

(2009) 10 MAD CK 0214

In the Madras High Court

Case No : Writ Petition No. 33786 of 2006 and O.A. No. 5433 of 1998

K. Muruga Selvan

APPELLANT

Vs

The Secretary, Tamil Nadu Public Services Commission and
The Director, The Tamilnadu Animal Husbandry Department

RESPONDENT

Date of Decision : 06-10-2009

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2009) 10 MAD CK 0214

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : A. Arulmozhi, for the Appellant; R. Neelakandan, GA for R2 and M. Bhaskar, for R1, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides.

2. This writ petition arose out of O.A. No. 5433 of 1998 filed by the petitioner before the Tamil Nadu Administrative Tribunal. In view of the abolition of the Tribunal, it was transferred to this Court and was renumbered as W.P. No. 33786 of 2006.

3. The petitioner sought for the issuance of a writ of mandamus to direct the respondents to appoint the applicant in the post of Veterinary Assistant Surgeon in Tamil Nadu Husbandry Service on par with other similarly situated candidates obtained same marks that of the applicant and in view of the fact that he has been placed in the reserve list.

4. The case of the petitioner was that the petitioner applied to the post of Assistant Veterinary Surgeon in the year 1992. He wrote the written examination and was permitted to attend an interview. His application number was 197. The respondent TNPSC published the select list by a notification No. 18693. The petitioner's name was kept in the reserve list. But, however he was not given

any posting orders. Subsequently, when the respondent TNPSC invited applications for 174 vacancies for the post of Veterinary Assistant Surgeon, the petitioner filed OA No. 5433 of 1998 seeking for a direction to the respondents to appoint the petitioner as VAS under the Tamil Nadu Animal Husbandry Service on par with similarly situated candidates whose names were found in the reserve list for the selection held in the year 1992.

5. On notice from the Tribunal, the respondents have filed a reply affidavit dated 12.2.1999. In the reply affidavit, in paragraph No. 10, it was stated as follows:

10. ...it is submitted that based on the marks obtained by the applicant in the Main Written Examination and in the Oral Test and with reference to the rule of reservation of appointments and also with reference to the date of birth of the applicant, he did not reach his turn for selection in the main select list and he reached his turn only for the placement in the reserve list. Of the 151 candidates selected in the main select list, only 6 candidates did not join duty. The Unit officer viz. the Director of Animal Husbandry, who initially requested for the released of all the 33 candidates in the reserve list without specifying the reasons therefore, had on clarifications stated that the 6 vacancies caused due to the non joining duty of the main select list candidates were included in the estimate of vacancies furnished by him for the year 1997-98. He had not also made any specific request for the release of 6 candidates from the reserve list for appointment in the 6 vacancies caused due to the non joining duty of the 6 candidates in the main select list. As such, the applicant who was placed in the 3rd position in the reserve list was not allotted from the reserve list for appointment. The selection process pursuant to the notification issued by the Commission in September '97, based on the estimate of vacancies furnished by the Director of Animal Husbandry has also been completed and the selection was also finalised and published.

6. The petitioner had stated that he has secured 219 marks whereas candidate with registration Nos. 10, 40, 48, 111 and 235 were also selected even though they had secured the very same mark.

7. In response to this statement, in the reply affidavit, it was stated that totally six candidates had secured 219 marks, but the ranking list was arranged by the TNPSC and because of the ranking list, the candidates with application Nos. 235, 10, 40, 48 and 111 were selected and their names were arranged on the basis of the communal roster. The roster contained the first three backward class candidates, then one open competition and the fifth candidate was MBC candidate. The petitioner was kept in the reserve list, because as per the date of birth, he was junior most and as per the guidelines, he was kept in the reserve list.

8. It must be noted that in the notification published by the TNPSC, it was stated that the reserve list will be kept pending in case if any candidate who was selected did not join the post and the reserve list will be valid till the next

selection list. According to the petitioner, there was six vacancies on account of six selected candidates did not join and therefore, the petitioner ought to have been given appointment against the vacancies meant for six candidates since the petitioner's position was third in the reserve list. This fact was explained in the reply affidavit.

9. However, Ms. A. Arulmozhi, learned Counsel for the petitioner placed reliance upon the judgment of the Supreme Court in *State of U.P. Vs. Ram Sawrup Saroj*, . In paragraph 10 of the said judgment, it was observed as follows:

10. Similarly, the plea that a list of selected candidates for appointment to the State services remains valid for a period of one year only is primarily a question depending on facts and yet the plea was not raised before the High Court. Secondly, we find that the select list was finalised in the month of November 1996 and the writ petition was filed by the respondent in the month of October 1997, i.e., before the expiry of one year from the date of the list. Merely because a period of one year has elapsed during the pendency of litigation, we cannot decline to grant the relief to which the respondent has been found entitled by the High Court. We may place on record that during the course of hearing of the SLP before this Court, on 29-9-1999 we had directed the learned Additional Advocate General for the State of U.P. to bring on record on affidavit the status of present recruitment of the judicial officers and the present vacancy position in the subordinate judiciary. In the affidavit of the Joint Secretary, Department of Appointment, State Government, Uttar Pradesh sworn in on 4-11-1999 and filed before this Court it is stated that as on 14-10-1999 there were 231 vacancies existing in the cadre of Munsif Magistrates (now Civil Judge, Junior Division/Judicial Magistrates). That being the factual position we see no reason why the direction made by the High Court should be upset in an appeal preferred by the State of Uttar Pradesh.

10. It is not clear as to how this case can help the case of the petitioner especially when the contention in the present case is totally different. It is not the case of the petitioner that the reserve list was operated selectively. On the contrary, the reserve list was never operated by the respondent State in view of the obstinate and illegal stand of the Director of the Animal Husbandry. He wanted the release of all the 33 names instead of six vacancies which arose due to non joining of candidates. When the moment the fresh notification came to be published in the year 1997, the earlier reserve list will automatically lapse. The petitioner chose to move the court after the reserve list had lapsed even by the notification issued by the TNPSC. In this context, it has to be seen whether the petitioner has an enforceable right merely because his name was found either in the select list or in the present case in the reserve list kept by the TNPSC.

11. The Supreme Court has held that a select list can be operated only as against the notified vacancies, but not against future vacancies. Though for the six vacancies, the persons in the select list could have been accommodated, but for the illegal demand made by the Director of Animal Husbandry to release all the

33 names from the reserve list could not be accepted by the TNPSC as it would amount to filling up even non notified vacancies. In this context it is necessary to refer to the judgment of the Supreme Court in Mukul Saikia and Others Vs. State of Assam and Others, of the said judgment may be usefully reproduced below:

33. At the outset it should be noticed that the select list prepared by APSC could be used to fill the notified vacancies and not future vacancies. If the requisition and advertisement was only for 27 posts, the State cannot appoint more than the number of posts advertised, even though APSC had prepared a select list of 64 candidates. The select list got exhausted when all the 27 posts were filled. Thereafter, the candidates below the 27 appointed candidates have no right to claim appointment to any vacancy in regard to which selection was not held. The fact that evidently and admittedly the names of the appellants appeared in the select list dated 17-7-2000 below the persons who have been appointed on merit against the said 27 vacancies, and as such they could not have been appointed in excess of the number of posts advertised as the currency of select list had expired as soon as the number of posts advertised are filled up, therefore, appointments beyond the number of posts advertised would amount to filling up future vacancies meant for direct candidates in violation of quota rules. Therefore, the appellants are not entitled to claim any relief for themselves. The question that remains for consideration is whether there is any ground for challenging the regularisation of the private respondents.

12. The Supreme Court had a review of all the previous decisions in the matter of enforceability of a select list against the State and also the need for the aggrieved parties coming before the Court at the appropriate time vide its decision in S.S. Balu and Another Vs. State of Kerala and Others, . The following passages found in paragraphs 12 to 17 may be usefully extracted below:

12. There is another aspect of the matter which cannot also be lost sight of. A person does not acquire a legal right to be appointed only because his name appears in the select list. (See Pitta Naveen Kumar v. Raja Narasaiah Zangiti.) The State as an employer has a right to fill up all the posts or not to fill them up. Unless a discrimination is made in regard to the filling up of the vacancies or an arbitrariness is committed, the candidate concerned will have no legal right for obtaining a writ of or in the nature of mandamus. (See Batiarani Gramiya Bank v. Pallab Kumar.) In Shankarsan Dash v. Union of India a Constitution Bench of this Court held: (SCC pp.50-51, para 7)

7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner.

The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.

13. In *State of Haryana v. Subash Chander Marwaha* this Court held: (SCC p.226, paras 10-11)

10. - The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed. Indeed, if the State Government while making the selection for appointment had departed from the ranking given in the list, there would have been a legitimate grievance on the ground that the State Government had departed from the rules in this respect.

11. It must be remembered that the petition is for a mandamus. This Court has pointed out in *Rai Shivendra Bahadur (Dr.) v. Nalanda College* that in order that mandamus may issue to compel an authority to do something, it must be shown that the statute imposes a legal duty on that authority and the aggrieved party has a legal right under the statute to enforce its performance. Since there is no legal duty on the State Government to appoint all the 15 persons who are in the list and the petitioners have no legal right under the rules to enforce its performance the petition is clearly misconceived.

14. In *Pitta Naveen Kumar v. Raja Narasaiah Zangiti* this Court held: (SCC p.273, para 32)

32. ... A candidate does not have any legal right to be appointed. He in terms of Article 16 of the Constitution of India has only a right to be considered therefore. Consideration of the case of an individual candidate although ordinarily is required to be made in terms of the extant rules but strict adherence thereto would be necessary in a case where the rules operate only to the disadvantage of the candidates concerned and not otherwise.

15. In *State of Rajasthan v. Jagdish Chopra* this Court held: (SCC pp.164-65, paras 9 and 11)

9. Recruitment for teachers in the State of Rajasthan is admittedly governed by the statutory rules. All recruitments, therefore, are required to be made in terms thereof. Although Rule 9(3) of the Rules does not specifically provide for the period for which the merit list shall remain valid but the intent of the legislature is absolutely clear as vacancies have to be determined only once in a year. Vacancies which arose in the subsequent years could be filled up from the select list prepared in the previous year and not in other manner. Even otherwise, in absence of any rule, ordinary period of validity of select list should be one year. In *State of Bihar v. Amrendra Kumar Mishra* this Court opined: (SCC p.564, para 9)

9. In the aforementioned situation, in our opinion, he did not have any legal right to be appointed. Life of a panel, it is well known, remains valid for a year. Once it

lapses, unless an appropriate order is issued by the State, no appointment can be made out of the said panel.

It was further held: (Amrendra Kumar case⁷, SCC p.565, para 13)

13. The decisions noticed hereinbefore are authorities for the proposition that even the wait list must be acted upon having regard to the terms of the advertisement and in any event cannot remain operative beyond the prescribed period.

* * *

11. It is well-settled principle of law that even selected candidates do not have legal right in this behalf. (See *Shankarsan Dash v. Union of India* and *Asha Kaul v. State of J&K.*)

16. Furthermore, the rank list was valid for a period of three years. Its validity expired on 5-6-2000. Another select list was published for the period from 16-9-2002 to 15-9-2005. Vacancies in terms of the said select list have also been filled up.

17. It is also well-settled principle of law that "delay defeats equity". The Government Order was issued on 15-1-2002. The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and the State of Kerala preferred an appeal there against, they impleaded themselves as party-respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, relief's prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage. In *NDMC v. Pan Singh* this Court held: (SCC p. 283, para 16)

16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction.

(See also *Virender Chaudhary v. Bharat Petroleum Corpn.* at SCC p.302, para 17.)

13. In the light of the above, this writ petition stands dismissed. However, there

will be no order as to costs.