
(2010) 03 DEL CK 0120

In the Delhi High Court

Case No : Writ Petition (C.) No. 3077 of 2007

Shri Sudhansh Sharma

APPELLANT

Vs

Indira Gandhi National Open University

RESPONDENT

Date of Decision : 03-03-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1), 226
Delhi Sales Tax Act, 1975 — Section 13(4)

Citation : (2010) 03 DEL CK 0120

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : L.S. Chaudhary, for the Appellant; Aly Mirza, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.—The petitioner has filed the present writ petition for directions for his appointment to the post of permanent Lecturer in the school of Computer and Information Sciences with the respondent University retrospectively w.e.f. 17.03.2007.

2. Briefly stated the facts of the case giving rise to this petition are that in response to the respondent's public advertisement, the petitioner had submitted an application for his appointment to the post of Lecturer in Computer Sciences and the respondent by way of its letter dated 14.03.2005 (Annexure P-1 at page 10 of the paper book) called him for interview on 27.03.2006. After the interviews were held, a select panel of two persons was recommended by the Selection Committee against one notified vacancy advertised by the respondent. Mr. Naveen Phougat was the first selected candidate in the select panel approved by the Board of Management in its 86th meeting held on 01.04.2006.

3. Mr. Naveen Phougat who was at number one in the select panel had joined the respondent university on 15.09.2006 but he resigned the post vide his resignation letter dated 12.03.2007 which was accepted by the Vice-Chancellor

vide office order No. 292 dated 16.03.2007 (Annexure P-5 at page 30 of the paper book). Consequent upon acceptance of his resignation, Mr. Naveen Phougat was relieved from the respondent university w.e.f. 20.03.2007 vide its letter dated 24.04.2007 (Annexure R-1 at page 46 of the paper book).

4. There was one more leave vacancy in addition to a regular vacancy of Lecturer advertised by the respondent and that leave vacancy had arisen w.e.f. 08.02.2006 on account of Mr. P.V. Suresh, Lecturer having gone on study leave w.e.f. 08.02.2006. The petitioner was appointed against the said leave vacancy w.e.f. 26.05.2006 purely on stop gap arrangement basis and his appointment against the leave vacancy came to an end on 03.03.2008 as Mr. P.V. Suresh, against whose leave vacancy the petitioner was appointed, had rejoined the University on 03.03.2008.

5. The petitioner has based his claim for his regular appointment against the vacancy caused by the resignation of the first selected candidate Mr. Naveen Phougat as he was the next available candidate in the select panel for his appointment against the said vacancy. The petitioner has placed reliance on Ordinance 12 of the respondent University according to which the validity of the select panel is one year from the date of its approval by the Board of Management. He has also placed reliance on the instructions of the Government contained in DOPT OM No. 41019/18/97-Estt. (B) dated 13.06.2000 according to which any vacancy caused by non-joining of the selected candidate within the stipulated time allowed for joining the post or where a candidate joins but he resigns or dies within a period of one year from the date of his joining, has to be filled from the reserve panel and not to be treated as a fresh vacancy. The petitioner has stated that the select panel in the present case was valid for one year from the date of approval of the same i.e. w.e.f. 01.04.2006 to 31.03.2007 and therefore, according to him, since the vacancy had arisen within one year validity of the said panel, he was entitled to be appointed against the vacancy caused by the resignation of the first selected candidate Mr. Naveen Phougat. He has, therefore, prayed for directions to the respondent University to appoint him to the post of Lecturer in the school of Computer and Information Sciences on regular basis retrospectively w.e.f. the date of arising of the vacancy on the resignation of Mr. Naveen Phougat.

6. In response to notice of this writ petition, the respondent University has filed its counter affidavit denying the right of the petitioner for his appointment against one notified vacancy. As per the respondent, the select panel had come to an end upon appointment of the first selected candidate Mr. Naveen Phougat as the said panel was prepared for filling up of only one vacancy notified in the advertisement. The respondent has also stated that the appointment of the petitioner against the leave vacancy of Mr. P.V. Suresh, Lecturer was strictly a stop gap arrangement and has nothing to do with his claim for his appointment against a regular post. It is stated that the regular appointment to a post is exclusively within the purview of expert bodies like the Selection Committee and

a wait listed candidate cannot invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution in such matters of appointment. It is further stated by the respondent that it is not within the domain of writ jurisdiction to direct filling up of all vacant posts as it is the employer who is the best Judge to recruit more people depending on the requirement and other consideration such as budget restrictions. The respondent has prayed for dismissal of this writ petition.

7. I have heard the arguments of the learned Counsel for both the parties and have also perused their written arguments as well as the entire case file.

8. Dr. L.S. Chaudhary, learned Counsel appearing on behalf of the petitioner, has placed strong reliance upon the provisions contained in Ordinance 12 of the respondent University and also the instructions of the Government contained in DOPT OM No. 41019/18/97-Estt. (B) dated 13.06.2000 in support of his contention that the petitioner is entitled for his appointment against a regular vacancy caused by the resignation of the first selected candidate Mr. Naveen Phougat as the said vacancy, according to him, had arisen within one year validity of the select panel and was liable to be filled up by the respondent by offering the same to the petitioner. Learned Counsel appearing on behalf of the petitioner has also placed reliance on a judgment of the Hon'ble Supreme Court A.P. Aggarwal Vs. Govt. of N.C.T. of Delhi and Another, .

9. Per contra, Mr. Aly Mirza learned Counsel appearing on behalf of the respondent University had argued that the advertisement pursuant to which the petitioner had applied was for filling up of one vacancy and the select panel prepared by the respondent pursuant to the said advertisement came to an end with the appointment of the first selected candidate Mr. Naveen Phougat who had joined the respondent University on 15.09.2006. According to Mr. Mirza, the select panel in terms of Ordinance 12 could operate up to one year for filling up of the notified vacancies mentioned in the advertisement and not for filling up of future vacancies arising later on. Mr. Mirza learned Counsel appearing on behalf of the respondent had also argued that the instructions of the Government contained in DOPT OM No. 41019/18/97-Estt. (B) dated 13.06.2000 are not applicable to the respondent University because its Board of Management in its 86th meeting held on 27.11.2006 had rejected the proposal for appointment from the reserve panel/waiting list against vacancy that may arise on account of resignation, death, retirement etc. within one year of the panel. The argument of Mr. Mirza was that since the respondent University has its own rules and regulations in regard to matters of regular appointments, any instruction of the Government to the contrary will not apply to the University. It was further argued by him that it is for the employer to decide whether it wants to fill a particular vacancy or not depending upon its requirement and other relevant consideration and according to him, the Court should not interfere in such matters until it is found that inaction on the part of the employer is arbitrary, unjust or bias. It was submitted by him that in the present case, the respondent University did not

require any more teacher after Mr. P.V. Suresh had rejoined the respondent on 03.03.2008 and for that reason, it chose not to make any appointment against the vacancy caused by the resignation of the first selected candidate Mr. Naveen Phougat w.e.f. 20.03.2007. Mr. Mirza learned Counsel appearing on behalf of the respondent had placed reliance on several judgments of the Hon''ble Supreme Court in support of his contention that a selected candidate cannot have a vested right for his appointment only because his name appears in the waiting list of the select panel.

10. From the above rival submissions made by the counsel for the parties, the only question that arises for consideration in the present writ petition is whether the petitioner, on account of his being next in the reserve/wait list in the select panel prepared for filling up of one advertised vacancy, has a protected legal right for his appointment against the vacancy caused by the resignation of the first selected candidate.

11. In *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, , an advertisement was given for filling up of 11 vacancies of Munsifs and a requisition was made to the Public Service Commission to select 11 persons for filling up of 11 advertised vacancies. While sending the list of selected candidates, the Public Service Commission sent a list containing more than 11 names. That was obviously with a view to fill up the vacancy, if any of the 11 candidates according to their merit did not join, from among the 11 persons in the waiting list according to their merit. It was held by the Hon''ble Supreme Court that once the 11 candidates who were selected had joined the post, the list got exhausted and the waiting list could not be used for any purpose thereafter.

12. In *R.S. Mittal v. Union of India* reported as Supp. (2) SCC 230, the question that arose was with regard to the selection of candidates to the post of Judicial Member, Income Tax Appellate Tribunal. The Selection Board prepared a panel of selected candidates which included the name of the appellant in that case. The candidates who were at numbers 1 & 2 in the panel did not accept the appointment. The Hon''ble Supreme Court did not grant any relief to the appellant Mr. R.S. Mittal who was at number 4 in the select panel observing that a person on the select panel has no vested right to be appointed to the post for which he has been selected. The relief was declined by the Supreme Court to the appellant in that case because the stand of the person who was at number 3 of the select panel was not before the Court.

13. In *Virender S. Hooda and Others Vs. State of Haryana and Another*, , the Haryana Service Commission advertised 12 posts of the Haryana Civil Service (Executive Branch). On completion of selection process, a final select list was prepared and published. Some of the selected candidates did not join and the appellants contended that they should have been considered against the vacancies so arising, depending upon the ranking obtained by the appellants in the competitive examination. In that case, the Hon''ble Supreme Court relying upon the Government circulars dated 22.03.1957 and 26.05.1972 directed the

appointment of the appellants in that case observing that the Government ought to have considered the case of the appellants in terms of its policy as per their ranking in the merit list and appoint them, if they come within the range of selection. It was observed by the Supreme Court in the said case as under:

When a policy has been declared by the State as to the manner of filling up the post and that policy is declared in terms of rules and instructions issued to the Public Service Commission from time to time and so long as these instructions are not contrary to the rules, the respondents ought to follow the same.

14. It was held by the Hon''ble Supreme Court in the case of State of Punjab Vs. Raghubir Chand Sharma and Another, as follows:

As rightly contended for the appellant-State, the notification issued inviting applications was in respect of one post and the first candidate in the select panel was not only offered but on his acceptance of offer came to be appointed and it was only subsequently that he came to resign. With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select panel prepared, the panel ceased to exist and has outlived its utility and, at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently.

15. In Sanjoy Bhattacharjee Vs. Union of India and others, as follows:

Merely because the petitioner has been put in the waiting list, he does not get any vested right to an appointment. It is not his case that any one below his ranking in the waiting list has been appointed which could give him cause for grievance. Thus, he cannot seek any direction for his appointment.

For subsequent vacancies, every one in the open market is entitled to apply for consideration of his/her claim on merit in accordance with law and it would be consistent with the provisions of Articles 14 and 16(1) of the Constitution. Therefore, direction sought for not to fill up the vacancies having arisen subsequently until the candidates in the waiting list are exhausted, cannot be granted.

16. The claim of the petitioner for his appointment against a regular post is based upon Ordinance 12 of the respondent University and on instructions of the Government contained in DOPT OM No. 41019/18/97-Estt. (B) dated 13.06.2000.

17. Ordinance 12 of the respondent University which deals with the life of the select panel is reproduced here-in-below:

The panels recommended by a Selection Committee shall be valid for a period of one year from the date of their approval by the Board of Management. Provided that the Board of Management may, for reasons to be recorded, extend the validity of the panel by one more year.

18. The instructions of the Government contained in DOPT OM No. 41019/18/97-Estt. (B) dated 13.06.2000 on which reliance was placed by the learned Counsel appearing on behalf of the petitioner are reproduced here-in-below:

The undersigned is directed to invite attention to this Department's Office Memorandum No. 39021/18/84-Estt.(B) dated 20.11.1985; No. 39021/18/84-Estt. Dated 14.05.1987 (Sl. No. 328 of Swamy's Annual, 1987) and No. 39036/6/88-Estt. (B) dated 18.01.1990 (Sl. No. 247 of Swamy's Annual, 1990) " and to say that in terms of these office memorandum, it was informed that the Union Public Service Commission, wherever possible maintains a reserve panel of candidates found suitable on the basis of selection made by them for appointment on direct recruitment, transfer on deputation, transfer basis and the reserve panel is operated by the candidate recommended by the UPSC on a request received from the Ministry/Department concerned when the candidate recommended by the UPSC either does not join, thereby causing a replacement vacancy or he joins but resigns or dies within six months of his joining. Ministries/ Departments were advised that whenever such a contingency arises, they should first approached the UPSC for nomination of a candidate from the reserve panel, if any. The recruitment process be treated as completed only after hearing from the UPSC and the Ministry/Department concerned may resort to any alternative method of recruitment to fill up the vacancy thereafter.

2. The Fifth Central Pay Commission, in para 17.11 of its report, has recommended that with a view to reduce delay in filling up of the posts, vacancies resulting from resignation or death of an incumbent within one year of his appointment should be filled immediately by the candidate from the reserve panel, if a fresh vacancy. This recommendation has been examined in consultation with the UPSC and it has been decided that in future, where a selection has been made through UPSC, a request for nomination from the reserve list, if any, may be made to the UPSC in the event of occurrence of a vacancy caused by non-joining of the candidate within the stipulated time allowed for joining the post or where a candidate joins but he resigns or dies within a period of one year from the date of his joining, if a fresh panel is not available by then. Such a vacancy should not be treated as fresh vacancy.

3. It has also been decided that where selections for posts under the Central Government are made through other recruiting agencies such as Staff Selection Commission or by the Ministries/Departments directly and the reserve panels are similarly prepared, the procedure for operation of reserve panels maintained by UPSC as described in Para 2 above will also be applicable for the reserve panels maintained by the other recruiting agencies/authorities.

19. It is correct that in terms of the instructions of the Government contained in DOPT OM No. 41019/18/97-Estt. (B) dated 13.06.2000, the vacancy caused by the resignation of the first selected candidate could be filled from the next candidate in the wait list in the event of said vacancy arising within one year of the life of the select panel. The question is regarding interpretation to be placed

on the life of the select panel contemplated in Ordinance 12 of the respondent University and the question incidental thereto that also arises for consideration is whether the instructions of the Government contained in Circular Order dated 13.06.2000 extracted above are applicable to the respondent university.

20. Clause 12 of the Ordinance of the respondent University only provides for validity period of selection panel, which is one year extendable up to two years by the Board of Management in its discretion. The said clause was interpreted by the Board of Management of the respondent University in its 61st meeting held on 16.11.1998 wherein it was observed that a wait listed candidate can be offered the appointment only if the successful candidate does not join. However, if the successful candidate joins, the panel stands lapsed. The minutes of 61st meeting of the Board of Management are Annexure R-2 at running pages 92 to 100 of the paper book. Relevant clause of the minutes of the 61st meeting are extracted below:

(iv) In reference to the resolution No. BM 60.8.1, some members were of the opinion that the names of the selected candidates be recorded in the Resolution itself. The Registrar explained that the university had, in the initial years, used to record the names but this practice was changed subsequently as recording the names, including the waitlisted persons, caused certain administrative problems.

(v) In this context, some members pointed out certain technical points regarding panel and validity of panel, etc. It was stated that the panel is a list of candidates showing the names of candidates selected for a post against the specific advertisement. It represents the list of successful candidates in order of merit as recommended by the Selection Committee. The first person in the panel get the first chance for offering the appointment for the specific post. If he/she accepts the offer and joins the post, the panel stands lapsed. The remaining candidates in the panel, therefore cannot be appointed for any other vacant post in the organisation. However, if the first person in the panel refuses/declines to join the post, then the name of the second person in the order of merit be offered the post provided that the period of panel as prescribed is not over and any appointment made in contravention to the above procedure, stands technically flawed.

21. In the 88th meeting of the Board of Management of the respondent University held on 27.11.2006, the amendment in the rule was proposed on the basis of recommendations of the Fifth Pay Commission for appointment against future vacancies arising within one year of the select panel on account of resignation, death or retirement etc. was not approved and it was directed that the validity period of the panel shall be decided as per the existing rules. The rules regarding life of the panel and the filling up of the vacancies arising within one year of the said panel that existed prior to 88th meeting of the Board of Management held on 27.11.2006 were admittedly that the select panel would come to an end and cannot be operative after appointments against notified vacancies. The position is very clear that in terms of the rules of the respondent

University, the vacancy caused by the resignation of the selected candidate could not go to a wait listed candidate. In the present case, the University has its own rules pertaining to the scope and life of the select panel and therefore the instructions of the Government contained in DOPT OM No. 41019/18/97-Estt. (B) dated 13.06.2000 cannot override the rules of the university especially when the proposed amendment on the lines of instructions contained in the said OM have been rejected by the Board of Management in its 86th meeting held on 27.11.2006. The judgment of the Hon''ble Supreme Court in A.P. Aggarwal's case (Supra) on which reliance has been placed by the counsel for the petitioner is not applicable to the facts of the present case because in that case, the Supreme Court had considered appointment to the post of Member of Sales Tax Tribunal in terms of provisions Section 13(4) of the Delhi Sales Tax Act, 1975 and the instructions of the Government contained in its OM dated 14.05.1987 observing that the post of Member of Sales Tax Tribunal cannot be kept vacant in the public interest and was liable to be filled up from the next available candidate in the wait list upon resignation by the earlier selected candidate. Neither the instructions of the Government contained in DOPT OM No. 41019/18/97-Estt. (B) dated 13.06.2000 nor the judgment of the Hon''ble Supreme Court in A.P. Aggarwal's case is applicable to the select panel prepared by the respondent University for filing up of one advertised vacancy. In view of the settled legal position laid down by the Hon''ble Supreme Court in the aforementioned judgments, the petitioner cannot claim a vested right which can be enforced through the process of Court leave alone, a legally protected right for his appointment against a regular post.

22. In view of the foregoing, I do not find any merit in this writ petition which fails and is hereby dismissed but with no order as to costs.