

PETITIONER:
U.P. JAL NIGAM & ORS.

Vs.

RESPONDENT:
DURGA PRASAD SINGH & ORS.

DATE OF JUDGMENT 02/12/1994

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATACHALA N. (J)

CITATION:
1995 SCC Supl. (1) 440 JT 1995 (2) 348
1994 SCALE (5) 254

ACT:

HEADNOTE:

JUDGMENT:
ORDER

1. Leave granted in SLPs -No.8106 and 8264 of 1994.
2. These appeals by special leave arise from the judgments of the Division Bench of the High Court of Allahabad in W.P.No.72(SB)/94 and 114(SB)/94 dated 18.3.93. The facts are that the respondents were temporarily appointed on adhoc basis as Assistant Engineers in U.P. Local Self Govt. Engineering Department. On an earlier occasion, when writ petition was filed, the High Court adjudicated the dispute and had observed in its order dated January 14, 1993, in W.P.No.8504/87 at paragraphs 17 and 18 thereof thus :

"It follows from the conclusions arrived at above that the Jal Nigam must publish the merit list prepared by the Selection Committee and take necessary action for determining seniority according to that list. The merit list could not be produced by the Jal Nigam before the Tribunal. 'Mere are three alternatives. First that the original merit list is traced out by the Jal Nigam and is acted upon after considering objections, if any, which may be made against the same by the concerned Assistant Engineers. The second alternative is that if the original merit list is not traceable, an attempt is made to reconstruct and publish the same and after inviting objections thereto from the concerned Assistant Engineers and disposing of the objections action is taken according to law. The third alternative is that the copy of the merit list reduced by the claimants before the Tribunal is taken into account for determining seniority provided the genuineness of the merit list is accepted by all the persons affected by it after opportunity for the same

is given to them by the Jal Nigam in this behalf. In case none of these alternatives is feasible, there can no other court left open for the Jal Nigam except to constitute a fresh selection committee under the relevant rules for the purposes of drawing a fresh merit list of the parties concerned on the basis

349

of their performance as indicated by the available records upto December 26, 1977. The whole exercise must be completed within a period of two months.

After hearing the learned counsel for the parties at great length, I have come to the conclusion that the writ petition deserves to be allowed. The writ petition is accordingly allowed and the impugned judgment and order of the U.P. Public Services Tribunal dated 1.7.87 is hereby quashed. The impugned seniority list dated 26.12.1977 is also quashed. It is directed that the U.P. Jal Nigam shall draw a fresh seniority list in accordance with, the relevant service rules which were in force on 26.12.1977. The fresh seniority list shall be drawn within a period of two months from the date on which a copy of this order/judgment is produced before the competent authority. In drawing the seniority list, the U.P. Jal Nigam shall take into account the merit list alleged to have been prepared by the claimant before the aforesaid Tribunal provided the genuineness of the merit list is accepted by all the persons affected by it after opportunity for the same is given to them by the Jal Nigam in this behalf. In case the genuineness of the merit list is not accepted by the parties then it will be open to the Jal Nigam to constitute a fresh Selection Committee as required under the relevant rules for the purposes. Of determining the merit of the parties concerned, the fresh seniority list shall be finally prepared after giving an opportunity to the parties concerned to show cause against the same. In any case the whole exercise must be completed within a period of two months as already indicated. Parties to bear their own cost. Reasons will follow.

3. Since the record has not been traced out and the officers who dealt with the matter at the relevant point of time though were contacted, could not assist the U.P. Jal Nigam in tracing the record, they lodged the F.I.R. with the police to investigate into the persons responsible for the destruction of the record. Consequently, the last option given by the High Court in the said order viz. constitution of the fresh Selection Committee was resorted to and a Committee was accordingly constituted. The legality of the constitution of the committee, when came to be challenged in the writ petitions, by the impugned order of the Division Bench made in them, it is observed:

"We do not intend to go into detail as to whether the three alternatives as provided in the directions contained in paragraph 17 of the judgment were strictly followed and if not followed then for valid reasons or not; we proceed to examine the scope of the present

selection committee which has been ultimately constituted by the U.P. Jal Nigam. We are doing so specially for the reason that the matter relating to determination of seniority of the Assistant Engineers has been hanging fire for about two decade now and the promotion of certain Assistant Engineers on the basis of the impugned seniority list of December, 1977 are also in jeopardy. Therefore, assuming that the authorities could neither trace the previous merit list nor was consensus on the genuineness of the seniority list produced by some of the Assistant Engineers before the Public Service Tribunal, the only way out left for the authorities was to constitute a fresh selection committee under the relevant rules which they have done but then it appears that the authorities have ignored the rider that this merit list has only to be reconstituted on the basis of their performance as indicated by the available record upto December 1977 and no new material could be added. It has nowhere been stated by the Jal Nigam either in the

350

counter affidavit or during the course of the arguments that since records of the concerned Assistant Engineers who had participated in the selection committee of March 1976 as produced before the selection committee are not available today. In these circumstances, the authorities have clearly acted contrary to the directions issued by this Court by attempting to hold fresh interview and assess the Assistant Engineers on the basis of their present performance.

4. Accordingly, a mandamus has been issued directing the appellant to re-do the merit list of only of such Assistant Engineers whose services were regularised by the selection committee constituted in March, 1986, on the basis of their performance as indicated by the available records upto December 26, 1977. This order is now under challenge.

5. The facts stated, would clearly indicate that the record relating to the relevant period has been destroyed and the admission in the affidavit filed by the respondent in an interim application itself clearly indicates that the fresh selection list was only a tentative list not made even by the Department but by some others. In the interim application, the actual averment has been made at page 37 thus:-

"That only by a notice dated 23.8.1993, the U.P. Jal Nigam had circulated the partial merit list filed by the claimants in the U.P. Public Services Tribunal and invited objections.

6. It is clear that a merit list filed, had obviously been made by some of the parties and produced before the Tribunal and when it was circulated the adversely affected persons had objected to that a merit list, as well as its genuineness. In consequence, the list was ignored and a committee came to be appointed. The appellants have also specifically stated in the counter affidavit filed in the High Court that after investigation to dig out the record, they could not trace out the record and so they lodged an F.I.R. for investigation as to the persons responsible for

destruction of the record and the matter is under investigation. Under these circumstances, the appellants obviously had chosen the last option given by the High Court in the earlier order and constituted a fresh selection committee to consider the claims of the candidates for preparation of the inter se seniority in the order of merit. Under these circumstances, the High Court was not right in issuing the writ of mandamus pointed above.

7. The appeal is accordingly allowed. It is needless to mention that the committee would go into the question of inter-se seniority and prepare the list according to merit and give the report within a period of two months from the date of the receipt of this order. It is again needless to mention that the police would make a thorough investigation into the persons responsible for destruction of the record and take appropriate action according to law. The writ petitions stand dismissed.

S.L.P. NO.9364/94 :- The petition is dismissed as withdrawn.
353