

Dalip Kumar and ors. Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : Mar-05-2008

Reported in : RLW2008(3)Raj2675

Judge : R.M. Lodha and; Raghuvendra S. Rathore, JJ.

Appellant : Dalip Kumar and ors.

Respondent : State of Rajasthan and anr.

Advocate for Pet/Ap. : Mr. Ashok Gaur

Disposition : Appeal dismissed

Judgement :

R.M. Lodha, J.

1. heard this group of special appeals comprising of eight matters together as it involves identical controversy and all these matters are being disposed of by this common order.

2. The appellants are unsuccessful petitioners. They filed few writ petitions before this Court principally praying for direction to the respondents to consider their candidature against 102 vacant posts of Teacher Grade-Win accordance with their merit with all benefits with effect from 17.1.2002 and for declaring the order dated 13.12.2001 issued by the State Government illegal and unconstitutional.

3. The facts in nutshell are thus:

4. The District Establishment Committee, Zila Parishad, Bharatpur through its Chief Executive Officer issued an advertisement in the year 1996 for 60 posts of Teacher Grade-III. The eligibility for appointment was prescribed therein. The petitioners claimed to have applied pursuant to the said advertisement. They also claimed to be qualified for such appointment possessing minimum qualification. That the petitioners were not appointed pursuant to the selection process undertaken by the respondent No. 2 vide advertisement issued in the year 1996 is not in dispute. That they remained quiet and were satisfied with their non-selection until the present writ petition was filed is also not in dispute. Their case is that some of the candidates including Lokendra Singh and Ahmed Khan and few others who were also not selected filed two writ petitions being Writ Petition Nos. 3436/1997 and 4529/1998 before this Court raising their grievance of non-selection. These writ petitions were disposed of on 30.3.2000 directing the respondent No. 2 to consider the candidature of petitioners therein against 119 vacant posts (the posts seem to have swollen on account of some vacancies under blackboard scheme). Incompliance of the said order, the state government directed the respondent No. 2 vide its communication dated 13.12.2001 that those petitioners be appointed against 119 vacant posts and the candidates who have not approached the Court should not be considered. Then on 17.1.2002, the respondent No. 2 issued an office order giving appointment to those petitioners. It was then that the present petitioners came out of deep slumber and sought for relief as afore-noticed. The brief reasoned order came to be passed by the Single Judge in S.B. Civil Writ Petition No. 5022/2002 -Narendra Kumar Sharma and Ors. v. State of Rajasthan and Anr. and based on that, the other writ petitions were dismissed. The order in the case of Narendra Kumar Sharma reads thus:

Petitioners are seeking appointment to the post of Teacher Gr. III in pursuance to the advertisement issued way back in the year 1996. Admittedly, the whole selection process is over and appointments have also been made long back. There cannot be any dispute that selections are made for the vacancies of a particular year. A select list is also prepared accordingly. There is a fix period of life of select list as well. With the lapse of time after expiry of select list, no

directions for appointment can be issued by this Court from the select list already expired long back. Even if there are vacancies still exist from a particular year and the same have not been filled for one reason or the other, the vacancies shall be carried forward for next year. No appointment can be made from a select list already expired. This will result in not only violation of relevant rules but Articles 14 and 16 of the Constitution as well because there may be more meritorious expiring eligible candidates for remaining unfilled vacancies of a particular year. Even directions of the Court for consideration may be misread and misconstrued and appointments may be given beyond the vacancies of a particular year. Such a practice may create lot of complications and irregularities, which may be committed by the authorities concerned. That apart, subsequently even the process of selection for the post in question has also been changed by way of amendment in the relevant rules and now the selections are made through Rajasthan Public Service Commission.

Having considered entire facts and circumstances, with the lapse of time the prayer as made in the present writ petition cannot be accepted. The writ petition is dismissed accordingly as having no merits.

5. Mr. Ashok Gaur, counsel for the appellants raised two-fold submission before us. First, he submitted that once this Court passed the order on 30.3.2000 in the writ petitions filed by Lokendra Singh, Ahmed Khan and others directing the respondents to consider the candidature of those petitioners against 119 vacant posts, the respondents ought to have considered the case of the present petitioners (appellants herein) as well strictly in order of merit and pass an order accordingly. Having not done that, the respondents acted illegally. He placed reliance upon a decision of the Supreme Court in the case of K.T. Verrappa and Ors. v. State of Karnataka and Ors. : (2006)9SCC406 . Secondly, Mr. Ashok Gaur would contend that once the select list was allowed to operate after its expiry, the Single Judge was not justified in holding that with the lapse of time, after expiry of select list, no directions for appointment could be issued. In this regard, he relied upon a Single Bench decision of this Court in the case of Idan Singh v. State of Rajasthan and Ors. 2000 (3) RLR 715 : RLW 2000(4) Raj. 396.

6. Mr. Gurucharan Singh Gill, Additional Advocate General supported the view of the Single Judge by placing reliance upon the decision of the Supreme Court in the case of State of Rajasthan and Ors. v. Jagdish Chopra : (2007)8SCC161 . He also relied upon a decision of the Supreme Court in the case of J. Ashok Kumar v. State of Andhara Pradesh and Ors. : [1996]2SCR1035 wherein it was held that challenge to the selection at a belated stage after the selection has been already over would disentitle the petitioners from any relief.

7. Having reflected over the matter thoughtfully, we deem it proper to refer the case of Jagdish Chopra first. The Supreme Court in Jagdish Chopra considered Rule 9(3) of the Rajasthan Educational Subordinate Service Rules, 1971 (for short/the Rules') and it was held that although Rule 9(3) does not specifically provide for the period for which the merit list will remain valid but the intent of the legislature was absolutely clear as vacancies have to be determined only once in a year. Vacancies which arose in the subsequent years could be filled up from the select list prepared in the previous year and not in other manner. Even otherwise in absence of any Rule, ordinary period of validity of select list should be one year. This is what the Supreme Court observed in para 9 of the report:

Recruitment for teachers in the State of Rajasthan is admittedly governed by the statutory rules. All recruitments, therefore, are required to be made in terms thereof. Although Rule 9(3) of the Rules does not specifically provide for the period for which the merit list shall remain valid but the intent of the legislature is absolutely clear as vacancies have to be determined only once in a year. Vacancies which arose in the subsequent years could be filled up from the select list prepared in the previous year and not in other manner. Even otherwise, in absence of any rule, ordinary period of validity of select list would be one year. In State of Bihar and Ors. v. Amrendra Kumar Mishra 2006 (9) Scale 549, this Court opined: 'In the aforementioned situation, in our opinion, he did not have any legal right to be appointed. Life of a panel, it is well known, remains valid for a year. Once it lapses, unless an appropriate order is issued by the State, no appointment can be made out of the said panel.

It was further held:

The decision noticed hereinbefore are authorities for the proposition that even the wait list must be acted upon having regard to the terms of the advertisement and in any event cannot remain operative beyond the prescribed period.

8. Jagdish Chopra was a case where for the year 1995-96 33 vacancies were to be filled and advertisements were issued therefor. Jagdish Chopra was one of the appellants for the said posts. The selection committee prepared a select list. His name figured at Sr. No. 10 of the said list. Out of 33 vacancies, 19 posts were to be filled up by teachers (physical education) and 14 posts were meant for teachers (grade-III). Out of 19 posts of teachers, physical education, 9 posts for general category candidates, 5 posts were reserved for OBC candidates, 2 posts for scheduled caste candidates and 1 post for scheduled tribe candidate. One post was to be filled on basis of vacancies arising out of appointment on compassionate ground. The date of joining was fixed on 12.4.1996. The candidate placed at Sr. No. 8 in the merit list did not join. The vacant post was said to have carried forward to the next year i.e. 1996-97. Jagdish Chopra had also applied for the post of teacher (physical education) in the said year but he was placed at Sr. No. 23 in the merit list and was not appointed in 1996-97 also. He filed writ petition before this Court. The Single Judge dismissed the writ petition on the premise that validity of the merit list had expired. The Division Bench, allowed the appeal and directed the State to appoint Jagdish Chopra against Sr. No. 8 vacancy and also directed that his appointment would relate back to the date on which Sr. No. 9 candidate joined. The decision of the Division Bench was carried to the Supreme Court by the State government being contrary to Rule 9(3). In this backdrop, the Supreme Court observed as has been noticed above in paragraph 9.

9. In the scheme of Rule 9(3) and the view of the Supreme Court in respect of the said rule, the view of the Single Judge that the select list having already expired, no appointment can be given to the petitioners cannot be faulted moreso because unfilled vacancies were carried forward in the next year. Mr. Gurucharan Singh Gill, Additional Advocate General informed us, and we find no reason to disbelieve his statement, that in the subsequent advertisement, the unfilled vacancies pursuant to the advertisement issued in the year 1996 were notified and these vacancies have already been filled and there is no vacancy for the post of Teacher

Grade-III of the year 1996. In this view of the matter also, we find that the petitioners could not have been granted any relief.

10. In our view, even otherwise, the petitioners have dis-entitled themselves from claiming any relief from this Court as they challenged their non selection after a lapse of more than 6 years from the date the advertisement was issued by the respondent No. 2 for filling the vacant posts of Teacher Grade- III. Even if we assume the case that large many vacancies remained unfilled pursuant to that advertisement, the fact of the matter is that although some of the aggrieved persons approached this Court challenging their non selection, the petitioners were satisfied and did not raise any whisper until the filing of the present writ petition in the year 2002. Challenge to their non- selection at such belated stage and that too after the select list had already expired, in our view dis-entitled to the petitioners from any relief. This position, is supported by the observations made by the Supreme Court in the case of J. Ashok Kumar where it has been held that the petitioner may not be entitled to any relief if it is sought at a belated stage if the selection has already been over.

11. It is pertinent to notice that this Court in its order dated 30.3.2000 while disposing of the writ petitions of Lokendra Kumar and Ahmed Khan directed the respondents in unambiguous terms to consider the candidature of the petitioners against 119 vacant posts. With such specific direction, obviously the State Government could have only considered the candidature of those candidates who had approached the court and in whose petition the order came to be passed. Had they departed from the order dated 30.3.2000, they would have exposed themselves to the disobedience of the order of this Court as already they were facing the contempt proceedings. Seen thus, the contention of the counsel for the petitioners that their candidature also ought to have been considered while considering the case of those petitioners cannot be accepted. In this view of the matter, the decision of the Supreme Court in the case of K.T. Veerappa and Others relied upon by the counsel for the appellants cannot be applied. Once a direction is given by a Court, obviously that direction has to be obeyed as it is and it is not open to the authority to enlarge the scope of such direction on its own. Non-consideration of the case of the petitioners in this view of the matter and in passing

the orders dated 13.12.2001 and 17.1.2002 cannot be faulted.

12. In so far as case of Idan Singh is concerned, we find that the said decision is founded on proved discrimination and arbitrariness which is not the case here. The petitioners have not alleged much less proved a case of discrimination and arbitrariness in issuance of the orders dated 13.12.2001 and 17.1.2002. Rather the said orders have been issued in compliance of the order of this Court dated 30.3.2000. Idan Singh, therefore, does not help the case of the appellants at all.

13. For all these reasons, we are satisfied that these appeals have no force and are dismissed.

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