
(2016) 03 RAJ CK 0067
In the Rajasthan High Court
Case No : Civil Writ Petition No.13084 of 2011

Alka Agrawal

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Citation : (2016) 2 WLCRajUC 118

Hon'ble Judges : Mr. Veerendr Singh Siradhana, J.

Bench : Single Bench

Advocate : Ms. Anuradha Soni, Ms. Nayan Tara Soni, Mr. Mohit Soni, Mr. Vishal Soni and Mr. N.K. Garg, Advocates, for the Petitioner; Mr. B.K. Sharma, Deputy Government Counsel, for the State-Respondent; Mr. S.N. Kumawat, Advocate, for the Respondent-RPSC

Final Decision : Allowed

Judgement

1. The State-respondents declined the representation of the petitioner vide communication/order dated 17th August, 2011, of which the petitioner is aggrieved of, and therefore, has instituted the present writ application praying for the following relief(s):

"(i) By issuing an appropriate writ, order or direction the impugned order dated 17.8.2011 be quashed and set aside and the respondents be directed to appoint the petitioner on the post of Teacher Gr.I in Hindi subject against advertisement dated 2.8.2008 being at No.1 in the reserve list against the unfilled vacancies due to non-joining of the selected candidates with all consequential benefits.

(ii) Any other appropriate writ, order or direction which this Hon''ble Court may deems think fit and proper may kindly be passed in favour of the petitioner.

(iii) Cost of the writ petition be awarded in favour of the petitioner."

2. Shorn off unnecessary details the skeletal material facts necessary for appreciation of the controversy raised herein are that the petitioner in response

to an advertisement dated 2nd August, 2008, issued by the respondent - Rajasthan Public Service Commission (for short "respondent-Commission"), inviting application from the eligible candidates for appointment on 26 posts of Teacher Grade-I in Hindi subject, submitted her candidature for consideration. It is pleaded case of the petitioner that as a consequence of recruitment process, she was declared successful and her name found place at serial number 1 in the waiting list drawn by the respondent-Commission. The recommendation for appointment of 26 successful candidates in the main list was forwarded by the respondent-Commission to the State-respondents on 20th August, 2010. The State-respondents issued necessary direction for verification of credential of the 26 successful candidates in the main list, including verification of the documents on 27th August, 2010. The required reports, after verification, were received up to 1st February, 2011. Offer of appointments were issued to the 26 successful candidates with effect from 5th January, 2011 up to 3rd February, 2011. The joining period allowed to the last candidate (Manor Singh Charan), was up to 23rd February, 2011. It is further contended that out of 26 selected candidates, 8 candidates did not join, still the petitioner was not offered appointment despite her name found place at serial number 1 in the waiting list. On institution of S.B. Civil Writ Petition No.7676 of 2011; a Coordinate Bench of this Court vide order dated 6th July, 2011, taking note of the detailed representation already served, directed the petitioner to address a representation and the respondent-Commission was directed to decide the same within one month from the date of its receipt. In case, the petitioner felt still aggrieved, liberty was reserved to her to avail of proper course in accordance with law.

3. In response to the notice of the writ application, the State-respondents have filed their counter-affidavit while supporting the impugned order declining appointment to the petitioner though she stood at serial number 1 in the reserve list for the reserve list was valid only for six months from the date of recommendation of the main list by the respondent-Commission. According to the respondent-Commission, the recommendation was made on 20th August, 2010, and therefore, the period of six months, being validity period of the waiting list was over on 19th February, 2011. The requisition of the State Government dated 17th March, 2011, which was received for the first time on 29th March, 2011, in the office of the respondent-Commission, was declined stating that any recommendation, beyond the period of six months would be contrary to the rules.

4. Learned counsel for the petitioner, Mr. Mohit Soni, reiterating the pleaded facts and grounds of the writ application has asserted that the factual matrix as to participation of the petitioner in the selection process and she being at serial number 1, in the waiting list, is not in dispute. According to the learned counsel, the pretext pleaded by the State-respondents in declining offer of appointment to the petitioner for the waiting list lived out its validity period of six month on 19th February, 2011; is arbitrary, illegal and contrary to the law declared by the Hon"ble Apex Court of the land.

5. Referring to Annexure-3 dated 31st January, 2011, learned counsel would submit that the last date to join the post allowed to the selected candidate-Sita Ram Sharma, was 19th February, 2011, and therefore, any right, which could have accrued in favour of the petitioner, would be only after 19th February, 2011, in the event of non-joining of the selected candidate(s). Therefore, the stand of the respondents cannot be sustained on that count alone. In order to fortify his submissions, he has strongly relied upon the opinion of the Hon"ble Supreme Court in the case of State of Jammu and Kashmir & Ors. v. Sat Pal: (2013) 11 SCC 737. Reliance has also been placed on the opinion of the Hon"ble Supreme Court in the case of Inturi Rama Rao v. Union of India & Anr., (2015) 13 SCC 374, and A.V. Bhogeshwarudu v. A.P. Public Service Commission & Anr., Civil Appeal No.4041 of 1989, decided on 21st September, 1989.

6. Per contra; Mr. S.N. Kumawat appearing for the respondent-Commission and Mr. B.K. Sharma, for State-respondents, while supporting the impugned action of the respondents in declining appointment to the petitioner, asserted that the statutory period of validity of the waiting list was six months, which expired on 19th February, 2011, and therefore, the action of the respondents cannot be faulted. In support of their submissions, reliance has been placed on the opinion of the Division Bench of this Court in the case of Dr. M.K. Gaur & Ors. v. State of Rajasthan & Anr., 2002 (3) WLC (Raj.) 367; Rajasthan Public Service Commission, Ajmer through its Secretary v. State Chand Goyal & Ors., D.B. Civil Special Appeal (Writ) No.108/2007, decided on 12th February, 2008; Dr. Shri Narayan Basna v. State of Rajasthan & Ors., D.B. Civil Special Appeal (Writ) No.675/2008, decided on 24th July, 2008; Dr. Kalpana Kumari Meena v. State of Rajasthan & Ors.: D.B. Civil Special Appeal (Writ) No.1052/2007, decided on 30th January, 2008; and Smt. Kalpana Sharma & Ors. v. The Government of Rajasthan & Ors.: 2015 (4) WLC (Raj.) 361.

7. I have heard the learned counsel for the parties and with their assistance perused the materials available on record as well as gave my thoughtful consideration to the rival submissions at Bar.

8. Indisputably, the petitioner in response to the advertisement dated 2nd August, 2008, participated in the recruitment process and her name found place at serial number 1 in the waiting list. It is also not in dispute that the respondent-Commission forwarded the main select list on 26 candidates to the State-respondents on 20th August, 2010. The State-respondents having received the recommendations along with the select list of 26 candidates on 23rd August, 2010, issued necessary direction to the Governmental Enforcement Agency for verification. The process of verification including the verification of the documents of the successful candidates aforesaid, was concluded on 1st February, 2011. However, offer of appointments to the selected candidates were issued on 5th January, 2011, in favour of 23 candidates. Bal Gopal Sharma was offered appointment vide order dated 10th January, 2011 and Sita Ram was offered appointment vide order dated 31st January, 2011, with the last date for

joining indicated as 19th February, 2011 (Annexure-3). On the basis of the record, learned counsel for the State-respondents informed the Court that one of the successful candidate, namely, Manohar Singh Charan, was offered appointment vide order dated 3rd February, 2011, with last date for joining indicated as 23rd February, 2011.

9. Out of 26 selected candidates, who were offered appointment, 8 candidates did not join the service, and accordingly, a requisition was addressed on 17th March, 2011 (Annexure-4), by the State-respondents to the respondent-Commission to forward names of selected candidates from the reserve/waiting list immediately. The respondent-Commission declined to forward names from the reserve list for the period of validity of six months of the reserve list expired on 19th February, 2011.

10. The petitioner approached this Court instituting S.B. Civil Writ Petition Number 7676 of 2011, which was disposed of by the Coordinate Bench of this Court on 6th July, 2011, with the observations, which read thus:

"I have considered submissions of learned counsel and perused record of the case.

Since a detailed representation has already been sent by the petitioner to the Commission and to others, it would be proper to dispose of the writ petition at this stage. Accordingly, respondents are directed to consider the notice for demand of justice within one month from the date of receipt of this order and, if grievance of the petitioner is found to be genuine, then redress the same without dragging the petitioner into further litigation. In case anything adverse exists, same may be conveyed to the petitioner by a speaking order and, in that case, petitioner would be at liberty to approach this court in accordance with law within.

In view of aforesaid directions/observations, the writ petition so as the stay application stand disposed of."

11. The petitioner requested the respondent-Commission to ensure compliance of the direction issued by this Court on 6th July, 2011. In consequence, the respondent-Commission has passed the impugned order dated 17th August, 2011, declining the claim of the petitioner for the validity period of six months, of the reserve list, expired on 19th February, 2011.

12. In the case of A.B. Bhogeshwarudu (*supra*), where the process of selection was instituted in the year 1983 and was completed in 1987; the vacancies, which arose in between and were to be accommodated from the recruitment list prepared. In the event of non-joining of some of the successful candidates, the vacancies were required to be filled up by next in order of merit and there was no requirement of fresh selection.

13. In the case of Sat Pal (*supra*), in somewhat similar factual matrix, the Hon"ble Supreme Court explaining the issue of operationalization of waiting list observed that a waiting list would start to operate only after the posts for which

the recruitment is conducted, have been completed. Sat Pal, the writ petitioner, staked his claim for appointment after having learned that some scheduled caste candidates above him in the merit/select list had not joined in spite of having been offered appointment. Sat pal also mentioned name of one Trilok Nath as one of the selected candidates, who was offered appointment, but did not join. In his representation, he (Sat Pal) also pointed out, that in the merit/select list pertaining for scheduled caste candidates, his name figured immediately after the name of the said Trilok Nath. Dealing with the issue of operationalization of waiting list, the Hon"ble Supreme Court held thus:

"11. In view of the factual position noticed herein above, the reason indicated by the Appellants in declining the claim of the Respondent Sat Pal for appointment out of the waiting list is clearly unjustified. A waiting list would start to operate only after the posts for which the recruitment is conducted, have been completed. A waiting list would commence to operate, when offers of appointment have been issued to those emerging on the top of the merit list. The existence of a waiting list, allows room to the appointing authority to fill up vacancies which arise during the subsistence of the waiting list. A waiting list commences to operate, after the vacancies for which the recruitment process has been conducted have been filled up. In the instant controversy the aforesaid situation for operating the waiting list had not arisen, because one of the posts of Junior Engineer (Civil) Grade-II for which the recruitment process was conducted was actually never filled up. For the reason that Trilok Nath had not assumed charge, one of the posts for which the process of recruitment was conducted, had remained vacant. That apart, even if it is assumed for arguments sake, that all the posts for which the process of selection was conducted were duly filled up, it cannot be disputed that Trilok Nath who had participated in the same selection process as the Respondent herein, was offered appointment against the post of Junior Engineer (Civil) Grade-II on 22.4.2008. The aforesaid offer was made, consequent upon his selection in the said process of recruitment. The validity of the waiting list, in the facts of this case, has to be determined with reference to 22.4.2008, because the vacancy was offered to Trilok Nath on 22.4.2008. It is the said vacancy, for which the Respondent had approached the High Court. As against the aforesaid, it is the acknowledged position recorded by the Appellants in the impugned order dated 23.8.2011 (extracted above), that the waiting list was valid till May, 2008. If Trilok Nath was found eligible for appointment against the vacancy in question out of the same waiting list, the Respondent herein would be equally eligible for appointment against the said vacancy. This would be the unquestionable legal position, in so far as the present controversy is concerned.

12. The date of filing of the representation by the parties concerned and/or the date on which the competent authority chooses to fill up the vacancy in question, is of no consequence whatsoever. The only relevant date is the date of arising of the vacancy. It would be a different legal proposition, if the appointing authority decides not to fill up an available vacancy, despite the availability of candidates

on the waiting list. The offer made to Trilok Nath on 22.4.2008 by itself, leads to the inference that the vacancy under reference arose within the period of one year, i.e., during the period of validity of the waiting list postulated by the rules. The offer of the vacancy to Trilok Nath, negates the proposition posed above, i.e., the desire of the employer not to fill up the vacancy. Herein, the Appellants wished to fill up the vacancy under reference. Moreover, this is not a case where the Respondent was seeking appointment against a vacancy, over and above the posts for which the process of selection/recruitment was conducted. Based on the aforesaid inference, we have no hesitation in concluding that the Appellants ought to have appointed the Respondent Sat Pal, against the vacancy which was offered to Trilok Nath."

14. In the case of Inturi Rama Rao (supra), the Hon"ble Supreme Court upheld the claim for appointment of a candidate from waiting list to the post of Accountant Member of ITAT for two selected candidates not being cleared by Vigilance. The recruitment process therein commenced in pursuance of an advertisement dated 21st January, 2005. The petitioner therein (Inturi Rama Rao), was placed at serial number 2 in the waiting list for appointment as Accountant Member. The proceedings in the first round of litigation were closed in the backdrop of the statement made on behalf of Union of India, before the Hon"ble Supreme Court, that vacancies in the future will be made only after the amendment in the Rules. However, the respondent-Union of India without any amendment in the Rules resorted to a fresh process of selection and appointment. The Hon"ble Supreme Court while allowing the writ petition directed consideration of the petitioner for appointment on the basis of his position in the merit list against one of the two vacancies, which arose for two of the candidates in the merit list not having been granted vigilance clearance.

15. A glance of the observations made by the Hon"ble Supreme Court in the case of Sat Pal (supra), would reveal that a waiting list would start to operate only after the posts for which the recruitment is conducted, has been completed. In the instant case, the recruitment process, which commenced on 2nd August, 2010, continued as the offer of appointment, which was issued in favour of the selected candidates from the main list was issued on 3rd February, 2011, with last date for joining indicated as 23rd February, 2011. A right in favour of the petitioner would accrue only in the event of non-joining of the selected candidates in the main list and in the event of availability of vacancy on that account. Therefore, the arguments advanced on behalf of the respondents that the validity period of the waiting list ended on 19th February, 2011, has no substance and is hereby rejected.

16. In the case of Dr. Kalpana Kumari Meena (supra), the Division Bench dealt with Rule 9 and 20 of the Rajasthan Medical Service (Collegiate Branch) Rules, 1962, and therefore, observations made and conclusion arrived at, is of no help to the State-respondents. Moreover, Rule 20 was held not to operate in case of requisition for additional post, which is not case at hand.

17. In the case of Dr. Shri Narayan Basna (*supra*), the Government decided to make appointment from the reserve list and withdrew the said requisition vide subsequent letter on 8th March, 2001, whereas in the instant case the State-respondents called upon the respondent-Commission to forward the names from the reserve list for 8 vacancies remained unfilled for non-joining of candidates in the merit list and last date for joining being 23rd February, 2011. Thus, the facts are entirely different and distinguishable from the case at hand.

18. In the case of Satish Chand Goyal (*supra*), the State Government had sent requisition for forwarding names from the reserve list and in compliance thereof, names were forwarded by the RPSC on 17th January, 2004. Again a requisition for 5 names was received by the RPSC from the State Government and names were forwarded on 24th June, 2004. Thereafter, until 16th July, 2004, there was no requisition received by the RPSC from the State Government. It was in that factual matrix the Division Bench observed that the life of the reserve list came to an end on 16th July, 2004 and thereafter, it could not operate. The factual matrix of the case referred to and relied upon is entirely different from the one at hand.

19. In the case of Smt. Kalpana Sharma & Ors. (*supra*), the Coordinate Bench of this Court dealt with a case wherein initial advertisement was issued on 28th April, 2011, followed by corrigendum dated 19th August, 2011 and 9th September, 2011. Thereafter, fresh advertisement was issued on 17th February, 2012, withdrawing the earlier advertisement while permitting the candidates, who had applied earlier not to apply again for participation. The result that was declared on 18th November, 2012 wherein 2092 candidates were provisionally declared successful, and thereafter, a waiting list of 1033 candidates was prepared and published on 29th January, 2013. There was a successive challenge to the recruitment process before the Single Bench and also before the Division Bench resulting into redrawing of the merit list so also the waiting list, which resulted into inclusion and/or exclusion of some of the candidates in subsequent waiting list. Thus, the opinion expressed therein in view of the attendant singular facts of the case, has no application to the case at hand.

20. The factual matrix that emerges from the pleadings of the parties and materials available on record is that the petitioner found place at serial number 1 in the waiting list. The respondent-Commission recommended the names of the 26 candidates in the main list of 20th August, 2010. The process to fill up the 26 vacancies commenced with the necessary instructions for the purpose of verification of antecedents including the document verification with effect from 5th January, 2011. The offer of appointment to the last selected candidate (Manor Singh Charan), was issued on 3rd February, 2011, with the last date to report/join up to 23rd February, 2011. It is also not dispute that 8 candidates did not join out of 26 selected candidates in the main list. Thus, no right accrued to the petitioner until 23rd February, 2011. The State-respondents intended to proceed with the recruitment process to fill up the vacancies advertised from

amongst the wait list candidates, as would be evident from communication dated 17th March, 2011, indicating that 8 successful candidates from the main list did not assume the charge until the last date fixed for the purpose, and therefore, their offer of appointments were cancelled. The respondent-Commission took a technical objection of validity of reserve list having expired referring the date of recommendation of selected candidates in the main list made on 20th August, 2010.

21. In the case of *Sat Pal (supra)*, the Hon'ble Apex Court of the land while explaining the commencement of operation of waiting list in no uncertain terms observed that a waiting list commences to operate, after the vacancies for which the recruitment process has been conducted have been filled up. From the fact situation that emerges in the instant case at hand, it is evident that the recruitment process conducted for filling up the 26 vacancies in fact did not conclude up till 23rd February, 2011, for 8 vacancies were never filled up. It is also relevant to take note of the fact that the last date to assume the charge to the last candidate out of the main list was indicated as 23rd February, 2011, therefore, the stand of the respondent-Commission, in declining the requisition of the State Government to forward the names of the candidates from the waiting list as is evident from communication dated 17th March, 2011, on the pretext of validity period of the reserve list expired on 19th February, 2011; is absolutely baseless and without any factual foundation. This Court is not oblivious of the fact that even a selected candidate in the main list would have no indefeasible right for appointment even if the vacancy existed, but in the instant case at hand, the State-respondents themselves with an intention to operate the reserve list, which allows a room to the appointing authority to fill up the vacancies during subsistence of the waiting list has been declined by the respondent-Commission on a technical ground without any logic or reasoning in support thereof.

22. It is not the case of the respondents that there has been no requisition made by the appointing authority for appointment from the reserve/wait list. So also it is not the case of the State-respondents that there was any decision for not filling up the vacancies for reasons sustainable in law. The selection process would come to an end only when the vacancies under recruitment process are filled up and the waiting list has lapsed for the statutory period provided under the relevant rules.

23. On being queried, the learned counsel for the State-respondents denied of any recruitment process undertaken after the advertisement involved herein. The appointing authority cannot ignore the select panel or decline the appointments on its whims and fancy. For no reason has been spelt out in the counter-affidavit for not proceedings with the recruitment process rather communication dated 17th March, 2011, reflects the intention and proves that fact that the State-respondents did proceed with the recruitment process for 8 vacancies, which could not filled as the selected candidates in the main list did not assume the

charge.

24. For the reasons and discussions aforesaid, the writ application succeeds and is hereby allowed.

25. The State-respondents are directed to consider the case of the petitioner for appointment, if she is otherwise found suitable.

26. Needless to observe that in case, the petitioner is found suitable for appointment, the appointment would relate back to the same recruitment process in accordance with the Rules and service conditions of the cadre on notional basis. Her seniority will be determined below the last selected candidate. The respondents would ensure compliance of the order within six weeks from the date a certified copy of the order is made available to them.

27. No costs.