

Arun Singhal and anr. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jan-04-2002

Reported in : 2002(1)WLC783

Judge : Arun Madan, J.

Appeal No. : S.B. Civil Writ Petition No. 5035 of 2001

Appellant : Arun Singhal and anr.

Respondent : State of Rajasthan and ors.

Advocate for Def. : Akhil Simlote, Adv.

Advocate for Pet/Ap. : Naina Saraf, Adv.

Disposition : Writ petition dismissed

Judgement :

Madan, J.

1. Though the matter was listed for on respondents' application for vacation of stay order dated 15.10.2001 but with the consent of the learned counsel for the parties, the matter is being decided finally since the arguments advanced during the course of hearing by the learned counsel touch upon the merits of the case and keeping in view the fact that the career of large number of students, who are to be

appointed on the post of Teachers is involved in the instant matter.

2. The grievance, which has been raised in the writ petition is that both the petitioners are having the requisite qualification for appointment on the post of Teacher Grade-11 (Science) in pursuance of the advertisement dated 11.9.1998 (Ann. 1) issued by the Director, Sanskrit Education, Rajasthan, Jaipur and hence, they should have been given appointment on the said post. Their contention is two fold (i) that atleast 35 posts of Teacher Grade-II in all were advertised and the appointment was subject to fulfillment of the terms and conditions and the petitioners had in compliance thereof submitted requisite documents for being considered for appointment (ii) to allow regular pay scale from the date of their appointment.

3. As per petitioners case, undisputably they were empaneled in the select list prepared and they were placed at Sl. No. 36 & 49 respectively and were also called for interview in pursuance of the letter dated 16.12.1998 (Ann.2).

4. The petitioners have further contended that prior to their appearing before the Interview Board, they submitted an application for calculating their marks secured by them in B.Ed. Examination. As per formula provided by Dayal Bag Educational Institute (College), Agra, the petitioners have secured 72.55 and 71.25 percent marks respectively. According to the petitioners, the respondents had miscalculated the percentage of marks on the basis of average obtained by the petitioners in various subjects and even on the said formula it comes to 71.55 and 69.40% respectively. As regards the above contention, the arguments which has been advanced by the learned counsel for the respondents is that the respondent University is not governed by any formula of Dayal Bag Educational Institute, Agra and hence the petitioners submission is not binding on the respondent- State.

5. It is not the petitioners case that they had secured higher percentage of marks than the last candidates appointed by the respondents nor they have made out any case on the touch stone of alleged arbitrariness for violation of Article 14 & 16 of the Constitution of India that the petitioners have been treated arbitrarily as against those candidates who were lower in merit have either been appointed or even considered for appointment by the University in any manner. Hence, the

arguments advanced by the learned counsel for the petitioner cannot be accepted merely because of the fact that the second advertisement dated 25.8.2001 (Ann. 6) was issued when the appointments in pursuance of the first advertisement dated 11.9.98 had not been made in various specialities by the University.

6. During the course of hearing, learned counsel for the petitioner has contended that she is confining her arguments only to the appointment with regard to Science subject for which there was no jurisdiction for the University for issuing a second Notification while appointment to the subjects in English, Hindi, Sanskrit and Maths had already been made to which the petitioners have no grievance. Their further case is that the petitioners were anxiously awaiting the select list and hopefully waiting for appointment on the basis of their educational qualification.

7. It is not the petitioners' case that they were called for interview on the basis of the first advertisement dated 11.9.98 though not given appointment on the post of Science Teacher Grade-II. Hence aggrieved by the second advertisement (Ann. 6), they have moved this Court by way of the instant writ petition seeking the grievances inter alia that the impugned advertisement dt. 25.8.2001 (Ann. 6) be quashed and set aside and that the respondents be further directed to issue the merit list and to give appointments to the petitioners in pursuance of the earlier advertisement dated 11.9.98 (Ann.1).

8. I have heard Ms. Naina Saraf, learned counsel for the petitioners and Mr. Akhil Simlote, learned counsel for the respondent at length and carefully perused the material available on record as also examined their rival contentions and also the legal position at issue.

9. Prima-facie I am of the considered view that there is no vested or indefeasible right on the basis of which, the petitioners can claim appointment on the above post and the law is well settled that a candidate only has a right to be considered for appointment on a particular post subject to fulfillment of conditions which are necessary for such appointment as regards the eligibility criteria, which may be fixed by the State before the appointment is made, Learned counsel for the petitioner has contended that the petitioners were called for interview and they were duly interviewed by the Committee but appointment letter has not issued to

them.

10. In reply to the show cause notice, Mr. Akhil Simlote, learned counsel for the respondent while controverting the aforesaid arguments of the learned counsel for the petitioner, has contended that it is an admitted case of the petitioners themselves that the selection process had commenced in pursuance of the advertisement dated 11.9.98. (Ann. I), though it could not be completed for the reasons, which would be indicated in the forgoing paras.

11. From the Perusal of the averments made in para-9 of the writ petition it is apparent that the petitioners were waiting for the select list to be prepared and released but the same was not published. In grounds 'B to E', the petitioners have clearly mentioned that the merit list was published and the process of selection was stopped without completing the same.

12. In reply to the writ petition, on merits, it has been contended by the learned counsel for the respondents that admittedly 35 vacancies were advertised and the petitioners were placed at serial No. 36 and -19 respectively. Thus, notwithstanding the petitioners were not in the merit, yet they were called for interview for the reason that the candidates who were called for interview were in the ratio of 1:3.

13. As regards the arguments in reply to the petitioners' contention that they be given the benefit of Dayal Bag Educational Institute's formula, it has been contended that in the mark sheet of B.Ed, issued by the Dayal Bag Institute, the cumulative percentage of theory and practical is given and to find out the total percentage of B.Ed., the average of both is to be calculated. No method of calculating the percentage is given in the mark sheet. The formula prepared by Dayal Bag Educational Institute is undertaken by the said institution itself and cannot be made applicable to the respondents. The cumulative percentage is mentioned against all Semesters. The percentage has been calculated on the basis of this principle and the percentage of petitioners Arun Singhal and Shri Arun Singh comes at 69.26 and 68.51 respectively. The above result was duly communicated to the petitioners and they themselves had admitted this fact and put their signatures on the interview sheet and thereafter having participated in the

interview and not appointed thereafter, it is not open to them to challenge the selection process.

14. As regards the process of selection, which could not be completed on the basis of the advertisement dated 11.9.98 (Ann. 1), for which it had become necessary to issue second advertisement vide Annexure-6 dated 25.8.2001, which is impugned herein, it has been contended in para-7 of the reply that the process of selection as per the terms of the advertisement (Ann. 1) was never completed for the reason that the post of Teacher Grade'11 (Science) is to be filled in 50% by promotion from amongst the qualified and eligible Teacher's Gr-II and 50% by direct recruitment. However, there was a dispute with regard to bifurcation of quota, the directorate cannot shift the quota either way and the consent of the State Government and Rajasthan Public Service Commission (RPSC) was not accorded, as such, the process of selection was stopped in between.

15. Learned counsel for the respondent has vehemently contended that the life of the first panel, which was prepared on the basis of the first advertisement was valid upto 31.3.1999. Thereafter, it was not possible to give appointment as per Annexure-1.

16. Admittedly, the case of the petitioners is that they have secured the merit position at Nos. 36 and 49 respectively, and as such, they had every hope to be appointed on the said post. This contention, in my view is misconceived since the petitioners have nowhere come out with a case that a lesser meritorious person has been given appointment by the respondent nor there is any whisper in the writ petition that who are the candidates, who were given appointment.

17. From the perusal of the pleadings on the record, it is apparent that it had become necessary for the University to issue a fresh advertisement vide Ann. 6, after balancing the quota cadre-wise after approval of the competent authority. Moreover, the petitioners have not disputed the fact that the select list was never prepared. This itself is sufficient to believe that no right has accrued to the petitioners to challenge the select list already prepared by the respondent or even to challenge the appointment of others lawfully made. I am of the view that the career of large number of students, who have been given admission in Science

subject for the academic year 2001-2002 has been adversely affected consequent upon the interim order given earlier by this Court on 15.10.2001. Moreover, the stay order was passed ex parte and the position has been clarified by the counsel for the respondent after the notice has been issued and the respondents' counsel has been heard.

18. Keeping in view the fact that this Court vide its order dated 12.12.01, after hearing the learned counsel for the parties, has stated that considering the factor that large number of candidates have been called for interview although there is a stay operative, to safeguard the interest of both parties it would be appropriate to permit the respondents it would be appropriate to permit the respondents to carry on the interview, however, the respondents shall neither prepare the select list nor shall declare the result of interview until further orders.

19. I am informed by the learned counsel for the respondents that it is only because of the interim order that they could not make the appointments though the process of interview and selection have already been completed whereas only appointment orders have to be issued.

20. Learned counsel for the petitioner has placed reliance upon the ratio of decision of this Court on the following matters:-

1. Md. Ibrahim Ali and Ors. v. State of Assam and Ors. (1) @IN = 2.

Govt. of Orissa v. Hariprasad Das (2)

3. S. Prakash v. K.M. Kurian (3)

21. During the course of hearing, it has been contended by the learned counsel for the petitioner that the life of the panel for which the petitioners claim to be appointed has been extended by two years. In absence of any documentary evidence this contention cannot be accepted.

22. In Md. Ibrahim's case (supra), the question which arose before the learned Gauhati High Court pertained to challenge made by the petitioners to a select list prepared by the State of Assam in the matter of appointment to the post of

Veterinary Filed Assistant. The select list was prepared in 1996 but withstanding the above list prepared fresh selection was made ignoring the earlier selection by issuing a fresh advertisement. From the finding recorded by the learned Judge in para-10 of the Judgment, it has been observed as under:-

'The last point argued by the learned State counsel that empanel-ment of names do not confer any right on the selected candidates to get appointment. Our attention has also been drawn to the decision of the Supreme Court in Shankaran Dash v. Union of India (1991 (3) SCC 47) in order to show that the selected candidates do not acquire any indefeasible right to be appointed against the existing vacancies, the same ratio is also available in Government of Orissa v. Harprasad Das and Ors. (1998 (1) SCC 487). There cannot be any dispute as to the position of law in this behalf.'

23. Since in the instant case, the State Government has explained adequate reasons for issuing second advertisement vide Annexure-6, which is under challenge, in my view, the ratio of aforesaid decision will not help in advancing the arguments in any way, since in that case, reasons had not been given for issuing subsequent advertisement. Moreover, as already discussed above, since in the instant case, the entire selection process has come to a standstill in view of an interim order and the interest of the candidates (students) has been adversely affected as a result of the appointment having not been done notwithstanding the interview of the candidates, who were otherwise found eligible having taken place could not be appointed, fill date.

24. In Govt. of Orissa's case (supra), the question which arose for consideration in appeal before the Apex Court against the Judgment of the State Administrative Tribunal was as to whether mere empanelment or inclusion of name of particular candidate in a select list could give right of appointment to the candidate? The Apex Court after taking over all view of the matter and also after having examined the order of the Tribunal, came to the conclusion that the Tribunal had exceeded its jurisdiction in directing the State Government to make further appointments on the vacancies on the ground of public exigency and it was beyond its jurisdiction. While giving such direction, the Tribunal had failed to appreciate that the decision

of the Government had not been challenged as arbitrary, the grounds, which were not sustainable on the ground of discretionary treatment to the respondents. The ratio of decision of this matter also does not given any advantage to the petitioner in any manner.

25. In S. Prakash's case (supra), the question which arose for consideration before the Apex Court in appeal challenging the Judgment of the Kerala High Court was pertain to the appointments in Kerala State Administrative Services. The Apex Court while confirming its earlier view on the subject has observed as under:-

'It is also settled that a candidate selected and kept on select list does not acquire any absolute right to appointment. Therefore, it is open to the Government to decide how many selected candidates are to be appointed in service on the basis of ratio or percentage prescribed in the service rules.'

26. The arguments advanced by the learned counsel for the petitioners are thus are misconceived and not tenable, the writ petition is accordingly dismissed. The interim order dated 15.10.2001 stands vacated. No order as to costs.