

Sanjeev Puri Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Nov-10-2006

Reported in : 2007(2)JKJ434

Judge : Nirmal Singh, J.

Appellant : Sanjeev Puri

Respondent : State and ors.

Advocate for Pet/Ap. : Mr. Ashok Parihar

Disposition : Petition dismissed

Judgement :

Nirmal Singh, J.

1. The facts are not in dispute. The Jammu and Kashmir Public Service Commission (hereinafter, for short, referred to as Commission) invited applications vide Notification No. 05-PSC of 2000 dated 11-02-2000 for five posts of B-Grade Specialists in Ophthalmology in the Health and Family Welfare Department with the following break-up:

Open category : 02 posts RBA category : 01 post ST category : 01 post SC category : 01 post

2. Twelve candidates appeared in the interview, which was conducted at Srinagar on 23rd and 24th of July, 2000. Therefore, on the basis of over all performance in the interview and the academic qualification, experience and other relevant factors, the following candidates in order of merit were found suitable for appointment as B-Grade Specialists in Ophthalmology:

OPEN CATEGORY:1. Dr. Sunil Ji Mattoo S/o Triloki Nath Mattoo 126 A/D, Gandhi Nagar, Jammu. 2. Dr. Sajjad Hamid Fazili S/o Ab. Hamid Fazili R/o 165 Rawalpura Housing Colony, Post Office Sanatnagar, Srinagar. SCHEDULED TRIBE CATEGORY:1. Tsering Angchuk S/o Tsering Rabjor C/o Sm. Dechain A.C.O. Office Leh-Ladakh.

3. No candidate was found available in the categories of RBA and Scheduled Caste. Due to the non-availability of the Reserved Category candidates, names of Dr. Ashok Kumar Sharma S/o D.K. Sharma and Dr. Sanjeev Puri S/o Chaman Lal Puri, who is the petitioner in the present case, were recommended by the Commission against the posts reserved for RBA and Scheduled Caste Categories.

4. On the recommendations of the Commission, Secretary to Government, Health and Medical Education, issued appointment orders to Dr. Sunil Ji Mattoo S/o Triloki Nath Mattoo, Dr. Sajjad Hamid Fazili S/o Ab. Hamid Fazili; and Tsering Angchuk S/o Tsering Rabjor, who were selected in the General/Open Category as well as in the Category of Scheduled Tribe.

5. The Department of Health, Family Welfare and Medical Education also wrote a letter to the Department of General Administration for giving approval that the petitioner may be given appointment against the Reserved Category post. The General Administration Department upheld the recommendations of the Commission and allowed the Health Department to go ahead and issue the appointment orders in favour of the selected candidates, including the petitioner, furnished by the Commission. However, in the meanwhile, selection list furnished by the Commission had elapsed, as such the Department of Health, Family Welfare and Medical Education was not able to issue the orders of appointment of the selected candidates. The Department of Health, Family Welfare and Medical Education had requested the Commission to furnish its view in the matter for

proceeding further. The Commission vide its letter (Annexure-G) dated 21-01-2003, after considering the proposal of the Department of Health, Family Welfare and Medical Education, decided not to extend the validity of the selection list.

6. The petitioner filed the present writ petition under Article 226 of the Constitution of India read with Section 103 of the Jammu and Kashmir Constitution, with the following substantive prayers:

I/A WRIT OF CERTIORARI and quash and set aside:

(a) the communication bearing No. :PSC/DR/Paed/13/97 dated: 31-01-2003 issued by the respondent no: 2 to the address of the respondent no: 1 whereby it has conveyed the decision of the public Service Commission in not extending validity of the Select List bearing No: 8-PSC/B-Grade/Ophthalmology Dated: 16-08-2001 sent by it to the respondent no: 1 and under the petitioner on his selection has been recommended for his appointment as B-Grade Specialist in the Discipline of Ophthalmology; and also

(b) Declare Rule 57 of the Jammu & Kashmir Public Service Commission (Business & Procedure Rules, 1988, as ultra vires and quash and set aside the same; and also

II/A WRIT OF MANDAMUS and thereby command and direct the respondents 1 and 2:

a/ to treat the Select Panel dated: 16-08-2001 as alive and existing and issue a formal order of appointment in favour of the petitioner and declare the petitioner as having been appointed as B-Grade Specialist in the Discipline of Ophthalmology along with the respondent No. 3 and two other candidates in the Open Category who are selected and recommended along with the petitioner under the Government Order No: 556-HME of 2001 Dated: 17-09-2001.

b/ to accord all the consequential benefits in favour of the petitioner such as seniority, promotion, increments, allowances and fixation of pay scales and also pay the arrears of salary to the petitioner; and further

c/ declare the petitioner as senior to the respondent no: 3 for the reasons of the petitioner having been selected and recommended for his appointment against the seat subsequently de-reserved and declared as a seat under the open category; and also

III/A WRIT OF PROHIBITION and thereby:

a/ prohibit and restrain the respondent no: 1 from referring the post against which the petitioner has been selected to the respondent no: 2 or any Screening Committee for making selection against the same afresh; and further'

b/ restrain the respondents from filling or making any appointment against the post against which the petitioner has been selected and recommended for his appointment.

Any other writ, order or direction that may be deemed fit and appropriate in the facts and circumstances of the case may also be passed in favour of the petitioner and against the respondents.

7. I have heard the learned Counsel for the parties and perused the record.

8. The issue involved in this petition is whether a candidate from the Open/General Category can be selected and recommended by the Commission against the post meant for Reserved Category without getting it de-reserved.

9. Before considering this proposition, it will be relevant to notice Rule 11 of the Jammu and Kashmir Medical (Gazetted) Service Recruitment Rules, 1970 (hereinafter, for short, referred to as 'Recruitment Rules, 1970') as well as Rule 13 of the Jammu and Kashmir Reservation Rules, 1994, issued vide SRO-126 dated 28th of June, 1994:

Rule 11 Reservation of appointments.-While making appointments either by promotion or direct, reservation shall be made in accordance with the rules and orders issued from time to time for members of Scheduled Castes, Backward Classes and any other category or class of permanent residents of the State for whom reservation may be made under orders of the Government.'

Rule 13. Vacancies to be carried forward. -

(i) Subject to the provisions hereinafter contained in this Part II, if a sufficient number of candidates from the Scheduled Castes., Scheduled Tribes and Backward Classes are not available on the occasion of any recruitment for filling of the vacancies reserved for them in direct recruitment, the vacancies shall not be filled up from amongst the candidates who are not members of the Scheduled Castes, Scheduled Tribes and Backward Classes.

(ii) If in the first attempt of recruitment, suitable candidates are not available, second attempt may be made in the same recruitment year and if even then suitable candidates are not available, the vacancies shall be treated as 'backlog vacancies' provided that the total number of served vacancies shall not exceed 50% of total available vacancies.

(iii) In subsequent year, when recruitment is made for reserved vacancies, the 'backlog' vacancies shall also be announced, provided that total number of reserved vacancies shall not exceed 50% of total available vacancies.

(iv) The reserved vacancies remaining vacant for a period exceeding three years despite recruitment drive shall be treated as de-reserved.

(v) Where the vacancies cannot be allowed to remain unfilled in public interest, the Department concerned shall make a proposal for de-reservation of the, vacancies giving full justification therefor. The Administrative Department concerned shall place the proposal for de-reservation to the General administration Department for final decision.

10. Perusal of Sub-Rule (i) of Rule 13 of SRO-126 of 1994 shows that if the candidates from the Scheduled Castes, Scheduled Tribes and Backward Categories are not available on the occasion of any recruitment for filling the vacancies reserved for them in direct recruitment, the vacancies shall not be filled up from amongst the candidates who are not members of the Scheduled Castes, Scheduled Tribes and Backward Classes. This Rule makes it crystal clear that at the first attempt of recruitment, if candidates are not available, then against the

posts meant for Scheduled Castes, Scheduled Tribes and Backward Classes Categories are not to be filled up from any other Category.

11. Perusal of Sub-Rule (ii) of Rule 13 of SRO-126 of 1994 shows that if in the first attempt of recruitment, the suitable candidates are not available, second attempt has to be made in the same recruitment year. Even if the suitable candidates are not available, the vacancies are to be treated as backlog vacancies. There is a proviso to this Sub-Rule to the effect that the total number of reserved vacancies are not to be exceeded 50% of total available vacancies and the case is to be dealt with under Sub-Rules (iii), which makes it clear that when in the subsequent year, the recruitment is made for reserved vacancies, backlog vacancies shall also be taken into consideration. Again a proviso has been added that the total number of reserved vacancies shall not exceed 50% of the total available vacancies. If the vacancies remain vacant for a period exceeding three years despite recruitment drive, then those vacancies shall be treated as de-re-served. For declaring these vacancies as de-reserved, the period of three years will be reckoned from the subsequent year when the recruitment is made for reserved vacancies. Before declaring a vacancy as de-reserved, the indenting Department shall make a proposal for de-reservation to the General Administration Department. But the indenting Department will have to justify for getting de-reservation.

12. The petitioner has placed on record Annexure-A, vide which the Commission has found the suitable candidates for the appointment of B-Grade Specialists in Ophthalmology in the Health, Family Welfare and Medical Education Department. The petitioner's name, admittedly, had been recommended against a post, which was reserved for Scheduled Caste Category. The recommendations of the Commission were beyond its jurisdiction and in violation of the Recruitment Rules, 1970 and SRO-126 of 1994.

13. Mr. Ashok Parihar, learned Counsel for the petitioner, submitted that there was no bar for the Commission to recommend the name of the petitioner against the unfilled Scheduled Caste Category post because of the non-availability of the Category candidate. He has placed reliance on Rule 11 of the Jammu and Kashmir Medical Education (Gazetted) Service Recruitment Rules, 1979

(hereinafter, for short, referred to as Recruitment Rules, 1979). Rule 11 of the Recruitment Rules, 1979, for facility of reference, is reproduced below:

Rule 11. Reservation of appointment. - (1) While making appointments either by promotion by selection or by direct recruitment, reservation shall be made in accordance with the rules and orders issued from time to time for the members of the Scheduled Castes or any other category or class of permanent residents of the State for whom such reservation may be made under the orders of the Government.

(2) If a sufficient number of candidates belonging to the classes for whom reservation has been made, are not available for filling up all or any of the vacancy reserved for them during a recruitment period, reservations for the posts not so filled shall lapse and the posts shall be filled up as if no reservation therefore had been made.

14. At the very outset, it may be said that the Recruitment Rules, 1979 are not applicable for the appointment of B-Grade Specialists in Ophthalmology. Rather, the Rules applicable for B-Grade Specialists in Ophthalmology are 'the Recruitment Rules, 1970. Under the Recruitment Rules, 1970, Schedule has been annexed. In the Schedule, B-Grade Specialists, Ophthalmology, find mention under the columns 'Class' III, 'Category' (a) and 'Designation of the post B-Grade Specialists in' at (iii). Schedule has also been annexed with the Recruitment Rules, 1979, but B-Grade Specialists Ophthalmology Service does not find mention in these Rules. The Recruitment Rules, 1970 are called 'The Jammu and Kashmir Medical (Gazetted) Service Recruitment Rules, 1970'; whereas the Recruitment Rules, 1979 are called 'The Jammu and Kashmir Medical Education (Gazetted) Service Recruitment Rules, 1979'.

15. Mr. Parihar has also pointed out that the Commission had also recommended to the Government for the appointment against unfilled Scheduled Caste Category posts due to the non-availability of Category candidates for the posts of Lecturers Ophthalmology in the Health and Medical Education Department vide order No. PSC/DR/Lect/Oph/97/48 dated 25-04-2000 (Annexure-D) and on those recommendations, the Government has already issued appointment orders in

favour of the selected candidates. On the same analogy, the learned Counsel submits, the petitioner should have been given appointment. I have considered this submission of the learned Counsel for the petitioner and find the same without any substances.

16. Recruitment Rules, 1979 referred to by Mr. Ashok Parihar, learned Counsel for the petitioner, are, in fact, applicable for the recruitment to the posts of Lecturers Ophthalmology in the Health and Medical Education Department, and not in the case of B-Grade Specialists in Ophthalmology. In Rule 11 of the Recruitment Rules, 1979, the legislature, in its wisdom, has intentionally and deliberately inserted Sub-Rule (2) that in case the Category candidates are not available, the posts can be filled up by Open Category candidates presuming as if no reservation therefor had been made. Taking into consideration the Recruitment Rules of 1979, the Commission has rightly recommended the names of Open Category candidates for the appointment against the unfilled Scheduled Caste Category posts due to non-availability of Category candidates. So the Commission has not violated the Recruitment Rules in any manner. The petitioner cannot, thus, take any benefit of the Recruitment Rules, 1979, as these are not applicable in his case.

17. Learned Counsel for the petitioner further submitted that the General Administration Department has upheld the recommendations of the Commission and had allowed the Health Department to go ahead and issue the appointment order in favour of the petitioner. However, the appointment order could not be issued because the selection list furnished by the Commission had elapsed. He contended that the selection list had elapsed due to the lapse on the part of the respondent-Department as it had not taken the permission from General Administration Department within the prescribed period of one year. He also submitted that the Commission has erroneously not extended the validity of the select list.

18. The second point, which has to be considered in this petition, is whether the Commission has erroneously declined to extend the life of the select list.

19. The Commission has formulated the Jammu and Kashmir Public Service Commission (Business and Procedure) Rules, 1980. Rule 57 of these Rules, for facility of convenience, is reproduced hereunder:

Rule 57. The decisions of the Commission for making appointment by direct recruitment shall, subject to the provisions of Rules 9 and 10 be signed by all the members. The recommendations of the Commission shall be communicated to the Government by the Secretary.

The recommendations shall be valid for a period of one year from the date they are communicated to the Govt. The validity period of one year can, however, be extended for a further period of six months on specific request of the Govt. if the request for such extension is made before the expiry of the validity of the panel.

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20. A perusal of Rule 57 shows that the life of the panel of candidates selected and recommended for appointment by the Commission, will be one year from the date of communication sent by the Commission to the Government. It may be extended for further six months in case indenting Department/Government makes a specific request for its extension to the Commission before the expiry of period of its validity, i.e., one year. In the instant case, the respondent-Department had not made any such request within the stipulated period of one year.

21. The Commission did not extend the life of the select list (panel) in the instant case. The select list was prepared and communicated by the Commission to the Health and Medical Education Department vide No. 8-PSC/B.Grade/Opthalmology dated 16-08-2001. The Health, Family Welfare and Medical Education Department did not move any proposal specifically requesting for the extension of period of panel of selected candidates to the Commission. However, the Health, Family Welfare and Medical Department sought views in the matter of issuing appointment orders to the selected candidates, from the Commission on 15-11-2002, i.e., three months after the period of expiry of the panel, which the Commission had rightly considered and decided not to extend the validity of the select list, and communicated its decision to Health & Medical Education

Department vide its letter No :PSC/DR/Pael/13/97 dated 31-01-2003.

22. Mr. D.C. Raina, learned senior counsel appearing for the Public Service Commission, very fairly and candidly made a statement that the Commission has erroneously recommended the name of the petitioner for the appointment against the unfilled Scheduled Caste Category post due to the non-availability of Category candidate. Mr. Raina submitted that the Commission has exceeded its jurisdiction by recommending the name of the petitioner against unfilled Scheduled Caste Category post, and that was done in violation of the Recruitment Rules, 1970 as well as SRO-126 of 1994, which were applicable at that point of time.

23. Even otherwise, the selection itself gives no substantial right to a candidate asking for appointment. In this regard, reliance can be placed on Vinodan T. and Ors. v. University of Calicut and Ors. reported as : [2002]3SCR530 , wherein the Apex Court held as under:

12. 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 concerned authority to decide how many appointments should be made. However the selected candidates have a right to compel such authority (i) not to make appointments by travelling outside the list and (ii) to make the selection for appointment strictly in the order the candidates have been placed in the list. This Court has placed two further restrictions on the exercise of power by the appointing authority, namely that the appointments to the vacancies must be made in accordance with the Rules, if any, relating to reservations and also that the appointing authority cannot scrap the panel of selected candidates during the period of its validity, except for well founded reasons.

24. In the instant case, the name of the petitioner was recommended by the Commission in violation of the Statutory Rules, i.e., Recruitment Rules, 1970 and Reservation Rules (SRO-126 of 1994). The Commission should recommend the names of the candidates selected as per the advertisement, requisition made by the indenting Department and strictly in accordance with the Rules. If the Commission will recommend the name(s) beyond its jurisdiction, it will generate

litigation, as it has been done in this case.

25. For the reasons mentioned hereinabove, there is no merit in SWP No. 1053/2003, which stands dismissed along with connected CMPs. This shall dispose of SWP No. 670/2005 as well along with connected CMPs.

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