

Ram Vikas Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Aug-09-2001

Reported in : 2001(3)AWC2347; (2002)1UPLBEC352

Judge : Ashok Bhushan, J.

Acts : Group 'D' Employees Service Rules, 1985 - Rules 16 and 19; ;Uttar Pradesh Public Services (Reservation for Scheduled Caste, Scheduled Tribes and Other Backward Class) Act, 1994; Group 'D' Employees Service (Amendment) Rules, 1986; ;Bihar University Act, 1951 - Sections 35(3)

Appeal No. : C.M.W.P. No. 15150 of 1997

Appellant : Ram Vikas

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : S.N. Verma and ;J.N. Verma, Adv.

Judgement :

Ashok Bhushan, J.

1. This writ petition has been filed by the petitioner praying for a writ of certiorari quashing the impugned order dated 31.3.1997 Annexure-1 to the writ petition

passed by the respondent No. 3. It has further been prayed that a direction be issued in the nature of mandamus directing the respondents not to interfere in the peaceful working of the petitioner. A further mandamus has been prayed for paying salary and other benefits to the petitioner.

2. Facts of the case as emerge from the pleadings of the parties are that there were certain vacancies of Class IV and Class III in the District Hospital, Siddharth Nagar. The Director General, Family Welfare, U. P., Lucknow wrote a letter dated 16.10.1995 to all Chief Medical Officers, U. P. for making available the details pertaining to vacant posts under reserved category of Scheduled Castes, Scheduled Tribes and other backward category. The letter stated that the State Government has decided to fill up the unfilled quota of reserved candidates category in which quota is not filled. Letter further stated that the special drive be taken in accordance with the U. P. Public Services (Reservation for Scheduled Caste, Scheduled Tribes and Other Backward Class) Act, 1994. The District Magistrate, Siddharth Nagar also wrote a letter to that effect to the Chief Medical Superintendent, District Hospital, Siddharth Nagar. On the aforesaid basis, the then Chief Medical Superintendent of District Hospital, Siddharth Nagar Dr. O. S. Singh constituted a Selection Committee consisting of one Dr. Ashok Kumar, member of Scheduled Caste, Dr. S. K. Arora, Raja Ram Misra a class III employee, one Smt. Munni Sonkar, a staff nurse and Sri Babbu Safai Karmachari for holding selection of Class III and Class IV posts. It is claimed that a selection was held on 26.10.1995 in pursuance of which the petitioner was issued an appointment order dated 26.10.1995 Annexure-6 to the writ petition as Chaukidar. In pursuance of the said appointment order, petitioner joined his post and started working and was paid his salary. It appears that complaints were made regarding selection made by Dr. O. S. Singh to the State Government as well as to the Director Medical Health. The Director Medical Health directed the Additional Director to submit report pertaining to the selection against Dr. O. S. Singh. Additional Director conducted an enquiry, examined the record and also recorded the statement of Dr. O. P. Singh and other members of the Selection Committee and submitted a report dated 20.4.1996 to Director. In the Additional Director's report, it has been stated that the selection was conducted only by issuing a notice on the Notice Board. It was further stated in the report that no proceedings of

selection or details of marks of the candidates was made available. The relations of the members of the selection committee were selected and issued appointment orders. Report further stated that Dr. O. S. Singh went beyond his jurisdiction in making appointment on the post of Dark Room Assistant, Lab Attendant, Electrician and Registration-cum-Record Keeper whose appointing authority is Director. The selection committee was not constituted in accordance with the rules and in accordance with the Government Orders. No nominee of the District Magistrate was there in the selection committee. On the basis of the report submitted by the Additional Director, all the appointments made by Dr. O. S. Singh was directed to be cancelled. In pursuance of the above, order was issued by the Chief Medical Superintendent, Siddharth Nagar dated 31.3.1997 cancelling the appointment of the petitioner. The petitioner has challenged the aforesaid order. Petitioner's case is that the appointment was made by the duly constituted selection committee. Petitioner has further stated that the order dated 31.3.1997 was passed without issuing any notice or affording any kind of opportunity to the petitioner.

3. Counter-affidavit has been filed by the standing counsel in which it has been stated that the selection committee has not been constituted in accordance with Group 'D' Employees Service Rules, 1985 as amended by 1986 amendment. Dr. O. S. Singh did not constitute selection committee in accordance with the Government Orders. For selection, neither the advertisement was issued in the news paper nor names were called for from the Employment Exchange. In paragraph 3 of the counter-affidavit, it has been stated that the brother of Dr. Ashok Kumar, who was member of the selection committee, has been appointed on the post of Record Keeper and brother of another member Raja Ram Misra was appointed as Ward Boy, Son of Baboo, the member of selection committee was also given appointment. It was stated that the enquiry was got conducted by the Additional Director who submitted his report dated 20.4.1996 and on the basis of the aforesaid report, an order was issued by the Director Medical Health on 30.7.1996 directing for cancellation of the appointment. In paragraphs 16 and 17 of the counter-affidavit, it was stated that since the appointments were void and not made in accordance with the law, the petitioner is not entitled to any relief and there is no requirement of giving any opportunity in the present case. It was held

that the order dated 31.3.1997 cancelling the appointment is valid and in accordance with law. Petitioner has filed rejoinder affidavit in which the allegations of the writ petition were reiterated and it is stated that the advertisement was published in news paper 'Bharat Charcha' and a copy of which has been filed as Annexure-R.A. 1 to the rejoinder affidavit. Letter of the District Magistrate dated 12.10.1995 has also been annexed as Annexure-R.A. II to the rejoinder affidavit in which the appointing authorities were directed to fill up the quota of reserved category candidates.

4. Counsel for the petitioner Sri J. N. Verma made following submissions in support of the writ petition :

(i) That the order dated 31.3.1997 was passed without issuing any notice to the petitioner and without giving any kind of opportunity to the petitioner. Petitioner having been appointed on Class IV post vide appointment order dated 26.10.1995 had joined and was working ; the order dated 31.3.1997 causes serious prejudice to the petitioner hence could not have been passed without giving any notice or opportunity to the petitioner.

(ii) The reasons given in the counter-affidavit in support of the impugned order dated 31.3.1997 cannot be looked into since the reasons for action has to be found out from the order itself. It has been stated that the appointment was made on the basis of valid selection committee. List of candidates from the Employment Exchange was called. Petitioner is not related to any member of the selection committee.

(iii) The order passed by the Chief Medical Superintendent has been passed in pursuance of the direction issued by the higher authorities and the order having been passed on the dictates of the higher authority, is vitiated.

5. Learned standing counsel refuting the contentions of the petitioner submitted that the appointment of the petitioner was wholly arbitrary and contrary to the procedure prescribed under the rules. Dr. O. S. Singh did not follow any process of law in making appointment. Appointment was made secretly without giving any opportunity to other eligible persons. No marking was made in the selection to find

out as to who were entitled to be selected. The selection committee was contrary to the rules, 1985. Members of the selection committee selected their own brothers and son which shows that the selection was wholly arbitrary and biased.

6. Having heard counsel for the petitioner and the learned standing counsel and after perusing the record, it is clear from the record that the appointment order was issued to the petitioner as class IV employee dated 26.10.1995 in pursuance of which he was appointed and was working. That for making selection of Group 'D' post, rules have been made, namely, the Group 'D' Employees Service Rules. 1985. Rule 16 provides for constitution of the selection committee and Rule 19 provides for procedure for selection. Rules 16 and 19 are quoted below :

'16. Constitution of Selection Committee.--For the purpose of recruitment to any post, there shall be constituted a selection Committee as follows :

1. Appointing Authority.

2. An officer belonging to Scheduled Castes. Scheduled Tribes, nominated by the District Magistrate, if the appointing authority or his nominee does not belong to Scheduled Castes/Scheduled Tribes. If the appointing authority or his nominee belongs to Scheduled Castes/ Scheduled Tribes, an officer other than belonging to Scheduled Castes/Scheduled Tribes, to be nominated by the District Magistrate.

3. Two officers nominated by the appointing authority, one of whom shall be an officer belonging to minority community. If such suitable officer is not available in his department or organisation such officer shall, on the request of appointing authority, be nominated by the District Magistrate and on his failure to do so by reason of non-availability of suitable officer, such officer shall be nominated by the Divisional Commissioner.

19. Procedure for Selection.--(1) The appointing authority shall determine the number of vacancies to be filled during the course of the year as also the number of vacancies to be reserved for the candidates belonging to the Scheduled Caste. Scheduled Tribes and other categories. The vacancies shall be notified to the Employment Exchange. The appointing authority may also invite application

directly from the persons who have their names registered in the Employment Exchange. For this purpose, the appointing authority shall issue an advertisement in a local daily news paper besides pasting the notice for the same on the notice board. All such applications shall be placed before the selection committee.

(2) When the names both of the general candidates and reserve candidates for whom vacancies are required to be reserved under the orders of the Government have been received by the selection committee, it shall interview and select the candidates for various posts.

(3) In making selection the selection committee shall give weightage to the retrenched employees awarding marks in the following manner :

(i) For the first complete year 5 marks.

(ii) For the net and every completed year of service 5 marks :

Provided that the maximum marks awarded to a retrenched employee under this sub-rule shall not exceed 15 marks.

(4) The number of the candidates to be selected will be larger (but not larger by more than 25 per cent) than the number of vacancies for which the selection has been made. The names in the select list shall be arranged according to the marks awarded at the interview.

7. It is clear from the averments in the writ petition and other materials on record that the selection in question was initiated by Dr. O. S. Singh for filling up the quota of reserved category candidates. Serious allegations have been made in the report dated 20.4.1996 regarding the conduct of selection by Dr. O. S. Singh. From the record, it is proved that there was no nominee in the selection committee appointed by the District Magistrate as required by Rule 16. Other serious allegations have been made in the report and in the counter-affidavit which were to the effect that the whole selection process was sham and was done to give benefit to the few choicest persons without following the procedure as required by Articles 14 and 16 of the Constitution of India,

8. The foremost submission which has been raised by the counsel for the petitioner is regarding the violation of principle of natural justice. Counsel submitted that the petitioner having already been appointed and working, his appointment could not have been cancelled without notice, Counsel for the petitioner in support of his submission that notice was required before cancellation of the appointment has placed reliance on the following cases :

(1) Shridhar u. Nagar Palika, Jaunpur, AIR 1990 SC 307.

(2) Shravan Kumar Jha v. State of Bihar, 1991 (Supp) (1) SCC 330.

(3) Basudeo Tiwary v. Sido Kanhu University and others, AIR 1998 SC 3261.

(4) Pancnam Ram and others v. Chief Engineer, U. P. Jal Nigam and others. (1999) 1 UPLBEC 537.

(5) Sanjeev Kumar and others v. State of U. P. and others. (1999) 1 UPLBEC 575.

9. Learned standing counsel on the other hand relied on the judgment of the Apex Court in Ashwani Kumar and others v. State of Bihar and others, JT 1997 (1) SC 243. The Apex Court has considered the question of natural justice in large number of cases. In Shridhar v. Nagar Palika, Jaunpur (supra), the Apex Court held that it is elementary principle of natural justice that no person should be condemned without hearing. In paragraph 8, it was held :

'8. The High Court committed serious error in upholding the order of the Government dated 13.2.1980 in setting aside the appellant's appointment without giving any notice or opportunity to him. It is an elementary principle of natural justice that no person should be condemned without hearing. The order of appointment conferred a vested right in the appellant to hold the post of Tax Inspector, that right could not be taken away without affording opportunity of hearing to him. Any order passed in violation of principles of natural justice is rendered void. There is no dispute that the Commissioner's order had been passed without affording any opportunity of hearing to the appellant, therefore, the order was illegal and void. The High Court committed serious error in upholding the Commissioner's order setting aside the appellant's appointment. In this view,

orders of the High Court and the Commissioner are not sustainable in law.'

10. Shraavan Kumar's case was also a case in which appointments were cancelled by the Deputy Development Commissioner on the ground that the Deputy Superintendent Education had no authority to make appointment. Apex Court held that the impugned order cancelling the appointment was liable to be quashed on the ground that the appellant therein had not been given opportunity of hearing before cancelling the appointment. Basudeo Tewary is a case in which in accordance with the provisions of Section 35 (3) of the Bihar University Act, 1951, services were terminated on the ground that the appointment was irregular. Section 35 (3) of the Act provides :

'35 (3) Any appointment or promotion made contrary to the provisions of the Act, Statutes, rules or regulations or in any irregular or unauthorised manner shall be terminated at any time without notice.'

Exercising the power under Section 35 (3) of the Act, order was passed which was challenged before the High Court. In paragraph 12 of the judgment, the Apex Court laid down :

'12. The said provision provides that an appointment could be terminated at any time without notice if the same had been made contrary to the provisions of the Act, Statutes, Rules or Regulations or in any irregular or unauthorised manner. The condition precedent for exercise of this power is that an appointment had been made contrary to Act, Rules, Statutes and Regulations or otherwise. In order to arrive at a conclusion that an appointment is contrary to the provisions of the Act, Statutes, Rules or Regulation, etc. a finding has to be recorded and unless such a finding is recorded, the termination cannot be made, but to arrive at such a conclusion necessarily an enquiry will have to be made as to whether such appointment was contrary to the provisions of the Act, etc. If in a given case, such exercise is absent, the condition precedent stands unfulfilled. To arrive at such a finding, necessarily enquiry will have to be held and in holding such an enquiry, the person whose (notice) appointment is under enquiry will have to be issued to him, if notice is not given to him, then it is like playing Hamlet without the Prince of Denmark, that is. if the employee concerned whose rights are affected, is not

given notice of such a proceedings and a conclusion is drawn in his absence, such a conclusion would not be just, fair or reasonable as noticed by this Court in D.T.C. Mazdoor Sabha's case. AIR 1991 (1) SC 101. In such an event, we have to hold that in the provision there is an implied requirement of hearing for the purpose of arriving at a conclusion that an appointment had been made contrary to the Act, Statutes. Rule or Regulation etc. and it is only on such a conclusion being drawn, the services of the person could be terminated without further notice. That is how Section 35 (3) in this case will have to be read.'

11. The other judgments cited by the counsel for the petitioner do support the contention of the petitioner that he was entitled for notice before cancelling his appointment. In the present case since the petitioner has joined and was working, the cancellation of his appointment would have adversely affected his right which required a notice on the issues which have been raised in enquiry report dated 20.4.1996. Petitioner ought to have given an opportunity to have his say. May it be, that the petitioner in his reply could not have stated any fact which would have dispelled the charge levelled against the selection proceedings but justice must not only be done but should always seem to be done. In all fairness and in conformity with the principle of natural justice notice ought to have been given to the petitioner. The reliance placed by the learned standing counsel on the case of Ashwani Kumar and others (supra) is not applicable on the facts of the present case. In Ashwani Kumar's case, the Apex Court while dealing with the question of natural justice had observed that the principle of natural justice is observed in that case since public notices were given to the petitioners of that case and all other employees have submitted their explanations. In the aforesaid case, the High Court has directed the State Government to appoint the committee and thoroughly investigate the entire matter in pursuance of which the committee issued notices to all the affected persons and thereafter thus after giving opportunity submitted its report. In Ashwani Kumar's case against 2,500 posts appointments of 6,000 persons were made. The Apex Court in that case observed :

'Thus, the basic principles of natural justice cannot be said to have been violated by the Committee which ultimately took decision on the basis of the personal hearing given to the concerned employees and after considering what they had to

say regarding their appointments. Whatever was submitted by the concerned employees, was taken into consideration and then committee came to a firm decision to the effect that all these appointments made by Sri Malik were vitiated from the inception and were required to be set aside and that is how impugned termination orders were passed against the appellant. On the facts of these cases, therefore, it cannot be said that principles of natural justice were violated or full opportunity was not given to the concerned employees to have their say in the matter and before their appointments were recalled and terminated.'

12. In view of the above the judgment in the case of Ashwani Kumar is not applicable on the facts of the present case. In view of the above the order cancelling the appointment of the petitioner by the order dated 31.3.1997 is liable to be quashed. However, in view of the allegations and materials which have been brought on the record in the form of the enquiry report dated 20.4.1996 great doubt has been raised with regard to fairness of the alleged selection held on 26.10.1995. The substance of the allegations can be summarised in following manner :

(a) That the constitution of selection committee which held the selection on 21.1.1996 was not in accordance with the Group 'D' Employees Services Rules, 1985. There was no nominee of the District Magistrate in the selection committee.

(b) That Dr. O. S. Singh the Chief Medical Superintendent did not call names from the Employment Exchange and it is claimed that one earlier list which was sent long back by the Employment Exchange was utilised for the purpose.

(c) There has been no publication of advertisement in any well known news paper. The petitioner in the writ petition has claimed advertisement in one news paper 'Bharat Charcha'.

(d) The selection committee claims to have appointed persons who were brothers and sons of the several members of the selection committee.

13. In view of the serious allegations against the selection, great doubt has been raised with regard to procedure of selection. Although the order dated 31.3.1997

cancelling the appointment is being quashed as having been passed in violation of principles of natural justice, it is directed that before petitioner is permitted to join the post, a decision is taken by the competent authority on issues raised after giving proper opportunity to the petitioner. In view of the above, I direct the Director General, Medical Health and Family Welfare to issue a notice to the petitioner regarding the allegations against the selection and appointment and after considering the explanation and materials submitted by the petitioner to take decision on the matter. The petitioner's continuance on the post and other benefits will be dependent on the decision to be taken by the Director General, Medical Health and Family Welfare. The Director General, Medical Health and Family Welfare will issue appropriate notice to the petitioner within a period of one month from the date of receipt of a certified copy of this judgment and after receiving the explanation from the petitioner pass final order within a period of two months thereafter.

14. With the aforesaid direction, the writ petition is finally disposed of.

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