

(1994) 10 KL CK 0061
In the High Court Of Kerala
Case No : W.A. No. 1094/93 B

The Manager, Reserve Bank of India

APPELLANT

Vs

Krishna Kumar and Others

RESPONDENT

Date of Decision : 18-10-1994

Acts Referred:

Citation : (1994) 10 KL CK 0061

Hon'ble Judges : Sujata V. Manohar, C.J;K. Sreedharan, J

Bench : Division Bench

Advocate : T.P. Kelu Nambiar, in W.A. Nos. 1094/93, 1099/93 and 1100/93, for the Appellant; C.P. Sudhakar Prasad, for Respondents 1, 5 and 6 and Narayanikutty Chettur, for 3rd Respondent in W.A. 1165/93 and 1168/93C, for the Respondent

Judgement

Sujata V. Manohar, C.J.—W.As. 1094, 1099 and 1100 of 1993 are at the instance of the Reserve Bank of India, who were the original Respondents 2 and 3 in O.Ps. 12776 of 1991, 874 of 1992 and 15377 of 1992 respectively. The other three Writ Appeals are at the instance of some of the original Petitioners in the above Original Petitions. The appeals all arise from a common judgment "and order dated 28th July 1993 delivered by the learned Single Judge in the three Original Petitions. The relevant facts are as follows:

2. On 1st August 1988, the Reserve Bank of India published a notification/advertisement inviting applications for appointments to the common cadre of Clerks Grade II/Coin Note Examiners Grade II in the Office of the Reserve Bank of India at Trivandrum. The approximate number of vacancies for which these applications were invited was 150 Out of these vaeancies, some were reserved for Scheduled Castes/Scheduled Tribes, Physically Halidicapped persons and 21 vacancies were reserved for Ex-servicemen.

3. About 17,000 applications were received pursuant to this advertisement. Written test for selection of candidates was conducted on 15th January 1989. On the basis of performance in the written test, about 290 candidates were issued

advices for attending an interview. The candidates were called in Accordance with merit, on the basis of the aggregate marks obtained by them in the written examination. The interviews were held between 24th July 1989 and 8th August 1989.

4. Although the anticipated vacancies were estimated at 150 at the time when the advertisement was issued, on a review of the position of actual vacancies at the time of the preparation of the select list, it was decided that the actual vacancies which may arise in the near future would be only around 63. As a result, the select list of candidates was restricted to 82 candidates- These 82 candidates were selected on the basis of their performance in the written test and the interview and all the candidates were issued selection/non-selection advises on 12th February 1990. These advises were individually sent to all the candidates who had attended the interview. In the select list of 82 candidates which was prepared in the order of merit, nine seats were kept for Ex-servicemen as per the policy of, reserving 14 1/2 per cent of vacancies to; Ex-servicemen (on the basis of 63 anticipated vacancies). For the Ex-servicemen quota of nine vacancies, 12 persons were wait-listed on the select list.

5. From the select list of 82 candidates, 20 persons were appointed in the order of merit till the date of the filing of these Original Petitions in January 1991 and one person was appointed subsequent to the filing of the Original Petitions.

6. According to the Reserve Bank of India, it was decided not to appoint any further candidates from the select list because of reorganisation of the work of the I Bank. It is the submission of the Reserve Bank of India that on account of introduction of certain organisational changes in some departments, as also on account of the liberalisation of foreign exchange regulations pursuant to the policy formulated by the Government of India as also on account of introduction of modern technology leading to an overall decrease in the work-load in various departments which were not envisaged earlier, it was found, that there would not be any necessity to fill up any further vacancies. Hence, on account of administrative exigencies the Reserve Bank of India decided not to appoint any more candidates from the select list. The three Original Petitions have been filed by some of the candidates who were on the select list of 82 candidates, but who have not been appointed.

7. It was one of the contentions raised by these candidates that the select list of 82 candidates was not published at any point of time by the Reserve Bank of India and this has caused prejudice to them because they were not able to assess their position in the merit list. This grievance no longer survives since the merit list has now been published. It is also not in dispute that the Petitioners in these Original Petitions are not amongst the first 21 candidates in the order of merit.

8. What we have to examine is whether the Petitioners have a right to be appointed to the posts in question on the basis of their being on the select list of

candidates and whether the Reserve Bank of India can be compelled to fill the 63 vacancies which they anticipated at the time when they, prepared the select list of candidates.

9. In this connection, it is necessary to note that the select list was valid for two years. The select list was prepared on 29th January 1990 and, therefore, it was valid upto 28th January 1992. The life of the select list "was subsequently extended thrice. The last date upto which it had been extended was 31st July 1993. The validity of the select list has now expired. In the advice which was issued to all the candidates who were selected/not selected, the candidates have been informed that the list will be operative only, till 29th January 1992. They further informed as follows:

(c) during the currency of the list, he will be offered appointment in accordance with his position in the list as and when vacancies arise;

(d) mere inclusion of his name in the list would not confer upon him a right to be appointed in the Bank's service; and

(e) as the mere inclusion of his name in the list would not confer on him a right to be appointed in the Bank's service, and as the list would lapse on 30th January 1992, he is advised that he should in his own interest apply for other posts for which he may consider himself eligible, including posts in the Bank till such time he is actually appointed in the Bank's service.

These instructions have clearly conveyed to each of the selected candidates that mere inclusion of his name in the select list does not confer on him any right to be appointed. This is in accordance with the well-settled, law on this question,

10. In the case of *Shankarsan Dash Vs. Union of India*, a Bench of Five Judges of the Supreme Court considered, inter alia, the question of a person's right, if any, to be appointed if his name is on the select list. The Supreme Court has made it clear that:

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.... 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,

Therefore, simply because the Reserve Bank of India had notified certain number of vacancies and had prepared a select list of candidates to fill up those vacancies, the candidates do not acquire an indefeasible right to be appointed to the vacancies as anticipated by the Bank. Nor is the Reserve Bank of India under any legal obligation to fill up all the vacancies which it had anticipated at the time when it prepared the select list. However, the decision of the Reserve Bank of India not to fill up vacancies has to be taken bona fide and for good

administrative reasons. It cannot be an arbitrary decision. The above decision of the Supreme Court has also referred to three earlier cases, namely, *The State of Haryana Vs. Subash Chander Marwaha and Others*, *Jatinder Kumar and Others Vs. State of Punjab and Others*, and *Miss Neelima Shangla, Ph. D. Candidate Vs. State of Haryana and Others*. The Supreme Court has observed that these cases do not lay down any different proposition of law.

11. In the case of *Miss Neelima Shangla, Ph. D. Candidate Vs. State of Haryana and Others*, it has been observed by the Supreme Court that her petition was allowed, not on the ground that she had acquired any right by virtue of her selection and existence of vacancies, but on the basis of certain special facts. In that case, the Public Service Commission had sent to the Government the names of only 17 candidates belonging to the general category on the assumption that only 17 posts were to be filled up. Government had accordingly made only 17 appointments and it stated before the Court that they were unable to appoint any more candidates as the Public Service Commission had not recommended any other candidates. It was, in fact, found that more candidates were available, but the Public Service Commission forwarded only 17 names. The Supreme Court felt that it was not for the Public Service Commission to take a decision in this regard. It was for the Government and the High Court (as it dealt with appointments to the judiciary) to take a decision in regard to the number of persons to be appointed. Therefore, the above case is of no assistance to the original Petitioners in the present cases.

12. The Original Petitioners have also relied upon a decision of the Supreme Court in the case of *Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others*. In that case also the Supreme Court observed that the Government was not bound to fill up the existing vacancies within a particular time frame and that mere inclusion in the select list would not confer upon the candidates any indefeasible right to appointment. In that case, however, the Government had partially accepted the select list and made some appointments from the select list. Thereafter it decided to reject the remaining select list. The Court said that the Government had asked for a list of 20 candidates and the Public Service Commission had sent a list of 20 candidates. The list could not have been approved in part and rejected in part. Of course, by merely approving the list of 20 candidates, there was no obligation upon the Government to appoint them forthwith. The list was valid for one year from the date of its approval and publication. Within such period if any of the candidates were not appointed the list would lapse at the end of the year and a fresh list would have to be prepared. But after approving the list, the Government cannot make some appointments and then reject the rest of the list during the period of its validity. The Supreme Court, in this connection, has also observed that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment. Government also has an obligation to act fairly. The whole exercise of selection cannot be reduced to a farce. The Supreme Court observed:

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.

On facts, however, the Supreme Court held that the Government's action in not approving the rest of the names in the select list was unsustainable. The Supreme Court, however, declined to interfere looking to the fact that the list had long expired. This decision, therefore, does not lay down any law different from what was pronounced by the Supreme Court in *Shankarsan Dash Vs. Union of India*, . The decision turned upon its own facts. The above decision also has reiterated that the Government can, for good and valid reasons, not make appointments.

13. The next decision which is strongly relied upon by the original Petitioners is the one reported in *Union of India v. Ishwar Singh Khatri* 1992 Supp. (3) S.C.C. 84. In that case, the Delhi Administration had notified 654 vacancies of trained graduate teachers and asked the Employment Exchange to sponsor names of suitable candidates for appointment. About 4,000 candidates were so sponsored. The Staff Selection Board, after interviewing the candidates, prepared a panel of 1,492 names. The panels were displayed on the notice board stating specifically that the appointment will be in the order of merit, that appointment will be made from the select list till the last candidate is appointed" (*Italics ours*). It was also stated in the minutes of the Staff Selection Board meeting that the life of the panels of selected candidates will be valid for an indefinite period till all the candidates are offered appointments. In these circumstances, the Supreme Court said that the selected candidates had a right to get appointment. There is no such provision in the select list which is before us. On the contrary, the advice to each of the candidates clearly states that they do not have any right to be appointed to the post simply because their name is on the list. Therefore, the ratio of this judgment also does not help the original Petitioners before us.

14. What we have to examine is whether there is any valid reason for not making any further appointments from the select list. Learned advocate for the Reserve Bank of India has submitted before us that the decision not to fill up the vacancies has been taken for bona fide administrative reasons. We do not see any reason to doubt the bona fides of this decision. A reading of the counter affidavit as a whole clearly indicates that it was because of the changed circumstances set out therein that an administrative decision has been taken not to appoint any more persons to the category in question.

15. It was submitted before us on behalf of the original Petitioners that the decision of the Reserve Bank of India was not bona fide because they appointed at least 12 persons to the same posts from other categories. In the counter affidavit filed on behalf of the Reserve Bank of India in O.P. 12776 of 1991, which

is treated as a common counter affidavit in all the Original Petitions, the Reserve Bank of India has stated that subsequent to the preparation of the waiting list, three vacancies in the said posts were filled on compassionate grounds, three vacancies were filled under the heading "Sports merits", five vacancies were filled by promotion from Class IV employees under the scheme to provide avenues of promotion to Class IV employees and one vacancy was filled on account of a change over from the non-clerical cadre to the said category. These vacancies have been filled under other quota and hence they have no bearing on the operation of the select list.

16. It was next submitted before us that the decision not to operate the select list was not taken bona fide. It was taken out of spite because of a writ petition which was filed by some Ex-servicemen. As set out earlier, out of the anticipated 63 vacancies, nine vacancies (14 1/2 per cent) were reserved for Ex-servicemen. According to the Reserve Bank of India, they had not received any instructions issued by the Government of India to the effect that Ex-servicemen who were already gainfully employed elsewhere were not eligible for being appointed in the reserved quota for Ex-servicemen in the employment of the Bank.; Hence, when they prepared the select list of 12 Ex-servicemen for being appointed in the reserved quota, the same was prepared strictly according to the aggregate marks obtained by the Ex-servicemen in the written examination and interview. Subsequently, on learning about the said instructions of the Government of India, the Central Office of the Reserve Bank of India issued instructions that only those Ex-servicemen who were not gainfully employed elsewhere should be included in the select list. However, before any changes could be made, two Ex-servicemen filed a Writ Petition in this Court being O.P. 10388 of 1990 challenging the select list of Ex-servicemen, Thereupon, the Reserve Bank of India submitted before this Court that if some of the selected Ex-servicemen were found ineligible, they would not be considered for appointment and their names would be deleted from the select list. As the appointment of Ex-servicemen was stayed by the High Court by its order of 26th November 1990 pending disposal of the said Writ Petition, the names of Ex-servicemen were not considered for appointment when the first batch of 20 candidates were appointed in January 1991 and three vacancies, i.e. 14 1/2 per cent share of 20 vacancies were kept unfilled at that time. As per the directions issued by the High Court by its order dated 7th January 1991 a fresh select list was prepared for the Ex-servicemen category after deleting names of five Ex-servicemen who were found ineligible. Thereafter three Ex-servicemen candidates were appointed from the fresh list in the Bank's service with effect from 21st August 1991/2nd December 1991.

17. According to the Original Petitioners, it was because of the filing of this Writ Petition by Ex-servicemen that the Reserve Bank of India decided not to operate the select list. It is, therefore, submitted that the decision not to fill up any more vacancies was a mala fide decision. We do not see any connection between the Writ Petition filed by Ex-servicemen, and the operation of the select list in respect

of candidates belonging to the general category. The Reserve Bank of India had, in fact, carried out the directions given by this Court in the above Writ Petition and had appointed three Ex-servicemen accordingly. Therefore, there is no merit in the contention that the decision not to fill up any more vacancies was a mala fide decision.

18. In the present case, it is also necessary to note that the select list has expired, as far back as on 31st July 1993. Before the select list expired, however, the original petitions were heard by the learned Single Judge and judgment was delivered on 28th July 1993. The learned Single Judge has, inter alia, directed the Reserve Bank of India to publish the list within three weeks and keep it alive for one month from the date of such publication. We find it difficult to sustain this direction. It is well established that whether a select list should or should not be kept alive is purely a managerial decision and the Court should not, as far as possible, extend the validity of the select list. See in this connection. *Public Service Commission v. Pylo* 1986 KLT 46. We also do not find any special circumstances in the present case for keeping the select list alive for any further period. Clearly, the Reserve Bank of India had a right to decide whether to fill the vacancies in question or not. The decision in the present case not to fill the vacancies has been taken for bona fide administrative reasons. The selected candidates do not have any legal right to secure an appointment in any of the vacancies which were either originally notified or were subsequently anticipated at the time of the preparation of the select list.

In the premises, W.A. Nos. 1094 of 1993, 1099 of 1993 and 1100 of 1993, which are at the instance of the Reserve Bank of India, are allowed and O.P. Nos. 12776 of 1991, 874 of 1992 and 15377 of 1992 are dismissed. W.A. Nos. 1165 of 1993, 1168 of 1993 and 1171 of 1993 are dismissed. In the circumstances, there will be no order as to costs.

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