

(2015) 08 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Writ Petition No. 9918 of 2014

Dinesh Kumar Agarwal and Others

APPELLANT

Vs

District Judge, Bharatpur

RESPONDENT

Date of Decision : 14-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 08 RAJ CK 0012

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Ashok Bansal, for the Appellant; N.K. Maloo and Ajeet Maloo, Advocates for the Respondent

Final Decision : Allowed

Judgement

Alok Sharma, J—The petitioners were successful in the examination for appointment to the post of LDC held pursuant to an advertisement for the purpose published on 10.03.2014. Under the said advertisement, a total of 64 posts were advertised to be filled up in the year 2014, of which 40 were those from regular vacancies and the remaining 24 were anticipated vacancies on the post. The petitioners being eligible participated in the selection process and state to have been included in the list of the top 64 successful candidates. However, appointments were offered only to 40 candidates i.e. against the regular vacancies, but not offered to others entitled, such as the petitioners, despite having passed the examination securing 40% or more marks in the aggregate with at least 30% marks in paper-I and paper-II and having achieved the minimum typing speed required under the Rajasthan Subordinate Court Ministerial Establishment Service Rules, 1986 (hereinafter "the Rules of 1986").

2. Aggrieved of the arbitrary non-filling up of the remainder 24 vacancies to the post of LDC, as advertised for the year 2014, the petitioners dispatched a notice for demand of justice through their counsel to the respondent--District Judge, Bharatpur, but to no avail. Hence this petition on 17.09.2014.

3. Mr. Ashok Bansal, appearing for the petitioners has submitted that albeit a selected candidate does not indeed have an indefeasible right to appointment to the post advertised, yet as held by the Hon''ble Apex Court in *Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others*, (1993) 2 JT 688 : (1993) 2 SCALE 545 : (1993) 2 SCC 573 those selected after due process cannot be abandoned by the appointing authority on its whims and caprice without any good reason being proffered. It has been submitted that no good and legally valid reason having been forthcoming from the respondents for non-appointment to the remainder 24 posts advertised, the evident arbitrariness of the respondent is liable to be rectified through the process of this Court in the exercise of its powers under Article 226 of the Constitution of India with suitable directions beneficial to the petitioners being made.

4. Mr. N.K. Maloo, Sr. Advocate appearing with Mr. Ajeet Maloo, for the respondent submitted that even though advertise for recruitment in the year 2014 were 64 posts of LDCs, the 24 anticipated vacancies only fructified on 15.01.2015--when promotions were made from LDC to UDC following the Departmental examinations. And as the vacancies advertised related to the year 2014 i.e. 1st January to 31st December. The vacancies on the post of LDC which became available on 15.01.2015 on promotions being made to the cadre of UDC were not open to appointment with reference to the advertisement dated 10.03.2014. It was further submitted that some inter-district transfer applications qua LDCs were pending before the Hon''ble High Court and the potential transferees to the Bharatpur Judgeship had to be adjusted, if directed by the High Court, against the 24 vacancies. And this was another reason as to why appointment to the remainder posts against anticipated vacancies advertised under the advertisement dated 10.03.2014 were not made. Sr. Counsel for the respondent relied upon the judgment of the Hon''ble Apex 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 to contend that no selected candidate has an indefeasible right to be appointed. It was then submitted that fresh recruitment process for appointment of LDCs now having been commenced, the writ petition should be dismissed. An additional affidavit in support of the reply has also been filed wherein it has been submitted that life of panel under Rule 19(iii) of the Rules of 1989 is one year from the date of declaration of result of the written test and thereafter even the names of the candidates selected have to be automatically removed from the register of the selected candidates. Whereupon such candidates left out are to again take their chance with others for recruitment in the subsequent years. The period of one year from the declaration of result has lapsed and hence the writ petition is liable to be dismissed on this ground also.

5. Heard. Considered.

6. The Hon''ble Apex Court in *Asha Kaul (Mrs.) (Supra)* has held that those

selected after due process for appointment, cannot be abandoned by the appointing authority on its whims and caprice without any good reason being proffered for non-appointment on the posts advertised. No authority of the Apex Court or this Court holds to the contrary or allows arbitrary non-appointment of selected candidates on vacant posts as advertised. Even in *Shankarsan Dash (Supra)*, on which Mr. N.K. Maloo, Sr. Counsel relied, the Hon''ble Apex Court held that even though an indefeasible right to appointment for those selected cannot be attributed, yet it does not mean that the State has the licence to act in an arbitrary manner. Consequently the decision not to fill up the vacancies by the candidates selected has to be taken bona fide for appropriate reasons. Further in *Lala Raghuraj Swarup (dead) by L.Rs. Vs. Hardwari Lal and others*, AIR 1991 SC 2072 : (1991) 3 JT 486 : (1991) 2 SCALE 387 : (1991) 4 SCC 391 : (1991) 3 SCR 672 : (1991) 2 UJ 536 , the Hon''ble Apex Court held that those in the select list prepared under due process are entitled to appointment on vacancies available during the currency of such a list.

7. From the reply to the writ petition and the contentions of the Sr. counsel appearing for the respondent, it is evident that the appointments to all the 64 posts advertised have not been made. Appointment have been made only against 40 of the 64 vacancies advertised. In terms of Rule 19(iii) of the Rules of 1986, the life of panel is one year from the date of declaration of the result which in this case is 25.06.2014. The panel of candidates successful in the LDC examination thus was/is good and valid till 24.06.2015. Yet the petitioners have not been appointed to the said vacant posts on the specious ground of potential transfer of LDCs from other District Judgeship to the Bharatpur Judgeship applications for which were stated to have been then pending before the Hon''ble High Court. This Court cannot conceivably find the above purported reason for non-appointment of selected candidates to the advertised posts, valid and legally sustainable. A contrary conclusion has obviously to be drawn. Even the assertion that anticipated vacancies only arose on promotion from the post of LDC to UDC on 15.01.2015 is of no event as the promotion to the post of UDCs related to the vacancies previous year i.e. 2014. Resulting vacancies on the post of LDC would also relate to the year 2014. During this time the validity of the select list cannot be doubted as the result of successful candidates for the post of LDC was declared on 25.06.2014. The select list was thus valid till 24.06.2015 as per Rule 19(iii) of the Rules of 1986.

8. Any discretion including the discretion not to operate the select list for appointment to the posts advertised had to be reasonably exercised. It was not so by the respondent. The law and the Constitution do not recognize any arbitrary exercise of discretion. Such arbitrariness, if permitted, would be wholly destructive of the Rule of law. Discretion has to be exercised on judgment made with reference to the facts of a case. From the reasons given out in the reply to the writ petition for non-appointment of LDC against the 24 anticipated vacancies in the year 2014, I am of the considered view that the discretion for non-appointment against the 24 anticipated vacancies was exercised wholly arbitrarily

and without any legal, valid and justifiable cause.

9. I find no force in the contention of the Sr. Counsel for the respondent that the select list having expired on 24.6.2015, under Rule 19 of the Rules of 1986, the writ petition be dismissed. In the case of Ghanshyam Singh Rathore v. The State of Rajasthan & Anr. [2010 (2) WLC (Raj.) 443], a similar contention was rejected and following judgments of the Hon''ble Apex Court, it was held that where a writ petition has been filed during the validity of a select list, directions for consideration of a candidate therein can be granted by the Court even if during the pendency of the writ petition, the select list has expired. It is notable that the present writ petition was filed on 17.09.2014 much prior to the expiry of the select list on 24.06.2015.

10. Consequently, the writ petition is allowed. The respondent--District Judge, Bharatpur is directed that the case of the petitioners be considered for appointment to the post of LDC against the 24 anticipated vacancies for the post of LDC in Bharatpur Judgeship pursuant to the advertisement dated 10.03.2014. And on the petitioners being found meritorious and eligible on proper verification, consequences to follow.