

Azhar Ali Khan and Others

Vs

Commissioner, Municipal Corporation of Delhi and Others

Civil Miscellaneous Petitions Nos. 3068 of 1984 and 3069 of 1984 in Civil Writ Petition No. 1194 of 1979

(V. D. Tulzapurkar, A. Varadarajan JJ)

18.04.1984

JUDGMENT

VARADARAJAN, J. -

1. C. M. P. No. 3068 of 1984 is by the first respondent in Writ Petition No. 1194 of 1979 (Municipal Corporation of Delhi) for a direction that having regard to changed circumstance the Corporation need not fill in the gaps in the seniority list of 1978-79 relating to Assistant Engineers by direct recruitment. C. M. P. No. 3069 of 1984 is by the petitioner in the same writ petition for taking proceedings against respondents 1 and 2 in the writ petition for contempt of this Court's order dated July 13, 1983 made in the writ petition and for directing those two respondents to forthwith implement that order and fill up the available 32 posts of Assistant Engineers from amongst the petitioners "who were qualified and eligible according to the recruitment rules" and to restrain those respondents from filling up the posts in the direct recruitment quota from amongst diploma holders on current duty charge or on ad hoc basis or in any other manner.

2. By our order dated July 13, 1983 we allowed prayers Nos. 1, 2, 3 and 5 in the writ petition as indicated in our judgment with costs and dismissed the writ petition in other respects. Prayer No. 1 in the writ petition was to direct respondent 1 in the writ petition to fill up eight posts of Assistant Engineers from amongst those in the select panel approved on May 2, 1979. As regards that prayer what has been ordered by us is this : [SCC para 45, p. 593 : SCC (L & S) p. 459]

... there is nothing wrong in the respondent 1 - Corporation proceeding to appoint Assistant Engineers (Civil) by direct recruitment as per the Recruitment Regulations or in fixing the 50 : 50 quota and working it out or in the selection of the petitioners in Writ Petition No. 1194 of 1979 as Assistant Engineers pursuant to the decision to appoint eight Assistant Engineers (Civil) by direct recruitment in the interviews held for that purpose on March 6 and 7, 1979 and that respondents 1 and 2 should issue orders of appointment to those posts to eight of the petitioners in Writ Petition No. 1194 of 1979 who are in the select list within six weeks from this date (July 13, 1983), if not already issued as undertaken by Mr. U. R. Lalit (senior counsel of respondents 1 and 2) on July 29, 1981 within five months from that date.

3. Prayer No. 2 in the writ petition was to quash the office order dated April 11, 1978 entrusting Junior Engineers with current duty charge of the posts of Assistant Engineers and the office order dated June 21, 1979 promoting 2 Junior Engineers as Assistant Engineers on current duty charge on their own pay scale. As regards that prayer what we have stated in our order in the writ petition is this : [SCC para 54, p. 598 : SCC (L & S) p. 464]

Continuing current duty charge and ad hoc appointments for such a long period exceeding the period of one year mentioned in the said memorandum dated December 30, 1976 of the Government of India is irregular though that memorandum could not be stated to be automatically binding on respondent 1. What is totally wrong is that appointment of Junior Engineers on current duty charge as Assistant Engineers has been made by the impugned order dated June 21, 1979 even after the approval of the select list prepared for the appointment of eight Assistant Engineers those persons who are in the select list. In these circumstances we hold that the appointment of six diploma-holder Junior Engineers by the order dated April 10, 1978 (Annexure I) and of two such Junior Engineers by the order dated June 21, 1979 (Annexure M) as Junior Engineers on current duty charge for periods which are proved to be too long is irregular and we quash the same.

4. Prayer No. 3 in the writ petition was to direct respondent 1 to fill up the remaining posts of Assistant Engineers in the direct recruitment quota from amongst the empanelled petitioners who were graduate Junior Engineers. As regards that prayer what he have ordered in the writ petition is this : [SCC para 46, pp. 593-94 : SCC (L & S) pp. 459-60]

Respondent 1 is admittedly bound by the Recruitment Regulations made with the approval of the Central Government as required by Section 480(2) of the Act and it shall fill the remaining posts of Assistant Engineers (after filling up the eight posts of Assistant Engineers as aforesaid in regard to prayer No. 1) in the direct recruitment quota which are kept vacant in the seniority list dated September 2, 1978 (Annexure G in Writ Petition No. 1194 of 1979) and any further posts which might have become available thereafter or become available in view of our decisions in these two writ petitions or otherwise in accordance with those Recruitment Regulations within six months from today (July 13, 1983) or from the date on which further vacancy to the posts of Assistant Engineers in the direct recruitment quota arises, as the case may be, if permissible from out of the select list approved on May 2, 1979.

5. Prayer No. 5 in the writ petition was to restrain respondent 1 from giving ad hoc promotions to current duty charge holders amongst Junior Engineers. As regards that prayer what we have ordered in the writ petition is this : [SCC para 55, pa 598 : SCC (L & S) p. 464]

Respondent 1 shall not make current duty charge/ad hoc appointments and promotions except strictly and truly in accordance with the instructions and Regulations referred to above and other instructions, if any, issued in that regard.

6. In C. M. P. No. 3069 of 1984 filed by the petitioners in the writ petition for taking proceedings for contempt of this Court's order dated July 13, 1983 made in the writ petition and for giving directions it is alleged that respondent 1 has not complied with this Court's order to fill up the remaining posts of Assistant Engineers (remaining after filling up 8 posts of Assistant Engineers as mentioned above). It is stated that the total number of posts still available as on the date of C. M. P. No. 3069 of 1984 is 32, that there were 26 direct recruitment quota posts as on the date of the writ petition as detailed therein, that 11 out of those 26 posts have been filled up already leaving 15 posts and that those 15 posts are to be filled up from amongst the remaining empanelled petitioners/Graduate Junior Engineers viz. petitioners 1, 2, 4, 6 to 9, 11, 13, 16, 20, and 29 in accordance with this Court's order made in the writ petition. The petitioners' complaint is that it has not been done in spite of letters and telegram dated July 13, 1983, August 19, 1983, September 7, 1983, October 5, 1983 and October 7, 1983 sent by the petitioners and their counsel and Union and that on the other hand it appears from C. M. P. No. 3068 of 1984 filed by respondent 1 for directions that a Resolution No. 493 dated September 26, 1983 has been passed for filling up all the

posts of Assistant Engineers by promotion and not by direct recruitment. It is also alleged in C. M. P. No. 3069 of 1984 that respondent in the office orders dated April 10, 1978 and June 21, 1979 in spite of the fact that those orders have been quashed by our order dated July 13, 1983 made in the writ petition. It is in these circumstances that the prayer in C. M. P. No. 3069 of 1984 mentioned above have been made.

7. In C. M. P. No. 3068 of 1984 it is alleged that 8 posts of Assistant Engineers have been filled up as per this Court's order and that as per the recommendations of the Appointment, Promotion, Disciplinary and Allied Matters Committee of the Corporation that the Recruitment Regulations for the posts of Assistant Engineers in the general wing be amended so as to provide for 100 per cent departmental promotion Resolution No. 493 dated September 26, 1983 has been passed by the Corporation and the Commissioner of the Corporation has thereby been prohibited from filling up any post of Assistant Engineer by direct recruitment even while the recruitment rules are not to be approved by the Union Public Service Commission and therefore it has become necessary for the Corporation to approach this Court for a direction that in view of the change in the circumstances the Corporation need not fill up the gaps in the seniority list of 1978-79 relating to Assistant Engineers by direct recruitment.

8. No counter-affidavit has been filed in C. M. P. No. 3068 of 1984 evidently because the stand of the respondents in that petition is reflected by the allegations made in C. M. P. No. 3069 of 1984. In the counter-affidavit of the Assistant Commissioner (Engineering) of the Municipal Corporation of Delhi filed in C. M. P. No. 3069 of 1984 it is stated that the order of this Court to issue orders of appointments to 8 degree holder/Junior Engineers out of those in the select list approved on May 2, 1979 has been complied with and that the appointment for the remaining posts of Assistant Engineers in the direct recruitment quota could not be made in view of the said Resolution No. 493 of 1983 dated September 26, 1983 to fill up all the posts of Assistant Engineers only by promotion and not by direct recruitment. It is further stated in the counter-affidavit that this Court has ordered that the vacant posts of Assistant Engineers remaining after absorbing 8 graduate Junior Engineers from the select list approved on May 2, 1979 may be filled from that select list if it is permissible to make the appointments from out of that list. It is contended that the select panel was for a period of two years as per circular issued by the Commissioner and therefore the panel should have got exhausted by May, 1, 1981. As regards the non-reversion of ad hoc appointees/promotees mentioned in the orders dated April 10, 1978 and June 21, 1979 it is stated in the counter-affidavit that their reversion is dependent upon appointments to the posts of Assistant Engineers being made, which could not be done in view of the supervening circumstances viz., Resolution No. 493 dated September 26, 1983, and that it is wrong to say that the representations made in the letters etc. referred to in C. M. P. No. 3069 of 1984 were not considered from the point of view of implementing the judgment of this Court, but they were considered before the Corporation approached this Court for directions in C. M. P. No. 3068 of 1984.

9. Dr. Y. S. Chitale, appearing for the persons whose appointments/promotions were made by those orders dated April 10, 1978 and June 21, 1979 submitted that those persons would have to be reverted as per this Court's order dated July 13, 1983 in the writ petition and he invited our attention to the said Resolution No. 493 dated September 26, 1983 as being a bar to the Corporation making appointments as per this Court's order. Mr. Ghosh appearing for respondents 1 and 2 also relied upon the said Resolution and prayed for the directions asked for in C. M. P. No. 3068 of 1984 being given. There is no substance in the explanation given by respondent 1 for not reverting the Junior Engineers who were appointed/promoted by those orders dated April 10, 1978 and June 21, 1979 which have been quashed by our order dated July 13, 1983. There is no direction in our order that

the quashing is subject to any condition, much less to appointments being made as per our order dated July 13, 1983 to the posts of Assistant Engineers. The reversion of those incumbents should have been made forthwith in compliance with our order dated July 13, 1983 quashing those office orders dated April 10, 1978 and June 21, 1979. We hereby direct respondents 1 and 2 to comply with this Court's order quashing those two officer orders by reverting the concerned officers within 10 days from this date. If this is not done within 10 days from the date of this order the petitioners in C. M. P. No. 3069 of 1984 may draw this Court's attention and mover afresh for action being taken against respondents 1 and 2 for contempt of this Court's order.

10. Respondents 1 and 2 cannot be allowed to circumvent this Court's order dated July 13, 1983 made in the writ petition regarding the appointment of Assistant Engineers from the select panel of graduate Junior Engineers approved on May 2, 1979 by pleading the Resolution dated September 26, 1983 as a supervening circumstance or by contending that the select list approved on May 2, 1979 got exhausted or had expired on May 1, 1981. When Mr. U. R. Lalit made the offer on July 29, 1981 to make the 8 appointments of assistant Engineers from that select list approved on May 2, 1979 it was evidently in force and the appointments to those 8 posts were made only from out of that list thereafter. Now it is not open to respondent 1 to contend that the select list was valid only for 2 years and had expired on May 1, 1981. Resolution No. 493 dated September 26, 1983 has been passed in the face of our clear direction to fill up the remaining posts of Assistant Engineers in the direct recruitment quota as per the Recruitment Regulations made with the approval of the Central Government as required by Section 480 (2) of the Act which were in force. That Resolution is said to have been submitted to the Union Public Service Commission for its approval. The validity of that Resolution and the question whether it could override by the learned counsel for respondents 1 and 2 or the learned counsel appearing for the promotees covered by those orders dated April 10, 1978 and June 21, 1979. The Resolution which is of its own making cannot be pleaded by respondent 1 as any inability or bar to comply with this Court's direction given in the writ petition on July 13, 1983. Respondents 1 and 2 shall make the appointments of Assistant Engineers for the remaining posts of Assistant Engineers in the direct recruitment quota as per our order dated July 13, 1983 and out of the select list approved on May 2, 1979 within one month from today failing which the petitioners in C. M. P. No. 3069 of 1984 may draw this Court's attention to that fact and move a fresh petition for taking proceedings against respondents 1 and 2 for contempt of this Court's order dated July 13, 1983. C. M. P. No. 3069 of 1984 is allowed accordingly to that extent. C. M. P. No. 3068 of 1984 is dismissed. There will be no order as to costs.

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