
(2001) 05 P&H CK 0070

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6986-CAT of 2001

Mrs. Madhu Dogra

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-05-2001

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19(1)
Constitution of India, 1950 — Article 14, 16, 226

Citation : (2001) 05 P&H CK 0070

Hon'ble Judges : Nirmal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Mr. I.D. Singla, for the Appellant;

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—Whether the petitioner is entitled to be appointed as Lower Division Clerk in the Engineer Branch of Western Command, Chandi Mandir is the only question which arises for determination in this petition filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the decision contained in letter Annexure P.16 dated 10.6.1993 sent to him by the Chief Engineer, Western Command, (Engineer Branch), Chandi Mandir (respondent No. 2) and order Annexure P.4 dated 13.3.2001 passed by the Central Administrative Tribunal, Chandigarh Bench (for short, the "Tribunal") dismissing the application filed by the petitioner.

2. A perusal of the record shows that in pursuance of the requisition sent by respondent No. 2, the Employment Exchange, Ambala Cantt. sponsored the petitioner's name for selection as Clerk. She appeared in the selection held in March, 1983. After considering the relevant merit of the candidates, the Selection Committee prepared two lists, one of which consisted the names of those candidates (248) who had secured 45 and above marks. The other list contained names of 108 candidates who had secured less than 40 marks. Name of the petitioner was included at Sr. No. 90 in the second list. After about 4

years, the office of respondent No. 2 sent letter No. 30522/LDC/EIC(I) dated 13.1.1987, to the petitioner to indicate her willingness in the prescribed proforma for appointment as Clerk. She gave consent vide letter dated 23.1.1987. Thereafter, the office of respondent No. 2 sent letters dated 13.4.1983, 29.1.1990, 24.5.1990, 24.11.1990, 2.3.1991 and 21.12.1991 on the issue of her appointment as Lower Division Clerk. However, vide letter dated 10.6.1993, she was told that she cannot be appointed.

3. The petitioner challenged the implied rejection of her claim for appointment as Clerk by filing an application u/s 19(1) of the Administrative Tribunals Act, 1985 (for short, the Act). She pleaded that after having offered appointment as early as in 1987, the respondents cannot refuse to give posting on the pretext of non-availability of sanctioned posts. She also averred that a large number of vacant posts of Lower Division Clerks were available and, therefore, the respondents were bound to appoint her.

4. In the written statement filed on behalf of respondents No. 1 and 2, it was averred that the order appointing the petitioner was never issued and the letter asking her willingness to accept appointment cannot be construed as an offer of appointment. The respondents further averred that no candidate less meritorious than the petitioner had been appointed and, therefore, she cannot seek a mandatory direction for her appointment ignoring the better claim of others.

5. After hearing the parties, the Tribunal dismissed the petitioner's application by making the following observations:

"Learned counsel for the applicant places reliance on the judgments in the case of Prahlad Ram v. University of Goa, reported as 1992(1) S.C.T. 302, and another judgment at page 60 in the same journal and has argued that once an offer of employment is given it cannot be withdrawn and that respondents cannot deny appointment to a selected candidate in an arbitrary manner. This proposition of law, in our opinion, would be attracted only if applicant can show that she had been offered appointment as LDC. Reading of the letters A-1, A-6, A-8, A-10, A-12 and A-14 do not at any place indicate that these are orders of appointment much less even offer of appointment. A-1 merely indicates that respondents were considering appointment of LDCs and in case she is willing to accept the job, she would complete the attached form and return the same to reach headquarters by a particular date otherwise her name will be deleted from the approved list. This cannot be even an offer of appointment as after she completes these formalities it was open to the respondents to issue an offer of appointment or invite an offer from the applicant which is finally accepted by the appointment authority while issuing a letter of appointment. We find force in the contention of counsel for respondents that they were preparing a list of persons who in case of exigency could be called for such appointment in future which included an exigency where persons who secured higher marks than applicant in the selection fail to join the posts. Even otherwise, the plea of respondents could not be effectively rebutted by the applicant that her name did not figure in the

first list of 248 persons in the list of candidates who had secured marks up to 45. Her name is said to be at Sr. No. 90 in the second list of 108 candidates who had obtained less than 40 marks. Thus, her name would be at Sr. No. 338 in case the lists are joined on the basis of merit. It is not her case that any one who had secured less marks than her has been given appointment nor she has been able to show that the stand of the respondents that they stopped at Sr. No. 196 and did not offer appointment to any one beyond that serial number is correct. Respondents' plea that the total number of available posts of LDCs was also reduced from 1501 to 1391 has also not been rebutted.

At this stage, learned counsel for the respondents has brought to our notice a fact that one Nirmal Mahresh Singh had also participated in the same selection of 1983 like the present applicant and after finding that no appointment was given to her she had filed a C.W.P. No. 737/94 in the High Court of Himachal Pradesh, Shimla, the High Court dismissed the writ petition with the following :

"We have heard the learned counsel for the parties and have also perused the record including the letter addressed to the petitioner. From the merit list No. 2, it appears that the name of the petitioner figures at Sr. No. 88. There is no dispute that the persons below the petitioner have not been appointed. The letter sent to the petitioner cannot be treated as an appointment letter. That part of the matter relates to the year 1983 i.e. more than ten years back. In the circumstances, we are unable to exercise our writ jurisdiction. Accordingly, the writ petition is closed and disposed of."

High Court of Himachal Pradesh has also, thus, held that the letter sent to the petitioner cannot be treated as an appointment letter and that no person below the petitioner had been appointed. Objection of limitation as raised by the respondents has no force and even if there was delay in filing the OA, we hereby condone the same as we have considered it on merits."

6. Shri I.D. Singla argued that the order passed by the Tribunal should be declared as vitiated by an error of law because it has failed to consider the petitioner's case in a correct perspective. He submitted that letter Annexure A.1 was not merely an offer of appointment but was an order of appointment and, therefore, the Tribunal should have directed the official respondents to treat her as duly appointed on the post of Clerk. He then argued that while deciding the petitioner's claim for appointment, the Tribunal should have called for the entire record and satisfied itself about the tenability of her claim, but instead of doing that, it relied upon the unsubstantiated statement contained in the written statement about the petitioner's placement in the select list and availability of vacancies and arbitrarily dismissed her application without assigning cogent reasons. He further submitted that even as on date, a large number of vacancies are available in the office of respondent No. 2 and, therefore, the Court may issue a mandamus directing him to appoint the petitioner.

7. We have given serious thought to the submissions of the learned counsel, but

have not felt impressed. The question as to whether the recommendations made by the Selection Committee creates an indefeasible right in favour of the selected candidate has been considered and answered in the negative in *The State of Haryana Vs. Subash Chander Marwaha and Others*, *Jatinder Kumar and Others Vs. State of Punjab and Others*, and *Shankarsan Dash Vs. Union of India*, . In the last mentioned case, the Supreme Court referred to the earlier decisions and laid down the following proposition of law :

"It cannot be said 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.

The process of final selection has to be closed at some stage and when a decision in this regard is accordingly taken and the process for further allotment to any vacancy arising later is closed, it is not material if in pursuance of a decision already taken before closing the process of final selection, the formal appointments are concluded later. What is relevant is to see as to when the process of final selection is closed. Mere completing the formalities later cannot furnish any ground to the candidate who is not selected to claim discrimination."

By applying to ratio of the afore-mentioned decision, we hold that the view taken by the Tribunal on the issue of petitioner's entitlement to be appointed as Clerk does not suffer from any legal infirmity warranting issuance of a writ of certiorari.

8. We are further of the view that by virtue of her placement at No. 90 in the waiting list prepared in 1983, the petitioner did not acquire a right to be appointed against the vacancies which became available in 1990 or thereafter and after more than 17 years of her empanelment in the waiting list, the High Court cannot issue a mandamus to the respondents to appoint her against one of the available vacancies.

For the reasons mentioned above, the writ petition is dismissed.

9. Petition dismissed.