

SHRIDHAR SON OF RAM DULAR  
v.  
NAGAR PALIKA, JAUNPUR AND ORS.

A

NOVEMBER 17, 1989

[K.N. SINGH AND N.M. KASLIWAL, JJ.]

B

*U.P. Municipalities Act, 1916: Section 71—Scope of—Whether confers power on State Govt. to issue directions, regulating the conditions of service of Municipal Employees.*

*Tax Inspector—Appointment of—Whether to be exclusively filled by promotion—Government's Order dated 10.4.50—Applicability of.*

C

*Practice and Procedure: Judicial discipline—Single Judge disagreeing with another Single Judge—Matter should be referred to a Larger Bench.*

D

*Administrative Law—Principles of natural justice—Violation of—Effect.*

The Municipal Board, Jaunpur invited applications for the post of Tax Inspector. The employees working in the Revenue Department of the Municipal Board were eligible for consideration alongwith the outsiders. Respondent No. 3, the seniormost Tax Collector in Municipal Board, was called for interview but he refused to appear on the plea that the post of Tax Inspector should be exclusively filled by promotion and being the seniormost Tax Collector he should be promoted without considering any outsider. Ignoring his claim the Municipal Board selected and appointed the appellant to the post of Tax Inspector. Respondent No. 3 represented to the Commissioner challenging the appellant's appointment. The Commissioner set aside the order of the Municipal Board and cancelled the appellant's appointment holding that pursuant to the directions contained in the Government's Order dated 10.4.50, Respondent No. 3 was entitled to promotion. The appellant challenged the Commissioner's order before the High Court by filing a writ petition. Disagreeing with the decision of another Single Judge, a Single Judge of the High Court 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's Order dated 10.4.50. Hence this appeal.

E

F

G

H

A **Allowing the appeal and setting aside the order of the High Court, this Court,**

**HELD: 1. The orders of the High Court and the Commissioner are not sustainable in law. [208B]**

B **1.1. It is a well-settled principle of judicial discipline 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 Single Judge of the High Court acted contrary to the well established principles of judicial discipline in ignoring those decisions. [205B-C]**

C **2. Section 71 of the U.P. Municipalities Act, 1916 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. [205D]**

D ***Ramesher Prasad and Ors. v. Municipal Board, Pilibhit*, A.I.R. 1958 All. 363; *Ram Kripal Garg v. State of U.P.*, Writ Petition No. 4556 of 1965 dated 16.9.66 and *Inder Bahadur v. Municipal Board, Mirzapur and Ors.*; Writ petition No. 235 of 1970 dated 20.10.1972 approved.**

E **2.1 Even after conceding supervisory power to the State Government to issue directions laying down conditions of service of Municipal employees, there are no directions in the Government Order dated 10-4-50 requiring a Municipal Board to fill the post of Tax Inspector only by promotion and not by direct recruitment. Therefore, it was open to the Municipal Board to make appointment to the post of Tax Inspector either by direct recruitment or by promotion. [205G; 207D]**

F **2.2 In the instant case, the Municipal Board gave opportunity to its employees working in the revenue class of service to appear for selection in competition with outsiders. Respondent No. 3 however did not avail the opportunity for which he himself is to be blamed. The Municipal Board acted within its jurisdiction in making appointment to the post of Tax Inspector by direct recruitment. [207E]**

G **2.3 A Govt. Order declared *ultra vires* by the High Court, could not be revived by any subsequent Govt. Order without there being any statutory power for the same. [205E]**

H **3. 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 an opportunity of hearing to him. Any order passed in violation of the principles of natural justice is rendered void. In the instant case, 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 without giving any notice or opportunity to him. [207G-H; 208A]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2967 of 1986.

From the Judgment and Order dated 28.7.1986 of the Allahabad High Court in W.P. No. 1793 of 1980.

Satish Chandra, R.B. Mehrotra, S.K. Mehta, Atul Nanda and Aman Vachher for the Appellant.

J.M. Khanna, R.B. Misra and Ms. Anil Katiyar for the Respondents.

The Judgment of the Court was delivered by

**SINGH, J.** 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.

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 No. 3 who was the senior most 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

A him to the post of the Tax Inspector by the order dated 11.3.78. Respondent No. 3 thereafter filed a claim petition before the Services Tribunal constituted under the U.P. Public Services Tribunals Act, 1976 but subsequently he withdrew the same on 23.12.79. 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 13.2.80 set aside the order of the Municipal Board and cancelled the appellant's appointment on the ground that the Respondent No. 3 was entitled to promotion in pursuance to the directions contained in the Government Order dated 10.4.50. The appellant filed a writ petition under Article 226 of the Constitution before the High Court challenging the order of the Commission. 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 10.4.50. Hence this appeal.

D 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 10.4.1950 the post of 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 10.4.50 had been issued by the State Government in exercise of its supervisory powers under s. 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 10.4.50 were *ultra vires* the State Government's powers under s. 71 of the Act. He placed reliance on *Ramesher Prasad and Other v. Municipal Board, Pilibhit*, AIR 1958 All. 363. 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.*, Writ Petition No. 4556 of 1965 dated 16.9.66 and *Inder Bahadur v. Municipal Board, Mirzapur and Others*, Writ Petition No. 235 of 1970 dated 20.10.72 holding that the Government Order dated 10.4.50 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 10.4.50 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.

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 *Ramesher Prasad* case and followed in other two cases, is correct. The High Court placed reliance on the Government Orders dated 27.4.57, 9.12.59 and 30.1.72 in holding that the directions contained in Government Order dated 10.4.50 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 10.4.50 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.

We have closely scrutinised the Government Order dated 10.4.50 (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:

A "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 transfer-  
ring at random officials in one class of service to another  
B should be stopped.

C 6. When direct recruitment to any post specified in the  
annexure had to be made it will be governed by the educa-  
tional qualifications shown therein. Recruitments 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 be 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  
D concerned, to make a selection from among the applicants  
for a vacant post by interviewing the after a competitive  
test. The actual appointment will, however, be made by the  
competent authority."

E In order to ascertain the correct scope of the aforesaid para-  
graphs 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  
F pursuance thereof it issued the Government Order dated 10.4.50 pre-  
scribing 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  
G 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 Suptdt. 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  
H 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 circumstances the post of Head Clerk or Office Suptdt. 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.

A

B

C

D

In the instant case, the Municipal Board, Jaunpur 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 No. 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.

E

F

The High Court committed serious error in upholding the order of the Government dated 13.2.80 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

G

H

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.

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

There will be no order as to costs.

T.N.A.

Appeal allowed.