

Ram Naresh Raikwar Vs. Divisional Manager, Life Insurance Corporation of India and anr.

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Court : Allahabad

Decided On : Jan-23-2004

Reported in : (2004)1UPLBEC983

Judge : R.B. Misra, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petition No. 44795 of 1999

Appellant : Ram Naresh Raikwar

Respondent : Divisional Manager, Life Insurance Corporation of India and anr.

Advocate for Def. : R.G. Padia and ;Prakash Padia, Advs.

Advocate for Pet/Ap. : Rajendra Prasad Tiwari and ;Madan Lal Pal, Advs.

Disposition : Petition dismissed

Judgement :

R.B. Misra, J.

1. Heard Sri Madan Lal Pal holding brief of Sri Rajesh Prasad Tiwari, learned Counsel for the petitioner and Sri Prakash Padia, learned Counsel for the

respondents.

2. The petitioner has challenged the order dated 20.12.1997 (Annexure-10) removing the name of petitioner from waiting list after noticing discrepancies in date of birth and qualification the order dated 15.12.1995 (Annexure-13) and order dated 29.9.1999 (Annexure-15) of respondent rejecting the representation in the light of order dated 9.2.1999 of High Court.

3. The petitioner applied for recruitment to the post of sub-staff under Life Insurance Corporation Ltd (in short called 'Corporation') and on the basis of his application dated 14.7.1995 and the certificate and documents enclosed therein the petitioner was called for written test was held on 10.9.1995 and petitioner was interviewed on 27.9.1995 and on being declared successful he was included in the panel of O.B.C. Sub-staff for the purpose of giving appointment. The complaint was received over which an inquiry was conducted by the respondents and it was found that the petitioner studied in Chitrakoot Inter College, Karvi where he appeared in High School examination in the year 1985 with Roll. No. 566446 as a regular candidate and again in the year 1986 with Roll. No. 611801 as regular candidate where he failed in 1985 examination. The copy of the certificate granted by Shri Maharshi Balmiki Inter College, Banda is annexed hereto whereby his date of birth has been certified to be 3.1.75 as per scholar register No. S. 2197, besides the copy of the letter No. Satyapan 30/286/97-98/338, dated 25.7.1997 of the Secretary, Madhyamik Shiksha Parishad, U.P., Allahabad is also annexed which speaks that the petitioner appeared in High School examination of 1985 with Roll. No. 566446 and obtained 225 marks out of 600 and date of birth is stated as 5.10.1970. Further, as per certificate granted on 6.3.1997 by Headmaster, Rajarshi Purushottam Das Tandon Junior High School, Chitrakoot Dhaam Nagar Palika, Karvi stating that as per the scholar register at serial No. 1987, the date of birth of the petitioner is 5.10.1970 and that he was admitted in that school on 12.7.1980 and exit date is 9.7.1983, passing Class VIII examination. And the petitioner was informed about his suppressing the facts about his education and date of birth vide letter dated 29.8.1997. Moreover, full facts in this regard have been stated above and the Hon'ble Court has perused the same. The letter of the Secretary of the Board of High School and Intermediate Education is also part of

the record. It will be clear that the petitioner did appear in the High School examination in the year 1985, but failed and this fact was not disclosed by the petitioner. The petitioner approached to this Court seeking direction for getting employment, when this Court was pleased to dispose of the Writ Petition No. 2447 of 1999 on 9.2.1999 (Ram Naresh Raikwar v. Divisional Manager, LIC, Allahabad and Anr.). The petitioner's representation was disposed of in compliance to the above order dated 29.3.1999, the Manager of 'Corporation' after considering the case of the petitioner has noted as below :

1. By letter dated 28.1.1998, 3.3.1998 and 16.6.1998 were received by the respondent No. 2 except a letter dated 18.9.1998 under registered post without any enclosure.

2. By Registered letter dated 29.8.1997, 17.11.1997, 20.12.1997 and again on 15.10.1998 the 'Corporation' has informed that the petitioner was removed from the Panel of the O.B.C. Sub-Staff due to concealment of the date of birth and the educational qualification.

3. The petitioner was found to have been imported education from two different schools simultaneously which is contrary to each other. The details of the schools are as under :

(A) Maharshi Balmiki Inter College, Khandeha, Banda where the date of birth of petitioner was mentioned as 3.1.1975 and petitioner studied upto Class IX and date of his exit from this School was mentioned as 3.6.1989 and the School Register No. was 2197.

(B) Rajarshi Purushottam Das Tandon Junior High School, Karvi as per their Scholar Registration No. 1078, date of birth of petitioner was mentioned as 5.10.1970 where he studied up to Class-VIII and his date of exit from that school was 12.7.1980.

4. Secretary, Madhyamik Shiksha Parishad, he vide his letter has certified that date of birth of petitioner 5.10.1970 and he appeared in the High School exam in 1985.

4. The respondents took similar stand in the counter affidavit and futile endeavourance was made by the petitioner too controvert the contents of the counter affidavit and reiterated the contents of writ petition.

5. The relevant paragraphs of the counter affidavit are necessary to be referred as below :

'8. While applying for the post in question, the petitioner had deliberately and willfully submitted false information to the Corporation about his date of birth as also about the educational qualification.'

'9. On the basis of the complaint made against the petitioner, the matter was got examined and the aforesaid facts were found correct. The petitioner was also given due show-cause notice to explain the conducts and he miserably failed to substantiate the facts. Accordingly, his name has been struck off from the panel. It is respectfully submitted that full and due opportunity has already been given to the petitioner in this regard.'

'10. The petitioner had wrongly stated in his application form for the appointment in question that he was born in the year 1975.'

'11. The deponent brings on record a true copy of the letter dated 25.7.1997 sent by the Secretary, U.P. Board of High School and Intermediate Education, Allahabad and the said letter addressed to the Corporation specifically says that the date of birth of the petitioner is 5.10.1970 and not 1975 as claimed by the petitioner and true copy of the letter/certificate issued by the U.P. Board of High School and Intermediate Education, Allahabad.'

'12. Another certificate issued by the Principal of the concerned institute at Chitrakoot dated 6.3.1997 to the effect that the date of birth of the petitioner is 5.10.1970 and in the said institution the petitioner had read in three classes viz. Class VI, VII and VIII.'

'13. Another certificate issued by the Principal. Sri Maharshi Balmiki Inter College, Khandaha, Banda Dated 6.3.1997 according to which the petitioner had appeared and read in the said institution in Class IX during the session 1988-89 as regular

institutional candidate. The said Principal has also certified in the said letter than in the marks-sheet submitted by the petitioner, his signature does not exist and the marks of the institution are also not tallying."

"14. In view of the aforesaid facts it is clear that the petitioner had deliberately tried to mislead the Corporation even at the time of applying for the job and shown him younger by five years with apparent intention to continue for five years even after his retirement.'

'17. The petitioner fulfilled the recruitment condition for OBC Sub-Staff as per his application dated 14.7.1995 submitted by him and the certificates and documents along with it and he was called for written test vide letter dated 23.8.1995 which was held on 10.9.1995. On qualifying in the written test, the petitioner was called for interview on 27.9.1995 vide letter dated 15.9.1995. On declaring successful in the interview, he was kept in panel of OBC Sub-Staff.'

'18. On the basis of complaint received through the Zonal Office, Kanpur, an inquiry was conducted by the respondents and it was found that the petitioner studied in Chirtakoot Inter College, Karvi from where he appeared in the High School examination of 1985 with Roll. No. 566446 as regular candidates of that institute and again in 1986 with Roll. No. 611801 as a regular candidate owing to failure in 1985 examination. The copy of the certificate granted by Sri Maharshi Balmiki Inter College, Banda is annexed hereto whereby his date of birth has been certified to be 3.1.1975 as per scholar register No. S. 2197, besides the copy of the letter No. Satyapan 30/286/97-98/338, dated 25.7.1997 of the Secretary, Madhyamik Shiksha Parishad, U.P., Allahabad is also annexed which speaks that the petitioner appeared in High School examination of 1985 with Roll. No. 566446 and obtained 225 marks out of 600 and date of birth is stated as 5.10.1970. Further, as per certificate granted on 6.3.1997 by Headmaster, Rajarshi Purushottam Das Tandon Junior High School, Chitrakoot Dhaam Nagar Palika, Karvi, stating that as per the Scholar Register at serial No. 1087, the date of birth of the petitioner is 5.10.1970 and exit date is 9.7.1983, passing Class VIII examination. And the petitioner was informed about his suppressing of facts about his education and date of birth vide letter dated 29.8.1997. Moreover, full facts in

this regard have been stated above and the Hon'ble Court may be pleased to peruse the same. The letter of the Secretary of the Board of High School and Intermediate Education is also part of the record. It will be clear that the petitioner did appear in the High Court examination in the year 1985, but failed and this fact was not disclosed by the petitioner.'

6. On behalf of the petitioners it was argued that in 1995 Supp (2) SCC 230, R.S. Mittal v. Union of India, where the person after being selected and put in the panel of the selected candidates was not to be denied the appointment without a proper reason however, in peculiar facts and circumstances relief was refused by the Supreme Court by observing in Para 10 as blew :

'10. Although a person on the select panel has no vested right to be appointed to the post for which he has been selected, the appointing authority cannot ignore the select panel or on its whims decline to make the appointment. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to the candidate at Sl. No. 1 of the select list within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.'

7. It was also argued on behalf of the petitioners that in (2000) 9 SCC 283, (Munna Roy v. Union of India and Ors., the Supreme Court after acknowledging that mere inclusion in select list does not confer any right to the Selectee and mandamus could not be issued but the Court could interfere when an administrative authority took a decision on erroneous reasons namely dubious method was suspected in the selection inasmuch as the candidate was a graduate, whereas, the minimum qualification for selection was matriculation and when the reason was described as arbitrary, irrational and not germane. In those circumstances the decision to cancel

the panel on this score could be set aside. In view of the observations made by the Supreme Court in R.S. Mittal (supra) as well as in Munna Roy (supra) the action of respondent in not declaring the result of selection in question and subsequently giving appointment to the petitioners is arbitrary and discriminatory as the same are in derogation to the spirit of Article 14 of the Constitution, as contended on behalf of the petitioners.

8. However, as contended on behalf of learned Counsel for Nagar Nigam that in absence of original records, documents the selection process could not be said to be complete and no direction could be issued to finalise the selection on the basis of duplicate records in peculiar facts and circumstances when the Selection Committee before it could finalize the selection and make recommendation became obsolete, therefore, for taking any further steps a fresh Selection Committee has to be constituted, which too, as well as Nagar Nigam are not under statutory obligation to declare the result in absence of original records/documents. Even after selection the petitioners do not acquire legal right of appointment even if vacancy is persisting for sometime. According to the respondents for the sake of argument even if the petitioners were recommended to the post of 'Naib Moharrir', after declaration of the result of said selection in question, do not acquire any legal right nearly because they were likely to be put in the penal of select list. According to the respondents, the selection in question has become obsolete and cannot be revived irrespective of the fact that subsequent selection for recruitment to the post of 'Naib Moharrir' in Nagar Nigam had taken place or not.

9. In (2002) 4 SCC 726, Vinodan T. and Ors. v. University of Calicut and Ors., the Supreme Court has held that the appointments to the vacancies must be made in accordance with law, if any, and the appointing authority can not scrap the panel of select list during the period of its validity except for well-founded reasons. It also observed in Para 14 as below :

'14. The principle that persons merely selected for a post do not thereby acquire a right to be appointed to such post is well established by judicial precedent. Even if vacancies exist, it is open to the authority concerned to decide how many appointments should be made.'

10. In (2002) 5 SCC 195, S. Renuka and Ors. v. State of U.P. and Anr., the Supreme Court while acknowledging the decision made in above two cases R.S. Mittal (supra) and Munna Roy (supra) has however held that no right accrues to a person merely because a person is selected and his or her name is put on a panel and the candidates have no right to claim the appointment.

11. In (2003) 2 UPLBEC 1697, State of Andhra Pradesh and Ors. v. D. Dastagiri and Ors., the Supreme Court has taken the similar view and has held that no vested right accrue to the candidates to be appointed even if selection process was completed and the Supreme Court has observed in Para 4 as below :

'4. There is serious dispute as to the completion of selection process. According to the appellants, the selection process was not complete. No record has been placed before us to show that the selection process was complete, but, it is not disputed that the select list was not published. In Paragraph 16 of the counter affidavit, referred above, the respondents themselves had admitted that the selection process was cancelled at the last stage. In the absence of publication of select list, we are inclined to think that the selection process was not complete. Be that as it may, even if the selection process was complete and assuming that only select list was remained to be published, that does not advance the case of the respondents for the simple reason that 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. It was open to the State Government to take a policy decision either to have prohibition or not to have prohibition in the State. Certainly, the Government had right to take a policy decision. If pursuant to a policy decision taken to impose prohibition in the State there was no requirement for the recruitment of Constables in the Excise Department, nobody can insist that they must appoint candidates as Excise Constables. It is not the case of the respondents that there was any malafide on the part of the appellants in refusing the appointment to the respondents after the selection process was complete. The only claim was that the action of the appellants, in the appointing the respondents as Excise Constables, was arbitrary. In the light of the facts that we have stated above, when it was open to the Government to take a policy decision, we fail to understand as to how the respondents can dub the action of the respondents as

arbitrary, particularly, when they did not have any right as such to claim appointments. In the absence of selection and publication of select list, mere concession or submission made by the learned Government Pleader on behalf of the appellant-State cannot improve the case of the respondents. Similarly, such submission cannot confer right on the respondents, which they otherwise did not have.'

12. A person has a right only to be considered being eligible as per the Rules for employment. He can raise the grievance provided a person having lesser merit in the same category is offered appointment.

13. Mere inclusion of the name of a candidate in the select list does not confer any right of appointment [vide *Shanker Sen Das v. Union of India and Ors.*, AIR 1991 SC 1612; *Asha Kaul v. State of Jammu and Kashmir*, (1993) 2 SCC 573; *Union of India & or v. S.S. Uppai*, AIR 1996 SC 2340; *Hanvman Prasad v. Union of India and Ors.*, (1996) 10 SCC 742; *Bihar Public Service Commission v. State of Bihar*, AIR 1998 SC 2280; *Syndicate Bank and Ors. v. Shankar Paul and Ors.*, AIR 1977 SC 3091 and *Vice Chancellor, University of Allahabad v. Dr. Anand Prakash Mishra and Ors.*, (1997) 10 SCC 264].

14. As there is no enforceable right to appointment, mandamus cannot be issued to the respondents to appoint petitioner [vide *Punjab S.E.B. v. Seema*, 1999 SCC (S/S) 629].

15. The Supreme Court in *Union of India and Ors. v. Ishwar Singh Khatri and Ors.*, 1992 Suppl. (3) SCC 84, has held that selected candidates have right to appointment only against 'vacancies notified' and that too during the life of the select list as the panel of selected candidates cannot be valid for indefinite period. Moreover, empanelled candidates 'in any event cannot have a right against future vacancies'. In *State of Bihar v. Secretariat, Assistant S.E. Union*, 1986 and Ors., AIR 1994 SC 736, the Supreme Court has held that 'a person who is selected does not, on account of being empanelled alone, acquire any indefeasible right of appointment'. Empanelment is at the best a condition of eligibility for purposes of appointment, and by itself does not amount to selection or create a vested right to the appointed unless relevant service rules provides to the contrary.

16. In *Surinder Singh v. State of Punjab*, 1997 (8) SCC 488, the Supreme Court observed as under :

'-----If the waiting list in one examination was to operate as infinite stock for power, there is danger that the State may resort to the device of not holding the examination for years together and pick-up candidates from the waiting list as and when required . The Constitutional discipline requires that improper exercise of power which may result in creating a vested interest and perpetuating the waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service.... Exercise of such power (to requisition the post) has to be tested on the touch-stone of reasonableness.-----'

17. It is settled legal proposition that no relief can be granted to the candidate if he approaches the Court after expiry of the Select List. [Vide *J. Ashok Kumar v. State of Andhra Pradesh and Ors.*, JT (1996) 3 SC 320; *State of Bihar and Ors. v. Mohd. Kalimuddin*, AIR 1996 SC 1145; *State of Uttar Pradesh v. Harish Chandra*, AIR 1996 SC 2173 and *State of U.P. and Ors. v. Ram Swamp Saroj*, (2003) 3 SCC 699]. It has been held therein that if the selection process is over, select list had expired and appointments had been made, no relief can be granted by the Court at a belated stage.

However, in *Purshottam v. Chairman, Maharashtra State Electricity Board and Anr.*, (1999) 6 SCC 49, the Supreme Court has held as under :

'The right of the appellant to be appointed against the post to which he has been selected, cannot be taken away on the pretext that the said panel, in the meanwhile, expired and the posts had already been filled up by somebody else. Usurpation of post by somebody else is not on account of any fault on the part of the appellant but on the erroneous decision of the employer himself. In that view of the matter, appellant's right to be appointed on the post has been illegally taken away by the employer.'

The Supreme Court held that in such a situation the party should be given the relief. The aforesaid judgment had been delivered by a Bench consisting of two Hon'ble Judges of the Supreme Court and that too without taking note of the

judgments referred to hereinabove.

18. A Bench of Three Hon'ble Judges of the Supreme Court, in *Sushma Suri v. Government of National Capital of Delhi*, (1999) 1 SCC 330, dealing with a case wherein the Court had been approached at the stage when the process of selection had started but by the time the matter was decided, the selection process stood concluded and the appointments had been made, observed as under :

'However, we are not in a position to give any relief to the appellant before us now because when she commenced the litigation, the recruitment process was still going on and it had gone too far ahead. In fact, the same has been completed and selected candidates had already been appointed and they had reported for duty in different places and they are not impleaded as parties in these proceedings, it would not be proper to upset such appointment.'

19. There can be no dispute that wherever there is a conflict in two judgements of the Court, the judgement of the Larger Bench would prevail. [Vide *Rameshwar Shaw v. District Magistrate, Burdwan and Anr.*, AIR 1964 SC 335; *State of U.P. and Ors. v. Ram Chandra Trivedi*, AIR 1976 SC 2547; *N. Meera Rani v. Govt. of Tamil Nadu and Anr.* AIR 1989 SC 2027; *N.S. Giri v. Corporation of City of Manglore and Ors.*; (1999) 4 SCC 697; *Coir Board Ernakulam and Anr. v. Indira Devai P.S. and Ors.*, (2000) 1 SCC 224; *Sub-Inspector Roop Lal and Anr. v. Lt. Governor, Delhi and Ors.*, (2000) 1 SCC 644; *Lily Thomas and Ors. v. Union of India and Ors.*, (2000) 6 SCC 224 and *S.H. Rangappa v. State of Karnataka and Ors.*, (2002) 1 SCC 538],

Thus, in view of the above we are of the considered opinion that in view of the Larger Bench judgments no appointment can be made after expiry of the Select List.

20. The Court has no competence to issued a direction contrary to law, [vide *Union of India and Anr. v. Kirloskar Pneumatic Co. Ltd.*, (1996) 4 SCC 453; *State of U.P. and Ors. v. Harish Chandra and Ors.*, (1996) 9 SCC 309 and *Vice-Chancellor, University of Allahabad and Ors. v. Dr. Anand Prakash Mishra and*

Ors., (1997) 10 SCC 264].

21. In, State of Punjab and Ors. v. Renuka Singla and Ors., (1994) 1 SCC 175, dealing with a similar situation, the Supreme Court has observed as under :

'We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations.'

22. Similarly, in Karnataka State Road Transport Corporation v. Ashrafulla Khan and Ors., JT 2002 (2) SC 113, the Supreme Court has held as under :

'The High Court under Article 226 of the Constitution is required to enforce rule of law and not pass order or direction which is contrary to what has been injected by law.'

23. I have heard learned Counsel for the parties, I find that the petitioner was not issued appointment order, only he was included in the panel of O.B.C. Sub-Staff and before issuance of the appointment letter the above said discrepancies in his records and testimonials and documents were detected as such petitioner was not entitled to be given appointment.

24. In these circumstance this Court is not inclined to invoke its extraordinary discretionary jurisdiction under Article 226 of the Constitution. The writ petition is dismissed.

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