

(1989) 10 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : L.P.A. No. 186 and C.M. No. 3141 of 1989

Union of India (UOI) and Others

APPELLANT

Vs

Gurkirpal Singh

RESPONDENT

Date of Decision : 04-10-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1990) 2 ILR (P&H) 127 : (1990) 97 PLR 102

Hon'ble Judges : V. Ramaswamy, C.J;G.R. Majithia, J

Bench : Division Bench

Advocate : H.S. Brar, Govt. of India, for the Appellant; P.S. Patwalia, for the Respondent

Final Decision : Allowed

Judgement

G.R. Majithia, J.—Whether a person who has been selected against anticipated vacancies, acquires a right to be appointed to the post which can be enforced by mandamus is the principal question which arises for determination in the appeal under clause X of the Letters Patent against the judgment of the learned Single Judge who allowed the writ petition filed by the respondent and issued a mandate directing the appellants to offer him the appointment to the post of Deputy Superintendent of Police in the Central Reserve Police Force.

2. The facts. In 1985, 45 posts of Deputy Superintendent of Police in the Central Reserve Police Force and Indo Tibetan Border Police were advertised In response thereto, the respondent (hereinafter referred to as the petitioner) also applied and underwent written test, physical test, interview etc. On April 9, 1986, a select list of 14 persons for appointment as Deputy Superintendent of Police Group "A-I post in Central Reserve Police Force (for short C.R.P.F.) was prepared and the petitioner"s name figured at S. No. 11 in the list. The candidates selected were required to be examined by a Medical Board. The petitioner was medically examined and was declared medically fit on May 2. 1986 and he was informed accordingly. On June 12, 1986, the Director General, C.R.P.F. enquired

from the petitioner that though his name found place in the list of selected candidates for appointment to the post of Deputy Superintendent of Police in the C.R.P.F. was he willing to be appointed as Deputy Superintendent of Police In the Indo Tibetan Border Police, and if so, he should forward his written preference for the C.R.P.F. In response thereto, the petitioner forwarded his preference for the C.R.P.F. Out of the select list, candidates of S. Nos. 12, 13 and 14 were deputed for training, the petitioner, whose name figured at S. No. 11 of the select list did not receive the requisite offer. On enquiry, the Director General, C.R.P.F. informed the petitioner on November 9, 1986, that "it is not possible to give you any offer of appointment in the force." This decision of the appellants intimated to the petitioner through the Director General, C.R. P.F. was challenged in the writ petition on the ground that after the petitioner had been selected, followed by declaration of his fitness by the medical board and clearance of the verification of his character and antecedents, by the Senior Superintendent of Police, Jalandhar, it was wholly arbitrary on the part of the appellants to refuse the appointment to him. The Coptic information without disclosing any reasons offended the principle of natural justice as the petitioner was not afforded any opportunity of hearing before taking the aforesaid decision.

3. Written statement was filed on behalf of the respondents. The factual position insofar as the selection of the petitioner was concerned was admitted. However, the decision of not offering the appointment to the petitioner was justified on the ground that reports of serious nature were received against the petitioner in the reports it was stated" that after the Operation Blue star, he had been indulging in anti-national activities and have been keeping association with the extremists and it was hazardous to appoint the petitioner as Deputy Superintendent of Police in C.R P. F. which has to perform vital role in the maintenance of law and order and security duties.,

4. The learned Single Judge allowed the writ petition on the sole ground that there was no legal justification for refusing appointment to the petitioner and that concrete and tangible material had not been disclosed on the basis of which it was concluded that the petitioner was not fit to be appointed to the force,

5. The equality which is guaranteed under the Constitution is the opportunity to make an application for a post and to be considered for it on merits. The right does not extend to being actually appointed. The process of selection and selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a mandamus. No one can ask for a mandamus without a legal right. It will be useful to refer to *Mani Subrat Jain and Others Vs. State of Haryana and Others*, in which the apex Court stated the scope of Mandamus. In this case, the question arose under the following circumstances. The High Court invited applications from eligible members of the Bar to fill up two vacancies in the quota of direct recruits from the Bar in the Haryana Superior Judicial Service." The High Court recommended to the Haryana Government the names of the two

appellants in the appeals before the Supreme Court for appointment as District/Additional District and Sessions Judges. The Government of Haryana rejected the recommendation. Thereupon the two appellants filed a writ petition in the High Court challenging the order of rejection and asked for a mandamus to the State Government for appointment as District/Additional District and Sessions Judges. The High Court dismissed the writ petition and the matter was taken to the Supreme Court wherein it was held thus : -

"The initial appointment of District Judges under Article 233 is within the exclusive jurisdiction of the Government after consultation with the High Court. The Governor is not bound to act on the advice of the High Court. The High Court recommends the names of the persons for appointment. If the names are recommended by the High Court, it is not obligatory on the Governor to accept the recommendation."

And on these premises, the apex Court declined to issue the writ of mandamus and held as under :-

"It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as a legally protected right before one suffering a legal grievance can ask for mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something (see Halsbury's Laws of England 4th Ed. Vol. 1, paragraph 122); The State of Haryana Vs. Subash Chander Marwaha and Others, ; Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, and Farris Extraordinary Legal Remedies paragraph 198."

This judgment was again followed in a recent decision of the apex Court in State of Kerala Vs. Smt. A. Lakshmikutty and others, and it arose in the following circumstances: The High Court of Kerala sent up to the Chief Minister of Kerala State a panel of 14 names settled by the High Court for appointment as District Judges from the bar. It was stated that the appointments had to be made according to the cycle of rotation governing reservation of posts as laid down in R. 14 (c), Kerala State and Subordinate Services Rules 1958, as required by R 2 (b) Kerala State Higher Judicial Service Rules, 1961. Accordingly, the appointments had to start with the first vacancy going to candidate belonging to the "Latio Catholics and Anglo Indians" community, 8th turn in the cycle of rotation. As there was no candidate belonging to the "Latin-Catholics and Anglo-Indians". "Other Backward Classes" and oScheduled Castes and Scheduled Tribes", 8th, 10th and 12th in the cycle of rotation the first vacancy had to be filled by reason of R. 15(a) of the Rules by a suitable candidate belonging to the community or group of communities immediately next to the passed over community or group, i.e., by respondent 1, Smt. A. Lakshmikutty, a member of the "Ezhava" community, 6th in order of merit, falling in the group "Ezhavas, Thiyyas and Billavas" 14th in the cycle of rotation. The second vacancy, i e, 9th in the cycle of cycle of rotation had to be filled by respondent 3, Krishnan Nair,

1st. in order of merit, by open competition The State Government did not accept the recommendation of the High Court The candidates whose names were borne on penal of selected candidates for appointment as District Judges moved the High Court of Kerala. The writ petition was allowed. On appeal, the judgment of the Kerala High Court was reversed. Reiterating the view expressed in Mani Subrat Jain's case (supra), it was held thus :--

"The existence of a right is the foundation of the jurisdiction of a Court to issue a writ of mandamus. The present trend of judicial opinion appears to be that in the case of non-selection to a post, no writ of mandamus lies. We however do not wish to rest the decision on the technical ground."

This matter was also dealt with by us in L.P.A. No. 434 of 1988 (State of Haryana v. Satya Parkash etc., L.P.A. No. 334 of 1988) decided on March 10, 1989. It was observed in that case that Public Service Commission is to ensure selection of best available persons for appointment to a post to avoid arbitrariness and nepotism in the matter of appointment. The selection is to be made by the Commission and the Government has to fill up the posts by appointing those selected and recommended by the Commission according to the order of merit in the list of candidates sent by the Public Service Commission. The Commission is required to make the recommendations only and the final authority for appointment is Government. The Government may accept the recommendation or may decline to accept it. In arriving at that conclusion, reference was made to two decisions of the apex Court-State of Haryana v. Subhash Chander Marwaha and Ors. 1973 (2) S. L. R. 137 and Faddi Vs. The State of Madhya Pradesh, .

6. The view taken by the learned Single Judge that the petitioner has a legal right for an offer of appointment to the post of Deputy Superintendent of Police of C.R.PF. is not sustainable at law.

7. In fairness to the learned counsel for the respondent, he strongly relied upon the following judgments : P. Nalini and Anr. v. The Divisional Manager, LIC of India 1978 (1) S. L. R. 623 and State of Madhya Pradesh v. Ramashankar Raghuvanshi and Anr. 1983 (1) S. L. R 575. In P. Nalini's case (supra), the learned Judges after referring to Subhash Chander Marwaha's case (supra) observed thus : -

"The principle emphasized by the Supreme Court has highlighted the relevant legal position which is to govern this case. The application of the said principle in the light of the facts and circumstances must conclude the matter in favour of the petitioners as far as the validity of the order Ex. P. 8 is concerned."

The learned Judges granted the relief to the writ petitioner in view of the clear facts of that particular case but on principle followed the judgment in Subhash Chander Marwaha's case (supra), where it was held that existence of a vacancy gives no right to a candidate to be selected for appointment. In Ramashankar Raghuvanshi's case (supra), the apex Court dismissed the appeal filed by the State of Madhya Pradesh in limine but on merits. O. Chinnappa Reddy J.

observed thus :-

"The right to freedom of speech and expression, the right to form associations and unions, the right to assemble peaceably and without arms, the right to equality before the law and the equal protection of the laws, the right to equality of opportunity in matter relating to employment to any office under the State are declared Fundamental Rights. Yet the Government, of Madhya Pradesh seeks to deny employment to the respondent on the ground that the report of a Police Officer stated that he once belonged to some political organisation. It is important to note that the action sought to be taken against the respondent is not any disciplinary action On the ground of his present involvement in political activity after entering the service of the Government, contrary to some service Conduct Rule. It is further to be noted that it is not alleged that the respondent ever participated in any illegal, vicious or subversive activity. There is no hint that the respondent was or is a perpetrator of violent deeds, or that he exhorted any one to commit violent deeds. There is no reference to any addition to violence or vice or any incident involving violence, vice or other crime. All that is said is that before he was absorbed in Government service, he had taken part in some RSS or Jan Sangh activities". What those activities were have never been disclosed Neither the RSS nor the Jan Sangh is alleged to be engaged in any subversive or other illegal activity; nor are the organisations banned."

8. There is a vast distinction between a political activity and anti-national activity. A Government servant after entering into service may involve himself in political activity. It may or may not be contrary to the Government Service Conduct Rules, but activity which is anti-national will be a legitimate ground for refusing to offer an appointment. Moreover, the judgment in that case related to termination of service founded on the report of police that the employee was not a fit person to be retained in Government service. the present case is a case of initial appointment, As stated supra, a person who has been selected has got no legal right to an offer of appointment. The view, expressed in Ramashankar naghuvamhi's case (supra), has no bearing on the facts of this case.

9. For the reasons stated supra, the appeal is allowed. The judgment of the learned Single Judge is set aside and the writ petition is dismissed. However, we leave the parties to bear their own costs. C.M. 3114/1989, is dismissed as having become infructuous.