

(2000) 08 DEL CK 0127

In the Delhi High Court

Case No : LPA No. 190 of 1999, 206 of 1999 and 209 of 1999

Nehru Yuva Kendra Sangathan

APPELLANT

Vs

Yogendra Singh and Another

RESPONDENT

Date of Decision : 02-08-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2001) 88 FLR 173

Hon'ble Judges : Arun Kumar, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Mr. Rajiv Nayyar and Mr. Rana Ranjit Singh, for the Appellant; Mr. D.D. Thakur Mr. Rakesh Kumar Singh and Mr. Bharat Singh, for the Respondent

Judgement

Arun Kumar, J.—Rule D.B.

2. Since short point is involved the matter is taken up at this stage for final argument and disposal.

3. These three appeals arise from a common judgment of a learned Single Judge passed in Writ Petitions being CWP No. 5289/98 and CWP No. 938/99 which were filed by the respondents in these appeals. By the impugned judgment dated 3rd March, 1999 the learned Single Judge while allowing the writ petitions directed the appellant herein to appoint those who were successful in the examination. All these appeals are disposed of by this judgment.

4. The advertisement was issued by the appellant Nehru Yuva Kendra Sangathan on 26.12.1996 for recruitment to the posts of Youth Co-ordinator. Respondents herein applied for the said post. Written test was held followed by interview on 7.11.1997. However, since the results were not declared, respondents herein filed the aforesaid writ petitions with the prayer that direction be issued to the appellants herein to declare the results of selection held on 7.11.1997. The appellant filed the counter affidavit in which it was, inter alia, stated that in the process of recruitment to the posts of Youth Co-ordinator some irregularities had

been found. It was also pointed out that there was no approval/sanction from the Ministry of Finance and no posts were created, the procedure adopted for scrutiny of applications received was not proper inasmuch as in the advertisement educational qualification was fixed as Graduate but only post graduates applicants were called for and that a number of complaints had been received in regard to the appointments on these posts. Resultantly, the decision was taken to cancel the selection process and it was for this reason that results of the interview held on 7.11.1997 were not declared. The learned Single Judge by impugned judgment allowed the writ petitions and gave the mandate to declare the results and appoint the petitioners herein if they were found successful. The relevant portion of the order reads as under:

"The respondents shall declare result of the examination held on 7.11.1997 and if the petitioners are found successful they shall be appointed. The attitude of respondents 1 and 2 is quite contrary to the ethos of Constitution of India. It is perverse and contrary to Articles 14 and 16 of the Constitution of India".

5. Mr. Rajiv Nayyar, learned Senior Counsel appearing for the appellants in LPAs.190/99 and 206/99 and Mr. Maninder Singh appearing for appellant in LPA No. 209/99 assailed the order of the learned Single Judge primarily on the ground that the learned Single Judge has not dealt with any of the contentions raised by the appellant in the counter affidavit and argued before the learned Single Judge. It was contended that there was no indefeasible right of the respondents to get appointed to the post applied for even if their names appear in the select list. It was further argued that there were valid reasons for cancelling the selection inasmuch as Union of India, Ministry of Human Resource Development under whose administrative control Nehru Yuva Kendra comes, had not approved/sanctioned the post and as it was found that there were number of irregularities and complaints in regard to the appointment, it was within the rights of the appellant to cancel the selection. On the other hand Mr. D. D. Thakur, learned counsel appearing for the respondents submitted that the cancellation was actuated by mala fides and the reasons given in the counter affidavit or in the decision dated 22.6.1998 deciding to cancel the selection process were neither factually correct nor legally tenable.

6. Law on the subject now stands crystalised by various judgments. If there are circumstances and material on record putting question mark on the fairness of selection procedure being adopted, it is permissible for the authorities to cancel the selection process. One may usefully quote the following observations of the Supreme Court in the case of Pritpal Singh and others Vs. State of Haryana and others, :

"Para 19: It is in the public interest that members of the police force should be selected objectively and fairly. The factors that we have enumerated above, satisfy us that the selection made by the Board was not objective and fair. It is, Therefore, in the public interest that the selections and the appointments made consequent thereon be quashed forthwith.

Para 20: We appreciate that it may be that there are among those selected some who deserved selection and who will, consequently, suffer as a result of this order. There is, regrettably, considering the state of the selection records, no way in which such men can be indentified. The public interest outweighs their interest. The directions that we shall now give shall enable them to compete once again with those who had sought selection with little or no disadvantage as a result of the years that have passed."

7. Apart from the question of fairness in selection process i.e. procedural infirmity, another reason for not implementing the selection process may be that the posts for which selection was made are not available or there is no valid sanction for the posts. Such reasons may have to be tested in Court. Because of such factors the law is that even if selection is made and a candidate's name appears in the merit list, he does not acquire any indefeasible right of appointment as a Government servant even if a vacancy exists. (Refer: The State of Haryana Vs. Subash Chander Marwaha and Others, , Miss Neelima Shangla, Ph. D. Candidate Vs. State of Haryana and Others, and Jitendra Kumar & Ors. Vs. State of Punjab & Ors (1985) 1 SCR 899.

8. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. In Shankarsan Dash Vs. UOI reported in 1991 (2) SLR 779, Constitutional Bench of Supreme Court, speaking through Lalit Mohan Sharma, J (as he then was) spoke of this principle in the following words:

"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 license 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."

9. Aforesaid legal principles have to be applied with reference to the facts of this case. The main issue for determination is whether the decision not to fill the posts was valid and bona fide. This issue has not been adverted to at all. It is common case of parties on both sides that what is sought to be argued before us was argued before the learned Single Judge and finds mention in the pleadings. However, these arguments are not dealt with in the impugned judgment. In fact, apart from the portion of the judgment reproduced above which in fact is the conclusion arrived at by learned Single Judge, there is no discussion of rival contentions nor any reasons are found in support of the conclusion arrived at in the impugned judgment.

10. In our view the question as to whether the decision to cancel the examination by the appellant was proper or not is very relevant and material for purposes of deciding the case. This has to be considered and a final view has to be taken based on such consideration. Accordingly, the impugned judgment has to be set aside and the matter needs to be remanded for fresh consideration and decision after taking into account all the relevant factors. The appeals are allowed and the matter is remanded back to the learned Single Judge for disposal on merits. The parties shall be entitled to file whatever further documents and/or affidavits which they want to file.

11. Since the matter pertains to selection of the respondents for which interview was held on 7.11.1997, it was submitted by Mr. D.D. Thakur, learned senior counsel for the respondents that the matter should be decided expeditiously. The respondents herein shall be at liberty to make appropriate request to the learned Single Judge in this behalf.

No order as to costs.

List on 4th September, 2000 for directions before learned Single Judge.