

Miss Neelima Shangla, Ph. D. Candidate

Vs

State of Haryana and Others

Writ Petition (Civil) No. 292 of 1986

(O. Chinnappa Reddy, M. M. Dutt JJ)

17.09.1986

JUDGMENT

CHINNAPPA REDDY, J. -

1. Miss Neelima Shangla desires to be appointed to the Haryana Civil Service (Judicial Branch). She has a brilliant academic record. The certificates produced by her show that from Matriculation to LLB she has passed every one of her examination in the first division. She was ranked No. 2 in the LLB examination of the Punjab University. She was awarded the national merit scholarship and the UGC's scholarship. She was also awarded the medal for the best all-round student of the Law Department in the year 1980-81. Her extra-curricular activities also appear to be of a very high order. She was President of the College Young Speakers' Club, Vice-President of the College Student's Council, the best camper and debator and represented the Punjab University in the All India Rock Climbing and Mountaineering Camp. She was the student Editor of the College Magazine, the Law Review and the Punjab University Magazine. She has also some published works to her credit. She appeared at the competitive test held in 1983-84 for selection to the Haryana Civil Service (Judicial) Branch. She secured 60.8 per cent marks in the written test and 50.5 per cent marks in the viva voce test. She was ranked No. 24. It may be mentioned here that there were altogether 774 applicants, while 390 only appeared at the test. Out of the candidates who appeared at the test, 54 candidates belonging to the general category, four candidates belonging to backward classes, four candidates belonging to scheduled castes and two candidates belonging to the category of ex-servicemen, qualified for appointment by securing the prescribed minimum of 55 per cent. According to the petitioner, though there were 54 vacancies altogether, the Public Service Commission purported to recommend 26 candidates only and they included 17 from the general category. The petitioner claims that 32 candidates in order of merit from the general category should have been selected for appointment and that the Service Commission illegally withheld the names of all the successful candidates from the government and the High Court. She contends that if the rules had been adhered to, she would have been selected for appointment. To appreciate her submission, it is necessary to refer to the relevant rules. The rules relating to the appointment of Subordinate Judges in Haryana are in six part - A, B, C, D, E, and F. Part A deals with qualifications. Part B deals with submission of rolls. Part C deals with examination of candidates. Rule 1 of Part C provides that an examination will be held at a place to be determined by the Haryana Public Service Commission. Rule 5 provides that the Judges of the High Court may, from time to time, declare the subjects in which the examination will be held. Rule 7 prescribes that no candidate shall be called for the viva voce test unless he obtains at least 45 per cent marks in the aggregate in all the written papers and 33 per cent marks in the language paper, Hindi (in Devanagari script). Rule 8 is important and it is as follows :

No candidate shall be considered to have qualified in the examination unless he obtains at least 55 per cent in the aggregate of all papers including viva voce test.

The merit of the qualified candidates shall be determined strictly according to the marks obtained by them.

Provided that in case two or more candidates obtain equal marks, their merit shall be determined according to the marks secured by them in the viva voce and if the marks in the viva voce of the candidates are also equal, the older in age shall be placed higher in order of merit.

Rule 10 is also important and it is as follows :

(i) The result of the examination will be published in Haryana Government Gazette.

(ii) Candidates will be selected for appointment strictly in the order in which they have been placed by the Haryana Public Service Commission in the list of those who have qualified under Rule 8 :

Provided that in the case of candidates belonging to the Scheduled Castes/Tribes and others Backward Classes, government will have a right to select in order of merit a candidate who has merely qualified under Rule 8, irrespective of the position obtained by him in the examination :

Provided further that the selection of candidates belonging to the Scheduled Castes/Tribes and other Backward Classes in the order of merit inter se shall be made against the vacancies reserved for them and in the manner prescribed by government from time to time.

Part D of the rules deals with "Appointment". Rule 1 of Part D is as follows :

The names of candidates, selected by government for appointment as Subordinate Judges under Rules 10 and 11 of Part C, shall be entered on the High Court Register in the order of their selection.

Rule 7(1) may also be extracted and it is as follows :

Whenever it shall appear to the Judges that a vacancy or vacancies in the cadre of the Judicial Branch of the Haryana Civil Service, whether permanent, temporary or officiating, should be filled, they will make a selection from the High Court Register in the order in which the names have been entered in the register under Rule 1 of this Part. The name or names of the selected candidate or candidates will be forward to government for appointment as Subordinate Judges under Article 234 of the Constitution of India. Every Subordinate Judge shall, in the first instance, be appointed on probation for two years but this period may be extended from time to time expressly or impliedly so that the total period of probation including extension, if any, does not exceed three years.

Explanation. - The period of probation shall be deemed to have been extended impliedly if a Subordinate Judge is not confirmed on the expiry of his period of probation.

Rule 8 is again important and it is as follows :

There is no limit to the number of names borne on the High Court Register but ordinarily no more names will be included than are estimated to be sufficient for the filling of vacancies which are anticipated to be likely to occur within two years from the date of selection of candidates as a result of an examination.

2. The scheme of the rules appears to be that the Public Service Commission should hold first a written test in subjects chosen by the High Court and next a viva voce test. Unless a candidate secures 45 per cent of the marks in the written papers and 33 per cent in the language paper, he will not be called for the viva voce test. All candidates securing 55 per cent of the marks in the aggregate in the written and viva voce tests are considered as qualifies for appointment, their merit being determined strictly in accordance with the marks obtained by them. The result of the examination is required to be published in the Haryana Gazette and the selection for appointment is to be made strictly in the order in which they have been placed by the Service Commission in the list of candidates qualified under Rule 8 of Part C. The names of the selected candidates are to be entered in a Register maintained by the High Court in the order of their selection and appointments are to be made from the names entered in the Register in that order. The number of names to be entered in the Register maintained by the High Court may be sufficient to fill vacancies anticipated to occur within two years from the date of selection of candidates as a result of the examination. Therefore, it appears that the duty of the Public Service Commission is confined to holding the written examination, holding the viva voce test and arranging the order of merit according to marks among the candidates who have qualified as a result of the written and the viva vice tests. Thereafter the Public Service Commission is required to publish the result in the gazette and, apparently, to make the result available to the government. The Public Service Commission is not required to make any further selection from the qualified candidates and is, therefore, not expected to withhold the names of any qualified candidates. The duty of the Public Service Commission is to make available to the government a complete list of qualified candidates arranged in order of merit. Thereafter the government is to make the selection strictly in the order in which they have been placed by the Commission as a result of the examination. The names of the selected candidates are then to be entered in the Register maintained by the High Court strictly in that order and appointments made from the names entered in that Register also strictly in the same order. It is, of course, open to the government not to fill up all the vacancies for a valid reason. The government and the High Court may, for example, decide that, though 55 per cent is the minimum qualifying mark, in the interests of higher standards, they would not appoint anyone who has obtained less than 60 per cent of the marks. Something of that nature happened in *State of Haryana v. Subash Chander Marwaha* [(1974) 3 SCC 220 : 1973 SCC (L&S) 488]. In that case, though the rules prescribed a minimum of 45 per cent of the aggregate marks to be qualified for appointment as a Subordinate Judge, the High Court and the government decided not to appoint candidates who had secured less than 55 per cent marks. The result was that although there were a large number of vacancies, only a few candidates were selected for appointment. The selection was challenged on the ground that it could not be so restricted when qualified candidates were available. This Court rejected the submission and upheld the selection. However, as we said, the selection cannot arbitrarily be restricted to a few candidates, notwithstanding the number of vacancies and the availability of qualified candidates. There must be a conscious application of the mind of the government and the High Court before the number of persons selected for appointment is restricted. Any other interpretation would make Rule 8 of Part D meaningless. In the present case, though the rules required the Public Service Commission to publish the result of the examination and, apparently, also to communicate the result to the government, the Public Service Commission did not publish the result in the first instance and sent

only the names of 17 candidates belonging to general category to the government, though many more had qualified. That was wrong. The names of all the qualified candidates had to be sent to the government. The reason given by the Public Service Commission for not communicating the entire list of qualified candidates to the government is that they were originally informed that there were only 28 vacancies. That is not a sound reason at all. Under the "Rules relating to the appointment of Subordinate Judges in Haryana", the Public Service Commission is not concerned with the number of vacancies at all. Nor is it expected to withhold the full list of successful candidates on the ground that only a limited number of vacancies are available. The Government of Haryana has taken the stand that they were unable to select and appoint more candidates as the names of only a few candidates were sent to them by the Public Service Commission. It now transpires that even before the Public Service Commission sent its truncated list to the government, the High Court had already informed the government that there were more vacancies which required to be filled. The government not knowing that the names of several candidates who were qualified had been withheld from the government by the Service Commission, wrote to the Service Commission to hold a fresh competitive examination. If the government had been aware that there were qualified candidates available, they would have surely applied Rule 8 of Part D and made the necessary selection to be communicated to the High Court. The net result is that qualified candidates, though available, were not selected and were not appointed. Miss Neelima Shangla is one of them. In the view that we have taken of the rules, Miss Neelima Shangla is entitled to be selected for appointment as Subordinate Judge in the Haryana Civil Service (Judicial Branch). By an interim order of this Court, one post of Subordinate Judge has been kept vacant for her.

3. We direct the first respondent (Government of Haryana) to include the name of the petitioner (Miss Neelima Shangla) in the 1984 list of candidates selected for appointment as subordinate judges in the Haryana Civil Service (Judicial Branch) and forward the same to the High Court of Punjab and Haryana for inclusion in the High Court Register maintained under Rule 1 of Part D of the Rules. She will be entitled to her due place in the Seniority List of the 1984 batch. The petitioner will be entitled to her costs which we quantify at Rs. 5000.

4. As a result of our finding a few more candidates would also be entitled to be included in the Select List and ordinarily we would have directed their inclusion in the list. But having regard to the fact that most of the others have not chosen to question the selection and the circumstance that two years have elapsed we do not propose to make any such general order as that would completely upset the subsequent selection and create confusion and multiplicity of problems. The cases of any other candidate who may have already filed a writ petition in this Court or the High Court will be disposed of in the light of this judgment. Those who have not so far chosen to question the selection will not be allowed to do so in the future because of their laches.

</html