
(2001) 08 GAU CK 0007
In the Gauhati High Court
Case No : Writ Appeal No. 54 of 1996

Biswajit Chowdhury

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 24-08-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 16(4), 226

Citation : (2001) 3 GLT 177

Hon'ble Judges : B. Lamare, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : C.S. Sinha, B. Choudhury and H.K. Battacharjee, for the Appellant;
S. Deb and R. Das, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Patnaik, J.—In these two Writ Appeals, the appellants have challenged the judgment and order dated 8.7.1996 of the learned Single Judge dismissing Writ Petitions Nos. 322/92 and 276/92.

2. The facts briefly are that the Tripura Public Service Commission (for short the TPSC) issued Advertisement No. 14/88 dated 7.12.1988, notifying therein that a Combined Competitive Examination will be held by the TPSC in March/April, 1989 for recruitment to 27 posts of Tripura Civil Service Grade-II and 10 posts of Tripura Police Service Grade-II. In the said Advertisement No. 14/88, the closing date for receiving applications of candidates was indicated as 16th January, 1989. Pursuant to the said Advertisement the two appellants amongst others applied. The appellants were called for written examination in which they qualified for the personality test and they appeared before the TPSC for the personality test. Thereafter, the TPSC in its letter dated 14th March, 1990 to the Chief Secretary to the Govt. of Tripura recommended the names of 28 candidates as suitable for appointment to the Tripura Civil Service Grade-II and of 11 candidates as suitable for appointment to Tripura Police Service Grade-II. In the aforesaid list of 28 candidates for Tripura Civil Service Grade-II and 11

candidates for Tripura Police Service Grade-II recommended by the TPSC, the names of the two appellants did not find place. The aforesaid 39 candidates (28+11) were appointed to Tripura Civil Service Grade-II and Tripura Police Service Grade-II. In the year 1991, certain vacancies arose in Tripura Police Service Grade-II and the Government requested the TPSC to send a list of 8 candidates for Tripura Police Service Grade-II from the panel prepared by the TPSC for Tripura Police Service Grade-II in 1990. The TPSC requested the Government for sending a proposal for extending the validity of the panel. The Government agreed to the extension of the validity of the panel for 3 months from 14.9.1991. The TPSC accordingly extended the validity of the panel for 3 months from 14.9.1991 and sent the names of 7 more candidates (5 General, 2 Scheduled Castes) from the panel drawn up on 14.3.1990. But the Government did not make the appointment to the said 8 vacancies in Tripura Police Service Grade-II and instead took a decision on 1.6.1992 that as the panel had become too old and its validity period has expired, there is no necessity to act upon the said panel. In accordance with the said decision a fresh requisition was sent by the Government to the TPSC for advertisement to fill up 6 posts of Tripura Civil Service Grade-II and 11 posts of Tripura Police Service Grade-II in 1992. The appellants then filed Writ Petition Nos. 322/92 and 276/92 for inter alia directions on the State respondents to appoint the appellants in the posts of Tripura Civil Service Grade-II or Tripura Police Service Grade-II with retrospective effect in accordance with the selection and recommendation made by the TPSC. But by the impugned common judgment dated 8.7.1996, the learned Single Judge dismissed the said Writ Petitions along with other Writ Petitions filed by other candidates. Aggrieved by the said judgment dated 8.7.1996 of the learned Single Judge, the appellants have filed these Writ Appeals.

3. Dr. H.K. Bhattacharjee, learned counsel appearing for the appellant in Writ Appeal No. 54/96, submitted that it will be clear from the Advertisement No. 14/88 and in particular Para-8 of the said Advertisement that the number of vacancies were subject to increase or decrease. Hence, the recruitment process initiated by the Advertisement was not just for the 37 advertised posts but for subsequent vacancies. He further submitted that after the 39 selected candidates recommended by the TPSC were appointed the Government requested the TPSC to send 8 more names, but the TPSC instead sent only 7 names. Dr. Bhattacharjee argued that if 8 names would have been sent by TPSC then the appellant of Writ Appeal No. 54/96 Sri Biswajit Chowdhury who was in the 6th position in the panel of General candidate would have been included in the list of 8 names (7 General and 1 SC) sent by the TPSC to the Government. Dr. Bhattacharjee, further argued that a direction should be issued to the TPSC to send the name of the appellant Sri Biswajit Chowdhury and a direction be issued to the State Government to appoint Sri Biswajit Chowdhury in a post of either Tripura Civil Service Grade-II or Tripura Police Service Grade-II.

4. Mr. K.N. Bhattacharjee, learned counsel appearing for the appellant in Writ Appeal No. 55/96, submitted that in the additional list of 7 candidates sent by

the TPSC to the Government, the name of the appellant in Writ Appeal No. 55/96 Sri Subhra Gupta finds place against Sl. No. 5. Mr. Bhattacharjee vehemently argued that since the Government had extended the validity period of the panel prepared by the TPSC by 3 months from 14.9.1991 i.e. upto 14.12.1991 and the TPSC sent the names of 7 candidates on 31.10.1991, the Government ought to have appointed the appellant to a vacancy in the post of Tripura Police Service Grade-II. Hence, direction ought to be given to the State respondents to appoint the appellant to a post of Tripura Police Service Grade-II with retrospective effect in accordance with the selection and recommendation by the TPSC. He cited the decision of the Supreme Court in *Jai Narain Ram Vs. State of U.P. and others*, in which the Supreme Court has held that the right to seek appointment to a post under Article 14 read with Article 16(1) and (4) is a constitutional right to equality and if the State failed to perform its constitutional duty to requisition the PSC to recommend the next qualified person to the posts the denial of appointment to the qualified person was unconstitutional. Mr. Bhattacharjee submitted that in the said case of *Jai Narain Ram v. State of U.P.* (supra) the Supreme Court not only directed the PSC to recommend the names of the appellant for appointment but also directed the State to issue orders of appointment to the appellant. Mr. Bhattacharjee also submitted that a set of instructions have been issued by the Governor of Tripura regarding direct recruitment through the TPSC and Para-7 of the said instructions provided that in case of recruitment by a competitive examination the TPSC will send to the appointing authority a complete list of marks obtained by each candidate and it was for the appointing authority to appoint the candidates who obtained the highest marks upto the number of vacancies to be filled. According to Mr. Bhattacharjee, the TPSC should not have sent the names of the 39 selected candidates but should have sent the complete list of candidates with marks obtained by them and it was for the Government to make appointment out of the said list the candidates who obtained the highest marks upto the number of vacancies to be filled. Mr. Bhattacharjee explained that if this procedure as laid down in Para-7 of the instructions was followed then the appellant Sri Subhra Gupta in Writ Appeal No. 55/96 would have been appointed to one of the vacancies in the post of Tripura Police Service Grade-II which occurred in the year 1992. In support of this contention Mr. Bhattacharjee cited the decision of the Supreme Court in *Miss Neelima Shangla, Ph. D. Candidate Vs. State of Haryana and Others*, in which the Supreme Court held that under the Rules relating to the appointment of Subordinate Judges in Haryana the PSC is not concerned with the number of the vacancies at all nor is it expected to withhold the full list of successful candidates on the ground that only a limited number of vacancies are available. Mr. Bhattacharjee submitted that there are two posts which have been kept vacant by interim orders passed by the Court on 23.1.1992 in Civil Rule No. 276/92 and on 17.12.1992 in Civil Rule No. 322/92 and appropriate direction can be given to appoint the appellants in the two appeals to said two vacancies.

5. Mr. S. Deb, learned counsel appearing for the State respondents, on the other hand, submitted that the Advertisement No. 14/88 was for filling up of 37 vacancies and 39 selected candidates have been recommended and already appointed by the Government. He further submitted that initially though the Government sent a requisition on 23.9.1991 for 8 vacancies in Tripura Police Service Grade-II which occurred in the year 1991 and the TPSC sent the names of 7 candidates for such vacancies, subsequently the Govt. decided on 7.3.1992 not to appoint any of these 7 persons from the panel prepared by the TPSC as the validity of the panel had already expired and instead a fresh requisition to the TPSC for a fresh advertisement and recruitment. He submitted that by such decision of the Government no fundamental right of the appellants had been infringed and the Government was well in its power not to appoint any one out of the 7 persons whose names had been sent by the TPSC for the 8 additional vacancies of the year 1991. Mr. Deb cited the decision of the Supreme Court in *Jatinder Kumar and Others Vs. State of Punjab and Others*, for the proposition that a person cannot claim as of right that the Government must accept the recommendation of the PSC and appoint the persons selected by the PSC and it is open to the Government to decide how many appointments will be made and no mandamus can be issued to the State Government to appoint the selected candidates. Mr. Deb also distinguished the facts of the present case from the facts of *Neelima v. State of Haryana (supra)* and *Jai Narian Ram v. State of U.P. (supra)* cited by Mr. K.N. Bhattacharjee. Mr. Deb produced the records of the State Government as well as a sealed envelop from the TPSC containing the names and marks of the candidates in order of merit excluding the 39 selected candidates.

6. It is now settled by the Supreme Court that when an advertisement is issued for direct recruitment to a particular number of vacancies, the recruitment has to be confined normally to such number of vacancies advertised. In *State of Bihar and another Vs. Madan Mohan Singh and others*, the Supreme Court found that the advertisement was for filling up 32 vacancies and held that the particular advertisement and the consequent selection process were meant only to fill up 32 vacancies and not to fill up the other vacancies and therefore the merit list prepared on the basis of the written test as well as viva voce will hold good only for the purpose of filling up those 32 vacancies and no further because the said process of selection for those 32 vacancies got exhausted and came to an end and if the same list has to be kept subsisting for the purpose of filling up other vacancies also that would naturally amount to deprivation of rights of other candidates who would have become eligible subsequent to the said advertisement and selection process. Applying the said law to the present case, it will be clear from the Advertisement No. 14 of 1988 that only 27 posts of Tripura Civil Service Grade-II and 10 posts of Tripura Police Service Grade-II totalling to 37 posts were advertised for recruitment through Combined Competitive Examination. As against the said 37 posts advertised, a select list of 39 candidates has been recommended by the TPSC and the said 39 selected

candidates have been appointed by the Government. Further, In the Advertisement No. 14/88 the closing date for receiving application was 16th January, 1989. Thus, candidates who became eligible for consideration for the competitive examination for direct recruitment to the Tripura Civil Service Grade-II and the Tripura Police Service Grade-II after 16th January, 1989 did not have the opportunity to apply for these 8 additional vacancies for the year 1991 in the Tripura Police Service Grade-II or any subsequent vacancies in the Tripura Police Service Grade-II and Tripura Police Service Grade-II. Hence, if appointments were to be made for the 8 vacancies of 1991 in Tripura Police Service Grade-II or to the subsequent vacancies in the Tripura Civil Service Grade-II or Tripura Police Service Grade-II out of the panel prepared by the TPSC on the basis of written test and viva-voce test held by the TPSC in the year 1989 out of the candidates who had applied pursuant to the said Advertisement No.14/88, the fundamental rights under Article 16 of all such candidates who became eligible for consideration after 16th January, 1989 would stand violated. In our considered opinion, therefore, the Government has rightly decided not to fill up the 8 vacancies in the post of Tripura Police Service Grade-II out of the panel prepared by the TPSC pursuant to the said Advertisement No. 14/88.

7. In *Neelima v. State of Haryana* (supra) cited by Mr. K.N. Bhattacharjee, the Supreme Court found that the Rules relating to appointment of Subordinate Judges of Haryana required the PSC to publish the results of the examination and to communicate the results to the Government but the TPSC did not publish the results and sent only the names of 17 candidates belonging to General category to the Government though many more had qualified. The Supreme Court further found that the Government of Haryana had taken the stand that they were unable to select and appoint more candidates as the names of only a few candidates were sent to them by the TPSC on those facts, the Supreme Court held that if the Government had been aware that there were qualified candidates available, they would have surely applied Rule 8 of Part-D and made the necessary selection to be communicated to the High Court. The Supreme Court further held that the net result was that qualified candidates, though available, were not selected and were not appointed and Miss Neelima Shangla was one of them. The Supreme Court accordingly directed the Government of Haryana to include the name of Miss Neelima Shangla in the 1984 list of candidates selected for appointment as Subordinate Judges in the Haryana Judicial Service (Judicial Branch) and forward the same to the High Court of Punjab and Haryana for inclusion in the High Court Register maintained under Rule 1 of Part-D to the Rules. The aforesaid decision of the Supreme Court was rendered on the interpretation of the Rules relating to appointment of Subordinate Judges of Haryana and particularly Rule 8 thereof which provided that "there was no limit to the number of names borne on the High Court Register but ordinarily no more names will be included than are estimated to be sufficient for the filling of vacancies which are anticipated to be likely to occur within two years from the date of selection of candidates as a result of examination". But in the present

case Para 1(b) of the instructions relating to direct recruitment through TPSC issued by the Governor provided that "in the case of services in which permanent vacancies occur throughout the year, the number of vacancies to be reported to the Commission should be the number likely to occur during the recruit year, and no vacancy which occur after the end of that year, shall be filled without a further reference to the Commission". Para-7 of the said instructions further provided that the candidates who obtain the highest marks upto the number of vacancies to be filled were to be appointed by the Governor or the Appointing Authority. It will be clear from the aforesaid Paras 1(b) and 7 of the instructions that the number of vacancies for which the examination was to be held by the TPSC and to which the appointments were to be made is the number likely to occur during the recruitment year and not for any vacancy which occurred after the end of recruitment year. In the instant case, therefore, the 8 vacancies in Tripura Police Service Grade-II which occurred in the year 1991 or subsequent vacancies in the Tripura Civil Service Grade-II or Tripura Police Service Grade-II could not be filled up on the basis of the recruitment held by the TPSC pursuant to the Advertisement No. 14/88.

8. Coming now to the decision of the Supreme Court in *Jai Narain Ram v. State of U.P.* (supra) cited by Mr. K.N. Bhattachargjee, in that case 4 posts were reserved in the Finance Department in Category-1 and 4 selected candidates did not join in the said 4 posts and as a result the said 4 posts reserved for Scheduled Castes remained vacant. On these facts, the Supreme Court held that the appellant and three other candidates who were next in the merit list of Scheduled Caste candidates were entitled for appointment and denial of appointment to appellant and 3 others above him was unconstitutional and directed the TPSC to recommend the name of the appellant for appointment and the State Government to issue the order of appointment to the appellant. But in the present case, all the 37 advertised vacancies in Tripura Civil Service Grade-II and Tripura Police Service Grade-II meant for general candidates and reserved for Scheduled Castes and Scheduled Tribes candidates have been filled up by appointment out of the 39 selected candidates. This is, therefore, not a case where any vacancy for which the recruitment process had been initiated by Advertisement No. 14/88 had remained unfilled because the selected candidates did not join. The aforesaid decision of the Supreme Court in *Jai Narain Ram v. State of U.P.* (supra) is thus of no assistance to the appellant.

9. In *Jatinder Kumar v. State of Punjab* (supra), on 31.3.1978 the Inspector General of Police, Punjab sent a requisition to the Subordinate Service Selection Board to select and recommend 7 suitable persons for the post of Assistant Sub-Inspector of Police. Thereafter 50 more posts of Assistant Sub-Inspector of Police became available and the Board was requested to recommend 57 suitable persons for these posts. The candidates were interviewed and physically tested on various dates from 24th of October, 1978 to 6th of February, 1979. Before the select list was finalised by the Board, the Inspector General of Police by his letter dated 31st of August, 1979 requested the Board to recommend 170 more

persons in addition to 57 persons in anticipation of further vacancies likely to occur as a result of expected reorganisation of the police force. The Board, however, recommended a panel of 144 candidates on 22.12.1979. Out of the 57 posts for which requisition was earlier sent, 9 posts were offered to the wards of the police officers in accordance with the Punjab Government instructions and the remaining 48 posts were offered to the candidates recommended by the Board in order of merit determined by the Board. Since the remaining candidates recommended by the Board were not appointed they filed two writ petitions under Article 226 of the Constitution. The Government opposed the said Writ Petition with the stand inter alia that by 7.1.1980 only 57 posts in the direct recruitment quota became available and appointments were made and that petitioners could not claim appointment as of right because the Board had recommended their names and that a time limit of 6 months had been prescribed for filling up the vacancies by persons recommended by the Board and after expiry of 6 months a fresh reference has been made to the Board. The writ petitioners were dismissed by the learned Single Judge of the Punjab and Haryana High Court and a Letters Patent Appeal against the judgment and order of the learned Single Judge was also dismissed by the High Court. The petitioners then filed appeal by Special Leave in which the Supreme Court inter alia held that it is open to the Government to decide how many appointments were to be made pursuant to a selection and that the selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a mandamus. The law laid down by the Supreme Court in *Jatinder Kumar's* case (supra) applies to the facts of these two Writ Appeals.

For the aforesaid reasons, we hold that no direction by way of mandamus can be issued to State Respondents to appoint the appellants in the vacancies in the Tripura Police Service Grade-II which occurred in the year 1991 or in subsequent vacancies in the Tripura Police Service Grade-11 or Tripura Civil Service Grade-II on the basis of the selection held by the TPSC pursuant to the Advertisement No. 14/88. These two Writ Appeals are therefore dismissed. But considering the facts and circumstances of the case, the parties shall bear their own costs.