
(2000) 09 RAJ CK 0070
In the Rajasthan High Court
Case No : Civil Special No. 320 of 1998

Rajendra Bhardwaj and Others	Vs	APPELLANT
State of Rajasthan		RESPONDENT

Date of Decision : 26-09-2000

Acts Referred:

Citation : (2000) 3 RLW 1929 : (2007) 2 WLN 100

Hon'ble Judges : AR. Lakshmanan, C.J;Rajesh Balia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—This is an appeal against the order dated 19th December, 1996 passed in S.B. Civil Writ Petition No. 3006 of 1992. The writ petition was initially filed by 15 persons on 25.5.1992 out of which only two persons are appellants namely petitioner No. 11 A.R. Ansari and petition No. 14 Abdul Aziz as appellants No. 2 and 3 respectively. Rajendra Bhardwaj, the appellant No. 1, was not at all a party in the petition. Appellant No. 4, Naresh Surana, was impleaded as petitioner No. 18 only in pursuance of his application dated 10.10.1996.

2. Petition was admitted and notices of the petition were issued on 27.5.1992. Following interim order was made on 27.5.1992 on the stay petition:

Heard. Issue notice of the stay application. Meanwhile, petitioners who find their name in the merit list as sent by the Public Service Commission in the month of March, 1991, shall be given appointment as Hindi Stenographer in accordance with their seniority. Without exhausting this list no fresh appointment shall be given in pursuance of examination which have been held later. The petitioner may take notices "Dasti" for service on the respondents. It shall be the duty of the petitioners to get the notices served within a period of eight weeks from today, failing which this stay order shall automatically come to an end without reference to the Bench.

3. The petitioners had alleged in their petition that an advertisement has been

issued for recruitment of Hindi Stenographers by the respondents on 2.4.1990 for 130 vacancies, it has also been stated in the advertisement that the said vacancies are liable to be reduced or increased. The result of the examination held in pursuance of the said advertisement was declared on 22nd March, 1991 in which 578 persons were declared successful to be considered for appointment. Out of those successful candidates, 147 persons were appointed against the 130 vacancies stated in the advertisement. Alleging that the examinations having been held after 7 years and a large number of vacancies are still laying vacant in the different departments of the State for Hindi Stenographers and that the list of selected candidates remains in force for a period of two years, the petitioners are entitled to be considered and appointed on the posts lying vacant in order of merit and since the Govt. has already operated the select list in part beyond the advertised vacancies of 130 it was not open for the respondents to withhold select list and deny appointments to the petitioners or post of Stenographer in various departments of the State. On the aforesaid anvil a mandamus to respondents for giving appointments to the petitioners was sought. It was also alleged in the petition that in pursuance of appointments offered to 147 candidates out of the select list, only 56 candidates have joined as Stenographer and therefore, the respondents were under an obligation to operate remaining part of the select list and give appointment to the petitioners who were awaiting for appointment under the select list. On this premise, the following reliefs were claimed:

(i) by an appropriate writ, order or direction, the respondents may be directed to give appointments to the petitioners on the posts of Hindi Stenographers from the date the result was declared or from the date the list was operated first with all consequential benefits.

(ii) by an appropriate writ, order or direction, the respondents may be restrained from making fresh selection on the posts of Hindi Stenographers without exhausting the list prepared in pursuance of the advertisement dated 2.4.1990.

(iii) any other appropriate writ, order or direction, which may be considered just and proper in the facts and circumstances of the case, may kindly be issued in favour of the petitioners.

(iv) costs of the writ petition may kindly be awarded in favour of the petitioners.

4. In pursuance of the interim order passed by the Court, ultimately the list had been operated until the merit of 429th candidate before the fresh selections were permitted to be made by the Court in 1994. The appellants No. 2 & 3, who were amongst the petitioners in the writ petition, were respectively at No. 532 and 434.

5. During the pendency of the said petition, two applications were made by different applicants for being impleaded as petitioners. Firstly, by an application filed on 13.12.1993 Satyanarayan and Ramlal made a prayer to be impleaded as petitioners. The said application was allowed and thereafter another application

was made by appellant No. 4 Naresh Surana on 10th October, 1996 for impleading as petitioner. The appellant No. 4 was at Serial No. 489 in merit position. Appellant No. 1 was never a party to the writ petition.

6. The learned Judge, considering that mere inclusion of the name in the select list does not give a right to be appointed had as substantial number of candidates beyond the advertised vacancies had already been appointed during the pendency of the writ petition, the petitioners are not entitled to any of the reliefs claimed. Aggrieved with the aforesaid order, the four appellants viz. Rajendra Bhardwaj, A.R. Ansari, Abdul Aziz and Naresh surana have preferred this appeal.

7. There is no dispute that the life of the list published on 22.3,1991 was for a period of two years i.e. upto 22nd March 1993 upto which it could be operated. It is also not in dispute that out of the 578 candidates declared successful only 429 candidates have been offered appointment and it is not the case of the appellants that any persons has been offered appointment by deviating from the order of merit in the list of from amongst successful candidates.

8. The only contention that has been urged before us is that once the State Govt. has decided to operate the select list upto a particular number and some of them could not join in pursuance of offer made to them, such appointment to such vacancies for which offer was made, the respondent State Govt. was bound to operate the list atleast and give appointment to down below candidates to the extent the candidates had not joined in pursuance of offer made. It was pointed out that out of 429 appointments offered, 12 candidates had not joined and the respondents have invited those persons again to join who had forfeited their appointments but has not offered appointments to persons down below the list.

9. Having carefully considered the contention, the aforesaid contention does not call for consideration in the present case and in our opinion the appellants are not entitled to any relief.

10. For laying foundation for the contention, first requirement is that grievance must be made during the life of list, if no claim is laid seeking appointment in pursuance of any selection which has been operated partially, no claim to relief on the basis of inclusion of name in such list can be made. From the facts stated above, it is apparent firstly that the appellant No. 1 Rajendra Bhardwaj has never made any grievance against the appointments made in pursuance of select list dated 22nd March, 1991 until filing of this appeal. He obviously, cannot be now permitted to lay a claim to the selections made in 1991 in pursuance of which due to operation of the interim order passed by this Court, the list has been operated upto merit No. 429 only about which there is no dispute. He having not laid claim any time prior to the filing of this appeal in 1998, his claim to appointment against select list which was prepared almost 7 years before raising of any grievance by him cannot be entertained for the first time at this appellate stage. Appellant No. 4 Naresh Surana too had failed to lay any claim to the

appointment out of process of appointment in question until making an application on 10.10.1996 only after five and half years of the publication of the select list and more than three and half years of the expiry of the life of the said select list, stands in no better position than appellant No. 1. It is pertinent to notice that relief claimed in the petition is confined to the petitioners only. That is to say the petition filed by 15 original petitioners had confined the relief for seeking mandamus for their appointments and was not for general benefit. The petition by 15 original petitioners had been filed while the life of select list was existing. Those who failed to raise any grievance until expiry of the period of select list, cannot automatically become entitled to claim continued operation of the said select list even after expiry of its life. Notwithstanding filing of joint petition, relief claimed was individual. These appellants claim more or less stems on the ground that since the petition was filed before the expiry of the life of the select list, any relief, if the appellants were entitled to on the date of filing petition should not be denied to them merely because of the expiry of the period of such list during the pendency of petition. Obviously, appellants No. 1 & 4 are not the persons who have raised any objection to the operation of the select list before the expiry of its period when appellant No. 1 had not laid any such claim until filing of the appeal and appellant No. 4 until making an application on 10.10.1996.

11. Appellant No. 2, A.R. Ansari admittedly stands at Sr. No. 539 in order of merit. Even if appointment is offered to 72 persons beyond the last person to whom appointment was offered at No. 429 he does not come within the zone of relief claimed by the appellants. Therefore, no relief can be given to him also even if the contention is accepted.

12. Coming to the claim of appellant No. 3, who is listed at Serial No. 434 in order of merit. To operate the list down below 429 on the principle of offering vacancies on account of non-joining, is also not applicable in this case. It is not in dispute that so far as the respondents are concerned, on their own volition they had not operated the list beyond Serial No. 147 until filing of the writ petition. They had operated the select list upto Serial No. 147 strictly in accordance in order of merit of the candidates. The persons below Serial No. 147 had been offered appointment only in pursuance of the directions issued by this Court on 27.5.1992, undoubtedly, the respondents had operated the list upto Serial No. 429 strictly in order of merit. But, there is nothing on record to suggest that the said invitation to join has been made to the 72 persons who had failed to report in pursuance of appointment letters issued to them in first instance within 15 days had been made, after operating the list upto Serial No. 429. If the list had been operated upto Serial No. 429 only after the 72 persons who allegedly failed to report in pursuance of appointment orders issued to them within the time allowed or if the last appointment offered to candidate at Serial No. 1 429 was made on failure of earlier candidates to join, no plausible grievance can be raised by candidates standing in merit below the last candidate to whom such appointment has been offered during the pendency of the writ

petition in pursuance of the directions issued by this Court.

13. The principle has been well established in *The State of Haryana Vs. Subash Chander Marwaha and Others*, which related to appointments to judicial service of State of Haryana as Judges. The candidates who were ranked below Serial No. 7 were not offered appointments notwithstanding there was an advertisement for 15 vacancies. Appointments were offered only to 7 persons in the serial order of list according to merit. A grievance was raised by the candidates enlisted at Serial No. 8, 9 and 13 that after the last candidate offered appointment vacancies still existed and as the petitioners name find place in the select list upto such vacancies the State is bound to offer them appointment upto the extend vacancies advertised. The High Court allowed the plea of the candidates. However the Supreme Court reversing the decision of the High Court said that competitive examination is for the purpose of showing that a particular candidate is eligible for consideration. Selection for appointment comes later. It is open for them to decide how many appointments shall be made. The mere fact that the candidates name appeared in the list does not entitle them to the appointed. The Court further went on to hold explaining the proposition.

Thus by appointing first 7 persons out of 15 candidates in the list as subordinate judges, the Govt. does not infringe any requirement of the rule and no legitimate grievance can be made by remaining persons in the list that there are still vacancies. The unfilled posts do not warrant issue of a mandamus to authority.

14. The principle has been consistently followed by the Supreme Court that mere inclusion in the select list does not confer an indefensible right in favour of a person whose name finds place in the select list. In *Shankarsan Dash Vs. Union of India*, the Apex Court restated:

It cannot be said that if a number of vacancies are notified for appointment a adequate number of candidates are found fit, the successful candidate acquire an indefeasible right to be appointed which cannot be legitimately denied, ordinarily, a notification merely amounts to an invitation to qualified candidates to apply for requirement 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.

15. Therefore, mere fact that the list which has been operated upto Serial No. 429. does not give a right to persons down below the list for seeking a mandamus for giving appointment by operating full list by pointing out that the vacancies still exist.

16. As a matter of fact, the context in which the assertions of call to 72 persons to join duties have come on record belies the very foundation of contention raised by the appellants. As noticed above, the petitioners have already operated list beyond 130 vacancies advertised and even out of those offered appointments a large number of them have not joined and alleged that in the past also the respondents have operated select list beyond life of select list. The respondents

have denied this allegation in their reply affidavit and had asserted that panel has lapsed in the month of April 1993. It was in response to this assertion an additional affidavit has been filed by Abdul Aziz on behalf of the petitioners placing on record Annexure 9, the advertisement dated 27.8.1993 inviting 72 persons to whom appointments have been offered prior to expiry of list, but who have not come to join their duties even until then in pursuance of the original offer within 15 days. This not only suggests that invitation was only to those who had been already issued appointment orders prior to expiry of life of select list but had failed to join in pursuance of it by extending period of joining by further 15 days from the date of publication of notice. This also suggests that the offer to join is referable to a date prior to filling up of vacancies upto 429 in pursuance of orders of the Court. There is nothing to suggest that any such invitation to persons who did not join after offering appointment was issued after last of the person in order of merit at 429 had been issued offer of appointment. This leads us to conclude that non-joining vacancy even if existed on 23.8.1993, were offered for appointment later on to the persons below in the merit list upto 429 in pursuance of orders passed by this Court after that date.

17. Moreover, there does not appear to be any prohibition or inflexible rule against extending period of joining even after original period stated in the letter of appointment for joining the duty has expired. It is not a case of operating list by ignoring order of merit in operating select list or withdrawing an offer of substitute appointment against "non joining duty" vacancy. We are of the view that the principle enunciated in the case of Subhhsh Chancier Marwaha and Shankaran Das (Supra) operates.

18. The principle laid down by the Supreme Court in A.P. Aggarwal Vs. Govt. of N.C.T. of Delhi and Another, doesn't apply to the facts of the present case. In A.P. Aggarwal's case, the rules provided for operating the reserve list in the contingencies stated in the Govt. memorandum that where the vacancies have been caused within six months of appointment, the next persons in the panel recommended by selection committee are to be appointed in the vacancies." In the case before the Supreme Court the Selection Committee had recommended a panel of two persons for filling up the vacancy of one member of the Sales Tax Appellate Tribunal. The person at No. 1 had been offered appointment, however the person so appointed by the Govt. resigned within six months. The Govt. instead of acting on memorandum specifying that in such exigencies the appointment be offered to the next person in the panel recommended by the selection committee did not act on that memorandum issued by itself but decided to hold a fresh selection. It is in the aforesaid circumstances the Court observed that even if the memorandum is considered to be discretionary and not mandatory. Government ought to act in a manner which will promote the object for which the power was conferred. In the absence of any valid reason for ignoring the same, the action of State appellant launching a fresh process of selection was not correct.

19. Likewise, the ratio of a Bench decision of Kerala High Court in *Indian Bank v. Jayasree* 1998 (2) KLT 464 does not help the cause of appellants, it was a case where a vacancy occurred because of non-joining of duty by the person appointed and the persons who was including in the wait-list was recommended for appointment as a substitute. The said order recommending appointment as substitute by the appointment authority was later on withdrawn acting upon directives of the Reserve Bank of India Imposing a restriction on further recruitment. It was in the aforesaid circumstances, the Court held that the directions by the Reserve Bank of India restricting further recruitment applied to a vacancy for which no appointment was made or offered but a vacancy which is caused on account of non-joining of a persons after appointment was offered to him indicating clearly that it was a filled vacancy, would not apply to the fulfilling of the substitute vacancy. This case, in our opinion, does not help the appellants in the circumstances stated above.

20. As a result, this appeal fails and is hereby dismissed. There shall be no orders as to costs.