
(2010) 12 MAD CK 0203

In the Madras High Court

Case No : Writ Petition No's. 13591 of 2008 and 7734, 7735, 7736, 7245 of 2010

B. Bosewel and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

Citation : (2010) 12 MAD CK 0203

Hon'ble Judges : K.K. Sasidharan, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : A.L. Somayaji for S.M. Loganathan, in W.P. No. 13591 of 2008, K. Sanjay in W.P. No. 7245 of 2010 and A.R. Suresh, for J. Muthukumaran, in W.P. Nos. 7734 to 7736 of 2010, for the Appellant; V. Radhakrishnan for V.G. Suresh Kumar and M. Vellaisamy, for ICF and Southern Railway, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Sasidharan, J.—These writ petitions are directed against the order dated 7 February, 2005 in O.A. Nos. 560 and 206 of 2004 and the subsequent order dated 24 February, 2010 in O.A. Nos. 206 of 2004, 925, 454, 457 and 455 of 2008 on the file of the Central Administrative Tribunal, whereby and where under the Central Administrative Tribunal rejected the claim of the Petitioners for appointment in the cadre of Khalasis in the Integral Coach Factory at Chennai.

2. The facts in the lead matter (W.P. No. 13591 of 2008) are as follows:

The Facts:

3. The Railway Board issued a notification bearing No. 1 of 1995 dated 7 September, 1995 calling for applications from candidates for 330 posts of "Khalasis" (Group -D) in their coach factory at Chennai. Subsequently the Railway Board agreed for preparing a panel for 917 vacancies on the ground of increase of vacancies from 330 to 917. The Petitioners were fully qualified and as such they made applications for such appointment. The third Respondent

received 58,675 applications and out of this 32,563 candidates were called for interview and ultimately 25,271 candidates attended the interview.

4. The selection was challenged before the Central Administrative Tribunal in O.A. Nos. 93, 103, 153, 202, 260 and 294 of 1999. The original application No. 367 of 1999 was filed by a selected candidate with a prayer to complete the process and to issue order of appointment. The Tribunal agreed with the contentions raised on behalf of the applicants with respect to the illegality in drawing a panel for 917 vacancies as against 330 vacancies notified and quashed the panel of selected candidates.

5. The order passed by the Tribunal was challenged by the selected candidates before the High Court. The High Court allowed the writ petitions. The High Court also agreed with the submission made by the third Respondent with respect to the actual vacancy. According to the third Respondent there were only 382 vacancies and this made the High Court to permit the Integral Coach Factory (hereinafter referred to as "I.C.F.") to appoint 382 candidates. The judgment of the Division Bench was challenged before the Honorable Supreme Court in SLP Nos. 14656 of 2000 and 2377 of 2001. The Supreme Court considered the issue in exten so and confirmed the order of the High Court as per judgment dated 12 April, 2001. The judgment was reported in All India SC and ST Employees Assn. and Another etc. Vs. A. Arthur Jeen and Others etc., .

6. The Petitioners taking advantage of the observation of the Supreme Court in paragraph 20 of the judgment filed original applications before the Central Administrative Tribunal. Before the Tribunal, they have contended that the right of the selected candidates was not considered in the earlier round of litigation and this fact was indicated by the Supreme Court in the judgment dated 12 April, 2001 and as such the Respondents are bound to appoint 917 selected candidates instead of 382. It was their further contention that the original select list contains the names of 917 candidates and it was reduced to 382 on the basis of the submission made by the third Respondent and now that there are vacancies available with the third Respondent, all the 917 candidates should be accommodated.

7. The Central Administrative Tribunal was of the view that the issue was clearly covered by the earlier order passed by the High Court in W.P. Nos. 16766 to 16672 of 1999 as confirmed by the judgment of the Supreme Court in All India SC & ST Employees case cited supra. The Tribunal also examined the method of short listing 382 candidates from and out of 917 forming the original panel and it was found that the roster was strictly followed. The Tribunal opined that the cancellation of panel of 917 and the preparation of short panel of 382 as permitted by the High Court, attained finality and as such, it cannot be re-opened in a subsequent proceeding. Accordingly, the original applications were dismissed.

8. Subsequently, another set of applications were filed before the Central

Administrative Tribunal in O.A. Nos. 925, 454, 457 and 455 of 2008 and those applications were also dismissed by the Tribunal as per order dated 24 February, 2010 by following the earlier order dated 7 February, 2005. Feeling aggrieved, the applicants are before us.

Submissions:

9. The submissions of the learned Senior Counsel for the Petitioners are as follows:

(i) The earlier select list prepared by the third Respondent contains the names of the Petitioners. The selection list was quashed by the Central Administrative Tribunal without hearing the Petitioners. While deciding the Special Leave Petition, the Supreme Court clearly observed that the selected candidates, who were seriously affected, have every right to challenge the decision of the Tribunal on all the grounds available to them. Therefore, the original applications at the instance of the selected candidates were clearly maintainable.

(ii) The High Court was made to believe that there were only 382 vacancies. This only made the High Court to permit the third Respondent to appoint 382 instead of 917 candidates. This order was confirmed by the Supreme Court. However, subsequent events made the position clear that there were more vacancies. The Railways resorted to large scale appointments without considering the case of the selected candidates and this only made the Petitioners to file original applications before the Tribunal. Therefore, the Tribunal should have directed the third Respondent to accommodate the Petitioners.

(iii) The list produced by the Petitioners would show that large scale appointments were made after the disposal of the SLP by the Supreme Court. This falsifies the contention of the Railways with respect to the actual number of vacancies. Therefore, the Petitioners were justified in making a claim for appointment on the basis of the select list prepared pursuant to Notification No. 1 of 1995.

10. The learned Senior Counsel for the Integral Coach Factory would submit:

(i) The reduction of vacancies from 971 to 382 was approved by the High Court and ultimately, the Supreme Court also confirmed the said order. Therefore, the Petitioners cannot be heard to say that there are vacancies and as such they should be accommodated.

(ii) The validity of the select list expired long back and as such, no right would accrue to the Petitioners to claim appointment on the basis of subsequent vacancies.

(iii) The vacancies that have arisen in Southern Railway cannot be relied on for the purpose of ascertaining the vacancy position in the I.C.F., which is a separate establishment.

The Issue:

11. The principal issue is as to whether the selected candidates would get a right to claim appointment on the basis of the vacancies that has arisen after the expiry of the select list.

Discussion:

12. It is true that the names of the Petitioners were also included in the revised select list. The original notification was in respect of 330 vacancies. However, the third Respondent prepared the select list for 917 vacancies and it was challenged before the Central Administrative Tribunal. The Tribunal quashed the select list. When the matter was taken up before the High Court, the third Respondent submitted that the report regarding assessment of vacancies shows only 382 posts in Group - D for the period upto 2002. This made the Division Bench to pass an order confining the appointment to the available vacancies. This order was confirmed by the Supreme Court. The Supreme Court observed that merely because the names of the candidates were included in the panel indicating their provisional selection, they did not acquire any indefeasible right for appointment even against the existing vacancies, and the State is under no legal duty to fill up all or any of the vacancies.

13. Before the Supreme Court, the Petitioners in SLP No. 14656 of 2000 contended that in view of the cancellation of Notification No. 1 of 1995 by the third Respondent, accepting the judgment of the Central Administrative Tribunal, the writ petition has become infructuous. It was only in such circumstances, the Supreme Court observed that the selected candidates, who were seriously affected, have every right to challenge the decision of the Tribunal on all grounds available to them and as such, it cannot be said that the writ petitions have become infructuous. This observation of the Supreme Court was taken advantage of by the Petitioners to file the original applications before the Central Administrative Tribunal. The Petitioners have forgotten the fact that the writ petitions filed by the selected candidates were tagged along with the Special Leave Petitions filed against the order passed by the High Court permitting appointment of 382 candidates. It was only in that factual context the Supreme Court made those observations and it was not intended as a liberty even to other selected candidates who have not filed writ petitions against cancellation of selection.

14. In paragraph 6 of the order, the Supreme Court has extracted the submissions made on behalf of the applicants before the Central Administrative Tribunal. The Petitioners while challenging the order passed by the High Court contended that the writ petitions before the High Court had, in fact, become infructuous, in view of the withdrawal of the employment notification by the I.C.F. accepting the order passed by the Tribunal. It was only in the said factual context the Supreme Court observed that the writ petitions have not become infructuous as the selected candidates, who were seriously affected had every right to challenge the decision of the Tribunal on all grounds available to them. This paragraph was taken out of context by the Petitioners and accordingly they

have filed the original applications once again claiming appointment on the basis of the lapsed select list.

15. The validity of the select list expired long back. It is true that there were subsequent vacancies and the third Respondent appears to have made several appointments. But the core question is whether it is possible to claim appointment after the expiry of the select list.

16. It is a matter of record that all the 382 selected candidates were accommodated. The names of the Petitioners were not included in the said list of 382. Their claim was on the basis of the revised list containing 917 candidates.

17. Since the Supreme Court has confirmed the order passed by the High Court restricting the vacancies to 382, the Petitioners were not justified in claiming appointment on the basis of the list drawn for 917 posts. The issue has attained finality and it cannot be re-opened in a subsequent proceeding. The observation of the Supreme Court in paragraph 20 of the order was made in answer to the submissions made by the applicants, at whose instances the selection was quashed by the Central Administrative Tribunal. The observation was not a liberty granted by the Supreme Court to the selected candidates to claim appointment.

18. The Supreme Court confirmed the order passed by the High Court in all aspects including the changed situation as to the reduction of vacancy from 917 to 382 on the basis of the revised assessment of vacancies. The Special Leave Petitions filed by the original applicants before the Central Administrative Tribunal as well as the selected candidates were dismissed.

19. In fact, before the Supreme Court, the selected candidates contended that there was no justification to reduce the vacancies from 917 to 382, having prepared and published the panel of 917 selected candidates. However, this contention was not accepted by the Supreme Court and ultimately the SLP filed by the selected candidates were also dismissed. The contention which was rejected by the Supreme Court in SLP No. 2377 of 2001 was sought to be raised once again in the subsequent original applications. The order passed by the Supreme Court in SLP No. 2377 of 2001 stands in the way and as such the Petitioners are not entitled to re-agitate the very same issue. We are not here to examine in this batch of writ petitions, the bona fides of the Railways and the I.C.F. in making large scale appointments as substitutes and the subsequent action in granting them temporary status. That is a larger issue unconnected with the issue involved in these writ petitions. The issue herein is very limited. The Petitioners have no indefeasible right to claim appointment in spite of the expiry of the select list. Therefore, it is not possible to re-agitate the issue by filing subsequent applications, taking advantage of the observation made by the Supreme Court, in response to the submissions made by the Petitioners in SLP No. 14656 of 2000 (Applicants before the Central Administrative Tribunal at whose instance the selection was quashed). The issue has become final.

The Legal Principles:

20. In *Dir. S.C.T.I. for Med. Sci. and Tech. and Another Vs. M. Pushkaran*, , the Supreme Court observed that merely because the name of a person appears in the select list the same by itself would not be a ground to claim appointment. The observation reads thus:

11. The law operating in the field in this behalf is neither in doubt nor in dispute. Only because the name of a person appears in the select list, the same by itself may not be a ground for offering him an appointment. A person in the select list does not have any legal right in this behalf. The selectees do not have any legal right of appointment subject, *inter alia*, to bona fide action on the part of the State. We may notice some of the precedents operating in the field.

21. In *State of U.P. and Others Vs. Rajkumar Sharma and Others*, , the Supreme Court observed that the selectees have no claim as a matter of right for appointment. The Supreme Court said:

Selectees cannot claim the appointment as a matter of right. Mere inclusion of candidate's name in the list does not confer any right to be selected, even if some of the vacancies remained unfilled and the candidates concerned cannot claim that they have been given a hostile discrimination.

22. In a recent decision in *State of Orissa v. Rajkishore Nanda* (2010 (5) MLJ 944 : 2010 (6) SCC 777), the Supreme Court after considering the earlier judgments on the point held that inclusion of the name of a candidate in the select list does not give him a right of appointment. The relevant paragraphs reads thus:

14. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate.

15. A Select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required. It is the settled legal proposition that no relief can be granted to the candidate if he approaches the Court after expiry of the Select List. If the selection process is over, select list has expired and appointments had been made, no relief can be granted by the Court at a belated stage. (*Vide J. Ashok Kumar v. State of Andhra Pradesh and Ors.* (1996) 3 SCC 225; *State of Bihar and others Vs. Md. Kalimuddin and others*, ; *State of U. P. and others Vs. Harish Chandra and others*, ; *Sushma Suri Vs. Govt. of National Capital Territory of Delhi and Another*, ; *State of U.P. Vs. Ram Sawrup Saroj*, ; *K. Thulaseedharan Vs. The Kerala State Public Service Commission, Trivandrum and Others*, ; *Deepa Keyes -Vs.- Kerala State Electricity Board and Anr.* (2007) 6 SCC 194; and *Subha B. Nair and Ors.* (supra).

23. The Central Administrative Tribunal on a careful consideration of the earlier

proceedings, culminated in the order passed by the Supreme Court, rejected the original applications opining that it was not open to the Petitioners to claim appointment once again on the basis of the lapsed select list. The Central Administrative Tribunal was fully justified in rejecting the original applications. We do not find any error or illegality in the said order warranting our interference by exercising the power of judicial review.

24. In the result, the writ petitions are dismissed. No costs. Consequently, the connected Mps are closed.