

(2011) 09 GUJ CK 0021

In the Gujarat High Court

Case No : Special Civil Application No. 10915 of 2010 with Spl.C.A. No's. 11324 to 11382 of 2010 with SpI.C.A. No's. 10996, 11117 to 11158, 12286 to 12290, 13112 to 13132, 9323, 9331 all of 2011 with Civil Application No. 3666 of 2011 in Spl. C.A. No. 10915 of 20

Chudasma Dilubhai Dipsinh and Ors

APPELLANT

Vs

Addl. General Manager, Paschim Gujarat VIJ Co. Ltd., Rajkot
and Anr

RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Educational Subordinate Services Rules, 1971 — Rule 9(3)

Citation : (2012) 1 GLR 257

Hon'ble Judges : Anant S. Dave, J

Bench : Single Bench

Advocate : Ashish M. Dagli, Petitioner Nos. 1 to 100, for the Appellant; Dipak R. Dave, Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

ANANT S. DAVE, J

1. All these writ petitions along with Civil Applications filed therein are taken up for final disposal upon joint request made by learned Advocates appearing for the parties, since subject-matter and prayer are same. The petitioners whose names were called from the office of Employment Exchange for selection procedure undertaken by respondent-Paschim Gujarat Vij Co. Ltd. (in short "P.G.V.C.L") for the post of Vidyut Sahayak (Jr. Assistant) on a fixed remuneration in the pay-scale of Rs. 3400-100-4100-125-5350-150-6550-175-8300 and the said pay-scale was to be revised after successful completion of three years as Vidyut Sahayak. The basic education qualification for the above post was B.A./B.Com./B.Sc./B.B.A. with 55 marks for unreserved category and 50 marks for reserved category and upper age-limit was 28 years for open category and 33 years for reserved category. When the said requisition was sent to Employment Exchange,

no specific number of vacancies were earmarked. However, candidates were also to submit application personally in the prescribed format along with two sets of attested testimonials. That, written test for the above post was held on 9-8-2009 consisting of 100 marks for a duration of two hours with the subject of Mathematics at the level of 10th Standard, English, Computer knowledge and General English. After the written test was conducted, the respondent-P.G.V.C.L. prepared selection list for the post of Vidyut Sahayak (Junior Assistant) of 76 candidates and a waiting list of about 396 candidates.

2. It is case of the petitioners that though select list was operated by the P.G.V.C.L. and for some vacancies even wait listed candidates were also offered appointment but without exhausting the waiting list as a whole, it came to be scraped and new advertisement was issued for undertaking fresh recruitment. A representation was made to the respondent authorities but no favourable response was received and the authority had decided to proceed further with the new advertisement. They had no other option but to invoke extraordinary jurisdiction under Art. 226 of the Constitution of India, and hence, these writ petitions have been filed challenging unreasonable, arbitrary and discriminatory exercise of powers of P.G.V.C.L. in scraping the waiting list and not filling up the vacancies in existence from the candidates so wait listed.

3. Mr. J. R. Nanavati and Mr. Amit Panchal, learned Advocates appearing for the petitioners vehemently contended that the decision of P.G.V.C.L. to scrap the waiting list is not only arbitrary and unreasonable, but actuated with oblique motive as well as all the petitioners whose names were sponsored and summoned from the Employment Exchange had undergone the valid selection procedure and were wait listed against sufficient vacancies in existence, and therefore, the P.G.V.C.L. ought to have considered and appointed the wait listed candidates including the petitioners on the post of Vidyut Sahayak. It is further submitted that during the operation of the waiting list, the petitioners have crossed upper age-limit so far as new advertisement is concerned which prescribed the upper age-limit, which is, 25 years with permissible relaxation in upper age-limit for physically handicapped candidates and female candidates in respective castes. Besides, as per the prevalent practice of P.G.V.C.L. in the past whenever the waiting list was prepared i.e. in the year 2004, 2006 and 2007-2008 irrespective of duration of the waiting list appointments were made for such post from the waiting list and only reason advanced for appointing wait listed candidates in those years was administrative exigency and similar exigency exist even for the wait listed candidates for the selection for the year 2009-2010, but the respondent has chosen to undertake a fresh recruitment by inviting advertisement which runs counter and detrimental to the interest of the petitioners who have become virtually ineligible as per the qualifications prescribed in the new advertisement. It is next contended that even the new advertisement issued by the respondent-P.G.V.C.L. is for filling up future vacancies, and therefore, the whole exercise smacks of arbitrary action taken by the respondent with a view to deprive employment. The above approach by

P.G.V.C.L. not only causes heart-burning to the petitioners but when they have found their names in the waiting list they had legitimate expectations from respondent-P.G.V.C.L. in view of their past practice of continuing and operating the waiting list against the existing vacancies till it is exhausted. In absence of any rule or regulation framed with regard to operation of the waiting list, the respondent authority ought to have adhered to the practice and precedent followed by them in the past namely in the year 2004, 2006 and 2007-2008. Learned Advocate, however, acceded to the proposition of law that though selectees have no indefeasible right for appointment but at the same time they cannot be deprived of their right to be considered for appointment by legitimate expectations that unless rules prohibiting this regard, it is not open for the authority namely the employer to arbitrarily curtail the operation of the waiting list and in absence of valid reasons, the petitioner acquired right to be appointed. It is also submitted that when the applications were invited and after written test was held, at no point of time, the petitioners were informed about duration of the select/waiting list and it is settled law that administrative authorities have also expected to act in a fair, reasonable and in transparent manner.

3.1. In support of their submissions as above, and in addition to the same, reliance is placed on various decisions of the Apex Court which are as under :

(1) Shankarsan Dash Vs. Union of India, , a decision of the Constitution Bench of the Supreme Court where the Court had an occasion to consider I.P.S. (Cadre) Rules, 1954, I.P.S. (Recruitment) Rules, 1954 along with I.P.S. (Appointment of Competitive Examination) Regulations, 1965, whereby it is held that the State while filling up the vacancies has to act bona fide and not arbitrarily. That such decision of the authority not to fill up the vacancies has to be taken by assigning appropriate reasons and if the vacancies are to be filled up, the State is bound to respect the comparative merits of the candidates, as reflected at the recruitment test. (2) Virender S. Hooda and Others Vs. State of Haryana and Another, , wherein the Apex Court was considering circulars issued by the Government of Haryana dated 22-3-1957 and 26-5-1972 that when such vacancies arise within six months from the receipt of the recommendations of the Public Service Commission they have to be filled up from the waiting list maintained by the Commission; such administrative instruction are not to be ignored and have binding effect. (3) A.P. Aggarwal Vs. Govt. of N.C.T. of Delhi and Another, , where the Apex Court considered office memorandum dated 14-5-1987 issued by the Central Government conferring discretion on the Government to operate reserve list under the circumstances specified in the office memorandum. (4) Sandeep v. State of Haryana, 2001 (1) ALD (CrI.) 620 (SC), , wherein in the light of recruitment for the post in Haryana Civil Service (Execution Branch), it is held that pursuant to written examination and interview held by Public Service Commission vacancies available upto the date of interview are to be filled up from amongst the candidates selected in the said competitive test. In the above decision, the Apex Court also referred to earlier decision in the case of Virender S. Hoonda (supra). (5) B.P. Singhal Vs. Union of India (UOI) and Another, for the

proposition that judicial review is available while exercising extraordinary jurisdiction under Art. 226 of the Constitution of India against mala fide and arbitrary exercise of public power and Court will interfere where reasons were given for exercising such power are irrelevant or where the exercise of powers vitiated by self-denial on wrong appreciation of full amplitude of the power or where the decision is arbitrary, discriminatory or mala fide. (6) *Md. Raisul Islam and Others Vs. Gokul Mohan Hazarika and Others*, and submitted that non-filling of vacancies may be a matter of policy of Government, but Government is duty-bound to take conscious decisions not to fill up vacancies for justifiable reasons and (7) *East Coast Railway and Another Vs. Mahadev Appa Rao and Others*, and reiterated that though a candidate who has passed an examination or whose name appears in the select list may not have an indefeasible right to be appointed, yet appointment cannot be denied arbitrarily, nor can selection test be cancelled without giving proper justification and after the administrative decision is taken by the Executive function it is absolutely essential that the authority taking such decision is alive to the material on the basis of which it purports to take a decision and in colourable exercise of powers is subject to scrutiny of a writ Court exercising powers under Art. 226 of the Constitution of India.

4. It is summed up by learned Advocates for the petitioners that in the backdrop of the facts as stated earlier, the decision of P.G.V.C.L. to scrap the waiting list without exhausting it fully and offering employment to the petitioners wait listed candidates, is nothing but a case of non-application of mind. The relevant facts in existence about available vacancies vis-a-vis need of offering employment to the petitioners and in absence of any justification coming forth, the above exercise is arbitrary, unreasonable and even discriminatory which deserves to be quashed and set aside in exercise of powers under Art. 226 of the Constitution of India.

5. Mr. B. B. Naik, learned Senior Advocate with Mr. Dipak Dave, learned Advocate for the respondents, opposed prayer clause of these writ petitions and submitted that decision of P.G.V.C.L. to scrap and discontinue the waiting list and not to exhaust it fully by offering employment to the petitioners is taken bona fide and in accordance with prevalent policy based on regulations and circulars issued by P.G.V.C.L. from time to time. It is submitted that initially when P.G.V.C.L. wanted to recruit the Vidyut Sahayak (Junior Assistant) their names were called from the Employment Exchange and also separate applications were invited. Pursuant to the written test conducted on 9-8-2009, all those 76 successful candidates placed in the select list were given appointment on 17-9-2009 and further 90 vacancies/post of Junior Assistant were filled in by appointing candidates from waiting list in seriatim on 16-11-2009. Thus, out of applications invited from Employment Exchange, the P.G.V.C.L. has filled in 166 vacancies against available vacancy of 160. By relying on affidavit filed by the competent officer on behalf of P.G.V.C.L., it is submitted that the P.G.V.C.L. has thus completed filling up of 166 vacancies during the life time of the select list which is for one year only. Learned Advocate for the respondent has relied on Circular dated 14-8-1974 issued by the predecessor G.E.B which remained in force about life of

the select list and in case of direct recruitment the successful candidates whose names appear in the select list were not assured about the appointment and the list would be valid only for one year from the date of selection. Learned Advocate for the respondent submits that the duration of the waiting list would have been exhausted at the end of one year, and therefore, a new advertisement was issued in a daily newspaper on 26-8-2010. It is further submitted that due to administrative exigency as specified, applications were invited for 90 posts of Junior Assistant, since the select list was prepared on 26-8-2009 came to expire at the end of one year i.e. on 25-8-2010. Learned Advocate would further submits that thus, decision of respondent P.G.V.C.L. to explore a better merit by a wider selection by inviting public advertisement, in which, 27,000 applications have been received for finding out better and suitable meritorious candidates cannot be said to be a decision actuated with any oblique motive or arbitrary decision. So far as past practice of year 2004, 2006 and 2007 is concerned about operating the waiting list beyond the limit of one year, a conscious decision was taken considering prevailing exigency after discussing notes placed on the file and circumstances existed on that date. The above past practice if given a go-bye and inviting applications pursuant to public advertisement by itself is no ground to conclude about arbitrariness on the part of P.G.V.C.L. Learned Advocate also referred to the exigency about non-continuity of outsourcing of meter reading by private parties making it necessary for P.G.V.C.L. to undertake recruitment drive. It is, therefore, submitted that in exercise of powers under Art. 226 of Constitution of India this Court would not issue the writ mandating the authority to fill up the vacancies from the waiting list contrary to decisions of the Apex Court as under :

5.1. In support of his submission, Mr. Naik, learned Senior Advocate for the respondent also places reliance on Shankarsan Dash (supra) a decision of the Constitution Bench in support of his submissions that a selectee has no indefeasible right for appointment. Learned Advocate further relied on the following decisions of the Apex Court which are as under :

(1) Madan Lal and Others Vs. State of Jammu and Kashmir and Others, , where the Apex Court was considering Jammu and Kashmir Judicial Recruitment Rules, 1967 and duration of merit list in the context of various rules framed therein. While considering requisition made by the Government for relevant post and the select list prepared by Public Service Commission and actual appointments made by the Government, it was held that candidates in excess of 11 vacancies has requisition and who are lower in the merit list of candidates can only be treated as wait listed candidates in order of merit to fill up only 11 vacancies, for which, recruitment has been made in the event of any higher candidate not being available to fill 11 vacancies for any reasons. Once, 11 vacancies are filled in by candidates in order of merit from the select list that list will get exhausted having served its purpose. (2) Punjab State Electricity Board and Others Vs. Malkiat Singh, , where the Apex Court reiterated that a candidate whose name included in the select list does not have any vested right to get order of appointment by

mere inclusion of name of candidate in the select list-direction for appointment of such candidate by the High Court was held to be improper. (3) Union of India (UOI) and Others Vs. Kali Dass Batish and Another, , where the Apex Court held the decision of Jharkhand High Court pointing that mere inclusion of candidate's name in the select list gave him no right and if there was no right, there could be no occasion to maintain a writ petition for enforcement of a non-existing right. In the above decision, the Apex Court also referred to the decision of the Constitution Bench in the case of Shankarsan Dash (supra). (4) K. Thulaseedharan Vs. The Kerala State Public Service Commission, Trivandrum and Others, and submitted that the Public Service Commission has no power to extend validity of a rank list that has expired and even if in the past Commission had done so in some cases it would not constitute foundation, a right to claim so in other cases and negative equity claim under Art. 14 was not approved by the Apex Court. (5) State of Rajasthan and Others Vs. Jagdish Chopra, , where the Apex Court was confronted with interpretation of Rule 9(3) of Rajasthan Educational Subordinate Services Rules, 1971 which provided for determination of vacancies once a year and it was held that the intention of the rule was that the panel/select list would be valid for one year only and it was further held that if the rules are silent on this point, otherwise also a panel/merit list should be valid for one year only. (6) Mukul Saikia and Others Vs. State of Assam and Others, , (7) Mohd. Sohrab Khan Vs. Aligarh Muslim University and Others, and (8) Rakhi Ray and Others Vs. The High Court of Delhi and Others, , where the Apex Court reiterated by stating that vacancies which arise after the selection undertaken for a given year would be filled up for the issuance of new advertisement and not from the waiting list and once time-limit expires of the panel/select list/wait list, it cannot be operated as a source of recruitment.

6. In the above, legal position about a right of selectee vis-a-vis operation of waiting list according to learned Advocate for the respondent-P.G.V.C.L., law is no more res Integra and the petitioners of these writ petitions are admittedly in the waiting list and in absence of any arbitrariness on the part of P.G.V.C.L. to discontinue and scrap the waiting list and not offering employment to the petitioners do not deserve any relief from this Court and when the writ petitions are found to be not maintainable for non-existing right like the petitioners claim and issuance of mandamus in exercise of powers under Art. 226 do not arise at all.

7. On perusal of the record of writ petitions and submissions made by learned Advocates for the parties, the following undisputed fact arises namely : (i) when the applications of the petitioners were invited and names were called from Employment Exchange, number of vacancies were not specified by respondent-P.G.V.C.L., (ii) the recruitment process undertaken by P.G.V.C.L., was in pursuance to powers vested into P.G.V.C.L. as per regulations and various circulars issued from time to time, (3) on passing written test as prescribed 76 candidates were found to be successful and were placed in the selection list and all of them were offered appointment. The petitioners of these writ petitions were

placed in waiting list for the post of Junior Assistant (Vidyut Sahayak) and in all 396 candidates were placed in waiting list. That, circulars/communications addressed by Establishment Officer of Predecessor of P.G.V.C.L. and G.E.B. on 14-8-1974 pertaining to nomination of selection to the candidates provide that in case of direct recruitment, the successful candidate whose name appear in the select list should be informed of the resolution and their serial numbers on which their names appear and it is to be clear that mere inclusion of the names in the select list, no assurance was given for appointment, but it will depend on the vacancies arising and there such list would be valid for one year only from the date of selection. On the facts of this case, selected candidates were appointed on 17-9-2009 and 90 candidates from the waiting list were also appointed on 16-11-2009 pursuant to the written test undertaken on 9-8-2009, and therefore, the life of select list which was of a duration of one year was over by 8-8-2010.

7.1. In view of the above, it was open for the respondent-P.G.V.C.L. to go for a fresh recruitment in accordance with law.

8. When learned Advocates appearing for the both the parties have heavily relied on the case of Shankarsan Dash (supra), a decision of Constitution Bench and it is not disputed about having no indefeasible right for a selectee whose name is included in the select list, only question remain to be examined is about exercise of the powers by respondent-P.G.V.C.L. and a decision taken to scrap waiting list whose life was over at the end of 12 months is unreasonable or arbitrary. That, the contention of learned Advocates for the petitioners that the above decision to scarp the waiting list by not offering employment to the petitioners is arbitrary in view of availability of the vacancies during the operation of the waiting list and petitioners who placed in the waiting list were not informed about duration or a life of the waiting list coupled with past practice of P.G.V.C.L. to operate the waiting list in spite of the expiry of one year in the year 2004, 2006 and 2007-2008 and legitimate expectation of the wait listed candidates like the petitioners if examined in the context of law laid down by the Apex Court, it is clear from the decision relied on by learned Advocate for the respondent that the employer is not duty-bound to inform about duration of the select list and its validity for a time-limit. In absence of non-specified vacancies for the recruitment which commenced on August, 2009 and the Circular of 1994 provided specifically about no indefeasible right of the candidate selected and placed in the select list and no assurance is given about the appointment, the decision taken by the respondent-P.G.V.C.L. to scrap and/or to discontinue the waiting list by not offering any appointment to the petitioners cannot be said to be in any manner unreasonable or arbitrary and violative of Art. 14 of the Constitution of India. When no right accrues in favour of the selectee, the petitioners were not placed in the select list but whose names were found in the waiting list could not have claimed and pitch their right on par with selectees. Even otherwise also, the respondent-P.G.V.C.L. has not only offered employment to all selectees but continued to operate even waiting list and 90 candidates were appointed for the post of Junior Assistant during the life-time of the select list.

The above exercise in my view is a procedure adopted by P.G.V.C.L. in consonance with decisions of the Apex Court relied on by learned Advocate for the respondents and it is not unreasonable, arbitrary or discriminatory or contrary to law.

8.1. It is trite, the Apex Court in the case of Gujarat State Dy. Executive Engineer's Association v. State of Gujarat, 1994 Supp. (2) SCC 591, while considering a circular issued by the State of Gujarat on 27-12-1983, by which, according to the instructions issued by various departments of the Government for preparing so often and waiting list prepared by the Gujarat Public Service Commission over and above the number of posts requisitioned was to remain in force upto two years or under circumstances upto the declaration of the result of next examination was considered along with relevant recruitment rules for the posts of Executive Engineers, G.S.E. Class-I and Class-II and claim of the direct recruit to issue directions to Government authorities to appoint the candidate from the waiting list to the vacancies to the relevant year and so often done by the High Court was quashed and set aside by the Apex Court and speaking through Hon'ble Mr. Justice R. M. Sahai (as His Lordship then was) in Para 8 after considering the nature of waiting list and limited right of wait listed candidate in case of appointed candidate not joined the service or vacancy arising due to resignation etc. it was held that no vested right accrued to wait listed candidate in Para 9 held as under :

"9. A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency, the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service."

8.2. Having held so, the Apex Court in Para 11 noticed that the entire appointment of the direct recruits from the waiting list was not proper, but such persons were appointed and worked since 5 years, their appointments were not disturbed and further noted in Para 13 not to grant any fresh appointment from

the waiting list. Therefore, the above decision and law pronounced by the Apex Court along with the decision of Shankarsan Dash (supra) and other such decision and the proposition that a candidate in the select list/waiting list has no indefeasible right to be appointed govern subject-matter of this case of wait listed petitioners. The decision of Gujarat State Dy. Executive Engineers' Association (supra) is squarely applicable, and therefore, seeking direction by way of mandamus to the respondent authority to appoint the petitioner admittedly in the waiting list for the post of Vidyut Sahayak (Jr. Assistant) from existing or even future vacancies cannot be issued in exercise of powers under Art. 226 of the Constitution of India.

9. The above issue is examined in the context of receipt of about 27,000 applications from open market upon following and issuing public advertisement for a wider and better scope of selection and inviting eligible candidates, on the contrary would remove discrimination and an unemployed youth other than who were registered with Employment Exchange would compete and participate in selection procedure. By adopting such a procedure, the P.G.V.C.L. would be able to undertake fair and transparent selection procedure giving better and wider scope to unemployed youth as well as the employer. That, the argument and submissions about arbitrary exercise of powers of P.G.V.C.L., therefore, is not only misconceived but based on an erroneous promise that wait listed candidates have right to claim appointment irrespective of duration of the panel list. The petitions are devoid of any substance and are hereby rejected.

10. Interim relief granted earlier stands vacated in all these petitions.

11. The request made by learned Advocate for the petitioners to continue stay, is rejected.

12. In view of the order passed in Special Civil Applications, no order in Civil Applications and hence, Civil Applications also stands disposed of. Rule is discharged in each of the petitions.