat Raj Officer are the most corrupt officers. He requested to take into account the public opinion and to find out the details of the properties of these officers and their relatives, and to punish them. The results may be declared only after making enquiries against these officers and only then the result be declared.

The Commissioner observed that apart from this he has also received several other complaints.

(c) In the complaint dated 9.9.2008 by Dr. Ram Sahayak Singh, National President, Santhwar Mall Sabha, Bahujan Samaj Party it was stated that rumours of acceptance of 'Suvidha Shulk' in the recruitment of Safai Karmis has spread and is hotly discussed in the district. Many candidates are disappointed with the news, which is not good for the beneficial scheme initiated by the Government. Many persons selected by paying money will not work and thus it is necessary that the results be declared only after the enquiries are made into the allegations so that there may be transparency in the selections and that the object of the scheme is achieved.

21. The Commissioner, thereafter narrated the details of his letter dated 10th September, 2008 staying the publication of the result till the enquiries are made. The contents of his letter were published in newspapers on 11th September, 2008. He has also referred to the assurance given by the District Panchayat Raj Officer that he will abide by the directions and the District Magistrate has kept him out of

the selection process. The Commissioner, thereafter, narrated about letter written by him on 12th September, 2008 to the District Magistrate and has stated in para 5 of his report that inspite of his letters dated 10.9.2008 and 12.9.2008 Shri Ranjeet Singh Pankaj, the District Magistrate, Gorakhpur published the results in the newspaper Dainik Jagran on 13.9.2008. Thereafter hundreds of complaints were received including the complaint of Shri Shravan Kumar Nirala, a worker of Bahujan Samaj Party; Shri Ashutosh Kumar, General Secretary, Sadar Loksabha Kayasth Samaj Bhaichara Samiti, Gorakhpur; Kamlesh Prasad, District President, Bahujan Samaj Party and the Radhey Shyam Bharti, Regional Incharge, Bahujan Samaj Party stating that large amount of money has been collected in selections and that inspite of the restrained order passed by the Commissioner the results were declared. The complaints were targeted against the Basic Shiksha Adhikari, Gorakhpur. It was alleged that he had misused his office to collect Rs. 1 lac from Scheduled Castes; Rs. 1.5 lacs from the Other Backward Castes and Rs. 2 lacs from the general candidates. In para 20 of his report the Commissioner stated about the amendment made in the Group-D Employees Service (4th Amendment) Rules, 2008, which provided that a person will not be eligible unless he has requisite knowledge and experience as sweeper. This requirement was not published in newspaper and thus large number of persons, who had no experience as sweeper appeared in the interviews, and that most of the candidates produced false certificate, which were not examined. The results were back dated and published in the newspaper.

22. The Commissioner has expressed surprise as to how the result was published on 13.9.2008, when according to the District Magistrate, Gorakhpur it was declared on 10.9.2008 and as to why the CD. of the results was not made available to the District Panchayat Raj Officer upto 5.00 p.m. on 13.9.2008.

23. The Commissioner has, thereafter, observed in para 21 of his report that the District Magistrate did not appoint any Addl. District Magistrate, Sub-Divisional Magistrate, Tehsildar, Block Development Officer, Administrative and Development Officers of the District in the Committees. He had appointed only those officers, who were known for their doubtful character and doubtful method of working.

24. In Para 22 of his report dated 16.9.2008 submitted by the Commissioner to the State Government it is stated that he had confidentially recorded statement in his office in which allegations have been made with regard to some officers in the selection committee, had demanded bribes on their mobile numbers 9936044542 9936044542 , 9415849776 9415849776 , 9450880403 9450880403 , 9415500047 9415500047 , 9415377747 9415377747 , 9956698983 9956698983 , 9305294698 9305294698 , 9794854448 9794854448 , 993636990 and 9415377747 9415377747 , out of which Mobile No. 9415377747 9415377747 was mentioned in several complaints. He then reports that the complaints have also been made that members of the selection committee got new mobile connections from the network and thus the complaints of demand of money by the members of the selection committees, officers and their relatives were found established putting a question mark on the impartiality in the selection. He, thereafter, observed that a large number of Scheduled Castes and some disabled persons have also complained that they were eligible but they were not selected and persons, who have been appointed have never touched a broom. On these serious complaints, irregularities, acceptance of false certificate and collection of crores of rupees. The Commissioner, Gorakhpur Division recommended for cancellation of the selection; to hold new selection and to make detailed enquiry with regard to forged experience certificate produced by the candidates. In the end the Commissioner recommended that since the Government is insisting upon appointment of Safai Karmis at the earliest, a decision may be taken expeditiously so that selection may not be delayed.

25. Shri P. S. Baghel, learned Counsel appearing for the petitioners submits that the Commissioner, Gorakhpur Division, Gorakhpur has acted wholly arbitrarily and unreasonably in making recommendations to cancel the selections and that the State Government has acted grossly illegally in accepting the report and cancelling the selections. He would submit that records were sealed and placed before the Commissioner by the District Panchayat Raj Officer on 15.9.2008. The Commissioner could not have concluded the enquiry by examining the records, taking statements of the complainants confidentially within 24 hours and forwarded his recommendations on 16.9.2008 to the State Government. The Commissioner did not make any enquiries in the matter at all. He was simply swayed by the

members of the ruling party, who were not satisfied as the persons recommended by them were not selected. The action of the Commissioner, who was not the appointing authority and was not given charge of supervising the selections by the State Government, in accepting the complaints directly addressed to him and issuing direction to stay declaration of result and thereafter giving his opinion within 24 hours establishes, mala fides in his action.

26. Shri P. S. Baghel would further submit that there was no proof of the complaints of acceptance of the money in selections. There were six selection committees, which took interviews on different places on different dates. The complaints targeted against the District Basic Education Officer and the District Panchayat Raj Adhikari had no basis at all and that there was no witness supporting the complaints made only by the local members of the ruling political party. The District Magistrate as the officer nominated by the Rules of 1985 to constitute selection committee was not obliged to appoint officers of the revenue department and that there were no complaints against the character and reputation of the Chairmen and members of the selection committees. The observations made by the Commissioner with regard to responsible officers of the district is wholly uncalled for and was unfortunate. A Commissioner of the division is responsible for administration in the district. He should not make complaints against his own officers so casually at the instance of the members of the political parties. The Commissioner has not given the names of the persons examined by him confidentially and had made no enquiries with regard to telephone numbers and the call details from the telecom service providers. Shri P. S. Baghel would then submit that the conclusions drawn by the Commissioner appears to have been based on an enquiry, which was held by him confidentially within a period of 24 hours of the submission of the records before him. No person could have made an enquiry into such allegations in which thousands of candidates appeared, within 24 hours, without appointing an Enquiry Officer or a committee. The Commissioner has exercised his powers arbitrarily and appears to be annoyed with himself in giving directions to stay the publication much after the declaration of the results. The findings that the selections suffered from irregularities and illegalities is not based on any material available on record and is liable to be set aside by this Court.

27. Shri Jafar Naiyer, learned Addl. Advocate General appearing for the respondents submits that empanelment in the selected list does not give them a right to appointment. The Commissioner of the division as administrative head of the region has a right to question the validity and transparency in the selections. He submits that serious complaints were received for accepting bribes by the members of the selection committees. The Commissioner took statements of the witnesses and found that several calls were made by the mobile numbers for which new connections were taken demanding money from the candidates. The District Magistrate did not appoint the revenue officers in the selections. He had appointed Chairman and members of doubtful integrity, and that false certificates of work experience were accepted by the selection committee at the time of interviews. He would submit that where the selections have been made irregularly and that members of the selection committee were found to be corrupt, the Court should not interfere in the decision taken by the State Government to cancel the selections. He has relied upon the judgments in *Shankarsan Dash v. Union of India* : (1992)11LLJ18SC ; *Asha Kant v. State of Jammu and Kashmir* : (1993)2SCC573 ; *K. Jaya Mohan v. State of Kerala* : [1997]3SCR1046 ; *Munna Roy v. Union of India* : (2000)9SCC283 ; *All India S.C./S.T. Employees Association v. A. Arthur Jeen* : [2001]2SCR1183 ; *Food Corporation of India v. Bhanu Oadh* : AIR 2005 SC2775 ; *State of M.P. v. Sanjay Kumar Pathak* : (2008)1SCC456 , in submitting that the inclusion of a candidate in the select list does not give him an indefeasible right to be appointed on the post. The Commissioner, Gorakhpur Division was competent to enquire about the validity and transparency in the selections and that he has rightly placed reliance upon the complaints regarding the irregularity in selections. The petitioners will get a fair chance to be interviewed in which they will have to produce experience certificates and will be considered for appointment on their own merits.

28. The appointment on civil posts must be made fairly and strictly in accordance with the statutory rules. In the present case the post of Safai Karmis would fall within the category of posts of sweepers provided in Rule 6 (a) of the Group-D Employees Service Rules, 1985 notified under Article 309 of the Constitution of India. Rule 6 provided for direct recruitment to these posts for which the qualifications are prescribed under Rule 10. Sub-rule (2) of Rule 10 provides that

no educational qualification is required for any other category namely the categories other than peon, messenger and cyclostyle operator, who are required to have passed Class 5 examination but that preference will be given to a person, who is educated and can atleast read and write Hindi in Devnagri script. Sub-rule (6) provides that for the Group-D post it is necessary that the person should know cycling but that condition would not be applicable to women candidate. The literacy with the proficiency in cycling except for women was the only requirement under the rules for selection by the selection committee to be constituted by the District Magistrate with the representation of O.B.C. and Scheduled Castes or Scheduled Tribes. There is no criteria fixed either in the rules or by the appointing authority or even by the selection committees for award of marks in the interviews. The State Government in sanctioning post of Safai Karmis did not prescribe any special criteria or preference to be given to any caste in selections. The U.P. Public Service Reservations for O.B.C., S.C. and S.T. Act, 1994 was applicable to the selections providing for vertical reservation for general category at 50%, O.B.C. at 27% and S.C./S.T. at 23%. If a reserved category candidate had scored more marks in the open general competition, as against general category, he was to be adjusted in accordance with Sub-rule (3) of Rule 3 of the Act of 1994 in general category. There was no preference to be given to any particular caste in any category in vertical reservation.

29. There were no allegations, made by any complainant that any member of the selection committee was interested or had taken money for selecting the candidates. No material was produced before the Commissioner to support the allegations that the selection committee had accepted money for selecting the candidates.

30. The suspicion or doubt based only upon the complaints made by the members of only one political party in power in the State, raising doubts over the character and integrity of the members of the selection committees without any relevant material, could not have been taken into consideration by the Commissioner of the Division. The Commissioner of the Division in the State is not required to act on the dictates of the ruling political party. He should have reposed trust in the District Magistrate, District Panchayat Raj Officer and other district level officers appointed

as Chairmen and members of the selection committee. In this case the Commissioner has not named the persons, who were examined by him confidentially, and has relied upon their statements without verifying the facts whether the mobile phone numbers were registered recently. He could have called for call details of these telephone numbers to verify the allegations of repeated calls made to demand money from the candidates.

31. The Government orders detailed in the opening paragraphs nominated the District Panchayat Raj Officer of the district as the appointing authority of 'Safai Karmis'. The District Magistrate was the authority competent under the Rules of 1985 to nominate the officers of the selection committees. The Commissioner of the Division did not have any role to play in the selections. The District Magistrate was satisfied with the reports of the selection committee and had directed the results to be published. The report of the Chairmen of the selection committees was sent to the District Magistrate on 9.9.2008. It was considered by the District Magistrate and that as the administrative head of the district after satisfying himself, he directed the results to be published after correcting the errors, if any in the report. He also directed that after declaration of the result, the same should be handed over to the newspapers and all the records should be sealed and deposited with the District Panchayat Raj Officer. The District Magistrate recorded his satisfaction over the process of selection and made an order to publish the result on 10.9.2008, on the same day, when the Commissioner had issued directions to the District Panchayat Raj Officer restraining him to publish the results. It is apparent that there was no coordination between the Commissioner of the Division and the office of the District Magistrate. There is no allegation that the Commissioner had informed the District Magistrate either in writing or even on telephone to stop the declaration and publication of the results.

32. The allegations of accepting bribes in selections not established on record. The Commissioner has on his own in Para 20 of his recommendation to the State Government dated 16.9.2008, has observed that the complaints with regard to accepting bribes and acceptance of forged experience certificates requires to be investigated in detail. He had acted in great haste, and apparently on the asking of the members of the ruling party, in believing their statements and in making

recommendations to cancel the results of the entire selections.

33. There are no allegations with regard to the money exchanged between any candidate and the members of the selection committees. Further there is no allegation that any particular candidate had produced false experience certificate or was awarded higher marks. The advertisement inviting applications was made before rules of 1985 were amended. The appointing authority and the selection committees had noticed the amendments and had taken care to require the candidates in the interview letters to produce experience certificates. The complainants did not give the names of any person, who had produced false experience certificate. The experience of working as sweeper was only an eligibility condition. It could not have vitiated the entire selections on the vague allegations that some candidates have produced false experience certificates.

34. In *Inder Preet Singh v. State of Punjab* : AIR 2006 SC2571 , the Supreme Court held that sufficient materials should be collected to be gathered through investigation in fair and transparent manner, and that the illegalities must go to the root of the matter vitiating the entire selection process, and the appointees in majority must be found to be part of the fraudulent purpose or may themselves be found to be corrupt, to cancel the selections. The Supreme Court observed that High Court should also consider the consequence of en masse cancellation of selection. It carries a big stigma particularly, when the cancellation of selection is directed on the serious charges of corruption. For the misdeeds of some candidates, honest and good candidates should not suffer in such en masse cancellation. In the interest of all concerned and particularly in the interest of honest candidates the State should have undertaken the task of finding out the illegalities in respect of each selections. The unscrupulous candidates should not be allowed to damage the entire system in such a manner, where innocent people also suffer great ignominy and stigma. The State also must not leave any stone unturned to bring the guilty to book. If there is any stigma, no officer howsoever high should be spared.

35. In the same report the Supreme Court observed in paras 71 to 73 that a decision to cancel the selections en masse should not be taken in undue haste. It

was found that a note containing 90 pages was sent to the Chief Secretary of Punjab on 22.5.2002 and that service of all the officers were terminated on the next day. The undue haste was beyond anticipated apprehension. It was necessary for the State to show as to how records moved so as to satisfy the conscience of the Court that there had been proper and due application of mind on the part of authorities concerned. An action taken in undue haste may be held to be mala fide vide *Bahadur Singh Lakhubhai Gohil v. Jagdishbhai M. Kamalia* : (2004)2SCC65 . The basic principle underlying the rule is that justice not only be done but must also appear to be done. This rule is not confined to the cases, where judicial power is exercised. It is appropriately extended to all the cases, where an independent mind has to be applied to arrive at a just and fair decision between rival claims of the parties, vide *Ashok Kumar Yadav v. State of Haryana* : AIR 1987 SC454 . It was further held, in this case, that justice is not function of the Courts alone; it is also the duty of all those, who are expected to decide fairly between contending party. The strict standards applied to authorities exercising judicial powers are being increasingly applied to administrative bodies, and it is vital to maintain rule of law in welfare of the State, where the jurisdiction of administrative bodies is increasing at a rapid pace that the instrumentality of the State should discharge their functions in a fair and just manner.

36. In the facts and circumstances of this case, I have no hesitation in holding that the Commissioner, Gorakhpur Division, Gorakhpur acted on the dictates of the local representatives of the ruling party. He initiated action to stop the publication of results at their instance. The Commissioner, thereafter, in a hot haste without considering the records, and making any enquiry into the complaints, which lacked details and particulars believed the statements given by them confidentially to him and made recommendations to cancel the entire selections on wholly vague and indefinite allegations. He himself has opined that the matter requires further enquiries but still recommended that in order to maintain transparency the entire selections in which 3448 persons were selected be cancelled and fresh selections be ordered.

37. The Commissioner has not given specific findings on any of the allegations made in the complaint. He only raised doubts and suspicions and was of the

opinion that the officers constituting selection committee were corrupt. There was no material or evidence on record to reach to such conclusion. The State Government committed gross illegality in accepting such a vague and indefinite report in cancelling the selections en masse in which 3,448 candidates were selected, out of many thousands, who had appeared in the interviews. On the facts and the material placed before the Commissioner, and from his report no reasonable person can come to the conclusion that the selections suffered from corrupt practices. The entire proceedings of cancellation and the order of cancellation suffers the arbitrary and unreasonable exercise of executive power and is thus violative of Articles 14 and 16 of the Constitution of India.

38. All the writ petitions are allowed. The recommendations of the Commissioner, Gorakhpur Division, Gorakhpur dated 16.9.2008 and the order of the State Government dated 22.9.2008 cancelling the selections are quashed. The respondents are directed to give appointments in pursuance of select list of 'Safai Karmis' of Gorakhpur dated 10.9.2008 published in newspaper 'Rashtriya Sahara' on 13.9.2008. There shall be no order as to costs.

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