

Pawan Kumar and Anr Vs. State and Ors

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Court : Rajasthan Jodhpur

Decided On : Aug-13-2015

Appellant : Pawan Kumar and Anr

Respondent : State and Ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

1S.B.CIVIL WRIT PETITION No.6764/2014 Pawan Kumar & Anr.

versus State of Rajasthan & ORS.2.S.B.CIVIL WRIT PETITION No.6779/2014
Bheru Lal versus State of Rajasthan & ORS.3.S.B.CIVIL WRIT PETITION
No.7346/2014 Shyam Kumar & ORS.versus State of Rajasthan &
ORS.4.S.B.CIVIL WRIT PETITION No.7513/2014 Bheru Lal & ORS.versus State
of Rajasthan & ORS.5.S.B.CIVIL WRIT PETITION No.7516/2014 Raju Lal &
ORS.versus State of Rajasthan & ORS.6.S.B.CIVIL WRIT PETITION
No.8037/2014 Radha Kishan & ORS.versus State of Rajasthan &
ORS.7.S.B.CIVIL WRIT PETITION No.7667/2014 Suresh Kumar & ORS.versus
State of Rajasthan & ORS.Date of order : 13th August, 2015 HONBLE
Mr.JUSTICE SANDEEP MEHTA Reportable Mr.A.A.Bhansali, Mr.Sushil Solanki
and Mr.Mahaveer Bishnoi, for the petitioners.Dr.Pratistha Dave, A.G.C.and
Mr.Tribhuvan Gupta, for the respondents.

<><><> 2 The instant bunch of writ petitions is preferred by the petitioners who represent a bulk of the Safai Karamcharis (Sanitation WorkeRs.of the Municipal Board, Rawatbhata, whose appointments were directed to be cancelled by the Local Self Department, Government of Rajasthan, Jaipur by order No.Pa.1Ga() Ka/SME/S.Karm/DLB/14/3311 dated 17.10.2014 and the consequent order dated 22.10.2014 issued by the Municipal Board, Rawatbhata.

The petitioners have approached this Court praying for being reinstated in service in terms of the order of appointment dated 1.10.2013 and for directing the respondents to make payment of salary and consequential benefits to them.

The facts relevant and essential for the disposal of these writ petitions are noted hereinbelow for the sake of ready reference.

An advertisement dated 25.5.2012 was issued by the Local Self Department of the Government of Rajasthan for filling up vacant posts of Safai Karamcharis in various Municipal Boards of State of Rajasthan.

The matters in hand arise out of the advertisement issued by the Municipal Board, 3 Rawatbhata for recruitment of 122 Safai Karamcharis.

The case as set up in the writ petitions is that the State Government issued amended guidelines dated 3.5.2013 wherein it was directed that for the purposes of recruitment to the post of Safai Karamcharis a selection committee consisting of five members shall be constituted to recommend recruitments.

The claim of the petitioners is that pursuant to the posts being advertised, they applied for appointment as Safai Karamcharis in the Municipal Board, Rawatbhata.

After following the lawful process prescribed under the selection Rules, the duly constituted Selection Committee issued an order dated 1.10.2013 giving appointment to the petitioners herein on the posts of Safai Karamchari on probation for a period of two yeaRs.However, soon after, complaints were received regarding various illegalities and irregularities in the constitution of the Selection Committee and in the entire selection process.

The Chairman, Municipal Board, Rawatbhata constituted a seven member committee to inquire into the procedure adopted by the Selection Committee in making the disputed appointments 4 on the posts of Safai Karamcharis.

The committee conducted a detailed inquiry into the matter and submitted its report finding wholesale irregularities committed in the manner of conducting selections.

Ineligible candidates were selected.

The procedure adopted by the Committee was found to be contrary to the rules, regulations and directions of the State Government.

The Inquiry Committee concluded that recommendations made by the Selection Committee and the appointments directed in pursuance thereof were fraudulent and tainted and should be cancelled.

The Inquiry Report was forwarded to the Local Self Department vide letter dated 13.12.2013.

The Director, Local Self Department nominated the Dy.

Director (Regional).Local Self Department, Udaipur to conduct a formal independent inquiry into the matter.

A writ petition was preferred before this Court by some of the unsuccessful candidates.

A few of the selected candidates were also impleaded as party to the said writ petition which came to be decided by this Court on 8.7.2014 with a direction to the Director, Local Self Bodies to conclude the inquiry, if any, within a period of two months.

The Dy.

5 Director had in the meantime, conducted a thorough detailed inquiry and submitted an inquiry report dated 30.5.2014 concluding that the Executive Officer

of the Municipal Board, Rawatbhata was guilty of wholesale irregularities in carrying out the selections.

The Selection Committee itself was not properly constituted.

Numerous other shortcomings were noticed and pointed out in the report.

In a few of the writ petitions which form a part of the bunch being Writ Petition Nos.6779/2014 (Bherulal & ORS.versus State of Raj.) and 6764/2014 (Pawan Kumar & Anr.

versus State of Rajasthan & Ors.).this Court by interim orders directed the Municipal Board to make payment to the petitioners if work was actually being taken from them.

On 17.10.2014 a final decision was taken and an order of even date was issued by the Director, Local Self Department declaring the entire selection to be tainted and flawed and directing cancellation of the appointments given to 122 Safai Karamcharis of the Municipal Board, Rawatbhata.

In furtherance of the order dated 17.10.2014, an order dated 22.10.2014 was issued by the Municipal Board, Rawatbhata cancelling the appointments 6 of the 122 candidates of whom the petitioners form a bulk.

The affected candidates being the petitioners herein have approached this Court by way of these writ petitions assailing the cancellation of their appointment and for directing the respondents to make them the payment of their salary.

This Court, while entertaining the writ petitions, by orders passed on different dates, stayed the effect and operation of the order whereby the petitioners services were terminated.

Another interim order dated 8.1.2015 was passed by this Court directing the Municipal Board, Rawatbhata to make payment of salary to the petitioners. The Municipal Board, Rawatbhata assailed the validity of the interim orders by preferring special appeals and by an interim order dated 8.5.2015 the Division Bench stayed operation of the various interim orders passed in favour of the

petitioners including the orders staying their termination and the direction to make payment of salary to them.

The findings of the Inquiry Officer who conducted the inquiry pursuant whereof the termination order in challenge was passed are very relevant for deciding these writ petitions.

7 A few of the relevant findings are reproduced hereinbelow for the sake of ready reference:- 06.02.2014 , , , , , , , , , () :- 1.

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5 :- 24-29 01.4.13 , , , 951-1134 03.5.13 , / , - (-) / 122 , , , , , , , , , 11 , , :- 11.04.13 17.5.13 11.4.13 - 17.5.13 11.4.13 12.4.13 11.9.13 17.9.13 : , , 12 11.04.13 12.4.13 ---- ---- ---- ---- 8.

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:- 13 15.

:- 01.10.2013 907-1045 , () (,). (). (). (). () 19 : - The gist of the findings recorded by the Inquiry Officer is summarized hereinbelow:- (1) That the Selection Committee was not properly constituted.

(2) Few Members of the Selection Committee did not participate in the interviews.

(3) The aspirants were called for interview without proper scrutiny of their application for Ms. (4) Large number of relatives of the persons already employed in the Municipal Board as well as of the members of the Selection Committee were given appointment.

(5) Overage and underage persons were appointed as Safai Karamcharis.

(6) A number of persons having more than two children 20 were given appointment.

(7) The experience certificates held by a large number of candidates were not proper.

(8) Candidates having less than two years experience were given appointment.

(9) A large number of non locals were selected.

(10) The appointment order dated 1.10.2013 was signed by a few persons who were not and could not have been a part of the Selection Committee.

(11) The Chairperson of the Municipal Board, who was supposed to be heading the Selection Committee did not sign the appointment order.

Acting on the above report, the Director, Local Self Department issued the order dated 17.10.2014 in compliance whereof, the petitioners appointments were cancelled by the Municipal Board, Rawatbhata by order dated 22.10.2014.

Being aggrieved of the action of the respondents in cancelling their appointments and withholding their salary, the petitioners have approached this Court by way of the instant writ petitions praying for the abovementioned relief.

21 Learned counsel for the petitioners vehemently contended that Inquiry Officers report is absolutely perfunctory.

The inquiry was conducted without following due procedure of law and the principles of natural justice.

It was urged that the finding recorded by the Inquiry Officer regarding excessive posts having been sanctioned contrary to the staffing pattern prescribed by the State Government is illegal inasmuch as the Inquiry Officer overlooked the amended staffing pattern guidelines issued by the State Government.

They urged that the Inquiry Officer, while submitting his inquiry report did not make any distinction whatsoever in the properly selected candidates and those against whom there were aspersions.

As per them, the inquiry was conducted in a mechanical manner.

The inquiry report submitted to the Local Self Department could not have been acted upon as the same was purely based on conjectures and surmises.

They further urged that the Director, Local Self Department also, without making any distinction in the cases of fairly selected candidates and those against whom there were aspersions, mechanically directed cancellation of the 22 appointments

of all selected candidates by a common order without following the principles of natural justice.

They further urged that the petitioners herein have satisfactorily served the respondent Municipal Board for a significantly long period and thus throwing them out of job at this stage would cause them undue hardship inasmuch as many of the petitioners might even have exceeded the maximum age of recruitment and would lose all future avenues of public employment.

It was also submitted that the action of the respondents in not making payment of salary to the petitioners despite having utilized their services for a long period is grossly illegal, arbitrary and unconstitutional as being violative of the letter and spirit of Article 23 of the Constitution of India.

They thus submitted that the writ petitions deserve acceptance and the petitioners are entitled to the claimed relief.

Per contra Dr.

Pratishtha Dave, AGC and Sh.Tribhuvan Gupta, learned counsel for the respondents vehemently opposed the submissions advanced by the learned counsel for the petitioners.Dr.

Pratishtha Dave submitted that the inquiry officer being the Dy.

Director of the Local Self Department, Udaipur conducted a thorough inquiry after providing opportunity of hearing to all concerned.

The Inquiry Officer came to a clear conclusion that the entire recruitment process was tainted with malpractices, favouritism, nepotism and fraud.

She relied upon the following decisions in support of her arguments:- 1.

Hitendra Singh & ORS.versus Panjabrao Deshmukh Krishi Vidyapeeth & ORS.reported in (2014) 8 SCC-369, 2.

Krishan Yadav & Anr.

versus State of Haryana & ORS.reported in (1994) 4 SCC-165, 3.

Nazira Begum Lashkar versus State of Assam reported in AIR 2001 SC-102, 4.

Union of India & ORS.versus O.Chakradhar reported in AIR 2002 SC-1119 and 5.

Biswa Ranjan Sahoo & ORS.Sushanta Kumar Dinda & ORS.reported in (1996) 5 SCC-365.

She contended that in view of the findings recorded by the 24 Inquiry Officer in his report that the entire selection was tainted, it was absolutely imperative to cancel the entire selection so that the faith of the people in the system could be restored.

She, therefore, urged that no grounds exist to interfere with the impugned orders which are perfectly just, proper and lawful.

Mr.Gupta also supported the arguments advanced by Dr.

Pratishtha Dave.

I have heard the arguments advanced by the counsel for the parties and have gone through the material available on record.

In the catena of judgments rendered by the Honble Supreme Court referred to *ibid*, it has been in no unequivocal terms propounded that where the recruitment process is corrupted or tainted with fraud, the only lawful option with the authorities is to set aside the entire selection and there is no requirement to follow the principles of natural justice in such situations.

In the case of *Krishan Yadav (supra)*.the Honble Supreme Court held that individual cases of innocence lose significance in such background.

In the case of *Nazira Begum Lashkar (supra)*.the State took a decision to cancel the 25 appointments made in defiance of the statutory provisions.

The decision to cancel the appointments was upheld by the Supreme Court observing that the petitioners therein were not entitled to equitable relief.

I have examined the appointment order dated 1.10.2013 minutely.

Very startling facts are revealed from perusal thereof.

It is admitted that as per the Rules, the Selection Committee was to be constituted by (1) the Chairperson of the Municipal Board (2) the Chairman of Sanitation Committee, (3) Sr. Medical Officer nominated by the Community Health Centre or the C.M.H.O./Sr. Most Sanitary Inspector, (4) Sr. Most Valmiki-Hela Community (Elected-Nominated) Member (5) Executive Officer.

Upon going through the appointment order dated 1.10.2013, it is reflected that (i) Member Secretary, Selection Committee, Municipal Board, Rawatbhata (Executive Officer) (ii) the Chairman of the Sanitation Committee, Municipal Board, Rawatbhata, (iii) Councilor, Valmiki Samaj, Municipal Board, Rawatbhata, (iv) President of Selection Committee, Municipal Board, Rawatbhata (v) Kastoor Chand, 26 Inspector/Jamadar, Municipal Board, Rawatbhata (vi) Gopal Lal, Inspector/Jamadar, Municipal Board, Rawatbhata, (vii) Chhitar Lal Dabodiya, Representative, All India Branch, Rawatbhata and (viii) Bheru Lal Baresha being a Social Worker, Rawatbhata were designated as the members of the Selection Committee.

Apparently, major constituents of the Committee were not authorized to be members thereof as per the guidelines issued by the State Government.

No rhyme or reason is available on record for justifying the inclusion of unauthorised persons as members of the Selection Committee.

The Chairperson of the Municipal Board who should have headed the selection committee was conspicuously missing from the selection process.

The appointment order does not bear her signatures.

In this background, it is evident that the Selection Committee itself was improperly constituted and was not authorised to make the appointments.

Thus, the very basis of the order of appointment dated 1.10.2013 is tainted and unlawful inasmuch as the Selection Committee was constituted by a major

proportion of unauthorised persons.

27 Significant and material findings of the Inquiry Officers report which have been reproduced *ibid* clearly reflect that the whole selection process was absolutely fraudulent and corrupted.

During the couRs.of the arguments, the learned counsel representing the petitioners did not dispute that a large number of selected candidates were related to either the members of the Selection Committee or employees already working in the Municipal Board and could not have been selected.

Few of the selected candidates were either overage or underage.

A few of them were having more than two children and were not eligible for selection.

A few candidates were from outside Rawatbhata.

There are question marks regarding the experience certificates held by a large number of the selected candidates.

Despite all these shortcomings & infirmities, the Selection Committee selected all of them.

The Honble Division Bench, whilst considering the D.B.Civil Special Appeal Nos.333/2015, 334/2015, 335/2015 and 336/2015 preferred by the Municipal Board against the interim orders issued by this Court, was also persuaded by the findings recorded in the inquiry report and stayed the 28 operation of the interim orders dated 9.10.2014, 8.1.2015, 13.3.2015, 7.4.2015 whereby the termination was stayed and the employer was directed to make payment of salary to the candidates who were continuing in service under interim orders passed by this Court.

In this background and considering the law as propounded by the Honble Supreme Court in the judgments referred to *supra*, this Court is of the firm opinion that the action of the respondents in cancelling the entire selection process and in terminating the petitioners services was absolutely just and proper and as a matter

of fact was absolutely essential for restoring the faith of the people in the system.

There was no requirement whatsoever to issue individual notices to the selected persons before cancelling their appointments.

So far as the question of payment of salary/wages is concerned, it goes without saying that the petitioners are definitely entitled to receive salary till the date of termination order i.e.22.10.2014.

However, for the period beyond that, if the petitioners have actually worked with the respondent Municipal Board, Rawatbhata under the interim 29 orders of this Court, then they are given liberty to submit a representation to the appropriate authority for making payment of salary/wages to them for that period.

Upon such representation being received the appropriate authority shall deal with the same according to law.

The impugned orders do not suffer from any illegality, irregularity or perversity and are not liable to be interfered with in the exercise of the extra ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India.

As an upshot of the above discussion, the writ petitions are liable to be and are hereby dismissed as being devoid of any merit.

A copy of the order be placed in each file.

(SANDEEP MEHTA).J.

/Sushil/

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