

**Court No. - 16**

**Case :-** WRIT - A No. - 8713 of 2009

**Petitioner :-** Ram Suresh & Others

**Respondent :-** State Of U.P. & Others

**Counsel for Petitioner :-** K.D. Tiwari, Narsingh  
Pandey, S.K. Pandey

**Counsel for Respondent :-** C.S.C.

**Hon'ble Ashwani Kumar Mishra, J.**

1. This writ petition has been filed in the year 2009, challenging the entire selection made by respondents in pursuance to the advertisement dated 15.6.2008 issued for appointment of Safai Karmi in District Basti. A further prayer is made to command the respondents not to issue appointment letters to the selected candidates and for conducting fresh selection proceedings.

2. While filing the writ petition, however, none of the selected candidates were impleaded. An amendment application has subsequently been filed in 2015 challenging an order dated 10.6.2009 passed by the District Magistrate concerned rejecting representations made against the selection proceedings. Along with the amendment application, three selected persons have also been impleaded.

3. It transpires that 3347 posts of Safai Karmi were to be filled up in the district concerned. A composite notification had been issued for appointing such persons in Basti, Sant Kabir Nagar, Kushinagar and Gorakhpur, and 10165 posts were to be filled. While entertaining the writ petition, following orders were passed on 10.4.2009:-

*"By means of this writ petition, the selection for the post of Safai Karmchari, pursuant to the advertisement dated 15th June, 2008 has been challenged.*

*It appears an advertisement was issued inviting applications to fill up 3347 posts of Safai Karmchari; in which 904 posts were reserved for OBC, 703 posts were reserved for SC and 67 posts for Schedule Tribes. Learned counsel for the petitioner submits that out of 3347 posts only 180 persons have been appointed from among general category. He has annexed the chart Annexure-3 to the writ petition making efforts to indicate that there was mal practice in the process of selection. From the perusal of which it transpires number of persons of the same family, same village and number of spouses have been appointed.*

*From the perusal of the record it also transpires that due to serious irregularities in the appointment the Divisional Commissioner has already*

*directed the District Magistrate, Basti to hold an enquiry in this matter. The copy of one such news report has been brought on record as Annexure-4 to the writ petition.*

*In spite of the time granted by this Court to file counter affidavit no counter has been filed by the learned Standing Counsel.*

*Learned Counsel prays for and is granted Six weeks' time to file counter affidavit.*

*List on 15th July, 2009.*

*On that date, report if any, pursuant to the order of the Divisional Commissioner be submitted by the District Magistrate, Basti. In case no enquiry has been held then this Court directs the District Magistrate, Basti to hold an enquiry with regard to the aforesaid selection and submit a report on the date fixed.*

*In case report is not submitted on the date fixed, District Magistrate, Basti shall appear in person before this Court. Copy of this order may be supplied to the learned Chief Standing Counsel within a week free of cost for communication."*

4. Records reveal that pursuant to the order passed by this Court, notices were issued by the District Magistrate to the petitioners permitting them to adduce evidence in support of their allegation that widespread manipulation had been made in the selection proceedings. The notice further specified that the applicants may appear before the authority concerned, so as to afford them an opportunity of hearing. Notices have been received by the petitioners, and they have also appeared before the authority concerned. The District Magistrate has recorded in his order dated 10th June, 2009 that none of the petitioners have adduced any evidence in support of their claim of widespread manipulation in the selection.

5. A counter affidavit has been filed denying the allegations made in the writ petition. A supplementary affidavit as well as rejoinder affidavit have also been filed, which are on record.

6. I have heard learned counsel for the petitioners and learned Standing Counsel for the State authorities, and have perused the records.

7. Admittedly 3347 posts of Safai Karmi have been advertised in Hindi newspapers 'Dainik Jagran' and 'Amar Ujala'. 703 posts were reserved for Scheduled Castes, 67 for Scheduled Tribes, 904 for OBC and remaining 1673 posts were for unreserved candidates. As per the order dated 10th June, 2009, a total 12603 candidates had been called for interview. 3829 candidates were from Scheduled Castes category, 32 from Scheduled Tribes, 2773 from OBC category and the remaining

candidates were unreserved. A merit list was prepared in accordance with the provisions of Group 'D' Employees Service Rules, 1985. The order records that 1673 posts have been filled from unreserved category while 703 posts have been filled up from Scheduled Castes category. As against 67 posts earmarked for Scheduled Tribes candidates, only 32 have appeared for interview. Remaining 42 seats of Scheduled Tribes have been left vacant. All 904 vacancies meant for OBC, however, have been filled up. Although learned counsel for the petitioners states that there have been widespread manipulation in making of selection but details in that regard are completely missing. Names of certain persons have been given in para 8, but they are not arrayed as parties to the writ petition. A specific finding recorded in the order of the District Magistrate, Basti that despite opportunity, none of the petitioners have furnished any evidence in support of the allegations made by them of widespread manipulation has been substantiated, is not shown to be incorrect.

8. Although the order dated 10.6.2009 has been challenged by way of an amendment, but none of the observations made therein are challenged. In the supplementary affidavit filed, it is stated that minimum marks have not been specified in respect of General Category candidates. It is also stated that the petitioners have done well in the interview. Such arguments, however, are not liable to be entertained at this stage. Except for reiterating that serious anomalies have been made in holding of selection, the allegations are not substantiated. The selection proceedings have been conducted in the year 2008, and more than 3000 persons have been selected. The selected candidates have not been made a party and only three persons have been impleaded for the first time in the year 2015. Averments made in the writ petition are otherwise wholly vague and general. Selected candidates have otherwise not been impleaded and only three of them have been impleaded in the year 2015. Illegality in making of appointment of these three persons is also not substantiated. Findings in the order of the District Magistrate dated 10.6.2009 have otherwise not been assailed. Argument made by learned counsel for the petitioners that 1673 posts had to be filled only by unreserved category candidates and could not be filled by candidates belonging to OBC or SC/ST category is wholly misconceived. It is always open for a candidate belonging to reserved category to be considered against seats meant for unreserved candidate, if he competes in unreserved category on merits. In such circumstances, writ petition lacks merit and is, accordingly, dismissed.

**Order Date :- 30.11.2017**

Anil