

Jawed Ahmad and Others Vs. State of U.P. and Other

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Court : Allahabad

Decided On : Aug-19-1998

Reported in : 1998(4)AWC158; (1999)1UPLBEC655

Judge : R.H. Zaidi, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Writ Petition NO. 3129 of 1986

Appellant : Jawed Ahmad and Others

Respondent : State of U.P. and Other

Advocate for Def. : C.S.C.

Advocate for Pet/Ap. : S.C. Misra, Adv.

Judgement :

R.H. Zaidi, J.

1. By means of this petition under Article 226 of the [Constitution of India](#), petitioners pray for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 23.4.1986. whereby order of appointment of the petitioners dated 19.11.1984 was cancelled by respondent No. 2. Prayer for issuance of a direction in the nature of mandamus commanding the respondents

to permit the petitioners to work and to pay their salary and allowances, has also been made.

2. It has been stated that on 29.10.1984, several posts of Junior clerks and cashiers were sanctioned by the Chief Engineer. Rural Engineering Services. For District Bahraich six posts of Junior clerk and one of cashier were sanctioned. Said posts were advertised on 16.11.84. A Selection Committee, in accordance with the rules, was also constituted under the Chairmanship of respondent No. 2. Executive Engineer. A letter is also stated to have been sent to the employment exchange asking to send the names of the candidates for selection and appointment on the said posts. Petitioners besides several others also applied for their appointment. Petitioners and other candidates were called for interview on 17.11.1984. On the basis of the said interview, select list was prepared. On the basis of the said select list, appointments were made and appointment letters were issued to the petitioners on 19.11.1984. Petitioners on the strength of the said appointment letters joined services on the same date, and since then they have been working and discharging their duties to the satisfaction of all concerned. Suddenly, the impugned order dated 23.4.86 was passed, whereby appointments of the petitioners were cancelled and their services were terminated. Petitioners, thereafter, approached this Court and filed the present petition.

3. In the counter-affidavit, it has been asserted that the petitioners were appointed on the posts in question by the Executive Engineer, without following the procedure prescribed under relevant rules. It is stated that the aforesaid posts were neither advertised in accordance with the rules, nor' Selection Committee was constituted in accordance with law. It has also been stated that regarding selection and appointments In question, enquiry was conducted on the basis of which, Impugned order of cancellation of the appointment was passed.

4. Learned counsel appearing for the petitioners vehemently urged that the petitioners were appointed on the posts in question, in accordance with law and after following the procedure prescribed for the same. It has been urged that the posts in question, were advertised in the newspapers and the Selection Committee was constituted, in accordance with the relevant rules and that the

impugned order dated 23.4.1986 was passed by respondent No. 2 wholly arbitrarily without affording an opportunity of hearing to the petitioners, in any form. Therefore, said order was non-est and was liable to be quashed. In support of his submission, learned counsel has referred to and relied upon the decision of the Apex Court in *Shrawan Kumar Jha and others v. State of Bihar and others*, 1991 Supp. (1) SCC 330, as well as the decision of this Court in *Govind Saran Dwivedi and others v. Union of India and others*, 1984 (2) LCD 243.

5. On the other hand, learned standing counsel has supported the validity of the Impugned order. It was urged that the appointment has been made in violation and contrary to rules. Therefore, it was not necessary to afford opportunity of hearing to the petitioners before passing the impugned order. It was urged that the impugned order was quite legal and valid.

6. I have considered rival submissions made by the learned counsel for the parties and also perused the record.

7. From the material on the record, it is evident that the posts in question were sanctioned by the Chief Engineer, Rural Engineering Services. It is also evident that the said posts were advertised in newspapers. Reference in this regard may be made to the Annexure-3 to the writ petition, as well as to C.A. 1 to the counter-affidavit. I do not find any illegality or infirmity in the said advertisement. It is not disputed that a Selection Committee for selecting the candidates on the posts in question, under the Chairmanship of Executive Engineer, was constituted. Learned standing counsel has failed to demonstrate from the material on record as to how the constitution of the Selection Committee was bad in law. Petitioners having been selected for appointment on the posts in question, after following the procedure prescribed under Rules, were lawfully appointed on the posts in question and since the date of their appointment, they have been discharging their duties.

8. It is well-settled in law that violation of the principles of natural justice while taking action, or passing orders, affecting the civil rights of a person, renders action taken and orders passed non-est. In *S. L. Kapoor v. Jagmohan*, AIR 1981 SC 136, it was ruled as under :

'In our view the principles of natural justice know of no exclusionary rule, dependent on whether It would have made any difference if natural Justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice Independently of proof of denial of natural justice is unnecessary.'

9. A reference in this regard may also be made to the decision of Apex Court In Mohinder Singh Gill v. Chief Election Commissioner, New Delhi, (1978) 2 SCR 272 : AIR 1978 SC 851.

10. In Shrawan Kumar Jha (supra), in the similar circumstances as of the present case, the appointment of the appellants who were 175 in number. were made by order dated 28.5.1988. The same were cancelled by order dated 2.11.1988 without affording an opportunity of hearing to the appellants on the ground that the District Superintendent had no authority to make the appointments. The Apex Court was pleased to rule as under :

'In the facts and circumstances of this case, we are of the view that the appellants should have been given opportunity of hearing before cancelling their appointments. Admittedly, no such opportunity was afforded to them. It Is well-settled in law that no order to the detriment of the appellants could be passed without complying with the rules of natural justice.'

11. A Division Bench of this Court in Govind Saran Dwivedi v. Union of India, and others, 1984 (2) LCD 243, relying upon the decision in S. L. Kapoor's case (supra) ruled as under :

'Since the petitioners had been appointed after their selection and they had been working for more than two years, they have acquired right to continue in service, unless same was terminated in accordance with the service rules. If there was any irregularity committed in the selection and if the authorities proposed to cancel the selection, petitioners should have been given opportunity of hearing. Admittedly, no opportunity was given to the petitioners, as a result of which principles of natural justice were violated and the order passed in breach of principles of natural justice is rendered null and void and it is not necessary to demonstrate any

prejudice.' See S. L. Kapoor v. Jagmohan and others, AIR 1981 SC 136.

12. In the present case, admittedly no opportunity of hearing or showing cause before cancellation of the appointments of the petitioners was given to them and the impugned order was passed wholly arbitrarily in violation of principles of natural justice. Therefore, the impugned order is liable to be quashed and this petition deserves to be allowed.

13. By means of the interim order dated 14.5.1986 operation of the Impugned order was stayed. It has been stated by the learned counsel for the petitioners, that the petitioners have been, on the strength of the interim order, continuing and discharging their duties on the posts in question. Since the petitioners have been holding the posts in question and have been discharging their duties for about thirteen years continuously, in my opinion, it was not equitable to permit the respondents to disturb the status-quo and to proceed further against the petitioners.

14. In view of the aforesaid discussions, this petition succeeds and is allowed. Impugned order dated 23.4.1986 is, hereby, quashed.

15. No order as to costs.

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