

(2015) 04 DEL CK 0080

In the Delhi High Court

Case No : Writ Petition (C) No. 685 of 2011

Ankit Kumar Aggarwal and Others

APPELLANT

Vs

Airport Authority of India and Others

RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2015) 04 DEL CK 0080

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Prakash Gautam, for the Appellant; K.K. Rai, Digvijay Rai and Dheeraj Singh, Advocates for the Respondent

Final Decision : Allowed

Judgement

Valmiki J. Mehta, J.—By this writ petition filed under Article 226 of the Constitution of India, the petitioners; first three petitioners falling in the General Category candidates and the fourth being the OBC Category candidate; seek the relief that they should be given appointment letters appointing them to the posts of Manager (Electronics) with the respondent no. 1, inasmuch as petitioners were in the waiting list panel prepared with respect to the successful candidates, and that out of 87 candidates who were issued appointment letters, in the General Category only 65 candidates had joined leaving 22 vacancies unfilled/existing, and in the OBC Category out of 46 candidates only 34 joined leaving 12 vacancies unfilled/existing. The petitioners state that since they fell within that waiting list of candidates they had to be issued the appointment letters on account of the fact that only 65 out of 87 persons in the General Category joined and only 34 persons out of 46 persons in the OBC Category joined the service pursuant to the appointment letters issued. In sum and substance, what the petitioners claim is that the first three petitioners are entitled to the appointment letters in the General Category because out of the total number of 87 persons selected, only 65 persons joined the service and thus the remaining 22 persons

falling in the waiting list have to be given the appointment letters, and the petitioner nos. 1 to 3 fell at serial nos.1, 3 and 14 in the waiting list ie within the vacancies qua 22 persons who did not join in the General Category. So far as petitioner no. 4 is concerned, the case is that out of 46 appointment letters which had been issued in the OBC Category, only 34 persons joined leaving 12 vacancies, and since petitioner no. 4's name was the third name in the waiting list i.e. within the 12 unfilled vacancies, hence petitioner no. 4 should get the appointment letter.

2. The facts of the case are that respondent no. 1/Airport Authority of India issued an advertisement No. 2/2007 requiring appointment of 171 persons as Managers (Electronics). Out of 171 posts, 88 posts were for General Category, 46 posts for OBC Category, 25 posts for SC Category and 12 posts for ST Category. The total number of the aforesaid posts also included 5 posts for physically handicapped persons.

3. Examinations were conducted in which petitioners were successful. Interviews were thereafter conducted. This resulted in a select list being prepared with respect to 171 persons as also additional persons who were shown in the select list and which additional persons would be waitlisted candidates in the select list entitled to appointment in case the original number of persons to whom the appointment letters were issued did not join the service. In the General Category with respect to the 88 posts, a select list of 155 candidates was prepared, and with respect to the OBC Category for the 46 posts, a select list of 159 candidates was prepared. Petitioners, however in spite of the requisite number of persons i.e 87 persons in the General Category and 46 persons in the OBC Category not joining, inasmuch as 22 persons in the General Category and 12 persons in the OBC Category did not join, yet were not issued the appointment letters although since they fell within that wait-listed number in the select list, and which if complied with would have entitled the petitioners to the appointments to the posts of Manager (Electronics).

4. Respondent no. 1, admittedly did not issue any notices to the petitioners or to any other candidates who would have been entitled to the appointments in view of 22 persons not joining in the General Category and 12 persons in the OBC Category, and instead conducted a fresh round of examination pursuant to an advertisement issued in July, 2010. By means of this advertisement of July, 2010, additional and other posts of Manager (Electronics) (i.e. other than posts advertised in 2007) were sought to be filled in by the respondent no. 1, both in the General Category as also the OBC Category and other categories. Petitioners participated in this selection process but were unsuccessful. Petitioners then came to know that a total of 84 other persons who fell within the 171 posts which were advertised for appointment as per the advertisement of the year 2007, since they did not get the appointment letters, such persons had filed a writ petition in this Court being W.P(C) No. 2133/2010. This writ petition was allowed and disposed of by the judgment of a learned Single Judge of this Court

dated 31.8.2010, and the respondent no. 1 was directed to issue the letters of appointment to those 84 persons. The petitioners therefore claim that although they were successful in the selection process which commenced pursuant to the advertisement of the year 2007 and they were entitled to be appointed against the available vacancies inasmuch as 22 persons had not joined in the General Category and 12 persons had not joined in the OBC Category, hence the respondent no. 1 should give the appointment letters to the petitioners.

5. The respondent no. 1 has filed its counter-affidavit as also the additional affidavits and contested the case of the petitioners on the following grounds, and which have also been argued before me:

(i) The 2007 selection process was followed by the 2010 selection process, and once a subsequent process was initiated in which petitioners were unsuccessful, petitioners cannot turn back and claim appointments under the 2007 selection process which had come to an end on the select list being approved pursuant to the 2007 advertisement on 03.11.2009 and uploaded on the website on 13.10.2010.

I note that though there is some confusion with respect to the date of uploading the result of the successful candidates on the website, however the same is not relevant and what is relevant is that, admittedly, the petitioners were never intimated the aspect that the persons to whom appointment letters were issued did not join and there remained vacancies 22 in number in the General Category and 12 in number in the OBC Category.

(ii) Being related to the aforesaid aspect of the petitioners being unsuccessful in the subsequent selection process in the year 2010, it is also argued that the case of the petitioners is hit by the doctrine of delay and laches, inasmuch as, this writ petition was filed on 03.2.2011, whereas, the appointment letters given to the successful candidates in terms of the 2007 selection process was completed in February, 2010.

I may note that before this Court there is a lack of clarity even on this aspect inasmuch as the cause of action would arise as per the respondent no. 1 when the results were uploaded on the website. In any case however, the factual considerations and aspects in this case changed pursuant to the judgment of a learned Single Judge of this Court dated 31.8.2010 in W.P(C) No. 2133/2010.

(iii) The panel which was prepared pursuant to the 2007 selection process, and which included a total number of 155 candidates in the General Category and 159 candidates in the OBC Category, lapsed beyond one year of the preparation of the panel on 03.11.2009, and once the panel lapsed, petitioners could not seek the appointments under a lapsed panel.

(iv) Respondent no. 1 was entitled to take a decision that they need not fill up all the vacancies which were advertised, and in support of this argument reliance is placed upon the judgment of the Supreme Court in the case of Shankarsan Dash

Vs. Union of India, AIR 1991 SC 1612 : (1991) 62 FLR 981 : (1991) 2 JT 380 : (1991) LabIC 1460 : (1992) 2 LLJ 18 : (1991) 1 SCALE 848 : (1991) 3 SCC 47 : (1991) 2 SCR 567 : (1991) 2 UJ 212 .

6. In my opinion, the petitioners are entitled to succeed and they are bound to be given appointment letters by the respondent no. 1. The reasons for the same are stated hereinafter.

7. No doubt, the petitioners were unsuccessful in the 2010 selection process, however, this would have been material if two aspects also simultaneously existed, being firstly that the posts of 2007 selection process were merged in the 2010 selection process and hence had ceased to exist independently, and secondly the petitioners can be taken as that they were presumed to know that they were entitled to be appointed in view of 22 vacancies still existing in the General Category and 12 vacancies in the OBC Category but still they had participated in the 2010 selection process. However, the fact of the matter is that, admittedly and it is not disputed on behalf of the respondent no. 1, that the posts which were advertised pursuant to the 2007 selection process were not those posts which were advertised in the 2010 selection process. Also, petitioners at no point of time were ever intimated by the respondent no. 1 that they were entitled to appointment inasmuch as they fell within the 22 number and 12 number of waitlisted persons who were entitled to the appointment because 22 persons did not join in the General Category and 12 persons did not join in the OBC Category. Therefore, in my opinion, the mere fact that the petitioners were unsuccessful in the 2010 selection process cannot mean that once petitioners were admittedly and otherwise in the waiting list of the successful candidates in the 2007 selection process, they should not be given appointments. The aspect that if in a subsequent examination and a selection process, a person has failed, the same cannot take away the fact that a person was in fact successful in an earlier selection process and under which selection process on account of being successful, he would be entitled to the appointment. A person merely because he appears subsequently and is unsuccessful in the subsequent selection process does not mean that his results in the earlier examinations would automatically be wiped out. This cannot be a legal position to deny any appointment to the petitioners.

8. In my opinion, petitioners cannot also be said to be guilty of delay and laches in approaching the Court, inasmuch as, the doctrine of delay and laches is applied by Courts if vested interests of the third parties would have come into existence in the meanwhile or the posts in question were either abolished or were merged in the subsequent selection process. Admittedly, none of this happened. It is not as if with respect to the 22 posts which remained vacant in the General Category and 12 posts in the OBC Category, other persons have joined, and hence those persons' right would be affected because they would have to be removed from service before giving appointments to the petitioners. Since no appointments have been made and no third party vested interest has

come into existence, the doctrine of delay and laches cannot be pressed against the petitioners. Also in the present case it is not that the petitioners and third parties are pitted for employment against each other for posts, inasmuch as, petitioners fall well within the available vacancies as compared to their waitlisted position and even after appointing the petitioners vacancies will still remain for appointing others in the waitlisted position. This argument urged on behalf of respondent no. 1 is therefore rejected.

9. Then it is argued on behalf of the respondent no. 1 that assuming petitioners are right in their contention that they were successful in the 2007 selection process and vacancies existed, and therefore the petitioners were entitled to be appointed, but, the life of the panel being one year in terms of Clause 15.12 of the Recruitment and Promotion Regulations, 2005 of the respondent no. 1 expired in one year and hence the petitioners beyond a period of one year of preparation of the select panel on 03.11.2009 cannot get appointment. Even this argument in the opinion of this Court is misconceived and liable to be rejected because issue of expiry of a panel would arise only if the petitioners were put to notice within the validity period of the panel that vacancies existed in the General Category for 22 number of persons and 12 number of persons in the OBC Category, and petitioners in spite of that knowledge, during the validity of the period of panel did not seek appointment with the respondent no. 1. Respondent no. 1 in my opinion however cannot contend that they will in effect conceal the fact of existence of vacancies, and it will not inform the petitioners that out of successful candidates they are also entitled to appointment because there remained vacancies on account of the actual number of persons to whom appointment letters were issued did not join, because to permit respondent no. 1 to do so would be to allow the respondent no. 1 to take advantage of its own wrong. I thus refuse to allow the respondent no. 1 to do so. Once the respondent no. 1 did not inform the petitioners that there remained vacancies to which they were entitled to be appointed, merely because there is a life period of one year of the panel, it cannot be said that the petitioners should be denied the appointments. The issue of validity of a panel cannot be pressed in aid to cause injustice, more so when the injustice is caused on account of the actions of the respondent no. 1 and, which will amount to respondent no. 1 taking advantage of its own wrong. This argument on behalf of the respondent no. 1 is also therefore rejected.

10. The last and final argument on behalf of the respondent no. 1 is that in view of the judgment in the case of Shankarsan Dash (supra), the respondent no. 1 is entitled to not fill up all the vacancies because as per this judgment there is no law that merely because vacancies have been advertised and selection process has taken place and candidates are successful, such posts must be filled in. This argument urged on behalf of respondent no. 1 is again equally misconceived as are the other earlier arguments. This is because in Shankarsan Dash's case (supra), it is specifically noted that no doubt there is no entitlement of a successful candidate to be appointed merely because his name exists in the

select list, however the ratio of Shankarsan Dash's case (supra) makes it clear that valid and germane reasons have to exist and must be given by the authority for not filling up all the vacancies. By an order dated 11.3.2014, a learned Single Judge of this Court allowed the respondent no. 1 to give germane reasons for not filling up the entire vacancies. The respondent no. 1 has filed its affidavit on 17.4.2014 pursuant to the order of a learned Single Judge of this Court dated 11.3.2014, however, in my opinion, this affidavit filed on 17.4.2014 is really an apology for an affidavit inasmuch as this affidavit does not in any manner give even a single reason as to what were the administrative exigencies and what were the factually germane reasons which compelled the respondent no. 1 not to fill up the vacancies. In the opinion of this Court, the affidavit which should have been filed was to be by giving factual reasons to justify the administrative exigencies for non- appointment of persons in spite of existence of vacancies, however the affidavit filed is really in the form of written arguments to this Court only stating that respondent no. 1 is entitled to leave the vacancies unfilled. Considerable part of this affidavit filed on 17.4.2014 reproduces the judgments of the Supreme Court and the arguments which are sought to be urged on behalf of the respondent no. 1. In my opinion, this is an unacceptable practice and an autonomous organization which is a State under Article 12 of the Constitution of India should not resort to such practices.

11. Therefore, once no reasons exist for not filling available vacancies, there does not arise any reason for applicability of the ratio in the case of Shankarsan Dash (supra), and in fact the ratio of Shankarsan Dash's case (supra) goes against the respondent no. 1, inasmuch as respondent no. 1 has failed to give any administrative exigencies or factual reasons which compelled it not to fill up the vacancies in question.

12. In view of the above, the present writ petition is allowed. The respondent no. 1 is directed to give the necessary appointment letters to the petitioners for the posts of Manager (Electronics) within a period of four weeks from today. Parties are left to bear their own costs.