

(2005) 08 DEL CK 0037

In the Delhi High Court

Case No : Writ Petition (C) 2072 of 2000 and 5077-79/05

Shri Ajay Appan and Others

APPELLANT

Vs

Indraprastha Power Generation Corporation Co. Ltd.

RESPONDENT

Date of Decision : 05-08-2005

Acts Referred:

Constitution of India, 1950 — Article 16, 226

Citation : (2005) 123 DLT 110 : (2005) 84 DRJ 228 : (2005) 107 FLR 383

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : S. Janani, for the Appellant; Vinay Sabharwal, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The petitioners, in these proceedings, under Article 226 of the Constitution of India, claim an appropriate writ or direction to the respondent to appoint them to the post of Technical Helper (later re-designated as Technical Assistant, Grade III. The petitioners had competed that post, being a candidate sponsored by the Employment Exchange.

2. The erstwhile Delhi Electricity Undertaking, (DESU, predecessor of Delhi Vidyut Board, in respect of which the respondent has been imp leaded as a successor in interest), had, in the year, 1994 notified vacancies in the post of Technical Helper. It sought requisitions from the Employment Exchange from amongst eligible and suitable candidates. The petitioners' names were sponsored along with several others. The candidates were interviewed by the Selection Board in June and December, 1993. The petitioners too attended the interview.

3. The DESU prepared a panel, on the basis of recommendations of the Selection Board, on 13-1-1994. The petitioners figured at Sl Nos 134, 163, 150 and 156. The order containing the panel stated as follows:

"As a result of interview held for the post of Tech Helper in the scale of pay of Rs. 975-1600/-, the following candidates are hereby declared selected and placed in

the panel for appointment to the said post as and when the vacancies occur"

4. Between the year, 1994 and 1999, several persons were apparently appointed from amongst the panel. It is averred that in 1999, about 40 vacancies existed, and that despite that position, the DVB proceeded to initiate fresh recruitment. No further appointments took from amongst those who were in the panel. The petitioners seek a direction that they ought to be appointed to the post, since they are eligible, have been found suitable, and selected. During pendency of the proceedings, an application was filed, alleging that 139 vacancies exist, and 85 of those are sought to be filled by a fresh recruitment process. The petitioners' hardship due to their having become over-aged, and having lost opportunities of employment, due to the cancellation of their names from the list maintained by the Employment Exchange, on their having been selected, have also been cited as grounds in support of the allegation of arbitrariness.

5. The inaction of the respondents in not operating the panel though it has no and effect appointments of candidates including the petitioners has been questioned and the petitioners seek an appropriate writ to enforce the panel as also for issuance of an appointment order/letter.

6. The respondent in its counter affidavit has alleged that the select panel in question could be utilized only for a period of one year, to the extent of notified vacancies. The respondent has also urged delay and laches, stating that the petitioners have approached the court after a long delay. It has been alleged that the select list cannot operate indefinitely, and that in any case vacancies which arose on or after 1999, could not be filled from amongst selected candidates in the list dated 13th January, 1994.

7. Ms. S. Janani, learned counsel, submits that the petitioners were eligible and sponsored by the Employment Exchange. Their names were included in the select panel which was intended to be operated. The DESU, and later DVB used the list and made appointments which indicates that it had every intention to make further appointments in respect of future vacancies till the panel was exhausted. Learned counsel submitted that the decision not to make further appointments is arbitrary since that would render candidates like the petitioners who were found suitable but waiting for want of vacancies ineligible due to their crossing the age limits prescribed, in the interregnum. She submitted that the decision acts harshly and amounts to penalizing the petitioners for no fault on their part.

8. Learned counsel for the petitioners also relied upon an circular/order of the Ministry of Home Affairs, Central Government, dated 8th February, 1982 the to say that the requisitioning authority/employer has to first exhaust the waiting/select list, and make appointments before resorting to fresh advertisements followed by another recruitment process.

9. The first point arising for consideration in the present case, is whether the petitioners can insist that the respondents should appoint them. It has been

repeatedly held that the inclusion of a person's name in a select list does not confer a vested right to seek appointment and that the appropriate appointing authority/Government is competent to cancel the entire list or only operate a portion of such list, for good and justifiable reasons (refer Shankarsan Dash Vs. Union of India, and State of Orissa and Others Vs. Bhikari Charan Khuntia and Others etc.,). In the latter decision, it was held that:

"A Constitution Bench of this Court in Shankarsan Dash v. Union of India held that candidates whose names appear in the merit list do not acquire indefeasible right of appointment if vacancies exist. The State is under no obligation to fill up all or any of the vacancies, unless the relevant recruitment rules so indicated. Though, the State is under no legal duty to fill up all or any of the vacancies, it does not mean that the State has a license of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for proper reasons. If vacancies or any of them are filled up, the State is bound to respect the comparative merit of candidates as reflected in the recruitment test and no discrimination can be permitted. This position was reiterated in All India SC & ST Employees' Assn. v. A. Arthur Jeen and Ludhiana Central Coop. Bank Ltd. v. Amrik Singh"

Hence there is no merit in the submission of the petitioners that the respondents are bound to issue the appointment letter. While a selected candidate can hope to be appointed, he cannot insist that the concerned authority should issue an appointment letter. If there are good and valid reasons in support of the decision not to appoint, the Court will not interfere with the policy. In the present case, the decision for not operating the list beyond the year 1999 is that the vacancies after that year had not been originally notified, and that the select list or panel cannot have indefinite life. I find no infirmity with that reasoning.

10. The second issue is whether a select list or waiting list invariably has to be exhausted till all the candidates are appointed. The petitioners rely on the terms of the select list, which states that appointments would be made as and when vacancies arise. They also rely on the circular dated 8-2-1982. The relevant portion of that circular reads as follows:

"the matter has been carefully considered. Normally recruitment whether from the open market or through a departmental competitive examination should take place only when there are no candidates available from an earlier list of selected candidates. However there is a likelihood of vacancies arising in future in case names of selected candidates are already available they should either be no further recruitment till the available selected candidates are absorbed or the declared vacancies for the next examination should take into account the number of persons already under list selected candidates awaiting appointment. Thus there would be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies either by the method of direct recruitment or through a department will competitive examination.

Once a person is declared successful according to the merit list of the selected candidates which is based on the declared number of vacancies they appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change after his name has been included in the list of selected candidates. Does Wales elected candidates have everything in one meant recruitment should either be postponed till all this elected candidates are accommodated or alternatively intake for the next recruitment reduced by the number of candidates already awaiting appointment from a fresh list from the subsequent recruitment or examination."

11. On this issue, the authorities are clear. There is no rule of universal application that a waiting/select list has to be operated, indefinitely. Each case would depend on the peculiar circumstances, particularly, the existence or otherwise of a rule compelling such a course of action (refer Ashwani Kumar Singh Vs. U.P. Public Service Commission and Others, ; Government of Orissa through Secretary, Commerce and Transport Department, Bhubaneswar Vs. Haraprasad Das and Others, and State of U.P v. Bibhakar Dwivedi 2003 (12) SCC 62. In Hara Prasad's case (supra) it was held that the Court or Tribunal cannot issue directions to the Government to make appointments from a list that had expired. In Ashwani Kumar Singh (supra) it was held that:

"It has not been laid down as a rule of universal application that whenever vacancy exists, persons who are in the merit list perforce have to be appointed. Much would depend upon the statutory provisions governing the field. In the present case, too, the decision of the MCD, dated 5.11.98, the select list stood cancelled."

12. Counsel for the petitioner had placed reliance upon the circular dated 8-2-1982 (quoted supra). I am of the view that the circular does not alter the situation. It does talk of the appointing authority having to exhaust the select list, first, before proceeding with fresh recruitment. However, the applicability of the circular/ notification has to be in the context of the time period. The recruitment process here concluded in 1994. Fresh recruitments were sought to be made in 1999. The stand taken by the respondent that the select list has a life of one year, and could not be operated indefinitely, cannot be called unreasonable. The circular cannot constitute an invariable rule, mandating that all vacancies, existing and future, would have to be filled from amongst candidates in the select list. That would run afoul of the judgment of the Supreme Court that a recruitment or selection process would be confined to the notified vacancies, and inclusion of further or later vacancies could be justified or upheld only as an exception, in an emergent situation (Ref Prem Singh and Others Vs. Haryana State Electricity Board and Others,). Acceptance of the petitioners' contention would Therefore, be in the teeth of the respondent's assertion that the recruitment for later years is in respect of fresh vacancies. One more reason for rejecting the petitioner's contention is that if such select lists are to operate without a time limit, there would be an inevitable violation of

Article 16 of the Constitution of India, since those who become eligible and qualified, in the interregnum period, (some of whom may be better candidates) would be deprived the opportunity to compete, for, and occupy the post.

13. In view of the foregoing discussion, I am of the view that the petitioners are not entitled to any relief. Writ petitions are accordingly dismissed. All interlocutor applications are also disposed off in the light of the judgment. No costs.