



\$~1 (Appellate)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RSA 117/2016

UNION OF INDIA & ANR Appellants
Through: Mr. Vikrant N. Goyal, Adv.

versus

URMILA DEVI & ORS Respondents
Through: Ms. Santwana Agarwal with
Mr. Umesh Kumar, Adv. for Respondents 1
and 3

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

% **23.05.2022**

1. This second appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) assails the judgement dated 20th October, 2015, passed by the learned Additional District Judge (“the learned ADJ”) in RCA 8/2015 (*U.O.I & Ors v. Urmila Devi & Ors*), whereby the learned ADJ has affirmed the judgment/order dated 22nd December, 2012 passed by the learned Senior Civil Judge (“the learned SCJ”) in Suit 967/06/99 (*Urmila Devi and Ors. v. U.O.I & Ors.*).

2. The respondents were registered with the Employment Exchange, Delhi for appointment as “*Safai Walas*”.



3. Consequent to release of 91 vacancies of *Safai Walas* by the Army Headquarters *vide* letter dated 4th May, 1995, an exercise for recruitment of the said 91 *Safai Walas* was undertaken by the office of Respondent 2. Even after the said recruitment exercise was undertaken, 20 sanctioned posts of *Safai Walas* remained unfilled. On 16th May, 1996, therefore, Respondent 2 addressed a communication to the Army Headquarters, which has been reproduced *in extenso* in para 11 of the impugned judgment dated 20th October, 2015 of the learned ADJ, and reads thus:

“Delhi Tele No. 3036082 54/69/Civs . UCA no.fl/15	Station Headquarters Delhi Cantt-10 16 May 96 Addl Dte Gen of Org/Org 4 (Civ)(b) Adjutant General's Branch Army Headquarters DHQ PO New Delhi-110001
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RECRUITMENT OF CONSY SAFAIWALAS

1. It is submitted that 20 (Twenty) vacancies of consy safaiwalas are available with this Headquarters after carrying out the recruitment action of (71+20) vacancies of consy safaiwalas released by your HQ *vide* your letter Nos. 15972/Stn/HQ/Rel/Org 4 (Civ) (b) dated 4 May 95 and 15972/Stn/HQ/Rel/Org 4 (Civ) (b) dated 4 May 95. These vacancies have occurred due to non availability of candidates with the Employment Exchange and retirement etc.

2. The shortfall of these consy staff adversely affecting the hygiene and sanitation of the areas. You are therefore, requested to release the vacancies immediately to make up the deficiency.

3. An early action is requested please.



sd/-
(NB Thapa)
Major
DAA & QMG
for Stn Cdr”

4. Consequent to the above, the appellants wrote to the Employment Exchange, requiring them to recommend the names of persons to be recruited as *Safai Walas* against the aforesaid 20 posts. The Employment Exchange sent the names of the respondents, who were issued Call Letters on 12th February, 1996 by the appellants, requiring them to appear for interview on 17th February, 1996. Consequent to the said interview, in which the respondents the respondents were apparently successful, letters dated 4th April, 1997 were addressed by the appellants to the respondents, offering them the posts of *Safai Walas*. Thereafter, the respondents were subjected to medical examination and were found fit for appointment as *Safai Walas*, and necessary Certificates of Health under Section 49 of the Civil Service Regulations were issued to them.

5. Despite this, the respondents were not appointed as *Safai Walas* and, instead, the appellants wrote to the Employment Exchange, calling for fresh names.

6. Aggrieved thereby, the respondents filed Suit 967/06/99, from which the present proceedings emanate. The respondents sought, in the suit, a decree of permanent injunction, restraining the appellants from appointing persons other than the respondents as *Safai Walas* and for a decree of mandatory injunction, directing the appellants to



appoint the respondents as *Safai Walas*.

7. The respondents succeeded in their suit both before the learned SCJ as well as the learned ADJ. Aggrieved thereby, the Union of India and the Assistant Adjutant & Quarter Master General for Station Commander Station Headquarters, Delhi Cantt., have preferred the present second appeal under Section 100 of the CPC.

8. While issuing notice in this appeal, the following substantial questions of law were framed by this Court on 3rd May, 2016.

“(i) Whether the plaintiffs/respondents have a legitimate expectation to be appointed on the post of Safai Karamchari more so when their names were sought by the respondent from the Employment Exchange and they were put to the rigorous of interview and medical test in which they have passed?

(ii) Whether the judgments of the courts below can be given effect to in view of a suit with similar relief having been dismissed earlier?”

9. I may note at this juncture itself that, apropos Question (ii) Mr. Vikrant Goyal, learned Counsel for the appellants has fairly stated that the respondents could not be non-suited because of the dismissal of the earlier suit, as they were not parties therein. Nonetheless, on all other grounds, he presses the present appeal.

10. The main contention of the appellants (as the respondents before the learned SCJ and the appellants before the learned ADJ)—which has been emphatically pressed by Mr. Goyal before this Court—is that the release of vacancies by the Army Headquarters is a



necessary prerequisite before recruitment could be made thereagainst. It is sought to be contended that 20 vacancies, regarding which requisition had been made from the Employment Exchange and in response to which the respondents' names had been recommended, were never sanctioned/released by the Army Headquarters and that, therefore, though the selection process was put into motion and had progressed to some extent, it remained an abortive exercise and had to be cancelled. Consequent to release of 20 vacancies by the Army Headquarters, the appellants contend that the exercise of inviting names from the Employment Exchange was carried out afresh but that as the respondents' names were not recommended on this occasion, they could not be recruited.

11. The present appeal has, at more than one point, sought to contend that the following of a proper selection procedure is a *sine qua non* for any right to appointment to fructify. It has been sought to be contended that the respondents' appointments were not effected by following a proper selection procedure and that, therefore, no right vested in the respondents to pray for appointment as *Safai Walas*. On a more careful reading of the appeal, however, what emerges is that there is actually no lacuna in the selection procedure, which was followed in the matter of recruitment of the respondents. The appellants do not seek to contend that the respondents were not qualified for appointment as *Safai Walas*. The respondents' names had been recommended by the Employment Exchange, they were duly issued Call Letters, they appeared in the interviews, consequent to their being found suitable therein, they were subjected to the medical



examination and were found fit for appointment as *Safai Walas*. As such, it is facile to contend that the recruitment of respondents as *Safai Walas* was contrary to the established selection procedure.

12. Indeed, a reading of the appeal reveals that the only lacuna in the selection procedure, on which the appellants more or less premise their entire appeal, is that the vacancies had not been released/sanctioned by the Army Headquarters. Essentially, therefore, the error, even as per the appellants, took place at the appellants' end and the respondents were in no way to blame therefor. Even if appellants' arguments were to be accepted, it is the appellants, who have remiss in requisitioning names from the Employment Exchange and, thereby, effectively leading the respondents up the garden path.

13. Having said that, there may have been substance in the appellants' contentions if the requirement of release of vacancies of *Safai Walas* by the Army Headquarters was a mandatory prerequisite for recruitment against these posts and, in fact, such procedure had not been followed.

14. On this aspect, however, the learned ADJ has relied on the letter dated 16th May, 1996 extracted *in extenso* in para 2 (supra) to hold as under:

“12. It is evident from above that these 20 vacancies were merely carry forward vacancies of an earlier recruitment held/approved by headquarters vide letter dated 04.05.1995. From the contents it transpires that the defendants/appellants could not recruit the sanctioned number of consty safaiwalas due to the non availability of candidates with the Employment Exchange and retirement etc. It is admitted fact that the



plaintiff / respondents were called for interview for 12.02.1997 and were subjected to medical test on 29.04.1997. It shows that part of recruitment process was completed by that time. The defence of the defendants/appellants is that no approval of these vacancies were received from Headquarters. The defendants/appellants have failed to place on record any denial of release of vacancy by the Head Quarters. The plaintiffs/respondents were under legitimate expectations that they would be given final selection, however, from the documents, it transpires that on 11.02.1998 the defendants / appellants started seeking names from the Employment Exchange from the fresh round recruitments. This time the recruitment were not restricted to aforesaid 20 posts only but there were many posts being filled under various categories by seeking names from Employment Exchange. Ex. DW1/4 is a letter dated 03.06.1998 sent by Sub-Regional Employment Office, Sub Regional Employment Exchange, Delhi Cantt in response to letter dated 11.02.1998 containing the names. There are many more such letters which are being exhibited as DW1/4, DW1/5 Ex. DW1/6(Golly). These documents show that the defendants/appellants carried out second round of recruitment without completing the first round in which the plaintiffs/respondents were selected. There is nothing on record suggesting that any communication was ever sent to the plaintiffs/respondents as cancellation of recruitment process. It is also not explained by the defendants/appellants as to why before commencing second round of recruitment the plaintiffs/respondents which were left over were not considered. The rights of the plaintiffs/respondents were prejudiciously effected because their names might not have sent to the defendants/appellants by the Employment Exchange in the second round under a consideration that they have been selected in the first round. The Id Trial Court has considered all the aspects and evidence on record before coming to the conclusion that the plaintiffs/respondent no. 1, 3 and 5 are entitled to be appointed as "Safaiwalas". There is no infirmity in the impugned judgment dt. 22.12.2012 passed by Ld Trial Court. The appeal is hereby dismissed.' No order as to cost. Copy of this judgment be sent to trial court alongwith Trial Court Record. Appeal file be consigned to record room."

(Emphasis supplied)

15. The learned ADJ, therefore, holds, on facts, that the vacancies,



against which the respondents' names were forwarded by the Employment Exchange, and against which they were subjected to the prescribed selection process, were only carry forward vacancies, which remained unfilled after the recruitment process which had earlier carried out. This finding is unexceptionable, as it is clearly in consonance with para 1 of the letter dated 16th May, 1996 (*supra*). The said paragraph clearly states that 91 vacancies of *Safai Walas* had been released by the Army Headquarters and that, after carrying out the exercise against the said vacancies, 20 vacancies remained unfilled. The requisition to the Employment Exchange, in response to which the respondents' names were forwarded, was with respect to these 20 unfilled vacancies. As such, the learned ADJ has found no substance in the contention, of appellants that the selection process, qua the respondents, was vitiated as vacancies against which the selection took place had not been released by the Army Headquarters.

16. There is not a whisper of an averment, in the entire appeal preferred by the appellants, traversing this finding.

17. Even otherwise, the finding is purely one of fact based on an appreciation of the letter dated 16th May, 1996 (*supra*) and, in exercise of its jurisdiction under Section 100 of the CPC, this Court would be loath to interfere therewith. ***H.P. Pyarejan v. Dasappa¹, Harjeet Singh v. Amrik Singh², Madhavan Nair v. Bhaskar Pillai³ etc.,*** are the authorities for the proposition that concurrent findings of the two

¹ (2006) 2 SCC 496

² (2005) 12 SCC 270

³ (2005) 10 SCC 553



courts below, based on appreciation of evidence, do not brook interference under Section 100 of the CPC.

18. In this context, the learned ADJ also notes that the appellants, while seeking to contend that the vacancies, against which respondents were considered, had not been released by the Headquarters, failed to place any documentary evidence on record to substantiate this stand. Equally, the learned ADJ has noted the fact that the respondents were never intimated, in any point of time, that the recruitment process to which they had been subjected and in which they had been found successful even in the medical examination, was cancelled, before inviting fresh applications from the Employment Exchange.

19. Mr. Goyal also sought to submit that other *Safai Walas* had been recruited against the aforesaid vacancies. This recruitment took place after the filing of the suit by the respondents and would, therefore, necessarily be governed by the principle of *lis pendens*

20. Even otherwise, the respondents having succeeded based on concurrent findings of fact and law, both before the learned ADJ as well as the learned SCJ, cannot be deprived of the fruits of the litigation. The respondents are, at the end of the day, merely *Safai Walas*. It would be for the appellants to find ways to accommodate them, rather than take a stand that the vacancies, in which they could be adjusted, do not survive.

21. In any event, I do not find that the orders of the learned SCJ and



the learned ADJ suffer from any such infirmity, as would justify this Court interfering therewith in exercise of the jurisdiction vested in it by Section 100 of the CPC.

22. The surviving question of law, i.e. Question (i) framed on 3rd May, 2016 is, therefore, answered in favour of the respondents and against the appellants.

23. Resultantly, the appeal is dismissed with consequential relief to the respondents, but without any orders as to costs.

C. HARI SHANKAR, J

MAY 23, 2022

r.bararia

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