

(2004) 01 AHC CK 0077

Allahabad High Court

Case No: Special Appeal No. 493 of 2003

Arvind Kumar Pipal and
Others

APPELLANT

Vs

Commissioner, Trade
Tax and Others

RESPONDENT

Date of Decision: Jan. 30, 2004

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2004) 2 AWC 1664 : (2004) 2 UPLBEC 1473

Hon'ble Judges: Tarun Chatterjee, C.J; Ashok Bhushan, J

Bench: Division Bench

Advocate: R.G. Padia and Prakash Padia, for the Appellant; Ranvijai Singh and S.C., for the Respondent

Final Decision: Dismissed

Judgement

Ashok Bhushan, J.

This special appeal has been filed against the Judgment dated 20th May. 2003 of a learned Judge by which Writ Petition No. 1815 of 2003 filed by the appellants challenging the order dated 3rd January, 2003 passed by the Deputy Commissioner (Administration), Trade Tax, Aligarh has been dismissed.

2. Facts giving rise to this appeal, briefly stated, are; Assistant Commissioner (Administration), Trade Tax, Aligarh issued an advertisement inviting applications for filling up seven backlog vacancies of class IV from amongst scheduled caste candidates. In response to advertisement 3559 applications were received, 2209 candidates were called for interview including the appellants. The selection committee was headed by one Sri B. D. Upadhyaya, Assistant Commissioner/Appointing Authority along with three other members. The appointment orders dated 23rd September, 2002 were issued to the appellants offering temporary appointment. In pursuance of the appointment orders, the

appellant Nos. 1, 2 and 4 to 7 submitted their joining on 24th September, 2002 whereas appellant No. 3 submitted his joining on 10th December, 2002. Serious complaints were received regarding selection proceedings, which were enquired by the department. The Deputy Commissioner, Trade Tax immediately after selection asked for comments from members of the selection committee and intimated the same to the higher authorities of the department. The Commissioner, Trade Tax, U.P., Lucknow also sought permission of the State Government to cancel the appointment proceedings. A review selection committee was also convened on 2nd January, 2003 for reconsidering the selection process and the appointments. The members of the review selection committee after examining the records were satisfied that irregularities have been committed in selection process and recommended for cancelling of all the seven appointments recommended between 18th September, 2002 to 23rd September, 2002. After receiving the recommendation of the review selection committee dated 2nd January, 2003 the selection and consequential appointments were cancelled vide order dated 3rd January, 2003. The writ petition was filed by the appellants challenging the said order dated 3rd January, 2003 which was dismissed vide judgment dated 20th May, 2003 against which present special appeal has been filed.

3. Dr. R. G. Padla, senior advocate, appearing for the appellants raised following submissions in support of the appeal:

"(i) The appellants having joined in pursuance of selection, they were entitled for notice and opportunity before cancellation of their appointments ; the order dated 3rd January, 2003 cancelling the appointment of appellants having been passed without notice and opportunity, is liable to be set aside. The learned single Judge erred in holding that no opportunity was necessary in the facts of the present case. Judgment in [Union of India and Others Vs. O. Chakradhar](#), relied by learned Judge was not attracted in the facts of the present case since in the above case the select list was cancelled after the report of C.B.I.

(ii) The State Government vide its order dated 20th December, 2002 (Annexure-6 to the affidavit filed in support of stay application) gave its approval to cancel the appointment by giving only one reason. The State Government having given only one reason in its order dated 20th December, 2002, i.e., the appointments were made without preparation of merit list, it was not open to the Deputy Commissioner to give other reasons for cancellation of the appointments."

4. The counsel for the appellants placed reliance on several judgments of the Apex Court and this Court in support of the above submissions, which shall be referred to while considering the submissions in detail.

5. Sri Ranvijai Singh, learned standing counsel, appearing for the respondents, supported the judgment of learned single Judge and submitted that entire selection process was vitiated due to manipulations and favouritism shown in the process. The individual

candidates were not entitled for any opportunity. The learned standing counsel in support of his submissions placed reliance on several judgments of the Apex Court and of this Court which shall be referred to while dealing with the submissions in detail.

6. We have considered the submissions of both the parties and have perused the materials available on the record.

7. The principal submission raised by counsel for the appellant is based on violation of principle of natural justice in ordering cancellation of the appointments. Elaborating his submission, Dr. Padia, contended that the appellants were issued appointment letters, they having joined their respective posts and working, their appointments could not have been cancelled without giving them notice and opportunity. Dr. Padia, in support of his submission, placed reliance on judgment of Apex Court in [Shridhar Vs. Nagar Palika, Jaunpur and Others](#), ; [Shrawan Kumar Jha and others Vs. State of Bihar and others](#), ; [Basudeo Tiwary Vs. Sido Kanhu University and Others](#), ; [Vishwamitra Yadav Vs. U.P. State Public Service Tribunal and Others](#), ; [Muneshwar Dayal Vs. Zila Karyakram Adhikari, Bijnor and others](#), ; [Jawed Ahmad and others Vs. State of U.P. and other](#), and [Sanjeev Kumar and others Vs. State of U.P. and another](#),

8. In Shridhar"s case (supra), the appointment on the post of Tax Inspector was cancelled by the prescribed authority, i.e., Commissioner on the representation of senior most Tax Collector who was working in the Municipal Board and claimed his right of promotion on the said post. The Commissioner cancelled the appointment of the appellant without giving any notice. The writ petition filed by the appellant was dismissed by the High Court holding that appointment of appellant was made in violation of Government order 10.4.1950. The Apex Court in above case held that it is an elementary principle of natural justice that no person should be condemned without hearing. The Apex Court in the aforesaid judgment held in paragraph 8 :

"8. The High Court committed serious error in upholding the order of the Government, dated 13.2.1980 by 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 is 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. In Shrawan Kumar Jha"s case (supra) the Apex Court held that in the facts and circumstances of that case appellant should have been afforded opportunity of hearing before cancellation of appointment. In Basudeo Tiwary"s case (supra), appellant was

appointed as lecturer vide order dated 4th February, 1986. The Vice-Chancellor directed for termination of services of the appellant which was communicated to the appellant on 7th May, 1993 that Syndicate had no power to make appointment on the post of lecturer then, his appointment was not lawful. The Apex Court considering the provisions of Section 35 (3) of Bihar Universities Act held that in order to arrive at a conclusion that an appointment is contrary to the provisions of Act, Statutes, Rules or Regulations, a finding has to be recorded and unless such a finding is recorded, the termination cannot be made. The Apex Court further held that to arrive at such a finding necessarily enquiry will have to be held and in holding such an enquiry the person whose, appointment is under enquiry will have to be noticed.

10. Any order affecting the rights of a person has to be made in consonance" with the principles of natural justice. An order taking away rights of a person without complying the principle of natural justice has been held to be illegal. The principle of natural Justice cannot be limited in any straitjacket formula. Necessity of hearing a person while taking an action depends on facts of each case. With regard to cancellation of entire selection, there may be various reasons and grounds, for example, for cancelling a selection process which does not culminate into appointment giving right to a person, it is well settled, that individual notice to the candidates selected is not normally necessary, however, when after selection an appointment is issued, the person acquires right to hold the post and for cancelling such appointment giving of notice is a normal rule. Cancellation of appointment after selection also can be of different magnitude and nature. When a cancellation of appointment of an individual appointee is made on certain grounds concerning the said individual, opportunity has to be afforded to the person whose appointment is sought to be cancelled. Shridhar's case (supra) is a case of that category in which appointment of one individual was sought to be cancelled on the representation by another person that he was entitled for promotion. There may be cases in which appointment of all the candidates made in one selection are sought to be cancelled, difficulty arises in applying the principle of natural justice in such cases where entire selection culminating into appointment is sought to be cancelled. Whether opportunity is required in a case where entire selection is being cancelled has been considered by the Apex Court in several cases.

11. In [Krishan Yadav and another Vs. State of Haryana and others](#), the entire selection proceedings on the post of Taxation Inspectors were under consideration. In above case after selection candidates have Joined and had worked for about four years. Following was held in paragraph 20 of the said judgment :

"20. In above circumstances, what are we to do? The only proper course open to us is to set aside the entire selection. The plea was made that innocent candidates should not be penalised for the misdeeds of others. We are unable to accept this argument. When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place as "fraud unravels everything". To put it in other words, the entire selection is arbitrary. It is that which is faulted and not the individual candidates.

Accordingly we hereby set aside the selection of Taxation Inspectors."

12. In [Biswa Ranjan Sahoo and others Vs. Sushanta Kumar Dinda and Others](#), the Apex Court held that in case of selection of an individual if the selection is not found correct in accordance with law, necessarily, a notice, is required to be issued but in case of mass malpractice no fruitful purpose may be served by issuing notice to the persons who were said to be selected. Following was laid down in paragraph 3 of the aforesaid Judgment :

"3. A perusal thereof would indicate the enormity of malpractices in the selection process. The question, therefore, is whether the principle of natural Justice is required to be followed by issuing notice to the selected persons and hearing them? It is true, as contended by Mr. Santosh Hegde, learned senior counsel appearing for the petitioners, that in the case of selection of an individual his selection is not found correct in accordance with law, necessarily, a notice is required to be issued, an opportunity be given. In a case like mass mal-practice as noted by the Tribunal as extracted hereinbefore, the question emerges, whether the notice was required to be issued to the persons affected and whether they needed to be heard? Nothing would become fruitful by issuance of notice. Fabrication would obviously either be not known or no one would come forward to bear the brunt. Under these circumstances, the Tribunal was right in not issuing notice to the persons who are said to have been selected and given selection and appointment. The procedure adopted are in flagrant breach of the rules offending Articles 14 and 16 of the Constitution."

13. The judgment of Basudeo Tiwary's case (supra), relied by learned counsel for the appellant was also a case of an individual lecturer whose appointment was sought to be cancelled on allegation that Syndicate was not competent to appoint him at the relevant time. The above case is not applicable in the facts of the present case where serious allegation regarding the entire selection process has been made. The case of Shrawan Kumar Jha (supra), was a case on its own facts, The Apex Court specifically said in that judgment that "in the facts and circumstances of this case, we are of the view that the appellants should have been given an opportunity of hearing before cancelling their appointments". The Division Bench judgment of this Court in Vishwamitra Yadav's case (supra) was a case of cancellation of promotion of an individual who was working as Play Organizer in Observation Home at Basti and was promoted vide order dated 28th June, 1994. The said case is not applicable in the present case. The case of Muneshwar Dayal (supra), decided by learned single Judge of this Court was also a case of Class IV employee who was regularised by order dated 25th October, 1994 but subsequently by order dated 2nd January, 1996 his services were terminated. The said case is also not attracted in the facts of the present case. In Jawed Ahmad's case (supra) a learned Judge of this Court had held that petitioners were selected for appointment on the post in question after following the procedure prescribed under Rules, they were lawfully appointed on the post and were discharging their duties and in that background of the abovesaid observations, this Court held that cancellation of the appointment without notice was bad. Sanjeev Kumar's case (supra) is again a judgment by learned single

Judge of this Court. In the aforesaid case services of the petitioners were terminated "as no longer required". The above case was not a case of cancellation of entire selection process on any ground.

14. The order dated 3rd January, 2003 which was impugned in the writ petition gives detail reasons for cancelling the entire selection. The order notices that although 3559 applications were received but only 2209 candidates were called and there was no decision of the selection committee for rejecting the applications of 1350 candidates. The order further records that in the board sheet marks were not given to 66 candidates by the Chairman/ appointing authority whereas other members of the Selection Committee gave marks to them. There was difference of marks with regard to several candidates. The board sheet with regard to several candidates was also changed. The order records that no merit list after compiling the marks of all the candidates secured in the interview was prepared and there are no signatures of the members of selection committee. The impugned order further notes that a review selection committee was constituted on 2nd January, 2003 and the selection committee after reviewing the selection process and considering all relevant facts recommended for cancellation of entire selection process and appointment. The selection committee which has earlier recommended the appointment having itself taken a decision to cancel the appointment after reconsidering the entire fact, it is clearly established that entire selection process was vitiated. The irregularities and illegalities committed in the selection process pertain to the entire selection process and were not confined to any individual candidate. In view of the above facts, in the present case, the decision of the respondents to cancel the appointments in pursuance of illegal and irregular selection process cannot be termed to be as arbitrary based on no valid reasons. No grounds have been made out to interfere with the decision of the competent authority to cancel all the appointments in exercise of jurisdiction of this Court under Article 226 of the Constitution. The learned single Judge rightly refused to interfere with the impugned order.

15. In above view of the matter, we are satisfied that in facts of the present case, individual notice was not required to be given to all the selected candidates and the decision of the authority cancelling all the appointments was based on valid reasons. The learned single Judge has rightly refused to interfere with the decision of authorities to cancel all the appointments.

16. Now coming to second submission of Dr. Padia that State Government having given only one reason in its letter dated 21st December, 2002 giving approval for cancellation of the appointments, authorities were not entitled to give additional reasons in the order dated 3rd January, 2003. The petitioners have impugned the order dated 3rd January, 2003 cancelling the appointment in the writ petition. The order dated 3rd January, 2003 has been passed by appointing authority after considering the departmental reports regarding entire selection process and after coming to the definite conclusions regarding illegality/irregularity in the process of selection, the appointing authority was within his jurisdiction to consider entire facts and circumstances and give reasons for its decision.

No error has been committed by the authorities in giving reasons for decision dated 3rd January, 2003. The appointing authority was not inhibited in any manner in giving reasons which were valid and genuine for cancelling selection. The letter of the State Government dated 20th December, 2002 was a communication to the Commissioner, Trade Tax communicating the approval of the State Government for cancelling the appointment. The mention of one reason while granting approval does not mean that State Government has held other reasons to be irrelevant. The submission of counsel for the appellant that appointing authority was not justified in giving reasons in order dated 3rd January, 2003 cannot be accepted. Dr. Padia tried to support his submission by judgment of Apex Court in [Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others](#). The said judgment is not attracted in the present case since it is not a case of giving any additional reason by way of counter-affidavit in the writ petition. The reasons for decision were mentioned in the order dated 3rd January, 2003 which was impugned in the writ petition. The second submission raised by counsel for the appellant has also no substance.

17. In view of foregoing discussions, we are satisfied that learned Judge did not commit any error in dismissing the writ petition filed by the appellant. We do not find any merit in this special appeal which is accordingly dismissed.

18. Parties shall bear their own costs.