

(1995) 11 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : C.W.P. No's. 371 and 491 of 1995

Neelam Thakur

APPELLANT

Vs

Dr. Y.S. Parmar University and Others
 Amar Datt
Bhardwaj and Others Vs Dr. Y.S. Parmar University

RESPONDENT

Date of Decision : 20-11-1995

Acts Referred:

Citation : (1995) 4 ILR HP 2637

Hon'ble Judges : S.N. Phukan, C.J; Bhawani Singh, J

Bench : Division Bench

Advocate : Ramakant Sharma and Rajiv Sharma, for the Appellant; D.C. Jishtu, for the Respondent

Final Decision : Allowed

Judgement

S.N. Phukan, C.J.—By this common judgment and order, we dispose of two writ petitions registered as C.W.P. Nos. 371 and 491 of 1995.

2. C.W.P. No. 371 of 1995 has been filed by Neelam Thakur and C.W.P. No. 491 of 1995 has been filed by three writ Petitioners, namely, Amar Datt Bhardwaj, Ved Prakash and Khem Chand.

3. The following facts are not disputed namely, all the writ Petitioners were working for a considerable long time as daily paid labourers. The Respondent University issued a circular dated 22.11.1993 calling for applications from daily paid clerks /typists in the University under various schemes and projects vide circular at Annexure PA to C.W.P. No. 491 of 1995. it is not disputed that all the writ Petitioners were allowed to appear in the written examination which was held on 18.5.1994 and they were interviewed. It is also not disputed that the names of all four writ Petitioners were in the waiting list as drawn up by the selection committee. During the validity of the select list and the waiting list, the Respondent University issued another circular dated 10.4.1995 vide Annexure PC to C.W.P. No. 491 of 1995 calling for applications for the post of clerks from

employees/daily paid clerks/typists/DP Ls etc. The grievance of the writ petitions is that as their names were in the waiting list the issuance of notification Annexure PC is illegal and, therefore, they have prayed for quashing the said notification.

4. In reply affidavit, as stated above, it is not disputed that the names of all the writ Petitioners are in the waiting list. However, it has been urged that the circular issued vide Annexure PA meant only for- daily paid clerks/typists. Therefore, some employees of category "D" and daily paid labourers who were otherwise eligible could not apply for the post of clerks. It has also been stated in the reply affidavit that the then Vice Chancellor of the University, with a view to provide equal opportunity, decided to call all those who were possessing requisite qualifications for the post of clerks. However, subsequently, the General Secretary of the Technical and Class IV employees Union filed a representation before the new Vice Chancellor to advertise the post of clerks afresh as earlier some of the categories of the employees having requisite qualifications could not apply in the light of circular at Annexure PA. Therefore the present Vice Chancellor, after considering the representation, directed re-advertisement of the posts of clerks.

5. Heard learned Counsel for the Petitioners as well as learned standing Counsel for the Respondent University.

6. From the reply affidavit and the representation of the General Secretary of the Technical and Class IV employees Union vide Annexure RA, it is clear that the new Vice Chancellor under pressure of the Union directed the re-advertisement of the posts, which in our opinion, is absolutely not proper and not in accordance with law.

7. Learned standing counsel for the University has drawn our attention to the decision of the apex court in Shankarsan Dash Vs. Union of India, and urged that the successful candidates do not acquire indefeasible right to be appointed against the existing vacancies and that the State is under no obligation to fill up all or any of the vacancies. It was further held that it does not mean that the State has the licence of acting in an arbitrary manner. This is a case where the State decided not to fill up the vacancies for appropriate reasons.

8. In Dr. Uma Kant Vs. Dr. Bhika Lal Jain and others, the apex court considered the provisions of Rajasthan University Teachers and Officers (Selection for appointment) Act, 1974 for the purpose of appointment for the post of a Professor. A select list was prepared as per the provisions of the above Act and also a reserve list. The apex court rejected the view expressed by the High Court that once a person selected by the selection committee joins the post than the selection made by the committee is exhausted and the reserve list is of no avail and becomes extinct.

9. In Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others, ., the Public Service Commission selected 20 candidates for the post of

Munsifs after holding a written test and viva voce. The Government kept the select list pending without being approved, as required under the relevant rules and thereafter only names of 13 persons from the first list were published and did not approve the other names in the list. On these facts the apex court held the action of the Government in not approving the rest of the seven names in the select list as unsustainable. It was further held that it is the obligation of the Government to act fairly and the Government cannot quietly and without good and valid reasons nullify the exercise done by the Public Service Commission.

10. In *Union of India and Ors. v. Ishwar Singh Khatri and Ors.* 1992 Supp (3) SCC 84, it was held that out of the panel of the selected candidates, candidates have right to appointment only against vacancies notified or available till the panel or select list is prepared and that after filling the notified number of vacancies from the panel no further appointment or fresh advertisement can be made.

11. *R.S. Mittal Vs. Union of India (UOI)*, it was, inter alia, held by the apex court that although a person on the select list has no vested right to be appointed to the post for which he has been selected, the appointing authority cannot ignore the select panel or on its own whims decline to make appointments. It was further held that when a person has been selected by the selection board and there is vacancy which can be offered to him, keeping in view his merit position, ordinarily there is no justification to ignore him for appointment and that there has to be justifiable reason to decline to appoint a person who is on the select list.

12. Viewed thus, the legal position may be summed up as follows. once select list is prepared, the concerned authority cannot sit over it and has to take action. It is true that although a person on the select list has not vested right to be appointed to the post for which he has been selected, the appointing authority cannot ignore the select list on its own whims and decline to make appointment and there must be cogent and reasonable grounds for not appointing a person whose name is in the select list.

13. Coming to the facts of the case in hand, as stated above, there is no dispute that the present writ Petitioners were allowed to sit in the written test as well as appeared in the interview. It is also not disputed that the names of all the persons are in the select list it has been admitted in the reply affidavit that all the writ Petitioners were allowed to appear in the written test and the interview by the then Vice Chancellor. From the reply affidavit it appears that the new Vice Chancellor of the University directed re-advertisement for the posts mainly on the ground of representation made by the General Secretary of the Technical and Class IV employees Union of the University This is not reasonable ground not to offer appointment to the four writ Petitioners as the select list was valid when the re-advertisement was made. From the reply affidavit it is not found why seven persons whose names are in the waiting list, were not offered appointment though there were vacancies. If the present Vice Chancellor wants to give

opportunity as demanded by the General Secretary of the Union, he could have done so for subsequent vacancies.

14. For the reasons stated above, we hold that denial of appointment to all the four writ Petitioners is not in accordance with law and, therefore, we allow the writ petitions with the direction to the Respondent University to offer appointment to all the four writ Petitioners within fifteen days from today.

15. In the result, the writ Petitioner are allowed,