

(2018) 10 UK CK 0116
In the Uttarakhand High Court
Case No : Special Appeal No. 942 Of 2017

Sunil Dutt And Others

APPELLANT

Vs

Uttarakhand Board Of Technical Education Roorkee And
Others

RESPONDENT

Date of Decision : 31-10-2018

Acts Referred:

Constitution of India, 1950 — Article 323(2)

Citation : (2018) 10 UK CK 0116

Hon'ble Judges : Rajiv Sharma, J; Sharad Kumar Sharma, J

Bench : Division Bench

Advocate : Vinay Kumar, Bhagwat Mehra, Rakesh Thapliyal, Puja Banga

Final Decision : Allowed

Judgement

Rajiv Sharma, A.C.J

1. The appellants are the writ petitioners. The appellants have instituted this appeal against the judgment and order dated 07.10.2017, rendered by the learned Single Judge in Writ Petition (S/S) No. 415 of 2017, whereby, the learned Single Judge has dismissed the Writ Petition.

2. The key facts necessary for adjudication of this Appeal are that an advertisement was issued on 09.02.2014 by the Uttarakhand Board of Technical Education for filling up 25 posts of Cooperative Inspector (Group-II). The appellants also participated in the selection process. After the selection process, a select list was prepared and only 19 candidates have submitted their joining report pursuant to the selection. The respondents have not filled up remaining six posts of Cooperative Inspector (Group-II).

3. The case of the respondents precisely was that requisition was sent for filling up remaining six posts to Uttarakhand Subordinate Service Selection Board. However, the fact of the matter is that these posts were not filled up by the Uttarakhand Subordinate Service Selection Board.

4. This Court is of the considered view that the appellants have no indefeasible right to seek appointment. However, the decision to fill up the remaining six posts should have been taken in accordance with law. (See *Asha Kaul (Mrs.) And Another vs. State of Jammu and Kashmir and Others* reported in 1993 SCC (L&S) 637). Their Lordships of Hon'ble Supreme Court has held in paragraph Nos. 7 to 10 as under:

"7. Construed in the above light, Rule 39, in our opinion, does not confer an absolute power upon the government to disapprove or cancel the select list sent by the public service commission. Where, however, the government is satisfied, after due enquiry that the selection has been vitiated either on account of violation of fundamental procedural requirement or is vitiated by consideration of corruption, agoutis or nepotism, it can refuse to approve the select list. In such a case, the government is bound to record the reasons for its action, and produce the same before a court, if and when summoned to do so, apart from placing the same before the Legislature as required by Clause (2) of Article 323. Indeed, Clause (2) of Article 323 obliges the Governor of a State to lay a copy of the annual report received from the commission before the Legislature "together with a memorandum explaining, as respects the cases, if any, where the advice of the commission was not accepted (and) the reasons for such non-acceptance." Evidently, this is meant as a check upon the power of the government. This provision too militates against the theory of absolute power in the government to disapprove or reject the recommendations of the Commission. For the same reason, it must be held that the government cannot pick and choose' candidates out of the list. Of course, where in respect of any particular candidate any material is discovered disclosing his involvement in any criminal activity, the government can always refuse to appoint such person but this would not be a case touching the select list prepared and recommended by the commission. It is equally not open to the government to approve a part of the list and disapprove the balance. In this case, it may be remembered that the government itself had asked for a list of twenty and the commission had sent a list of twenty. (we are not concerned with the waiting list sent by the commission, at this stage). It could not have been approved in part and rejected in part. The number of vacancies available on the date of approval and publication of the list is not material. By merely approving the list of twenty, there was no obligation upon the government to appoint them forthwith. Their appointment depended upon the availability of vacancies. A reading of Rule 41 makes this aspect clear. The list remains valid for one year from the date of its approval and publication. If within such one year, any of the candidates therein is not appointed, the list lapses and a fresh list has to be prepared. In this case, no doubt, a number of complaints appear to have been received by the government about the selection process We have seen the note file placed before us. It refers to certain facts and complaints. But if the government wanted to disapprove or reject the list, it ought to have done so within a reasonable time of the receipt of the select list and for reasons to be recorded. Not having done that having approved the list

partly (thirteen out of twenty names), they cannot put forward any ground for not approving the remaining list. Indeed, when it approved the list to the extent of thirteen, it ought to have approved the entire list of twenty or to have disapproved the entire list of twenty. The objections, the government have pertains to the very process of selection i.e., to the entire list, and not individually to any of the remaining seven candidates.

8. It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment State of Haryana v. Subhash Chandra Marwaha (1974) 3 SCC 220; Mani Subrat Jain v. State of Haryana (1977) 1 SCC 486 and State of Kerala v A Lakshmikutty (1986) 4 SCC 632 but that is only one aspect of the matter. The other aspect is the obligation of the government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the commission to select a particular number of candidates for a particular category, in pursuance of which the commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the government - the government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any government can adopt such a stand with any justification today. This aspect has been dealt with by a Constitution Bench of this Court in Shankarsan Dash v. Union of India (1991) 3 SCC 47 where the earlier decisions of this Court are also noted. The following observations of the Court are apposite : (SCC pp.50-51, para7) :

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 State of Haryana v. Subhash Chander Marwaha, (1974) 3 SCC 220, Neelima Shangla v. State of Haryana, (1986) 4 SCC 268, or Jatendra Kumar v. State of Punjab (1985)1 SCC 122.

9. We may reiterate that the principle of Article 323, referred to here in above, is equally relevant on the nature of the power of the government in such a matter.

10. Looked at from the above stand-point, it appears that the government's action in not approving the rest of the seven names in the select list is

unsustainable but there are certain circumstances which induce us not to interfere in this matter. They are:

(i) During the period of one year from the date of approval of thirteen names (23.12.1986/ 30.12.1986) no vacancy had arisen, which means that even if the list of twenty had been approved and published on December 23 or December 30, 1986 none of the seven persons would have been appointed. At the end of one year, the list lapses and becomes inoperative. The first letter of the High Court stating that one or two more vacancies have arisen and requesting the government to approve the remaining names, was sent only on August 13, 1988 i.e., long after the expiry of the one year period. Any direction at this stage to approve the list would be a futile exercise. The list cannot be operated with respect to the vacancies existing as on today; and (ii) When the government failed to act within a reasonable period from the date of the order (December 30, 1986) of the High Court in writ petition 1346/84 (which was disposed of recording the statement of the Advocate General) the petitioners ought to have moved in the matter. They did not do so. They waited for more than twenty months and approached the High Court only on September 14, 1988. This delay, in our opinion, disentitles the petitioners from any relief in the facts and circumstances of the case."

5. Accordingly, Special Appeal is allowed. Impugned judgment and order dated 07.10.2017, passed by the learned Single judge is set aside. The respondents are directed to fill up the remaining six posts of Cooperative Inspector (Group-II) within a period of ten weeks from today.