

(2016) 05 SC CK 0069

In the Supreme Court Of India

Case No : Civil Appeal Nos. 5035-5036 of 2016 (Arising out of SLP(C) Nos. 23748-23749 of 2012)

Kulwinder Pal Singh and Anr.

APPELLANT

Vs

State of Punjab and Ors.

RESPONDENT

Date of Decision : 12-05-2016

Acts Referred:

Citation : (2016) AIR(SCW) 2281 : (2016) AIRSC 2281 : (2016) ALLSCR 1254 : (2016) 2 ApexCourtJudgments(SC) 472 : (2016) 2 BBCJ 658 : (2016) 150 FLR 211 : (2016) 3 JCR 325 : (2016) 3 JLJR 122 : (2016) 4 KCCR 458 : (2016) 2 LawHeraldSC 1645 : (2016) 5 MLJ 132 : (2016)

Hon'ble Judges : T.S. Thakur, CJI; R. Banumathi, J.

Bench : Division Bench

Advocate : Rahul Gupta and Kuldip Singh, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J. - Leave granted.

2. These appeals are preferred against the common judgment dated 13.02.2012 whereby the High Court of Punjab and Haryana dismissed the writ petitions C.W.P. No.20135 of 2008, C.W.P. No.20189 of 2008 and C.W.P. No.21746 of 2008, holding that the appellants cannot claim any legal right in respect of the posts remained unfilled as the select list stood exhausted with the joining of the candidates to the extent of posts advertised.

3. Brief facts which led to filing of these appeals are as follows: Punjab Public Service Commission issued advertisement for filling up 52 posts of Punjab Civil Services (Judicial Branch) vide advertisement dated 07.03.2007. Out of 52 posts, 27 posts were for General Category; 25 posts for reserved category which included 03 posts for Ex-servicemen; 02 posts for Physically Handicapped; 10 posts for Scheduled Castes; 03 posts for Scheduled Caste Ex-servicemen; 05 posts for Backward Classes; 01 post for Backward Class Ex-servicemen and 01

post for Sports Person. Preliminary examination was conducted on 27.05.2007. The main examination was conducted from 20th to 22nd July, 2007. The viva voce was conducted from 28th to 30th November, 2007 and final result was declared on 01.12.2007. 27 candidates from general category, 10 candidates from scheduled castes and 05 candidates from backward classes were declared successful and have joined in terms of letters of appointment issued to them. Eight posts were de-reserved in respect of the remaining unfilled vacant posts. As against the said de-reserved posts, seven candidates from the general category i.e. candidates upto Sl. No.34 and 01 candidate from backward classes were offered appointments. However, three candidates belonging to general category namely Sumit Garg, Vijayant Sehgal and Yogesh Chaudhary placed at Sl. No.1, 5 and 32 respectively did not join the service. Resultantly, thirty one general category candidates accepted the appointment and joined service.

4. The appellants, who belong to general category have appeared in preliminary examination and subsequently in the main examination including viva voce figured in the final merit list as they stood at Sl. Nos. 37 and 36 and Parminder Singh Grewal at Sl. No. 35. Since three candidates did not join service, the appellants submitted the representation on 02.04.2008 to the High Court for issuance of appointment orders to them. The representation of the appellants was considered in the sixteenth meeting of the Administrative Committee held on 08.12.2010 and it was resolved to recommend the names of the appellants subject to approval of the Full Court. Again the matter was considered in the eighteenth meeting of the Administrative Committee held on 06.07.2011 wherein it was decided that the appellants cannot be offered appointments due to lack of vacancies. In Punjab, there was an ongoing litigation regarding selection of the judicial officers (Junior Division) in 1998, 1999, 2000 and 2001 (known as Sidhu scam). In the said litigation in C.W.P. No.1626 of 2003, as per the order of the Supreme Court, twenty two candidates were to be appointed. At that time in the Punjab Judicial Service, only six posts were available and therefore sixteen temporary posts were sanctioned by the Punjab Government on 22.07.2008 with a specific condition that those temporary posts shall be adjusted against the vacancies created due to future retirements/promotions/vacancies etc. and these sixteen posts shall be abolished one by one as and when a vacancy is available. In the meeting held on 06.07.2011, the Administrative Committee took note of the order of this Court and observed that three resultant vacancies of the year 2007- 2008 stood consumed with the joining of seventeen candidates of the litigation pertaining to Sidhu scam case.

5. Feeling aggrieved, appellants filed writ petitions before the High Court contending that three vacancies which remained unfilled due to non-joining of three candidates should have been offered to them as they were next in the order of merit. The High Court dismissed the writ petitions holding that the appellants have no right to be appointed against the vacancies falling vacant due to non-joining of three candidates of general category. It was further held that as against 27 vacancies available for general category candidates, 31 general

category candidates have already joined and are actually working i.e. candidates much more than the vacancies advertised have been permitted to join and thus the select list of 2007-2008 stands exhausted. Aggrieved thereof, appellants have preferred these appeals. Be it noted that Parminder Singh Grewal whose writ petition also came to be dismissed by the common judgment has not preferred any appeal.

6. Learned counsel for the appellants Ms. Kamini Jaiswal submitted that the appellants had a right to be appointed in lieu of three vacancies falling vacant on account of non-joining of the candidates. To substantiate the contention, learned counsel relied on *Gujarat State Deputy Executive Engineers' Association v. State of Gujarat and Ors.*, (1994) 2 SLR 710 (SC): (1994) Supp. 2 SCC 591. It was contended that the High Court erred by considering the issue of de-reservation of post even though the same was not raised before it. It was further urged that once the High Court concluded its view upon de-reservation, High Court should have directed cancellation of other candidates on their said de-reserved post as a necessary corollary of holding de-reservation improper.

7. Per contra, learned counsel for the respondents contended that because the names of appellants were in the select list, the appellants have no indefeasible right of appointment. Drawing our attention to Annexure P-10, learned counsel submitted that the said three resultant vacancies of the year 2007-2008 were consumed with the joining of seventeen candidates relating to "Sidhu scam case" and the appellants have no right to claim appointment.

8. We have carefully considered the rival contentions and perused the impugned judgment and material on record.

9. As against 27 posts of general category advertised, all 27 candidates joined. Out of de-reserved 08 posts, 01 post was filled by a backward class candidate and the remaining 07 posts by general category candidates. Admittedly, Sumit Garg, Vijayant Sehgal and Yogesh Chaudhary placed at Sl. Nos. 1, 5 and 32 of the merit list to whom appointment letters were issued, have not joined. Resultantly, as against 27 posts advertised for general category, 31 general category candidates have joined and are working.

10. There is no denying that the appellants were placed in the select list at Sl. Nos. 35, 36 and 37. In the sixteenth meeting of Administrative Committee held on 08.12.2010, considering the representation of the appellants it was "resolved to recommend, subject to approval of the full court, to the Government of Punjab for their appointment as Civil Judges subject to availability of vacancies". But in the eighteenth meeting of the Administrative Committee held on 06.07.2011, the Committee took note of the direction issued by the Supreme Court to appoint twenty two candidates selected in the years 1998, 1999, 2000 and 2001 who were not earlier appointed due to Sidhu scam. At that time only six vacancies were available. To accommodate those twenty two candidates, Government of Punjab had sanctioned sixteen temporary posts, with the stipulation that the post

will be abolished one by one as and when a vacancy becomes available. Relevant minutes of the eighteenth meeting of the Administrative Committee dated 06.07.2011 reads as under:-

"The writ petitions filed by 22 candidates selected in the years 1998, 1999, 2000 and 2001 were allowed on 27.05.2008 and were ordered to be appointed as Civil Judges in Punjab. At that time only 6 vacancies were available. To give effect to the said judgment of this Court, 16 temporary posts were sanctioned on 22.07.2008 by the Punjab Government with the stipulation that the posts will be abolished one by one as and when a vacancy becomes available. As per the orders of Hon"ble Supreme Court in that matter, only 17 candidates were issued appointment letters, 3 resultant vacancies of the year 2007-2008, stood consumed with the joining of 17 candidates."

11. It is fairly well-settled that merely because the name of a candidate finds place in the select list, it would not give him indefeasible right to get an appointment as well. The name of a candidate may appear in the merit list but he has no indefeasible right to an appointment (vide *Food Corporation of India and Ors. v. Bhanu Lodh and Ors.*, (2005) 3 SCC 618; *All India SC and ST Employees' Association and Anr. v. A. Arthur Jeen and Ors.* (2001) 6 SCC 380 and *Union of Public Service Commission v. Gaurav Dwivedi and Ors.* (1999) 5 SCC 180.

12. This Court again in the case of *State of Orissa and Anr. v. Rajkishore Nanda and Ors.* (2010) 6 SCC 777, held as under:

"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 the 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.

.....

16. 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..."

13. In *Manoj Manu and Anr. v. Union of India and Ors.* 2013 (10) SCALE 204: (2013) 12 SCC 171, it was held that merely because the name of a candidate finds place in the select list, it would not give the candidate an indefeasible right to get an appointment as well. It is always open to the government not to fill up the vacancies, however such decision should not be arbitrary or unreasonable. Once the decision is found to be based on some valid reason, the court would not issue any mandamus to government to fill up the vacancies. As noticed earlier, because twenty two other candidates were declared successful by the Supreme Court pertaining to the selection of the years 1998, 1999, 2000 and 2001 as Civil Judges (Junior Division), they were to be accommodated, as rightly resolved by

the Administrative Committee in the meeting dated 06.07.2011. The three resultant vacancies of the year 2007-2008 stood consumed with the joining of the said seventeen candidates and the same could not be filled up from the select list of that year. The decision of the Administrative Committee observing that the three resultant vacancies stood consumed is based on factual situation arising there and cannot be said to be arbitrary.

14. As noticed earlier, as against twenty seven posts of general category advertised for the year 2007-2008, thirty one general category candidates have joined and are working. In *Rakhi Ray And Ors. v. High Court of Delhi And Ors.* (2010) 2 SCC 637, observing that the vacancies cannot be filled up over and above the number of vacancies advertised, recruitment of the candidates in excess of the notified vacancies would amount to denial of equal opportunity to eligible candidates, this Court held as under:-

"12. In view of above, the law can be summarised to the effect that any appointment made beyond the number of vacancies advertised is without jurisdiction, being violative of Articles 14 and 16(1) of the Constitution of India, thus, a nullity, inexecutable and unenforceable in law. In case the vacancies notified stand filled up, the process of selection comes to an end. Waiting list, etc. cannot be used as a reservoir, to fill up the vacancy which comes into existence after the issuance of notification/advertisement. The unexhausted select list/ waiting list becomes meaningless and cannot be pressed in service any more.

13. In the instant case, as 13 vacancies of the general category had been advertised and filled up, the selection process so far as the general category candidates is concerned, stood exhausted and the unexhausted select list is meant only to be consigned to record room."

15. On behalf of the appellants, it was contended that once posts were de-reserved and appointments were made as against the said de-reserved posts and the de-reservation was not challenged, High Court erred in going into the question of de-reservation. As noticed above, out of 52 posts of Punjab Civil Service (Judicial Branch) advertised, 08 posts of reserved category were not filled up and Public Service Commission de-reserved the same. Bifurcation of the said de-reserved posts is as under:-

1. Ex-servicemen, Punjab - 3 posts
2. Physically Handicapped, Punjab -2 posts
3. Sports Person, Punjab - 1 post
4. Scheduled Caste, Ex-servicemen, Punjab - 1post
5. Ex-servicemen, Backward Class - 1 post

Out of the said eight de-reserved posts, one post was filled up by a backward class candidate and the remaining seven posts by general category candidates.

As observed by the High Court, so far as two posts of physically handicapped, three posts of ex-servicemen and one post of sports person is concerned, there was no statutory prohibition in respect of de- reservation. However, in respect of de-reservation of one post of scheduled caste category, Section 7 of Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 prohibits de-reservation and stipulates the manner in which such de-reservation could be done. Section 7 of the Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 as extracted in the impugned judgment reads as under:-

"7.(1) There shall be no de-reservation of any reserved vacancy by any appointing authority in any establishment, which is to be filled up by direct recruitment or by promotion. In case, a qualified or eligible Scheduled Castes or Backward Classes candidate, as the case may be, is not available to fill up such vacancy, in that situation, such vacancy shall remain unfilled.

(2) Notwithstanding anything contained in sub-section(1), if, in the public interest, it is deemed necessary to fill up any vacancy referred to in that sub-section, the appointing authority shall refer the vacancy to the Department of Welfare of Scheduled Castes and Backward Classes for de- reservation. Upon such reference, the Department of Welfare of Scheduled Castes and Backward Classes may, if it is satisfied that it is necessary or expedient so to do, by order in writing, de-reserve the vacancy, subject to the condition that the vacancy so de-reserved, shall be carried forward against a subsequent unreserved vacancy."

16. By perusal of Section 7, it appears that as a general rule there is a bar on de-reservation of the post reserved for scheduled caste candidates. However, sub-clause (2) provides an exception to this general rule by laying down that in the public interest the authorities may by passing an order in writing de-reserve the seats reserved for candidates belonging to scheduled castes category. After insertion of clause (4B) in Article 16 of the Constitution vide Eighty First (Amendment) Act, 2000, de-reservation could not have been done. Under Article 16(4B) of the Constitution of India, unfilled vacancies reserved for scheduled castes or scheduled tribes candidates are to be carried forward independent of ceiling of reservation of fifty per cent. The seats reserved for scheduled castes and scheduled tribes categories are to be filled only by specified category. Therefore, High Court was right in finding fault with the de- reservation of the seven posts which were filled by candidates belonging to general category and we do not find any reason warranting interference.

17. Learned counsel for the appellants contended that when the other candidates were appointed in the post against de-reserved category, the same benefit should also be extended to the appellants. Article 14 of the Constitution of India is not to perpetuate illegality and it does not envisage negative equalities. In State of U.P. And Ors. v. Rajkumar Sharma And Ors. (2006) 3 SCC 330 it was held as under:-

"15. Even if in some cases appointments have been made by mistake or wrongly that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake. (See *Sneh Prabha v. State of U.P.* (1996) 7 SCC 426; *Secy., Jaipur Development Authority v. Daulat Mal Jain*(1997) 1 SCC 35; *State of Haryana v. Ram Kumar Mann*(1997) 3 SCC 321; *Faridabad C.T. Scan Centre v. D.G., Health Services* (1997) 7 SCC 752; *Jalandhar Improvement Trust v. Sampuran Singh* (1999) 3 SCC 494; *State of Punjab v. Dr. Rajeev Sarwal* (1999) 9 SCC 240; *Yogesh Kumar v. Govt. of NCT, Delhi* (2003) 3 SCC 548; *Union of India v. International Trading Co.* (2003) 5 SCC 437 and *Kastha Niwarak Grihnirman Sahakari Sanstha Maryadit v. President, Indore Development Authority* (2006) 2 SCC 604.)"

Merely because some persons have been granted benefit illegally or by mistake, it does not confer right upon the appellants to claim equality.

18. Learned counsel for the appellants submitted that the appellants have been pursuing the matter for about eight years and even today there are vacancies in Punjab Judicial Service and thus prayed that direction be issued to the respondents to consider the case of the appellants as against the existing vacancies. This contention does not merit acceptance. Appointment to an additional post or to existing vacancies would deprive candidates who were not eligible for appointment to the post on the date of submission of the applications mentioned in the advertisement but became eligible for appointment thereafter. After referring to *Rakhi Ray*, *Rajkishore Nanda* and other decisions, High Court rightly held that the candidates much more than the vacancies advertised have already been permitted to join and thus the appellants cannot claim any legal right in respect of the posts of reserved category remaining unfilled. The impugned judgment does not suffer from any infirmity warranting interference in exercise of our jurisdiction under Article 136 of the Constitution of India.

19. The appeals are dismissed. In the facts and circumstances of the case, we make no order as to costs.