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**(2005) 4 AWC 3680 : (2005) 2 ESC 1466 : (2005) 2 UPLBEC 1443**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 30418 of 1999

| | |
|---|---|
| Amin Ullah and Ejaj Ahmad | APPELLANT |
| Vs | |
| Director, Ayurvedic and Unani Services, Regional Ayurvedic Evam Unani Officer, Medical Officer, Government Ayurvedic Hospital and Medical Officer, Government Ayurvedic Hospital | RESPONDENT |

**Date of Decision:** April 6, 2005

**Citation:** (2005) 4 AWC 3680 : (2005) 2 ESC 1466 : (2005) 2 UPLBEC 1443

**Hon'ble Judges:** Shishir Kumar, J

**Bench:** Single Bench

**Advocate:** Satya Prakash, S.M.A. Kazmi and Parvez Alam, for the Appellant; M.C. Chaturvedi, Addl. C.S.C., S.S. Sharma and Sardeep Mukherjee, S.C., for the Respondent

**Final Decision:** Dismissed

**Judgement**

Shishir Kumar, J.
By means of the present writ petition, the petitioners have approached this Court for issuing a writ of certiorari quashing

the order dated 15.5.1999 passed by Director, Ayurvedic and Unani Services U.P. Lucknow, and the order of communication dated 8.6.1999 of

Regional Ayurvedic and Unani Officer, Mau (Annexures 5 and 6 to the writ petition) and for issuing a writ in the nature of mandamus commanding

the opposite parties not to implement the orders dated 15.5.1999 and 8.6.1999 and further issuing a writ in the nature of mandamus directing the

respondents to permit the petitioners to continue on their posts as Sweeper-cum-Chaukidar in hospitals and to pay their regular salary to the

petitioners as well as the arrears of salary, which is due since 1995.

2. The fact arising out of the present writ petition is that the names of the petitioners were enrolled in the Employment Exchange, Mau. The

opposite party No. 2 sought the names for making appointment on the post of Sweeper-cum-Chaukidar in Regional Ayurvedic and Unani

Hospitals, Mau for their posting in various Ayurvedic and Unani Government Hospitals, Mau. The Employment Officer recommended the name of

103 candidates including the petitioners. The Selection Committee held the selection and recommended the names including the petitioners for

making appointment on the post of Sweeper-cum-Chaukidar. It has also been stated that the then Director, Dr. Shiv Raj has also given permission

to make the appointments on the post of Class IV employees vide order dated 23.2.1995. In pursuance of the recommendation of the Selection

Committee, the appointment letters were issued and the appointment letter dated 7.5.1995 have been annexed as Annexures 3 and 4 to the writ

petition. That in pusuance of the appointment letter, the petitioners have joined and regularly worked in the department on the post of Sweeper-

cum-Chaukidar. The salary to the petitioners were not paid by the opposite party No. 2 then the petitioners have approached this Court by way of

Writ Petition No. 30616 of 1995 (Lal Chand Ram and Ors. v. District Magistrate, Mau and Ors.). This Court on 3.11.1996 was pleased to pass

the following orders-

In the meanwhile, respondent No. 2 is directed to decide the representation filed by this petitioner for ventilation of his grievance by means of

speaking order within a period of two months from the date a certified copy of this order is produced before him.

3. In spite of the aforesaid orders passed by this Court, the Director did not pass any order and no counter affidavit was filed. Ultimately, on

1.5.1998, the aforesaid writ petition was disposed of with the direction to the Director to pass appropriate orders within a period of two months

from the date the certified copy is produced. It has been submitted that the copy of the aforesaid order dated 1.5.1998 was submitted before the

opposite party No. l along with their representations. The opposite party No. 1 sought report from District Magistrate, Mau, who directed the

Settlement Officer, Mau to conduct an enquiry and submit a report. On 20.6.1995, the Settlement Officer Consolidation, Mau without giving any

notice or affording any opportunity to the petitioners submitted an exparte report to the District Magistrate, Mau and the District Magistrate, Mau

on 10.6.1997 has sent a letter along with report of the Settlement Officer, Mau dated 20.6.1995 to the opposite party No. 1. On the basis of the

aforesaid reports the opposite party No. 1 has passed exparte order without any notice or opportunity to the petitioners and the opposite party

No. 1 vide order dated 15.5.1999 has cancelled the appointments of the petitioners. The copy of the order dated 15.5.1999 has been filed as

Annexure 5 to the writ petition. In pursuance of the order of the opposite party No. 1 dated 15.5.1999, the Regional Ayurvedic and Unani

Officer, Mau, Respondent No. 2 has passed an order dated 8.6.1999 terminating the services of the petitioners by a common order and also

directed to the respective medical officers where the petitioners are posted to relieve them from their post. A copy of the same has been filed by

the petitioners as Annexure 6 to the writ petition. Petitioner submit that the appointment of the petitioners were made after approval by the Director

dated 23.2.1995 and the same is still available but the same has not been verified from the record. Petitioners submit that against the order

mentioned above, that one Lal Chandra Ram and others has filed a Writ Petition No. 28330 of 1999 and this Court on 16.7.1999 was pleased to

pass the following orders:-

Heard Sri Satya Prakash, learned counsel for the petitioners.

The petitioners were appointed in class (SIC) cadre in Government Ayurvedic and Unani Hospital District Mau. The services of the petitioners

have been terminated by order dated 15.5.1999 passed by respondent No. l Director Ayurvedic and Unani Services U.P. Lucknow. This order

has been communicated by respondent No. 2 on 8.6.1999. The learned counsel for the petitioners pointed out that the petitioners are still working

on the post they were appointed.

Let a counter affidavit be filed within six weeks. List thereafter.

In the meantime operation of the order dated 8.6.1999 which was passed in consequence of the order dated 15.5.1999, Annexure 10 to the writ

petition, shall remain stayed.

4. Petitioners submit that the petitioners are still working but he salary to the petitioners are not being paid and the opposite party No. 1 has got no

jurisdiction to cancel the appointment of the petitioners without afterding an opportunity to the petitioners on the ground that out of four members

of the Selection Committee, only three members conducted the selection. Petitioners farther submit that the opposite party No. 2 sought names

from the employment exchange and all the petitioners come in the category of reservation, therefore, according to Rules 1994 and the rules of

Reservation of Scheduled caste the petitioners were appointed on the post of Swqeeper-cum-Chaukidar and no general category candidate was

appointed on the said post, therefore, the opposite party No. 1 was not legally justified in cancelling the appointment of the petitioners. Further

case of the petitioners is that as the alleged enquiry, which was conducted and submitted to the District Magistrate, Mau after a lapse of two years,

on the basis of the aforesaid report, the appointment of the petitioners have been cancelled, the order is liable to be set aside only on the ground

that no opportunity of hearing to the petitioners were given to produce the evidence before the Enquiry Officer and the copy of the enquiry report

has also not been given to the petitioners.

5. The writ petition was entertained and time was granted to the respondents to file a counter affidavit. A detailed counter affidavit has been filed

and in the counter affidavit, it has clearly been stated that the letter dated 23.2.1995 has not been sent by the Director and without any permission,

no appointments can be made. It has been stated in Para 6 of the counter affidavit that the representation of the petitioners have already been

decided and as the selection dared 7.5.1995 has already been cancelled, therefore, the petitioners are not entitled for any relief. They can only be

given the salary of the period of which the petitioners have worked. In the counter affidavit, a copy of the order dated 15.5.1999 has been

annexed as Annexure 1 to the counter affidavit. It has clearly been stated that the appointments of the petitioners who are alleged to have beer

appointed on 7.5.1995, an enquiry to that effect has been made and the then Director has directed the District Magistrate to make an enquiry. An

enquiry report has been submitted by the District Magistrate, then it has been found that the appointments of the petitioners were not proper and in

accordance with law and no letter was sent by the then Director, which has been alleged to be dated 21.2.1995, therefore, it appears that the

aforesaid letter is a forged one. It has also been stated that the four officers were nominated for Selection Committee but in the Selection

Committee only three persons were present and one was absent, therefore, it cannot be said that the selection of the petitioners is in accordance

with law. A finding to this effect has also been given that amongst the eight candidates selected, five are scheduled castes and three are of

backward class, though, all the posts were reserved for scheduled castes only. A finding to that effect has also been arrived that on the date of

interview, only 13 candidates appeared and according to rules, at least two or three candidates should be there on one vacancy and 7.5.1995 was

Sunday and on the same day the appointment letter was issued though on that date there was a holiday, therefore, it appears that the proper

procedure as provided has not been followed. As such, after due enquiry the selection has been cancelled. The respondents has also come up with

the case that when the petitioners were selected, at that time the Director has made various illegal appointments without following the procedure

and an enquiry to that effect was conducted and it has been found that various illegal appointments have been made. The Standing Counsel further

submits that it is well settled that if the appointment has been obtained by playing fraud or the proper procedure provided under the rules have not

been followed, the same can be cancelled and it is not necessary to give an appointment if the basis of appointment and selection is based on fraud.

It has also been submitted that proper enquiry has been done and after enquiry into the matter in detail and after submission of the report, the

appointments of the petitioners has been cancelled.

6. The respondents have placed a reliance upon a judgment of this Court reported in 2001(4) Educational and Service Cases, 1652 Upendra

Nath v. State of U.P. and Ors. The Hon''ble Single Judge has taken a view that if some illegality has been committed in the appointment, the

appointment is void ab initio. The, Hon''ble Single Judge has placed reliance upon a Division Bench judgment of this Court in Special Appeal No.

386 of 1997 Rakesh Kumar v. State of U.P. The Hon''ble Single Judge has given a opinion that ""In our opinion, the opportunity of hearing could

only be required to be given when the appointment is not void ab initio. In the present case as already stated above, the appointment can only be

made on the recommendations made by the Commission. The appointment of the appellant was void from the very beginning.

7. I have heard learned counsel for the petitioners and learned Standing Counsel.

8. Taking into considerations the facts and circumstances of the present case, it is well settled that if the appointment has been made by an

authority who is not competent, the appointment will be treated to be void ab-initio and if in the selection process proper procedure as provided

has not been followed, then the appointed person has got no right to post and cannot claim as a matter of right that before cancelling the

appointment the opportunity is necessary. After perusal of the report as well as the order dated 15.5.1999, it is clear that the selection of the

petitioners were not by duly constituted Selection Committee as only three members out of four members have participated and only 13 candidates

have participated in the interview though there was eight posts for purposes of appointment. It is also clear that no permission was taken by the

Director to make appointments. The alleged letter of permission by the petitioners is not available in the office of the respondents, as such, it will be

presumed that the alleged document has not been issued from the office of the Director and no prior approval or permission was obtained by the

Director for appointment of the petitioners. It is well settled in law that if the appointments have been made without permission of the competent

authority and without permission of the competent authority no appointments can be made. It is well settled that if proper procedure as provided

under the law or rules has been followed, then total selection is vitiated. In such a case, the affected person is not entitled for any notice or

opportunity as held by this Court that if such types of appointments have been made that will be treated to be void ah initio.

9. In view of the aforesaid fact, I find no merit in the writ petition. The writ petition is devoid of merits and is hereby dismissed. No order as to

costs.

10. Interim order, if any, is discharged.