

Before Adarsh Kumar Goel & Alok Singh, JJ.

SUNIL KUMAR,—Appellant

versus

GURDIAL SINGH AND OTHERS,—Respondents

LPA No. 39 of 2010 in CWP No. 588 of 2009

18th February, 2010

Constitution of India, 1950—Art. 226—Appointment to post of Peon in MC—Selection Committee interviewing, considering merit of candidates & recommending name of appellant—Son of Secretary of MC appointed—Whether High Court can substitute its own finding over decision of Selection Committee—Held, no — Father of appellant neither member of Selection Committee nor any role to play in process of selection—Merely because he conveyed decision of Selection Committee to employment exchange does not and cannot vitiate process of selection—Finding of Single Judge not sustainable in eyes of law—Appeal allowed.

Held, that learned Single Judge was justified in holding that both the candidates were matriculate, hence merit of the petitioner cannot be said to be less than respondent No. 5. This is well settled principle of law that this Court under Article 226 of the Constitution of India cannot substitute its own finding over the decision of the Selection Committee which is an expert body, unless and until some glaring mistake or bias is found.

(Para 7)

Further held, that undisputedly respondent No. 4 (father of the appellant) was not member of the Selection Committee. He had no role to play in the process of selection. Merely because he conveyed the decision of the Selection Committee to the employment exchange, does not and cannot vitiate the process of selection. Undisputedly, the Selection Committee has interviewed all the candidates and recommended the name of respondent No. 5-appellant for appointment. Hence, finding of learned Single Judge that everything was not fair, seems to be uncalled for.

(Para 8)

R. K. Malik, Sr. Advocate with Ashish Chaudhary, Advocate, *for the appellant.*

Ravinder Malik, Advocate, *for respondent No. 1.*

ALOK SINGH, J.

(1) The appeal has been preferred against the order of learned Single Judge dated 8th December, 2009 whereby the writ petition filed by respondent No. 1, was allowed.

(2) Brief facts of the case are that the Market Committee respondent No. 2 on 4th October, 2008 had issued an advertisement for one post of Peon and one post of Chowkidar for appointment from Scheduled Caste candidates only. Candidates for the aforesaid posts were called from Employment Exchange. Employment Exchange, Yamunanagar sent the names of 12 candidates for appointment to the post of Peon. Petitioner was one of the candidates sponsored by the employment exchange for the aforesaid post. He was interviewed on 27th October, 2008. *Vide* letter dated 4th November, 2008, respondent No. 4 intimated the Employment Exchange, Yamuna Nagar, that no candidate sponsored by it was found suitable for the said post. However, the petitioner came to know that his candidature was rejected being overage. It is alleged that he was not overage as on the date of interview, he was less than 45 years of age. It is further alleged that respondent No. 5 being the son of respondent No. 4 Jagdish Chand, Secretary, Market Committee, Mustafabad, District Yamunanagar, was appointed without considering the merit of the candidates. The reason of his rejection was stated to be contrary to eligibility criteria.

(3) The petitioner challenged the aforesaid action of the respondents by filing writ petition. The writ petition was allowed by learned Single Judge *vide* order dated 8th December, 2009 and appointment of respondent No. 5 as Peon was quashed. Through the present appeal respondent No. 5 has challenged the aforesaid order.

(4) Heard learned counsel for the parties and perused the record.

(5) Mr. R. K. Malik, learned senior counsel while placing reliance on the judgment of the Supreme Court in **Dalpat Abasaheb Solunke and others versus Dr. B.S. Mahajan and others (1)** argued that learned

(1) AIR 1990 S.C. 434

Single Judge was not competent to interfere with the decision taken by the Selection Committee. Hon'ble Supreme Court in Dalpat Abasaheb Solunke's case (supra) in paragraph 9 of the judgment has observed as under :—

“It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the Court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its Jurisdiction.”

(6) Learned Single Judge in the impugned judgment has observed as under :—

“It is not in dispute that respondent No. 5 is son of respondent No. 4, who is Secretary of the Market Committee and is the person who informed the Employment Exchange regarding the rejection of all the candidates sponsored by the Employment Exchange.

It also cannot be disputed that as per written statement the claim of the petitioner was rejected only on the ground that his village did not fall within the block of Market Committee which again could not be a ground in view of the fact that as per advertisement, candidates of block Mustafabad were to be considered, and the petitioner was from block Mustafabad.

The merit of the petitioner also cannot be said to be less than respondent No. 5, as both the candidates were matriculate. Petitioner has an experience of seven years of working, whereas respondent No. 5 has no experience.

In order to check whether the merit of the candidates was considered by the Selection Committee, record was seen. It is surprising to note that there is no proceeding of the Selection Committee record.

The resolution dated 27th October, 2008 is only record showing list of candidates who were sponsored by the Employment Exchange, and those who applied in pursuance to the advertisement issued.

The resolution was passed by the Chairman, Market Committee, wherein it has been mentioned that Committee had interviewed all the candidates, and unanimously recommended the name of respondent No. 5 for appointment.

There is no recommendation on record. The reading of the file confirms the fact that everything was not fair and is in fact no interview was conducted by the Selection Committee, nor any assessment was made of the candidates who appeared for interview.”

(7) In view of the judgment cited by learned counsel for the appellant in Dalpat Abasaheb Solunke’s case (*supra*), we are of the view that learned Single Judge was not justified in holding that both the candidates were matriculate, hence merit of the petitioner cannot be said to be less than respondent No. 5. This is well settled principle of law that this Court under Article 226 of the Constitution of India cannot substitute its own finding over the decision of the Selection Committee which is an expert body, unless and until some glaring mistake or bias is found.

(8) Undisputedly respondent No. 4, father of the appellant, was not member of the Selection Committee. He had no role to play in the process of selection. Merely because he conveyed the decision of the Selection Committee to the employment exchange, does not and cannot vitiate the process of selection. Undisputedly, the Selection Committee had interviewed all the candidates and recommended the name of respondent No. 5—appellant herein for appointment. Hence finding of learned Single Judge that everything was not fair, seems to be uncalled for.

(9) As far as finding of learned Single Judge that the petitioner was from Mustafabad and his candidature was rejected on the ground that his village did not fall within the Block Market Committee, is against the record. Undisputedly, the petitioner was interviewed and his candidature was considered by the Selection Committee and his candidature was never rejected. However, the petitioner was not found fit to be selected instead the appellant was found fit for the selection.

(10) In view of the above, the judgement of learned Single Judge cannot be sustained in the eyes of law. Accordingly, the appeal is allowed. The writ petition is dismissed with no order as to costs.

R.N.R.