

R.D. Devmani Vs. State of Gujarat

R.D. Devmani Vs. State of Gujarat

SooperKanoon Citation : sooperkanoon.com/733594

Court : Gujarat

Decided On : Mar-27-2003

Reported in : (2003)2GLR1085

Judge : J.M. Panchal, J.

Acts : Service Law; [Constitution of India](#) - Article 14

Appeal No. : Special Civil Application No. 3976 of 1992 with Civil Application No. 1722 of 1993

Appellant : R.D. Devmani

Respondent : State of Gujarat

Advocate for Def. : H.D. Dave, A.G.P. for Respondent Nos. 1 and 2 and; S.K. Patel, Adv. for Respondent No. 3

Advocate for Pet/Ap. : D.P. Vora, Adv. for Petitioner No. 1

Disposition : Petition dismissed

Judgement :

J.M. Panchal, J.

1. By filing instant petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ or order directing

the respondents to operate the waiting list prepared by the Gujarat Public Service Commission pursuant to Special Advertisement No. 129/89-90 and appoint the petitioner on the post of Inspector of notified factories. The petitioner has further prayed to direct the respondents to treat the waiting list prepared by the Gujarat Public Service Commission pursuant to Special Advertisement No. 129/89-90 as operating and restrain them from treating the said waiting list as having lapsed after June 20, 1992.

2. The Labour & Employment Department of the Government of Gujarat, Gandhinagar, had sent a requisition dated October 21, 1989 to the Gujarat Public Service Commission ('the Commission' for short) requesting the Commission to take appropriate steps for the recruitment of the candidates for three posts of Inspector of notified factories, as special drive for recruitment of reserved category candidates. Out of these three posts, one was reserved for the candidates belonging to the category of Scheduled Castes whereas remaining two posts were reserved for candidates belonging to Scheduled Tribes. Accordingly, the Commission had issued Advertisement No. 129/89-90 on November 22, 1989 inviting applications from the candidates belonging to Scheduled Caste and Scheduled Tribes. A copy of the said advertisement is produced by the petitioner at Annexure-A to the petition. Pursuant to the said advertisement, the petitioner, who belongs to Scheduled Caste, had applied for the post of Inspector of notified factories. After completion of the selection procedure, the Commission had prepared two lists, namely, a select list containing names of three candidates and a waiting containing names of four candidates, according to merits, and the name of the petitioner was mentioned at Serial No. 1 in the waiting list. Annexure-B to the petition, which is intimation dated June 25, 1990 given to the petitioner, would indicate that the waiting list was to be operative till June 20, 1992. Out of the three candidates whose names were mentioned in the select list, two were belonging to the Scheduled Tribes and one was belonging to the Scheduled Caste. All the three candidates were appointed vide Government Notification dated December, 17, 1990.

3. The record of the case would indicate that the concerned department of the Government had again sent another requisition to the Commission with a request

to take appropriate action for recruitment of candidates for 13 posts of Inspector of notified factories. Out of 13 posts, one was reserved for a candidates belonging to Scheduled Castes whereas two posts were reserved for candidates belonging to Scheduled Tribes and one posts was reserved for a candidate of Socially & Economically Backward Class whereas rest of the posts were meant for candidates belonging to general category. Accordingly, the Commission had issued Advertisement No. 189/89-90 dated February 15, 1990 inviting applications from the qualified candidates. It is an admitted position that the petitioner had not applied for the post of Inspector of notified factories pursuant to the Advertisement No. 189/89-90. The petitioner has claimed that the petitioner was already selected by the Commission and was placed at Serial No. 1 in the waiting list, and, therefore, the Government was not justified in sending fresh requisition for appointment of candidates belonging to Scheduled Castes on the post as the waiting list prepared pursuant to Advertisement No. 129/89-90 was operative till June 20, 1992. As the petitioner was not appointed on the post of Inspector of notified factories, he had made a representation to the Government requesting the Government to appoint him on the said post. However, by a communication dated March 9, 1992, which is produced on record of the case at Annexure-H, the petitioner was informed that in view of orders of Government, it was not possible to appoint the petitioner on the post of Inspector of notified factories. The petitioner has averred in the petition that in view of specific policy of the Government of filling in backlog vacancies of SC/ST candidates, the petitioner, who was at Serial No. 1 in the waiting list, should have been appointed and, therefore, direction deserves to be issued to the Government to appoint the petitioner on the post in question. The petitioner asserted that it is obligatory on the part of each department of the Government to fill in the vacancies in case of direct recruitment from the existing waiting list if the waiting list is in operation and, therefore, the respondents should be directed to (a) operate the waiting list prepared by the Commission pursuant to the Special Advertisement No. 129/89-90 and (b) appoint the petitioner on the post of Inspector of notified factories. Under the circumstances, the petitioner has filed instant petition and claimed the reliefs to which, reference is made earlier.

4. On service of notice, Mr. S.L. Raol, Deputy Secretary of the Commission, has filed affidavit-in-reply controverting the averments made in the petition. In the said

reply, it is stated that the petitioner was selected and his name was kept in the waiting list at Serial No. 1 in respect of the Special Drive Advertisement No. 129/89-90 and not with regard to Advertisement No. 189/89-90. It is mentioned in reply that in view, of General Administration Department's Resolution No. PVS-1189-2518-G.3 dated 4-8-1989, two separate waiting lists are required to be prepared in connection with general recruitment and Special recruitment, and as the petitioner had not applied for the post of notified Factory Inspector pursuant to the Advertisement No. 189/89-90, the question to include his name in a separate waiting list prepared pursuant to the Advertisement No. 189/89-90 does not arise. Further, it is mentioned in the said reply that the role of the Commission is to make recommendation to the Government for appointment, but actual appointment is to be made by the Government and, therefore, the petitioner is not entitled to claim reliefs against the Commission. It is also mentioned in the said reply that it is not possible for the commission to recommend to the Government the names of SC/ST candidates wait listed pursuant to Special Drive Recruitment while making recommendation for selection pursuant to general recruitment though general recruitment may include appointment on posts, reserved for SC/ST candidates and, therefore, the action of the Commission cannot be regarded as illegal.

5. Mr. V.R. Rana, Deputy Secretary to Government, Labour & Employment Department, Sachivalaya, Gandhinagar, has filed affidavit-in-reply on behalf of the respondent Nos. 1 & 2 controverting the averments made in the petition. What is mentioned in the said reply is that the three candidates whose names were mentioned in the select list prepared by the Commissioner pursuant to the Advertisement No. 129/89-90 have already been appointed on the posts of Inspector of notified factories and, therefore, the petitioner is not entitled to the reliefs claimed in the petition. It is also stated in the reply that total 63 roster points in the category of Inspector of notified factories are already utilized, and no point has either remained unutilized or carried forward by the department. What is asserted in the said reply is that backlog of vacant posts reserved for the Scheduled Castes candidates was already utilized by appointing one Mr. J.R. Gohil on December 17, 1990 and the petitioner whose name was shown in the waiting list has no legal right for appointment on the posts, which were subsequently advertised. It is also stated by the deponent of the affidavit-in-reply

that as per the Advertisement No. 129/89-90, only one post was vacant, which was to be filled in by appointing a candidate of Scheduled Castes category and one post having already been filled in, the petition should be dismissed.

6. The Court has considered the arguments advanced at the Bar and the documents forming part of the petition. The submission that the petitioner having been wait listed at Serial No. 1 pursuant to Advertisement No. 129/89-90, the petitioner should have been appointed on the post of Inspector of notified factories though the petitioner had not applied for the post pursuant to the Advertisement No. 189/89-90 because the waiting list prepared pursuant to Advertisement No. 129/89-90 was to be operative till June 20, 1992, cannot be accepted. It is relevant to notice that earlier, the Government had send requisition to the Commission for taking appropriate steps for recruitment of three candidates on the post of Inspector of notified factories as a special drive for recruitment of candidates belonging to the reserved category. As noticed earlier, the Commission, after completion of selection procedure undertaken pursuant to Advertisement No. 129/89-90, had prepared two lists, one containing the names of three candidates who were selected, and another list, namely, waiting list, mentioning the names of four candidates wherein the name of the petitioner was mentioned at Serial No. 1. The affidavit-in-reply filed on behalf of the Government clearly indicates that three candidates whose names were mentioned in the select list were appointed vide Notification dated December 17, 1990. On appointment of three candidates, the list prepared pursuant to Advertisement No. 129/89-90 had exhausted its life and it ceased to exist. The petitioner would have got benefit only if the selected candidate belonging to the Scheduled Caste had refused to join the service during the time, the waiting list was to be operative i.e., till June 20, 1992.

7. At this stage, it would be instructive to refer to the decision of the Supreme Court in *State of Punjab v. Raghubir Chand Sharma*, 2001 AIR SCW 4337. In the said case, a notification was issued inviting applications for the post of Assistant Advocate General, Punjab. The applications were invited in respect of only one post. From amongst the applicants, who had responded, a select panel of three candidates was made. The first in the panel was appointed on the post, but subsequently he resigned. The second candidate on the select panel by a letter

stated that he was not interested to accept the appointment. Thereupon, a decision was taken by the State Government to fill up the post from the service cadre by promotion and the second respondent, who was serving in the office of the Advocate General, was appointed on the post. The grievance of the respondent No. 1 was that he being the third candidate in the select panel should have been offered the appointment and not the second respondent. A Division Bench of the High Court of Punjab & Haryana while confirming the order of the learned single Judge of the said High Court directed the appellant-State to appoint the respondent No. 1 as the Assistant Advocate General, Punjab. While allowing the appeal of the State of Punjab, the Supreme Court has held that notification issued inviting applications was in respect of one post and the first candidate in the select panel was not only offered, but on his acceptance of offer came to be appointed, and it was only subsequently that he came to resign, but with the appointment of the first candidate for the only post in respect of which the consideration came to be made and select panel was prepared, the panel ceased to exist and had outlived its utility. What is ruled by the Supreme Court in the said decision is that no one else in the panel could have legitimately contended that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently.

The ambit and scope of a waiting list is that a waiting list prepared in service matters by the competent authority is a list of eligible and qualified candidates who in order of merit are placed below the last selected candidate. How a waiting list should operate and what is its nature may be governed by the rules and usually it is linked with the selection or examination for which it is prepared. For instance, if an examination is held say for selecting 10 candidates for 1990 and the competent authority prepares a waiting list then it is in respect of those 10 seats only for which selection or competition was held and such list is prepared either under the rules or even otherwise mainly to ensure that the working in the office does not suffer if the selected candidates do not join for one or the other reason or the next selection or examination is not held soon. Once the selected candidates join then candidate from waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for future vacancies also.

In *State of Bihar and Anr. v. Madan Mohan Singh and Ors.*, 1994 Supp. (3) SCC 308, the appellant-Government had invited applications for filling up of 32 vacancies of Additional District & Sessions Judges against the direct recruitment quota. 128 candidates were declared successful in written test, but one more candidate was included in the list of successful candidates because the candidates at 128th & 129th position had secured equal marks. The High Court, after conducting interview, had recommended a panel of 32 candidates out of 129 candidates. The selected candidates were asked to appear for medical test. The High Court at a Full Court meeting passed a resolution that any further vacancy within one year against direct recruitment quota would be filled up from merit list already prepared by it. The Supreme Court has held that the resolution was invalid because neither there was any statutory rule nor was it mentioned in the advertisement that panel would remain in force for one year. The Supreme Court in the said decision has vindicated the stand of the Government that fresh recruitment process was required to be resorted to for filling up of future vacancies.

In *Hoshiar Singh v. State of Haryana*, JT 1993 (5) SC 63 : AIR 1993 SC 2606, a requisition was sent to select candidates for appointment on 6 posts of Inspectors of Police by advertisement dated January 22, 1988. Applications were invited for the said 6 posts. Subsequent to the written examination but prior to physical test and interview, a revised request for 8 posts was sent. The Board recommended 19 names, out of which 18 candidates were given appointments. Those appointments were challenged before the Punjab & Haryana High Court. It was held by the High Court that appointments made beyond 8 posts were illegal. On appeal, the Supreme Court held that since requisition was for 8 posts, the Board was required to send its recommendation for 8 posts only. The Supreme Court further observed : 'The appointment on the additional posts on the basis of such selection and recommendation would deprive candidates who were not eligible for appointment to the posts on the last date for submission of applications mentioned in the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional posts because if the said additional posts are advertised subsequently those who become eligible for appointment would be entitled to apply for the same.' The High Court was,

therefore, right in holding that the selection of 19 persons by the Board even though the requisition was for 8 posts only, was not legally sustainable.

One of the questions which fell for consideration in *Madan Lal and Ors. v. State of Jammu & Kashmir*, JT 1995 (2) SC 291, was whether preparation of merit list of 20 candidates was bad as the vacancies for which the advertisement was issued by the Commission were only 11 and the requisition that was sent by the Government for selection was also for those 11 vacancies. The Supreme Court held that the said action of the Commission by itself was not bad but at the time of giving actual appointments the merit list had to be so operated that only 11 vacancies were filled up. The reason given by the Supreme Court was that as the requisition was for 11 vacancies, the consequent advertisement and recruitment could also be for 11 vacancies and no more. The Supreme Court further observed ;

'It is easy to visualize that if requisition is for 11 vacancies and that results in the initiation of recruitment process by way of advertisement, whether the advertisement mentions filling up 11 vacancies or not, the prospective candidates can easily find out from the office of the Commission that the requisition for the proposed recruitment is for filling up 11 vacancies. In such a case a given candidate may not like to compete for diverse reasons but if requisition is for larger number of vacancies for which recruitment is initiated, he may like to compete. Consequently the actual appointments to the posts have to be confirmed to the posts for recruitment to which requisition is sent by the Government. In such an eventuality, candidates in excess of 11 who are lower in merit list of candidates can only be treated as wait listed candidates in order of merit to fill only the 11 vacancies for which recruitment has been made, in the event of any higher candidate not being available to fill the 11 vacancies, for any reason. One the 11 vacancies are filled by candidates taken in order of merit from the select list that list will get exhausted, having served its purpose.'

Again in *Sanjoy Bhattacharjee v. Union of India and Ors.*, 1997 (4) SCC 283, petitioner's position in merit list was 779 while the notified vacancies were 480. His contention was that fresh recruitment could not be resorted to unless he and other similarly situated persons, whose names were included in merit list, were

appointed. The said contention has been rejected by the Supreme Court in the following terms :

'Merely because the petitioner has been put in the waiting list, he does not get any vested right to appointment. It is not his case that anyone below this ranking in the waiting list has been appointed which could give him cause for grievance. Thus, he cannot seek any direction for his appointment.'

The Supreme Court has further observed :

'For subsequent vacancies, everyone in the open market is entitled to apply for consideration of his/her claim on merit in accordance with law and it would be consistent with Articles 14 and 16(1) of the Constitution. The direction sought for, not to fill up the vacancies having arisen subsequently until the candidates in waiting list are exhausted, cannot be granted.'

In *All India SC & ST Employees' Association v. A. Arthur Jeen*, 2001 (6) SCC 380, the Supreme Court has explained that inclusion of a candidate's name in the panel of selected candidates does not confer any indefeasible right even against existing vacancies and State is under no obligation to fill up all or any of the vacancies. The scope and intent of waiting list is explained by the Supreme Court in *Surinder Singh v. State of Punjab*, 1997 (8) SCC 488 by observing that waiting list cannot be used as a perennial source of recruitment for filling up the vacancies not advertised and the candidates in the waiting list have no vested rights to be appointed except to the limited extent that when a candidate selected against the existing vacancy does not join for some reason and the waiting list is still operative.

Further, five-Judge Constitution Bench of the Supreme Court in *Shankarsan Dash v. Union of India*, AIR 1991 SC 1612 has also held that inclusion of candidate's name in the merit list does not confer any right to be selected. This principle has been reiterated time and again in several decisions of the Supreme Court.

8. Applying the principles laid down by the Supreme Court in the above quoted decisions to the facts of the present case, this Court finds that in the

Advertisement No. 129/89-90, it was never mentioned that the selection was for future vacancies also. On appointment of three selected candidates on the posts concerned, the list was exhausted and ceased to exist.

9. The process of final selection pursuant to Advertisement No. 129/89-90 stood closed on appointment of three candidates and the petitioner, who was wait listed at Serial No. 1 pursuant to the said advertisement cannot claim that he has an indefeasible right to be appointed on the posts in question which were subsequently advertised. The life of the waiting list prepared pursuant to Advertisement No. 129/89-90 was up to the date of appointment of 3 candidates on the posts concerned for which the initial requisition was sent and not thereafter. The waiting list could have been operated till June 20, 1992 if the candidate/ s, whose names were included in the select list, had not joined the service for any reason, but not thereafter. Here, in this case, the operation of the waiting list is discontinued for valid reasons, namely, all the three posts for which requisition was sent have been filled up by appointment of three candidates whose names were mentioned in the select list. It is not the case of the petitioner that anyone below his ranking in the waiting list has been appointed which could give him cause for grievance. Therefore, the petitioner who had not applied for the posts in question pursuant to Advertisement No. 189/89-90 has no right to claim appointment made pursuant to the said advertisement only on the ground that he was wait listed pursuant to Advertisement No. 129/89-90 because the said advertisement was for three posts and the select list prepared in connection with the said advertisement had ceased to exist on appointment of three candidates whose names were mentioned in the select list. Further, Advertisement No. 129/89-90 was for a specific purpose, namely, special drive for recruitment of reserved category candidates whereas Advertisement No. 189/89-90 was for candidates belonging to general category as well as reserved category and, therefore, one who is on waiting list prepared as a result of a specific drive for recruitment of reserved category candidates, cannot claim that he should be appointed on the posts sought to be filled up in a regular manner, more particularly when 63 roster points in the category of Inspector of notified factories were already utilized and no point had either remained unutilized or carried forward by the department.

Under the circumstances, the claim advanced by the petitioner cannot be accepted, and the petition is liable to be dismissed.

10. For the foregoing reasons, the petition fails, and is dismissed. Rule is discharged. Civil Application, which is filed in the petition, does not survive as the petition itself is dismissed. Therefore, the Civil Application No. 1722 of 1993 is also dismissed. Interim relief granted earlier is hereby vacated. There shall be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com