

(2011) 09 DEL CK 0558
In the Delhi High Court
Case No : LPA No. 257 of 2010

Sudhansh Sharma

APPELLANT

Vs

Indira Gandhi National Open University

RESPONDENT

Date of Decision : 07-09-2011

Acts Referred:

Citation : (2011) 09 DEL CK 0558

Hon'ble Judges : Dipak Misra, C.J.;Sanjiv Khanna, J

Bench : Division Bench

Advocate : L.S. Chaudhary, Ajay Chaudhary and Pradeep Rana, for the Appellant; Aly Mirza, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, C.J.—The present intra-Court appeal is directed against the order dated 3rd March, 2010 passed by the learned Single Judge in WP (C) No. 3077/2007 whereby he has declined to accede to the prayer of the Appellant for issue of a writ of mandamus to the Respondents to appoint him on the post of permanent lecturer in the school of Computer and Information Sciences with the Respondent, namely, Indira Gandhi National Open University (IGNOU).

2. The facts which are essential for adjudication of the present appeal lie in a narrow compass. The IGNOU issued an advertisement for filling up one post of lecturer in the school of Computer and Information Sciences. After being qualified in the interview, a panel of two candidates was recommended by the Selection Committee against the one notified vacancy. Shri Naveen Phougat was the first selected candidate in the select panel approved by the Board of Management in its 86th meeting held on 1st April, 2006. Shri Phougat joined the Respondent-university on 15th September, 2006 but eventually resigned from the post on 12th March, 2007, which was accepted by the Vice-Chancellor vide office order No. 292 dated 16th March, 2007. In the meantime, the Appellant was appointed against a leave vacancy as one Shri P.V. Suresh had gone on study leave. After the said Suresh came from leave, the vacancy came to an end

and the Appellant was relieved.

3. As the factual matrix gets further uncurtained, the Appellant put forth his claim for appointment to the post in question on the foundation that after the resignation of Shri Phougat, he deserved to be appointed inasmuch as the select panel was valid for a period of one year as per the Ordinance 12 of the Respondent-university. The stand of the Appellant before the writ court was that as a vacancy had been caused because of the resignation of Shri Phougat, he was entitled to be posted in the said vacancy. Reliance was placed on Instruction of the Government contained in DOPT OM No. 41019/18/97-Estt. (B) dated 13th June, 2000 which stipulates that if a vacancy is caused due to death or resignation of the first selected candidate, the said vacancy could be filled up by the next candidate.

4. The stand put forth by the writ Petitioner was resisted by the Respondent-University contending, inter alia, that the University has not accepted the Government's instruction and, in fact, in the 88th meeting held on 27th November, 2006 by the Board of Management, the University had categorically not accepted the same. It was further contended that as per the 61st meeting of the Board of Management held on 16th November, 1998, the wait-listed candidate could be offered an appointment only if the successful candidate does not join and if the successful candidate joins, the panel gets lapsed and, therefore, the writ Petitioner did not have any right to advance a claim to join the post solely on the ground that the validity of the select list was for a period of one year. It was also urged that the Ordinance 12 was of No. help or assistance to the Petitioner.

5. The learned Single Judge referring to the factual matrix, the various resolutions in the field, the Ordinance 12, the Government's Instruction and certain citations did not find any substance in the petition and accordingly dismissed the same.

6. Assailing the soundness of the order of the learned Single Judge, Dr. L.S. Chaudhary, learned Counsel for the Appellant has contended that when the panel was valid for one year and a vacancy had occurred, it was obligatory on the part of the University to post the Appellant as he was No. 2 in the select list. It is his submission that the Ordinance 12 should be given full effect to and injustice should not be allowed to usher in. The learned Counsel for the Appellant has highlighted that the learned Single Judge has erred in relying on the minutes of the 88th meeting of the Board of Management held on 27th November, 2006 inasmuch as the vacancy in actuality had arisen. He has commended us to the decisions in A.P. Aggarwal Vs. Govt. of N.C.T. of Delhi and Another, and Malik Mazhar Sultan and Another Vs. U.P. Public Service Commission and Others,

7. Mr. Aly Mirza, learned Counsel for the University, supporting the order of the learned Single Judge, has submitted that the conclusion arrived at by him to the effect that the panel lapsed after the post was filled up is flawless. It is proposed

by him that once the panel gets exhausted life cannot be breathed into it unless there is a provision to that effect and when the University has categorically not accepted the government instructions to fill up the vacancy caused due to resignation of the first selected candidate, a mandamus cannot be issued commanding the Respondents to fill up the same by allowing the Appellant to join solely on the ground that the validity of the panel is for one year.

8. The thrust of the matter is whether the Appellant has any right in law for seeking a writ of mandamus to the Respondent - University to post him in the vacancy that has arisen because of resignation of the first selected candidate. The Ordinance No. 12 of the University lays down that the panels recommended by a Selection Committee shall be valid for a period of one year from the date of its approval by the Board of Management. It is also stipulated therein that the Board of Management, for reasons to be recorded, can extend the validity of the panel by one more year. In the case at hand, it is not in dispute that the validity period of one year was not over. Navin Phougat, who was the first candidate in the select list had joined and, thereafter he resigned. Thus, the question that emanates for consideration is whether on his joining, the panel got exhausted or not. On a perusal of the general conditions incorporated in the advertisement, it has been stipulated in Clause 11 that the University may also prepare a panel of candidates keeping in view of the vacancies that may arise in future. The stand of the University is that as the panel got exhausted and the University thought it appropriate not to prepare a panel of candidates and accordingly proceeded to renotify the vacancies. We may note with profit that though the learned Counsel for the Appellant has laid immense emphasis on the said stipulation in the advertisement yet we have remained unimpressed as that it is only an enabling stipulation. Nothing is discernible from the material brought on record that the University has prepared any panel postulating that further anticipated vacancies shall be filled up. Thus, we are only required to address whether any right accrued in favour of the Appellant when the first selectee resigned after joining. In this context, we may refer with profit to the decision in *State of Punjab Vs. Ragbir Chand Sharma and Another*, In the said case the Division Bench of High Court of Punjab and Haryana concurred with the view of the learned Single Judge who had directed the State of Punjab that the Petitioner therein was entitled to be offered the post in question as a vacancy had been caused because of the resignation of the first candidate who had joined the post and resigned later on. It is worth noting that the post in question in the said case was for the post of Assistant Advocate General, Punjab. Their Lordships noted the contentions which we think apt to reproduce:

3. ...Strong reliance has been placed by the Appellant on some decisions of this Court wherein it has been held that mere empanelment in a select list does not confer upon such a person in the panel any right to get appointed to a post under the State and if for good and valid reason, the State does not choose to appoint the said person in the panel, No. right inheres in such a person to seek a mandate from the Courts for an appointment. Per contra, the learned Counsel for

the first Respondent placed strong reliance upon a decision of this Court, to which one of us (Rajendra Babu, J.) was a member, reported in *Virender S. Hooda and Others Vs. State of Haryana and Another*, wherein it was held \ relying upon the Circular Orders dated 22.3.1957, that when vacancies existing were filled in by appointing candidates recommended by the Public Service Commission, further vacancies arising and available within six months from the receipt of recommendation of Public Service Commission have to be filled up out of the wait list maintained by the Public Service Commission.

9. After stating the contentions, their Lordships proceeded to state as follows:

4. We have carefully considered the submissions of the learned Counsel on either side. In our view, the judgment rendered by the learned Single Judge as well as the Division Bench of the Punjab and Haryana High Court cannot be sustained. 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. The Circular Orders dated 22.3.1957 in our view, relates to select panels prepared by the Public Service Commission and not a panel of the nature under consideration. That apart, even as per the Circular Orders as also the decision relied upon for the first Respondent, No. claim can be asserted and countenanced for appointment after the expiry of six months. We find No. rhyme or reason for such a claim to be enforced before Courts,...

10. Be it noted, Dr. L.S. Choudhary has drawn inspiration from the decision in *A.P. Aggarwal* (supra), wherein it has been held thus:

15. In *Virender S. Hooda and Others Vs. State of Haryana and Another*, the Haryana Service Commission advertised 12 posts of Haryana Civil Service (Executive Branch). On completion of selection final list was published. Some of the selected candidates did not join and the Appellant contended that they should have been considered against the vacancies so arising, depending upon the ranking obtained by the Appellants in the competitive examination. They relied on government circulars dated 22.3.1957 and 26.5.1972 according to which the vacancies which arose within six months from receipt of recommendations of the Commission, should be filled up from the waiting list maintained by the Commission. The writ petition filed by the Appellants was dismissed by the High Court in the view that the administrative instructions contained in the circulars could not be enforced. Reversing the decision of the High Court, the Division Bench of this Court observed that the Government ought to have considered the case of the Appellants as per the rank obtained by them

and the Appellants had to be appointed if they came within the range of selection. The Bench pointed out that when those vacancies arose within a period of six months from the date of previous selection, the government circulars were attracted and the view of the High Court that the vacancies arose after selection process commenced had No. relevance and they are contrary to the declared policy of the Government. The Bench observed that the view taken by the High Court that the administrative instructions could not be enforced by the Appellants would be looking at the matter from a narrow and wrong angle. The Bench said: (SCC p.699, para 4)

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.

The ruling will apply on all fours in the present case.

11. The aforesaid decision is distinguishable on facts inasmuch as in the said case, some of the selected candidates had not joined the post, whereas in the case at hand, the number one selectee had joined the post and thereafter resigned. That apart, the said decision has also been distinguished in Raghbir Chand Sharma (supra) as it pertained to a select list prepared by the Public Service Commission.

12. In this context, we may fruitfully refer to the authority in Madan Lal and Others Vs. State of Jammu and Kashmir and Others, , wherein their Lordships have opined that even by abundant caution a merit list of more candidates is prepared but if the requisite vacancies are filled up from the merit list, the list gets exhausted.

13. The learned Counsel for the Appellant has commended us to the decision in Malik Mazhar Sultan and Anr. (supra). On a perusal of the said decision, we do not find anything that would support the stand of the Appellant.

14. In this regard, we may appositely refer to the decision regarding right of a candidate of a select list for getting an appointment. The Constitution Bench in Shankarsan Dash Vs. Union of India, has laid down thus:

7. 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 licence 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. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *The State of Haryana Vs. Subash Chander Marwaha and Others*, , *Miss Neelima Shangla, Ph. D. Candidate Vs. State of Haryana and Others*, or *Jatinder Kumar and Others Vs. State of Punjab and Others*,

15. Recently, in *State of Orissa and Anr. v. Rajkishore Nanda and Ors.* AIR 2010 SC 2100, their Lordships have opined as follows:

13. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate.

16. In the case at hand, it is perceptible, in the University 88th meeting DOPT instructions had not been accepted. In fact, there is a categorical decision not to accept, thus, the University is governed by its own rule and procedure. That apart, the Respondent-University in its 65th meeting of the Board of Management has clearly stipulated that waitlisted candidate could be offered an appointment only if the successful candidate does not join and if the successful candidate joins, the panel gets lapsed. Nothing has been brought on record to show that once a selected candidate resigns, and a vacancy is caused, the second person in the waiting list gets a right for consideration. Once the select list is exhausted, No. claim even can be put forth for consideration.

17. In view of the aforesaid premised reasons, we do not find any merit in this appeal and, accordingly, the same stands dismissed without any order as to costs.