STATE OF RAJASTHAN AND ORS. A

v.

JAGDISH CHOPRA

AUGUST 30, 2007

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.] B

Service Law:

Rajasthan Education Subordinate Service Rules, 1971—Rule 9 (3)—Recruitment under—Candidate applied for the post of teacher and placed at serial no. 10 in select list for a particular year—Non-joining of candidate at serial no 8—Vacant post carried forward to next year—Candidate at serial no 10 in select list of previous year applied but not appointed—Single Judge of High Court holding that candidate had no legal right to be appointed—Set aside by Division Bench—On appeal, held: Single Judge was right in holding that candidate has no legal right to be appointed—However, during the pendency of SLP, the State appointed the candidate not due to his merit but due to the orders of Division Bench—Thus, in exercise of jurisdiction under Article 142 and long pendency of the matter, appointment to be continued—Constitution of India, 1950—Article 142. C D E

In the State of Rajasthan, teachers were employed on yearly basis and vacancies for each year was determined separately. In 1995-96, vacancies arose and 19 posts were to be filled up by teachers (physical education). Respondent applied for the post and his name was at serial No.10 of the select list prepared. Candidate at serial No.8 in the merit list did not join and the said vacant post was carried forward to the next year. Respondent applied for the same post in the said year and could not be appointed since he was placed at serial No.23 in the merit list. Aggrieved, respondent filed writ petition. The Single Judge of High Court dismissed the petition holding that the respondent had no legal right to be appointed since the validity of the merit list had expired. Division Bench set aside the order of Single Judge without deciding whether the select list has remained valid or not. Hence the present appeal. F G

Partly allowing the appeal, the Court

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A **HELD: 1.1. Recruitment for teachers in the State of Rajasthan is governed by the statutory rules. Therefore, all recruitments are required to be made in terms thereof. Although Rule 9(3) of the Rajasthan Education Subordinate Service Rules, 1971 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 should be one year. The Single Judge of the High Court was correct in holding that the respondent has no legal right to be appointed.**

C **[Paras 7 and 8] [603-D, E; 604-A]**

Shankarasan Dash **v.** *Union of India,* **[1991] 2 SCR 567 and** *Asha Kaul (Mrs.) and Anr.* **v.** *State of Jammu and Kashmir and Ors.,* **[1993] 2 SCC 577, relied on.**

D *State of Bihar and Ors.* **v.** *Amrendra Kumar Mishra,* **(2006) 9 SCALE 549;** *K. Jayamohan* **v.** *State of Kerala and Anr.,* **[1997] 5 SCC 170;** *Munna Roy* **v.** *Union of India and Ors.,* **[2000] 9 SCC 283;** *All India SC and ST Employees' Association and Anr.* **v.** *A. Arthur Jeen and Ors.,* **[2001] 6 SCC 380;** *Food Corporation of India and Ors.* **v.** *Bhanu Lodh and Ors.,* **[2005] 3 SCC 618 and** *Pitta Naveen Kumar and Ors.* **v.** *Raja Narasaiah Zangiti and* E *Ors.,* **[2006] 10 SCC 261, referred to.**

1.2. The Division Bench was not at all justified in directing grant of service benefits to the respondent from the date on which the appointed candidate at serial No.9 in the merit list ought to have joined the post. Such F **a direction is wholly unwarranted. However, the impugned judgment cannot be set aside because of the fact that the State has appointed the respondent not by reason of his merit in the select list but by reason of the orders of the High Court during the pendency of this Special Leave Petition. Furthermore even a stay of further proceedings in the contempt petition has been passed by this Court. Therefore, in exercise of jurisdiction under Article 142 of the** G **Constitution of India and in view of the fact that matter is pending for a long time it is directed that the, respondent may be continued as if he was appointed on and from the date he joined the service. [Para 11] [605-G; 606-A-C]**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3987 of 2007.

H From the final Judgment and Order dated 19.04.2005 of the High Court

of Rajasthan at Jaipur Bench, Jaipur in D.B.Special Appeal (Writ) No.1462 of 1997. A

Aruneshwar Gupta, Adv. Genl. Naveen Kumar Singh, Mukul Sood, Shashwat Gupta and Adarsh Sabharwal for the Appellants.

Aishwarya Bhati for the Respondent. B

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Appellant-State employs teachers on yearly basis. Vacancies for each year are separately determined. Recruitment of teachers is made in terms of Rajasthan Education Subordinate Services Rules, 1971 (the Act). It remains valid for one year that is from the first day of April to 31st March. Rule 9(3) of the said Rules read thus ; C

> "Rule 9(3) Whether vacancies can be determined more than once in a year. D
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> Vacancies shall be determined only once a year: Vacancies occurring after the Departmental Promotion Committee meeting has been held shall be treated as the vacancies of the next year. Variation in the vacancies that may crop up between the date of requisitioning the Department Promotion Committee and the date of Departmental Promotion Committee meeting held shall be taken into account at the Departmental Promotion Committee meeting." E

3. For the year 1995-96, there were 33 vacancies and advertisements were issued therefor. Respondent herein was one of the applicants for the said post. The Selection Committee prepared a select list. The respondent's name figured at serial 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 were for General Category candidates; 5 posts were reserved for OBC candidates; 2 posts for Scheduled Castes candidate and one post for Scheduled Tribes candidate. One post was to be filled on the vacancies arising out of appointment on compassionate grounds. The date of joining was fixed on 12.04.1996. The candidate placed at serial No.8 in the merit list did not join. The vacant post was said to have been carried forward to 1996-97. Respondent had also applied for the post of Teacher (Physical F G H

A Education) in the said year but he was been placed at serial No.23 in the merit list and, thus, was not found fit to be appointed in 1996-97 also.

He filed a writ petition before the Rajasthan High Court. On the premise that the validity of the merit list had expired, a learned Single Judge of the said High Court opined that he had no legal right to be appointed stating :

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> "Since, respondent prepares a new panel every year and it will remain effective prior to the end of that session, i.e., till March. Hence, after the expiry of duration of panel, the candidates included in that panel, will not have remained any legal right to be appointed. In the present case also, the duration of the panel has been expired and appointments have already been made in accordance with the same..."

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4. An intra-court appeal was preferred thereagainst. A Division Bench of the High Court, however, reversed the said decision without adverting to the question as to whether the select list has remained valid or not. It was held :

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> "Taking into consideration all the facts and circumstances of the case, the defence taken that till 31st of March, 1996 there was no post vacant in the Department, is difficult to accept. The Petitioner did all whatever he could have done at the relevant time to protect his right of consideration for appointment. The ground on which the writ petition was dismissed is not tenable.
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> As a result of the aforesaid discussion this appeal succeeds and the same is allowed. The order dated 1.9.1997 of the learned Single Judge in S.B. Civil Writ Petition No.4599/1996, impugned in this appeal, is quashed and set aside. The writ petition is allowed and declared post of Teacher (Physical Education) fallen vacant due to non-joining of the appointed candidate stood at serial No.8 of the merit list. The Respondents are directed to give appointment to the Petitioner on the post of Teacher (Physical Education), within a period of one month from the date of receipt of the copy of this judgment. The appointment shall relate back to the date on which the appointment candidate stood at serial No.9 of the merit list, ought to have joined the post.
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> The Petitioner appellant shall not be entitled for the actual monetary benefits for the intervening period i.e. the date on which he would have joined the service and the date of his actual joining, however, this period shall be counted for other service and retrial benefits."

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5. The State is, thus, in appeal before us. A

Mr. Aruneshwar Gupta, Additional Advocate General, appearing on behalf of the appellant submitted that the respondent did not have any legal right to be appointed, particularly, when the validity of a merit list is confined only to one year.

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6. Mr. Aishwarya Bhati, learned counsel appearing on behalf of the respondent, on the other hand, urged that as the candidates were to join their posts on 12.4.1996, the State itself did not adhere to the period during which of the vacancies were required to be filled up. According to the learned counsel, respondent has already joined his services.

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Learned counsel submitted that Rule 9(3) does not fix the period of validity of the panel and in that view of the matter, the respondent, who was on the wait list, should have been appointed as one of the selected candidates could not join.

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7. 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 E 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. In *State of Bihar & Ors.* v. *Amrendra Kumar Mishra,* (2006) 9 SCALE 549, this Court opined :

> "In the aforementioned situation, in our opinion, he did not have any F 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 :

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

8. The learned single Judge of the High Court was, therefore, correct in H

A holding that the second respondent has no legal right to be appointed.

It is well settled principle of law that even selected candidates do not have legal right in this behalf. [See *Shankarasan Dash* v. *Union of India,* [1991] 2 SCR 567, *Asha Kaul (Mrs.) and Anr.* v. *State of Jammu and Kashmir and Ors.,* [1993] 2 SCC 577]

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In *K. Jayamohan* v. *State of Kerala and Anr.,* [1997] 5 SCC 170], this court held:

"5. It is settled legal position that merely because a candidate is selected and kept in the waiting list, he does not acquire any absolute C right to appointment. It is open to the Government to make the appointment or not. Even if there is any vacancy, it is not incumbent upon the Government to fill up the same. But the appointing authority must give reasonable explanation for non- appointment. Equally, the Public Service Commission/recruitment agency shall prepare waiting D list only to the extent of anticipated vacancies. In view of the above settled legal position, no error is found in the judgment of the High Court warranting interference."

[See also *Munna Roy* v. *Union of India and Ors.,* [2000] 9 SCC 283]

E In *All India SC & ST Employees' Association and Anr.* v. *A. Arthur Jeen and Ors.,* [2001] 6 SCC 380, it was opined:

"10. Merely because the names of the candidates were included in the panel indicating their provisional selection, they did not acquire any indefeasible right for appointment even against the existing vacancies F and the State is under no legal duty to fill up all or any of the vacancies as laid down by the Constitution Bench of this Court, after referring to earlier cases in *Shankarsan Dash* v. *Union of India.* Para 7 of the said judgment reads thus :-

"It is not correct to say that if a number of vacancies are notified for G appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under H no legal duty to fill up all or any of the vacancies. However, it does

not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken *bona fide* for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana* v. *Subhash Chander Marwaha, Neelima Shangla* v. *State of Haryana or Jatendra Kumar* v. *State of Punjab*."

9. The principles laid down in the aforementioned cases have been followed by this Court in *Food Corporation of India and Ors.* v. *Bhanu Lodh and Ors.*, [2005] 3 SCC 618 stating:

"14. Merely because vacancies are notified, the State is not obliged to fill up all the vacancies unless there is some provision to the contrary in the applicable rules. However, there is no doubt that the decision not to fill up the vacancies, has to be taken *bona fide* and must pass the test of reasonableness so as not to fail on the touchstone of Article 14 of the Constitution. Again, if the vacancies are proposed to be filled, then the State is obliged to fill them in accordance with merit from the list of the selected candidates. Whether to fill up or not to fill up a post, is a policy decision, and unless it is infected with the vice of arbitrariness, there is no scope for interference in judicial review..."

10. In *Pitta Naveen Kumar and Ors.* v. *Raja Narasaiah Zangiti and Ors.*, [2006] 10 SCC 261, this Court observed :

"The legal position obtaining in this behalf is not in dispute. A candidate does not have any legal right to be appointed. He in terms of Article 16 of the Constitution of India has only a right to be considered therefor. Consideration of the case of an individual candidate although ordinarily is required to be made in terms of the extant rules but strict adherence thereto would be necessary in a case where the rules operate only to the disadvantage of the candidates concerned and not otherwise..."

11. Furthermore, the Division Bench was not at all justified in directing grant of service benefits to the respondent from the date on which the appointed candidate at serial No.9 in the merit list ought to have joined the

A post. Such a direction, in our opinion, is wholly unwarranted.

We, however, cannot set aside the impugned judgment because of the fact that the State has appointed the respondent during the pendency of this Special Leave Petition. We may furthermore notice that even a stay of further proceedings in the contempt petition has been passed by this Court by an B order dated 16.05.2007. We, therefore, are of the opinion that it will not be proper for this Court now at this juncture to set aside the said appointment as the appointment granted in favour of the respondent by the State was not by reason of his merit in the select list but by reason of the orders of the High Court. We, therefore, in exercise of our jurisdiction under Article 142 of the C Constitution of India and keeping in view the fact that the matter is pending for a long time, are of the opinion that a direction should be issued that the appointment of the respondent may be directed to be continued as if he was appointed on and from the date he joined the service.

12. The appeal is allowed to the afore mentioned extent. Parties are left D to bear their own costs.

N.J. Appeal partly allowed.