

(2009) 11 KAR CK 0038
In the Karnataka High Court
Case No : Writ Petition No. 18203 of 2005

The District Level Recruitment Committee and Others	APPELLANT
Vs	
Sri Vasanth Shankar Rao and Others	RESPONDENT

Date of Decision : 06-11-2009

Acts Referred:

Citation : (2010) ILR (Kar) 49

Hon'ble Judges : S. Abdul Nazeer, J;Aravind Kumar, J

Bench : Division Bench

Advocate : M. Kumar, Additional Government Advocate, for the Appellant; G.G. Chagashetti, for R2 and R3, for the Respondent

Final Decision : Allowed

Judgement

S. Abdul Nazeer, J.—The Deputy Commissioner of Excise, Bangalore, by his letter dated 9.6.1999 informed the Deputy Commissioners of Excise of various districts in the State of Karnataka, the permission granted by the State Government for recruitment of Excise Guards in their respective districts. The Deputy Commissioner of Excise, Bidar was permitted to fill up 20 vacant posts of Excise Guards in Bidar District by direct recruitment. Accordingly, the Deputy Commissioner of Excise, Bidar District, issued a Notification dated 14.2.2000 for filling up of 20 posts of Excise Guards in Bidar District. The classification of vacancies in the said Notification is as under:

Classifications	of	Vacancies	Number of Sl. No. of Vacancies
Classifications of posts as per rousters No. posts in accordance with Govt. Order No. DPAR/34/SBC/95 dated 15.7.96 & DPAR/8/SBC/99 dated 20.6.1995			
		SCs STs GM CI AII BII AIII	
BIII Total			1. For
Gents	2 1 4 - 2 1 1 1 12		

2. For Ladies 1 - 4 1 - - - - 06

3.	For	Ex-	Service-	-	-	2	-	-	-	-	-	02	men		
-----												Total	03	01	10
01		02		01		01					01		20		

2. Pursuant to the said Notification, selection list of 20 candidates dated 11.4.2002 was published and appointment orders have also been issued to the selected candidates. The respondents were kept in the waiting list. It is the case of the respondents that the total number of posts advertised was 27. Since they were kept in the waiting list, they should have been appointed to the posts in question instead of the District Level Recruitment Committee calling for fresh list of candidates from the Employment Exchange to fill up the seven additional posts. Therefore they filed an application No. 4210-4212/2003 before the Karnataka Administrative Tribunal, Bangalore (for short the Tribunal) seeking the following reliefs:

(i) Issue a writ in the nature of mandamus directing the respondents to consider the case of the applicants for giving appointment orders to the post of Excise Guards in Bidar District, pursuant to the select list vide Annexure - A3, and give all consequential benefits flowing therefrom;

(ii) Pass such other or further orders which the applicants are entitled to in the circumstances of the case, including the award of the costs of this application, in the interest of justice and equity.

3. The petitioners filed statement of objections contending that in order to fill up 20 posts of Excise Guards in the Excise Department. Bidar district, a Notification was issued on 14.2.2000 and selection list of 20 candidates was published and appointment orders have also been issued to the selected candidates. It is contended that Notification was issued to fill up 20 posts and not 27 posts as claimed by the respondents. The 20 candidates whose names figured in the main selection list were eligible and as such appointment orders were issued to them. It is further contended that the intention behind preparation of waiting list is to accommodate the candidates from the said list in case the selected candidates in the main list do not report for duty. The Commissioner of Excise has accorded sanction for new posts of Excise Guards. It is an altogether fresh selection process. The Commissioner of Excise has called for particulars from the Employment Exchange to fill up the newly sanctioned posts. Mere inclusion of the names of the respondents in the earlier waiting list will not accrue them any right to claim selection in the subsequent Notification. They sought for dismissal of the application.

4. Considering the rival contentions of the parties, the Tribunal passed an order on 11.3.2005 directing the petitioners to appoint the respondents to the posts of Excise Guards in preference to the fresh candidates proposed to be selected unless the respondents are otherwise ineligible for the posts as per the rules. The

petitioners have called in question the validity of the said order in this writ petition.

5. We have heard the Learned Counsel for the parties.

6. Learned AGA appearing for the petitioners would contend that the Notification issued by the petitioners was for the appointment of 20 posts of Excise Guards and not 27 posts as contended by the respondents. He has produced a copy of the letter issued by the Deputy Commissioner of Excise, Bangalore, to the Deputy Commissioners of Excise of all the districts dated 9.6.1999 as also the Notification issued by the Deputy Commissioner of Excise, Bidar I District. It is further contended that the final selection list was prepared on 11.4.2002 and 20 candidates have been selected for the posts in question. The respondents were placed in the waiting list. The intention of preparation of the waiting list is to accommodate the candidates in the said list in case the selected candidates in the main list do not report for duty. It is further argued that mere inclusion of the names of the respondents in the waiting list does not confer any right to claim selection in the subsequent Notification. Therefore, the Tribunal is not justified in directing the petitioners to appoint the respondents to the posts of Excise Guards in preference to the fresh candidates proposed to be selected.

7. On the other hand Learned Advocate appearing for the respondents has sought to justify the impugned order. It is submitted that since the respondents were kept in the waiting list, unless and until they are not appointed to the posts of Excise Guards, the petitioners cannot select some other candidates for the said posts. The respondents should be given preference in the selection of Excise Guards.

8. We have carefully considered the arguments of the Learned Counsel made at the Bar and perused the materials placed on record.

9. It is clear from the letter dated 9.6.1999 issued by the Deputy Commissioner of Excise, Bangalore, written to the Deputy Commissioners of Excise of different districts in the State of Karnataka that the State Government has permitted the Deputy Commissioner of Excise, Bidar to fill up 20 vacant posts of Excise Guards in Bidar district. Accordingly a Notification was issued by the Deputy Commissioner of Excise, Bidar district, dated 14.2.2000 to fill up 20 posts of Excise Guards. Therefore there is no merit in the case that the posts advertised was 27. A final selection list was issued by the Deputy Commissioner of Excise and Chairman of Recruitment Committee, Bidar, dated 11.4.2002 (Annexure A3) whereby 20 candidates have been selected. The respondents herein were kept in waiting list. In the statement of objections, the petitioners have admitted that the Commissioner of Excise has accorded sanction for appointment of 7 posts of Excise Guards afresh. It is the contention of the petitioners that since it is a fresh selection process, they have called particulars from the employment exchange to fill up the newly sanctioned posts. The contention of the respondents is that they should have been appointed to the posts of Excise Guards in preference to the

fresh candidates proposed to be selected unless they are otherwise ineligible for the posts as per the rules. Therefore, the question for consideration in this writ petition is whether inclusion of names of the respondents in the waiting list confer any right in their favour to claim selection in preference to the fresh candidates proposed to be selected?

10. Before considering the point arising for consideration, it is, necessary to bear in mind the principles relating to the right of the candidates in the waiting list for appointment in preference to the fresh candidates proposed to be selected in accordance with the subsequent Notification.

11. In *Shankarsan Dash Vs. Union of India*, constitution bench of the Apex Court has held that ordinarily the Notification calling for applications from intending candidates for a post or posts amounts to an invitation to the 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.

12. In *State of Haryana and others Vs. Mahabir Prasad Sharma and others*, the Apex Court has held that keeping the candidates in the waiting list does not create any right in their favour in the posts, but if the appellant for administrative exigencies fills up the posts on an ad hoc basis, then it is open to the appellants to appoint the candidates waiting in the list in the order of merit. It is only an enabling direction to make temporary appointment pending regular recruitment.

13. In *Ashok Kumar and Others Vs. Chairman, Banking Service Recruitment Board and Others*, the Apex Court has held that appointment of the persons kept in the waiting list by the respective Recruitment Boards to the vacancies that had arisen subsequently without notifying them for recruitment is unconstitutional.

14. In *Vice-Chancellor, University of Allahabad and Others Vs. Dr Anand Prakash Mishra and Others*, the Apex Court has held that the process of selection must be in accordance with law existing as on the date of selection. Keeping a candidate in the waiting list does not confer any vested right in his favour much less indefeasible right. The appropriate appointing authority is not obliged to fill up the vacancies or appoint any candidate/candidates waiting in the list to any resultant vacancy, due to the operation of law under the Act.

15. In *Bihar State Electricity Board Vs. Suresh Prasad and Others*, the Apex Court held that in the absence of statutory rules to the contrary, the employer is not bound to prepare a waiting list in addition to the panel of selected candidates and appoint the candidates on the waiting list in case the candidates on the panel do not join. It has been held thus:

In the present case, a panel of 22 candidates was prepared for appointment under the 1986 advertisement and Respondents 1 to 7 fell beyond the cut-off number. There are no statutory recruitment rules which require the appellant Board to prepare a waiting list in addition to the panel. No rule has been shown in support of the respondents' argument that when 18 candidates failed to turn up the appellant was bound to offer the posts to candidates in the waiting list. There was no infirmity in the judgment sought to be reviewed and there was no need to recall the same.

16. In *Union of India (UOI) and Others Vs. S. Vinodh Kumar and Others*, the Apex Court has held that wait-listed candidates have no legal right to be appointed. It was for the appellant to decide as to whether the posts were to be reserved or carried forward. The respondents appeared in a competitive examination. The posts advertised were public posts. They did not have any vested right for appointment.

17. The Apex Court in *State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association*, has held that even in a case where the Court holds the order passed by the Government to be unsustainable, ordinarily a direction should be given to the State Government or the authority taking the decision to reconsider the matter and pass a proper order. The Court should avoid giving a declaration granting a particular scale of pay and compelling the Government to implement the same.

18. The principles deducible from the aforesaid decisions are that in the absence of statutory rules to the contrary, the employer is not bound to prepare a waiting list in addition to the panel of selected candidates and appoint the candidates in the waiting list in case the candidates on the panel do not join. Inclusion of the names in the waiting list, will not confer any right to the candidates to claim selection. Even the candidates who are selected and whose names find place in the select list, do not get vested right to claim appointment based on the select list. The select list dated 11.4.2002 (Annexure-A3) cannot be utilised as a perennial source or an inexhaustible reservoir for making appointments indefinitely. When the Courts hold the order passed by the Government to be unsustainable, ordinarily a direction should be given to the State Government or Authority taking the decision to reconsider the matter and not compelling the Government to implement the order.

19. Coming to the facts of the present case, the respondents were kept in the waiting in the final selection list of Excise Guards as per Annexure-A3 dated 11.4.2002. They do not have any vested right for appointment to the post of Excise Guards. Learned Counsel for the respondents has not shown any rules under which the wait listed candidates can claim selection in preference to the candidates newly selected or in place of the selected candidates who do not report for duty. In our considered view, the Tribunal was not right in directing the petitioners to appoint the respondents to the posts of Excise Guards in preference to the fresh candidates proposed to be selected for the newly

sanctioned posts.

20. At this stage, learned Counsel for the respondents draws our attention to the order at Annexure-R3 dated 25.07.2002 and submits that out of the 20 selected posts vide Annexure- A3, only 18 candidates have been appointed as Excise Guards. Therefore, at least two of the respondents ought to have been appointed as Excise Guards. This argument of the Learned Counsel is also without any merit. It is settled that the employer need not appoint the candidates on the waiting list in case the candidates in the select list do not join as held in Suresh Prasad's case (supra). Be that as it may. It is not in dispute that the first respondent belongs to S.C. category and respondents 2 and 3 belong to G.M. category. It is clear from the Notification dated 14.2.2000 that the number of posts reserved for S.C. category are 3 and number of posts reserved for the G.M. category are 10, out of which four posts are reserved for gents, four for ladies and two for ex-service men. 3 posts reserved for S.C. category has been filled up. Similarly, 10 posts reserved in the G.M. category has also been filled up. Therefore, the question of appointing the respondents to the posts reserved for some other category does not arise.

21. In the result, the writ petition succeeds and it is accordingly allowed. The order of the Tribunal impugned herein is hereby quashed and the applications Nos. 4210-4212/2003 are dismissed. No costs.