

Shridhar S/o Ram Dular

Vs

Nagar Palika, Jaunpur and Others

Civil Appeal No. 2967 of 1986

(K. N. Singh, N. M. Kasliwal JJ)

17.11.1989

JUDGMENT

SINGH, J. –

1. This appeal is directed against the judgment and order of the High Court of Allahabad dated July 28, 1986 dismissing the appellant's petition under Article 226 of the Constitution challenging the order of the Commissioner Varanasi Division dated February 13, 1980 setting aside the order of Municipal Board, Jaunpur appointing the appellant as Tax Inspector.

2. The Municipal Board, Jaunpur issued advertisement inviting applications for appointment to the post of Tax Inspector. The advertisement stated that the existing employees of the Revenue Department of the Municipal Board were eligible for consideration along with outsiders. Hari Mohan respondent 3 who was the seniormost Tax Collector working in the Municipal Board, Jaunpur was called for interview but he refused to appear for the interview on the plea that the post of Tax Inspector should have been exclusively filled by promotion and as he was the seniormost Tax Collector he should be promoted without considering any outsider. The Municipal Board ignored his claim and selected the appellant and appointed him to the post of the Tax Inspector by the order dated March 11, 1978. Respondent 3 thereafter filed a claim petition before the Services Tribunal constituted under the U. P. Public Services Tribunal Act, 1976 but subsequently he withdrew the same on December 23, 1979. Thereafter he filed a representation to the Prescribed Authority i. e. the Commissioner Varanasi challenging appellant's appointment to the post of Tax Inspector. The Commissioner by his order dated February 13, 1980 set aside the order of the Municipal Board and cancelled the appellant's appointment on the ground that respondent 3 was entitled to promotion in pursuance to the directions contained in the Government Order dated April 10, 1950. The appellant filed a writ petition under Article 226 of the Constitution before the High Court challenging the order of the Commissioner. A learned Single Judge (B. D. Agarwal, J.) of the High Court of Allahabad dismissed the writ petition and affirmed the order of the Commissioner on the findings that the appellant's appointment was made in violation of the Government Order dated April 10, 1950. Hence this appeal.

3. After hearing learned counsel for the parties at length we are of the opinion that the High Court committed manifest error in upholding the order of the Commissioner. The basic question which arises for consideration is whether the post of Tax Inspector, under the provision of the U. P. Municipalities Act, 1916 (hereinafter referred to as the 'Act') or any rules framed thereunder or under the Government Order dated April 10, 1950 the post Tax Inspector was required to be filled by promotion only and not by direct recruitment. The Prescribed Authority i. e., the Commissioner as well as the High Court both proceeded on the assumption that the Government Order dated April

10, 1950 had been issued by the State Government in exercise of its supervisory powers under Section 71 of the Act and as such it was binding on the Municipal Board, and the directions contained therein required the Municipal Board to fill up the post of Tax Inspector exclusively by promotion and not by direct recruitment. In making the appellant's appointment as a direct recruit, the Municipal Board acted in violation of the directions contained in the aforesaid government order, therefore, the appellant's appointment was rendered illegal. The High Court upheld the order of the Prescribed Authority on these findings. Learned counsel for the appellant urged that the directions contained in the Government Order dated April 10, 1950 were ultra vires the State Government's powers under Section 71 of the Act. He placed reliance on *Rameshwar Prasad v. Municipal Board, Pilibhit 1*. The learned counsel further urged that the aforesaid decision was approved by two other learned Judges of the High Court in *Ram Kripal Garg v. State of U. P. 2* and *Inder Bahadur v. Municipal Board, Mirzapur 3* holding that the Government Order dated April 10, 1950 was ultra vires. These decisions were placed before the learned Single Judge but he did not agree with the view taken in the aforesaid decisions instead he took a contrary view in holding that the Government Order dated April 10, 1950 was valid and it required the Municipal Board to fill up the post of Tax Inspector only by promotion. It is well settled principle of judicial discipline as has been reiterated in a number of decisions of this Court that if a Single Judge, disagrees with the decision of another Single Judge, it is proper to refer the matter to a larger bench for an authoritative decision. But in the instant case the learned Judge acted contrary to the well established principles of judicial discipline in ignoring those decisions.

4. Section 71 of the Act before its amendment in 1964 did not confer power on the State Government to issue any direction regulating the conditions of service of municipal employees. The view taken by the High Court in *Rameshwar Prasad case 1* and followed in other two cases, is correct. The High Court placed reliance on the Government Orders dated April 27, 1957, December 9, 1959 and January 30, 1972 in holding that the directions contained in Government Order dated April 10, 1950 were binding on the Municipal Board. We have gone through the aforesaid government orders and notifications but we find nothing therein to clothe the Government Order dated April 10, 1950 with statutory character. A government order declared ultra vires by High Court could not be revived by any subsequent government order without there being any statutory power for the same. Moreover the aforesaid government orders and notifications do not contain any direction requiring the Municipal Board to fill up the post of Tax Inspector exclusively by promotion. The High Court committed error in upholding the Commissioner's order.

5. We have closely scrutinised the Government Order dated April 10, 1950 (Annexure 1 to the petition) with the assistance of the counsel for the parties. But even after conceding supervisory power to the State Government to issue directions laying down conditions of service of municipal employees, we do not find any directions therein requiring a Municipal Board to fill the post of Tax Inspector only by promotion and not by direct recruitment. Learned counsel for the respondent placed reliance on paragraphs 5 and 6 of the government order in support of his contention that the post of Tax Inspector was required to be filled by promotion only. Paragraphs 5 and 6 of the government order read as under :

"5. In the case of the posts mentioned in the annexure promotions should, as a rule, be made from the lower to the higher posts or grades, as the case may be, in the same class of service subject to the general orders contained in the above paragraphs. The prevailing practice of transferring at random officials in one class of service to another should be stopped.

6. When direct recruitment to any post specified in the annexure had to be made it will be governed by the educational qualifications shown therein. Recruitment to posts from outside should, however, as far as possible be made by inviting applications through advertisement in the press and making a selection therefrom preferably by means of a competitive test. Local bodies may also be advised to form a committee consisting of the Chairman or the President, the Executive Officer or the Secretary, as the case may be, and the principal administrative officer of the department concerned, to make a selection from among the applicants for a vacant post by interviewing after a competitive test. The actual appointment will, however, be made by the competent authority".

6. In order to ascertain the correct scope of the aforesaid paragraphs it is necessary to refer to the entire content of the order. It appears that the U. P. Pay Committee made certain recommendations prescribing minimum qualifications in respect of employees of local bodies. The State Government accepted the recommendations of the Pay Committee by its Resolution dated March 29, 1949 and in pursuance thereof it issued the Government Order dated April 10, 1950 prescribing minimum qualifications for the employees of local bodies mentioned in the schedule to the order which included the post of Tax Inspector. Paragraph 2 of the order directed that future vacancies on the promotion post will not ordinarily be given from a lower to higher post unless the officials holding the lower post, possess the requisite educational qualifications prescribed for the higher post. Paragraph 3 directed that the posts of Head Clerks or Office Superintendent should be filled by promotion only from among the educationally qualified Head Clerks. It further directed that under no circumstances the posts of Head Clerks or Office Superintendent be filled by direct recruitment from outside. Paragraph 4 directed the Municipal Boards to discontinue the posts of Sectional Head Clerks and to create posts of Office Head Clerks. Paragraphs 7 and 8 of the order do not contain any directions with regard to the question of promotion. Paragraph 5 as quoted earlier directed that promotion as a rule should be made from the lower to the higher post or grade in the same class of service subject to the directions contained in other paragraphs of the order which means subject to the employee possessing the minimum qualifications prescribed for the higher post and the higher post should not be filled by transferring employees belonging to other class of service. Paragraph 6 directed that in case of direct recruitment to any post as specified in the annexure of the order it should be governed by the educational qualifications prescribed in the order and recruitment should be made in accordance with the procedure prescribed therein by constituting a committee and inviting applications. Paragraphs 5 and 6 as quoted above do not contain any directions requiring Municipal Board to fill the post of Tax Inspector exclusively by promotion. Though paragraph 3 as already noted directed that under no circumstance the post of Head Clerk or Office Superintendent should be filled up by the direct recruitment from outside, no such direction for the post of Tax Inspector was issued, therefore it was open to the Municipal Board to make appointment to the post of Tax Inspector either by direct recruitment or by promotion.

7. In the instant case, the Municipal Board, Janapur gave opportunity to its employees working in the revenue class of service to appear for selection to the post of Tax Inspector in competition with outsiders. Respondent 3 however, did not avail the opportunity for which he himself is to be blamed. The Municipal Board, in our opinion, acted within its jurisdiction in making appointment to the post of Tax Inspector by direct recruitment. The Commissioner, as well as the High Court committed error in taking a contrary view. Subsequently, the Act was amended and the statutory rules i. e., the U. P. Palika Centralised Service Rules have been framed regulating the conditions of service of municipal employees and appointment to the post of Tax Inspector is regulated by statutory rules.

8. The High Court committed serious error in upholding the order of the government dated February 13, 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.

9. We accordingly, allow the appeal and set aside the order of the High Court as well as the Commissioner.

10. There will be no order as to costs.

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