

Vinod Kumar and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Jan-22-1998

Reported in : 1998(2)AWC910; (1998)2UPLBEC1360

Judge : O.P. Garg, J.

Acts : [Constitution of India](#) - Article 14; Uttar Pradesh Public Services (Reservation for Scheduled Caste, Scheduled Tribes and Other Backward Class) Act, 1994 - Sections 3(2); Uttar Pradesh Act, 1994

Appeal No. : C.M.W.P. No. 22794 of 1997

Appellant : Vinod Kumar and Others

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Ashok Khare, Adv.

Judgement :

O.P. Garg, J.

1. The petitioners, who are 35 in number, were appointed on 24.6.1997 by Dr. Ram Lakhan, Deputy Director, Animal Husbandry Department, Allahabad Region, Allahabad in pursuance of special recruitment drive for filling up the vacancies in

class IV cadre to level up the quota of the candidates belonging to Scheduled Caste and other reserved categories. They were not allowed to Join in pursuance of the order, dated 22.7.1997 passed by the Director, Animal Husbandry--respondent No. 3.

2. Put briefly, the case of the petitioners is that they have been duly selected by the selection committee constituted for the purpose and in pursuance of the directions Issued by the State Government and, therefore, there was no justification to prevent them from Joining their duties in pursuance of the appointment letters issued to them on 24.6.1997. It is prayed that the direction in the form of a notice Issued by the Chief Veterinary Officer, Pratapgarh, dated 1.7.1997 and the order dated 2.7.1997 passed by Director, Animal Husbandry, U. P., Lucknow--respondent No. 3 be quashed and the respondents be commanded to permit the petitioners to function as class IV employees in pursuance of the orders of appointment Issued in their favour and to pay them regular monthly salary.

3. Counter and rejoinder-affidavits have been filed. Heard Sri Ashok Khare, learned counsel for the petitioners and the learned standing counsel on behalf of the respondents.

4. The State Government issued an order on 30.5.1997 addressed to the Director, Animal Husbandry directing that the quota of reservation for reserved category against the various posts be made good by filling up the vacancies on top priority basis and by 30.6.1997. The procedure for direct recruitment as laid down by the Government Order, dated 2.5.1997 was to be followed. The Director of Animal Husbandry passed on the said information through his circular letter dated 6/7.6.1997 and directed that all the vacancies in Group 'D' cadre existing in the Department of Animal Husbandry be filled-in by 30.6.1997. The Deputy Director, Animal Husbandry of the concerned region is the appointing authority of the class IV posts. The Deputy Director, Allahabad Region, in his turn directed the Chief Veterinary Officer, Pratapgarh to initiate selection proceedings. The Chief Veterinary Officer, Pratapgarh issued an advertisement inviting applications, which was published in the daily newspaper 'Dainik Jagran' dated 15.6.1997. The

vacancies were notified to the Employment Exchange also. A selection committee constituted according to the Government Order, it is alleged, met on 22nd, 23rd and 24th June, 1997 which was chaired by Deputy Director of the Allahabad Region. A merit list was prepared and appointment letters were issued to all the petitioners on 24.6.1997. The petitioners were not allowed to join on one pretext or the other and finally on 1.7.1997, a notice was put up by Chief Veterinary Officer that in the light of the communication received from the Deputy Director, Animal Husbandry, Allahabad Region, Allahabad the appointment letters issued to the selected candidates have been kept in abeyance. Subsequently, an order dated 2.7.1997, Annexure-9 to the writ petition was received from the Director Animal Husbandry that under the orders of the State Government, the selected candidates be not allowed to join. It transpired that the State Government has issued an order on 30.6.1997 for reorganization and modernisation of Government Livestock Farms under the control of the Animal Husbandry Department and establishment of Livestock Farm Development Authority and that the surplus employees of the Central Dairy Farm were to be absorbed in the Animal Husbandry Department.

5. On behalf of the petitioners. It was urged that the order, dated 2.7.1997 is arbitrary, discriminatory and violatlve of Article 14 of the Constitution ; that the said order is further in violation of principles of natural Justice as no opportunity of hearing was afforded to the petitioners. It was also urged that the recruitment was made for giving effect to the quota of reservation prescribed by U. P. Act No. 4 of 1994 and that the vacancies which had occurred were to be filled by the selected candidates of reserved categories and the said vacancies could not be diverted for absorbing the surplus employees, if any, of the Central Dairy Farm and the Government Livestock Farm.

6. In the counter-affidavit filed by Sri J. P. Srvastava, Pasu Chlkitsa Adhikari, Allahabad, it has been pleaded that the entire selection process was thrown to winds, inasmuch as, the selection committee was not duly constituted, the vacancies were not advertised in two newspapers having wide circulation and that serious irregularities and Illegalities have been committed in the selection of the candidates. It is also alleged that the Deputy Director. Dr. Ram Lakhan has

disobeyed the directions issued to him by the higher authorities and had issued the appointment letters in spite of the fact that he was directed not to issue the appointment letters as the entire selection process was illegal and irregular. A departmental enquiry has been initiated against Dr. Ram Lakhan and he has been placed under suspension on account of the illegal appointment letters issued by him in defiance of the orders of the State Government/Directorate.

7. The learned counsel for the petitioners pointed out that after the enactment of the U. P. Public Services (Reservation for Scheduled Caste, Scheduled Tribes and Other Backward Class) Act, 1994 (U. P. Act No. 4 of 1994). a special drive for filling up the vacancies, which had remained unfilled by the candidates of reserved categories was to be given effect to in pursuance of the order, dated 30.5.1997 passed by the State Government. A reference was made to the provision of sub-section (2) of Section 3 of the Act which lays down that 'if even in respect of any year of recruitment any vacancy reserved for any category of persons under sub-section [1) remains unfilled, special recruitment shall be made for such number of times not exceeding three, as may be considered necessary to fill up such vacancy from amongst the persons belonging to that category.' On the basis of this provision, it was contended that the Deputy Director, Animal Husbandry, Allahabad Region, Allahabad under the Instructions of the State Government as well as Director of the Department proceeded to recruit the class IV employees of the reserved categories. Admittedly, some of the petitioners are of general category. Learned counsel for the petitioners pointed out that since a sufficient number of candidates belonging to the reserved categories were not available, the remaining posts were filled by the candidates of general category as was notified by the notice dated 13.10.1997, Annexure-6 to the writ petition. The Government Order, dated 30.6.1997 did not contemplate filling up of any one of the vacancies by the general candidates. The tone and tenor of the Government Orders, dated 30.5.1997. which is Annexure-1 to the writ petition, is that a special recruitment drive was to be undertaken to make up cent per cent quota of the reserved categories. It was directed by issuing specific instructions that 5 per cent of the vacancies should be kept vacant and advertisement for filling up other vacancies should be given in the newspaper having wide circulation in the locality and those candidates who were working in the capacity of daily wagers in the Department be

also informed to appear in the recruitment test. The Deputy Director did not follow the said directions and also failed to call names from the Employment Exchange. A preliminary enquiry into the matter indicated that adequate notice was not given for submitting the applications to the persons who were desirous to apply for the post and in any case, no applications were invited from the daily wage workers working in the Rajkiya Pasudhan Evam Kukkut Prashar. The applications were invited only from the candidates belonging to the three reserved categories and the Deputy Director did not follow the said directions and acted against the policy decision of the Government by making appointment of the Petitioner Nos. 28, 29, 31, 32 and 34 who do not come within the reserved category. It was also revealed in the enquiry that the whole process of selection was reduced to a farce on account of large scale malpractices. There are overwritings and cuttings on different pages of the Broad-sheets and the instances of bungling in selection have come to light. It was compulsorily required under the Government Orders that nominee, of the District Magistrate shall be one of the members of the selection committee and that the constitution of the committee was to be made according to the provisions of Rule 15 of the U. P. Animal Husbandry Department Group 'D' Employees Rules, 1993. The committee constituted by the Deputy Director was against the norms as set out in Rule 15 and consequently the selection of the candidates made by illegally constituted committee could not be given effect to.

8. The State Government had taken a decision that the employees of the Pasudhan Udyog Nigam were to be absorbed first and, therefore, the appointments of the employees of Group 'D' and Group 'C' who were selected were kept in abeyance. The orders were duly communicated to the Deputy Director but he deliberately disregarded the directions issued by the Director, Animal Husbandry and issued appointment letters in a hot and unholy haste. Another policy decision was taken by the State Government to establish a Livestock Farms Development Authority and to reorganise and modernise the Government Livestock Farms under the control of Animal Husbandry Department and consequently the surplus employees of the Central Dairy and Livestock Farm were to be first absorbed and it was in this context of the policy decision that the Deputy Director was asked to refrain from issuing appointment letters to the

petitioners but he deliberately flouted the orders of the State Government and the Director.

9. It is true that under the U. P. Act No. 4 of 1994, special recruitment was required to be made to fill up the vacancies with a view to level up quota of the candidates belonging to the reserved categories. But it did not mean that the entire selection process was to be given a complete go-by. The recruitment, of necessity, had to be according to the procedure prescribed. It is a case in which patent and blatant irregularities and illegalities were committed in making the selection. Moreover, when once the superior authorities, including the State Government had taken a firm decision that no fresh appointment was to be made on the posts of Group 'D', the act of the concerned Deputy Director, namely, Sri Ram La Khan, was clearly in flagrant violation of such policy decision duly communicated to him. He deliberately disobeyed the directions of the superior authorities. The petitioners have not joined their duties. The fervent and persuasive submission of Sri Ashok Khare, learned counsel for the petitioner that once the selection process is complete and appointment letters have been issued to the petitioners, they have acquired an indefeasible right to join their duties and that in any case, the appointment letters could not have been cancelled without affording them an opportunity of hearing, is not acceptable. The Constitution Bench of the Supreme Court in *Shankarson B. Dash v. Union of India*, AIR 1991 SC 1612, has observed that 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 an indefeasible right to be appointed, which cannot be legitimately denied. A reference may also be made to the decisions of the Supreme Court in *Union Territory, Chandigarh v. Dil Bagh Singh and others*, AIR 1993 SC 796 ; *Preet Pal Singh v. State*, 1994 (5) SCC 695 ; *Hanuman Prasad and others v. Union of India and another*, JT 1996 (8) SC 510 and *Biswa Ranjan Sahoo and others v. Sushani Kumar Dinda and others*, JT 1996 (6), SC 515.

10. It is true that the State does not have a licence to act in an arbitrary manner but in the present case, it would appear that there have been glaring illegalities and flagrant disregard of the procedure prescribed as well as deliberate

disobedience of the directions issued in the matter by the superior authorities. The Constitution Bench of the Supreme Court in Shankarson Dash's case (supra) discussed its earlier decisions in State of Haryana v. Subhash Chander Marwab, AIR 1973 SC 2216 ; Miss Neelma Shangla v. State of Haryana, AIR 1987 SC 169 and Jitendra Kumar v. State of Punjab, AIR 1984 SC 1850 and observed that no discordant note is to be found in the three aforesaid decisions.

11. The appointment letters issued in favour of the petitioners have been kept in abeyance or cancelled for valid or justifiable reasons. Now the question is whether by not giving opportunity of hearing to the petitioners, the principles of natural justice have been violated. In this connection, besides making a reference to the decision of the Supreme Court in Maharashtra State Board of Secondary Education v. K. S. Gandhi and others. JT 1991 (2) SC 296 : Bishwaranjan Sahoo (supra) and Hanuman Prasad and others (supra), it would be profitable to refer to the two decisions of Supreme Court in State of Madhya Pradesh and others v. Shyama Pardhi and others. 1996 7 SCO 118 and Ashwani Kumar and others v. State of Bihar and others. 1997 2 SCC 1. In Shyama Pardhi's case (supra), certain persons not possessing the prerequisite qualifications prescribed by statutory rules were wrongly selected and after successful completion of training were appointed as Auxiliary Nurse-cum-Midwife. Their appointment was terminated. It was held that since the order of initial selection to undergo training was per se illegal, termination of their appointment did not attract principles of natural justice. In Ashitarti Kumar's case, a large number of class III and IV employees were appointed in Tuberculosis Eradication Scheme against the smaller number of posts. The Supreme Court found such appointments as void and further held that the said appointments were bad also because of omission to follow the recruitment procedure and the order of termination in such cases, without affording an opportunity of hearing, was not violative of principles of natural Justice. In the present case, it has been found that Dr. Ram Lakhan, Deputy Director, Animal Husbandry had disobeyed the directions Issued to him by the higher authorities and had issued the appointment letters in spite of the fact that he was directed not to issue such appointment letters as the entire selection process was Illegal and Irregular.

12. In view of above authoritative pronouncements of the Supreme Court, no opportunity of hearing was required to be given to the petitioners in the circumstances of the present case.

13. The writ petition, therefore, fails as the impugned order, dated 2.7.1997, Annexure-9 to the writ petition passed by the Director, Animal Husbandry, U. P., Lucknow is quite apt and justified. Since the appointment letters dated 24.6.1997 issued in favour of the petitioners have been rightly cancelled, they cannot be allowed to join their posts. The writ petition is accordingly dismissed. Costs easy.

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