

(2014) 10 KL CK 0027

In the High Court Of Kerala

Case No : W.A. No. 1433 of 2014 in WP(C). 2577/2013 and W.A. No. 1516 of 2014

The Staff Selection Commission

APPELLANT

Vs

Biju Babu

RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Citation : (2014) 4 KHC 953

Hon'ble Judges : Mr. Ashok Bhushan, ACJ. and Mr. A. M. Shaffique, J.

Bench : Division Bench

Advocate : Sri. T. Sanjay, CGC, for the Petitioner; Sri. Aneesh Joseph, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, A.C.J. - These two writ appeals have been filed against judgment dated 5.6.2014. Writ Appeal No.1433/14 has been filed by Staff Selection Commission and Others who were the respondent in the Writ Petition No.2577 of 2013. Writ Appeal No.1516 of 2014 has been filed by appellants who were not party to the writ petition. They, after having obtained leave to appeal, has filed the appeal on the ground that they are affected by the judgment and directions issued by the learned Single Judge.

2. We have heard learned counsel for the parties and by this common judgment, we dispose of both these writ appeals. Brief facts necessary for deciding these writ appeals to be noticed are :

The Staff Selection Commission issued employment notice published on 3.12.2011 inviting application for recruitment to Constables (GD) in CAPFs and Rifleman (GD) in Assam Rifles . The State/category wise applications are invited for recruitment for male/female as part of the advertisement. Vacancies for male in State of Kerala were notified as 849 and for female 65 vacancies were notified.

3. The notice further mentioned that the State-wise and category-wise

"tentative" number of vacancies to be filled from the examination as indicated in the appendix. The writ petitioners were candidates who have participated in the recruitment. Staff Selection Commission, however, declared only 523 male candidates with Kerala domicile as selected. One more candidate was selected for the post making it 524. Subsequently, another employment notice dated 15.12.2012 was issued inviting applications for constable (GD) in CAPFs and Rifleman (GD) in Assam Rifles for recruitment was issued in the year 2013-14. Employment notice also contained details of tentative vacancy earmarked for different States. 294 males and 52 females were mentioned in the appendix.

4. The writ petitioners who participated in the recruitment pursuant to notice dated 3.12.2011 filed the writ petition before this court praying for the following reliefs :-

"i) Issue a writ of mandamus or any other appropriate writ order or direction directing or compelling the respondent to prepare a final rank list on the basis of Ext.P3.

ii) Issue a writ of mandamus or any other appropriate writ order or direction directing or compelling the respondent to fill up the notified vacancies from the candidates who had cleared all selection criteria as per Ext.P3 list."

The principal prayer of the writ petitioner in the writ petition was that the respondent be directed to fill up notified vacancies from the candidates who have cleared all selection criteria. Ext.P3 is the mark-list showing the marks of all the candidates who appeared in the recruitment pursuant to notice dated 3.12.2011.

5. A counter affidavit was filed in the writ petition both by respondent Nos. 1 and 2. In the counter affidavit, it was stated that after the recruitment, pursuant to notice dated 3.12.2011, 20128 vacancies were decreased due to deferment of new arising schedule of sectors and Battalions in BSF and with regard to Kerala 342 vacancies were decreased proportionately. Hence respondents declared only 524 candidates in relation to Kerala State and vacancies which were decreased were subsequently added in the subsequent selection dated 15.12.2012.

6. In the writ petition learned Single Judge initially granted an interim order stopping the selection process. Subsequently it was modified permitting the selection to be proceeded.

7. Learned Single Judge heard the parties and by judgment dated 5.6.2014, allowed the writ petition directing the respondent to consider for selection for the recruitment year 2012 based on their merit, taking into account the number of petitioners in the writ petition and remaining vacancies were directed to be filled up from fresh list notified for subsequent recruitment for the year 2013-14. Learned Single Judge however, observed that only the writ petitioners need be given the benefit of the judgment.

8. The Staff Selection Commission being aggrieved by the said judgment, has come up in appeal. Non parties, who were candidates in the recruitment 2013-14

have also come up challenging the judgment.

9. Learned counsel for the appellant submits that the learned Single Judge committed error in issuing direction for giving appointment to petitioners" on the basis of marks declared for 2012 recruitment, where as in the relevant year, due to reduction of 342 vacancies in the Kerala State their names were not included in the select list or any appointment can be given. It is submitted that it was for the Home Ministry to decide how many candidates are to be selected for 2012 selection. The staff selection Commission has received information relating to decrease of vacancies and did not declare the results of 342 candidates due to decrease of vacancies. He submitted that the mere declaration of the marks of the petitioners will not give them any right to appointment. It is submitted that with regard to 2013-14 selection, there was no challenge and vacancies which were notified for 2013-14 cannot be directed to be apportioned for 2012 selection.

10. Learned counsel appearing for the appellant in Writ Appeal No.1516 of 2014 also adopted the submissions of learned counsel for the Staff Selection Commission and submitted that the vacancies which have been notified for 2013-14 cannot be reduced to accomodate the writ petitioners or give them appointment to the said vacancy. It is submitted that the appellants are candidates who are entitled for selection and appointment subsequent to 2013-14. Learned counsel for the writ petitioner supporting the judgment of learned Single Judge, contended that there was no sufficient materials brought on record by Staff Selection Commission regarding reduction of vacancies. It is submitted that vacancies which were notified by notice dated 3.12.2011 were required to be filled up on the basis of results of the recruitment and Staff Selection Commission Committed error in not declaring the results of 342 candidates which were illegally added to 2013-14. They are not backlog vacancies and that vacancies required to be included. Hence learned Single Judge has not committed any error in directing preference for appointment.

11. There is no dispute between the parties that in the notice dated 3.12.2011, in Kerala vacancies for 849 male and 65 female candidtes were notified. Employment notice as noted above clearly mentioned that the number of vacancies are "tentative".

12. A counter affidavit and a statement were filed by respondents 1 and 2. In the statement in paragraphs 3 and 4 the details of the vacancies and reduction thereof has been mentioned. In the counter affidavit, at paragraph 6 also it was detailed that the final result was declared consequent to final vacancy communicated by the Ministry of Home Affairs. Paragraph 6 of the counter affidavit and Paragraphs 3 and 4 of the statement which are relevant are extracted below. Paragraph 6 of the counter affidavit reads as follows :

"6. Regarding the contentions raised in paragraph number 6 of the writ petition, it is submitted that the Commission initially notified 849 vacancies for male and

65 vacancies for female candidates. It was clearly mentioned that these are tentative vacancies. In the final result, final vacancies communicated by the Ministry of Home Affairs were considered and 534 male candidates with Kerala domicile were declared qualified. Out of these, 524 have been nominated to various Forces so far. The written examination is competitive nature where as Physical Standard Test/Physical Endurance Test and Detailed Medical Examination are qualifying in nature. Therefore the marks obtained in the written examination were the only criteria for final selection and ranking and therefore, it is absolutely wrong to say that the action of the respondent is arbitrary and malafide. It is once again re-iterated that Exhibit P3 produced by the petitioners is only a marks statement in Roll Number Order. This can also be confirmed by the fact that many are absent or Unfit in the Medical Examination."

Paragraph 3 and 4 of the statement filed by respondents 1 and 2 reads thus :

"3. It is submitted that the notice/advertisement issued by the Staff selection Commission, it is clearly stated that the number of vacancies is tentative and subject to change. Later on, overall 20128 vacancies were decreased due to deferment of new raising schedule of sectors and Battalions in BSF, ARs and SSB and 22287 vacancies were increased due to inclusion of backlog vacancies of the year 2011.

4. For the State of Kerala the decrease was 342 vacancies where as the increased was of only 21 vacancies. This was resulted into overall decrease in vacancies of Kerala State. The details are as follows:-

Total vacancies Vacancies for Kerala State

Initial vacancies projected 50992 914

Vacancies decreased due postponement of new raising of BNs in BSF, SSB and ARs -20218 -342 (Vacancies of Kerala State decrease proportionately)

Vacancies increased for J & K 1337 -23 (Additional vacancies for J & K adjusted by decreasing vacancies of all the State Proportionately)

Vacancies increased by including backlog of 2011 22287 21 (The backlog pertains to Kerala was only 21)

Vacancies increased due to sanction of new posts in CISF 875 5

TOTAL 55255 575

13. From the facts brought on record, it is clear that although 849 + 65 vacancies were tentatively notified and earmarked for Kerala, but the Staff Selection Commission declared only 524 candidates qualified for appointment consequent to communication made by the Ministry of Home Affairs, as has been stated in paragraph 6 of the counter affidavit. The said statement made in the counter affidavit has not been disputed by filing any reply by the writ petitioner. This fact has to be accepted that, by a communication by Home Ministry, the

Staff Selection Commission has decided to declare the results of only 524 candidates. Present is not a case that without there being any reason, the Staff Selection Commission did not declare results of all 849 + 65 vacancies. Ext.P3, which is relied upon by the petitioners shows only details of the marks of all the candidates who appeared for selection consequent to notice dated 3.12.2011. Ext.P3 is the marks of male candidates in Roll number order. The said was neither a panel or select list. Paragraph 8 of the counter affidavit states that the rank of each selected candidate has been put in the website and only 524 candidates were declared qualified.

14. Present is not even a case of petitioner being included in the final panel declared by the Staff Selection Commission. Panel declared was in respect of 524 candidates who were declared as qualified. The Apex Court has laid down in *Shankarsan Dash v. Union of India* [(1991) 3 SCC 47] that inclusion of names of candidates in the panel does not confer any right to get appointment. The same issue is also reiterated in *Asha Kaul (Mrs.) and Another v. State of Jammu and Kashmir and others* [(1993) 2 SCC 573]. It is true that the Apex Court has also laid down that in a case where candidate included in the final list is arbitrarily denied appointment, action of the State can be intervened by a Constitutional Court in exercise of the writ jurisdiction.

15. Present is not a case of any arbitrary exercise of power on the part of the Staff Selection Commission. Apart from 524 candidates no other candidate was declared qualified. Present is a case of reduction of vacancies at the instance of Home Ministry which fact has been pleaded in the counter affidavit and remains un rebutted.

16. The mere fact that some backlog vacancies were also included in the selection of 2013-14 does not in any manner vitiate the subsequent selection. Present is a case where, it is relevant to note that with regard to subsequent notice dated 15.12.2012 there was no prayer in the writ petition for quashing the said notice or consequent selection.

We are satisfied that learned Single Judge committed error in directing appointment to be given to petitioners, who could not be included in the panel on account of reduction of vacancies. The said direction thus cannot be sustained. In view of the aforesaid discussions, we allow the writ appeal, set aside the judgment of the learned Single Judge and the writ petition is dismissed.