Shankarsan Dash

Vs

Union of India

Civil Appeal No. 8613 of 1983

(B. C. Ray, K. Janganntha Shetty, L. M. Sharma, M. N. Venkatachaliah, J. S. Verma JJ)

30.04.1991

JUDGEMENT

SHARMA, J.:-

1.This appeal was earlier heard by a Division Bench and was referred to a Constitution Bench for examining the question whether a candidate whose name appears in the merit list on the basis of a competitive examination acquires indefeasible right of appointment as a Government servant if a vacancy exists. Reference was made to the decisions in State of Haryana v. Subhash Chander Marwaha, (1974) 1 SCR 165: AIR 1973 SC 2216, Miss Neelima Shangla v. State of Haryana, (1986) 4 SCC 268: (AIR 1987 SC 169) and Jitendra Kumar v. State of Punjab, (1985) 1 SCR 899: (AIR 1984 SC 1850).

2. The appellant was selected in the combined Civil Services Examination held by the Union Public Service Commission for appointment to several services including the Indian Police Service (in short 'the IPS') and the Police Services Group 'B'. The examination had been held in October, 1977 and the result was announced in May, 1978. A combined merit list for the IPS and the Police Services Group 'B' was announced which included the name of the appellant. Out of the total number of 70 vacancies in the IPS announced to be filled up, 54 were of general category and the remaining 16 reserved for Scheduled Castes/ Scheduled Tribes candidates. The position of the appellant in the merit list was not high enough to be included in the IPS and he was offered appointment to the Delhi Andaman and Nicobar Police Service (hereinafter referred to as the 'DANIP') in Police Service Group 'B' which he accepted. On account of several candidates allotted to Police Services Group 'B' not joining, the position of the appellant improved and ultimately he was on the top of the list.

3. In June, 1979, 14 vacancies arose in the IPS due to selected candidates not joining the service. Out the same, 11 were in the general category and 3 in the reserved category. Three vacancies in the reserved category were filled up by the candidates who had been earlier appointed in DANIP Service, but no appointments were made to general category vacancies. The appellant, by a representation, prayed that these vacancies also should be filled up. The request was turned down, and the appellant moved the Delhi High Court by a writ application under Article 226 of the Constitution, which was dismissed in limine by the impugned order.

4. The case of the appellant is that since ultimately several vacancies in the general category of the IPS remained unfilled, he was entitled to be appointed in one of them, and the authorities were not right in rejecting his representation. It has been contended that after calculating the number of vacancies in the IPS, it was announced that appointments would be made in 54 vacancies of general

category, and steps for recruitment were accordingly taken. The appellant along with others appeared at the elaborate test held for the purpose and he was found qualified for the appointment. In that situation the respondent could not refuse to fill up the vacancies and proceed to appoint the appellant in the Police Services Group 'B'. It has been argued that the correct procedure in similar situation was followed with respect to the reserved category and the three vacancies arising in identical situation were filled up from the candidates selected for DANIP Service, and there was no justification to refuse similar benefit to the appellant in the general category.

5. According to the case of the Union of India, the process for the recruitment in question started in 1977, and the tentative service allocation for IPS was completed before the commencement of the foundational course in July, 1978. All the candidates selected for IPS excepting those who were eligible to appear at the examination for the Indian Administrative Service scheduled to be held in October-November, 1978, and such other candidates who had not been finally cleared on account of pending medical examination or character verification had to attend the foundational course. Candidates allocated to Police Services Group 'B' were not required to undergo this course. By June, 1978, 7 more vacancies arose on account of candidates not joining IPS due to various, reasons, and 7 persons in order of merit from the joint list of the IPS and the Police Services Group 'B' were allowed to fill up these vacancies. The last one in this list of 7 candidates was Shekar Sinha at serial No. 94. The appellant could not get a chance as his position was 100th. This process of final service allocation was closed on 24-10-1978 or at the latest by 4-11-1978, in view of the process for recruitment for the year 1978, which had already started. The additional vacancies arising later, therefore, remained unfilled. The entire procedure which is followed for recruitment to the Services has been given in several affidavits of the respondent, and detailed information in this regard was supplemented by a further affidavit during the hearing of the appeal filed in the light of observations of the Bench.

6. Dealing with the appointments to reserved category, it has been stated in the counter-affidavit that the process which was followed in connection with the general category and which was being earlier followed for the reserved category also was relaxed in pursuance of a policy decision taken after examining all relevant circumstances and materials in regard to this category including the strength of the reserve category in the IPS, the result of the examinations for the year 1975, 1976 and 1977. The procedure which was being followed in the past was not relaxed in regard to the general category on account of vital differences obtaining in the relevant conditions in the two categories and the appellant's plea of alleged discrimination does not have any merit. Similarly the case of one Km. Vandana Srivastava cited by the appellant has also been distinguished and Mr. Goswami, therefore, did not pursue this plea any further in his final reply.

7. It is not correct to say that if a number of vacancies are notified for 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 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, (1974) 1 SCR 165: (AIR 1973 SC 2216), Miss Neelima Shangla v. State of Haryana, (1986) 4 SCC 268:

(AIR 1987 SC 169), or Jitendra Kumar v. State of Punjab, (1985) 1SCR 899 : (AIR 1984 SC 1850).

8. In State of Haryana v. Subhash Chander Marwaha, (AIR 1973 SC 2216) (supra) 15 vacancies of Subordinate Judges were advertised, and out of the selection list only 7, who had secured more than 55% marks, were appointed, although under the relevant rules the eligibility condition required only 45% marks. Since the High Court had recommended earlier to the Punjab Government that only the candidates securing 55% marks or more should be appointed as Subordinate Judges, the other candidates included in the select list were not appointed. They filed a writ petition before the high Court claiming a right of being appointed on the ground that vacancies existed and they were qualified and were found suitable. The writ application was allowed. While reversing the decision of the High Court, it was observed by this Court that it was open to the Government to decide how many appointments should be made and although the High Court had appreciated the position correctly, it had "somehow persuaded itself to spell out a right in the candidates because in fact there were 15 vacancies". It was expressly ruled that the existence of vacancies does not give a legal right to a selected candidate. Similarly, the claim of some of the candidates selected for appointment, who were petitioners in Jitendra Kumar v. State of Punjab, (AIR 1984 SC 1850), was turned down holding that it was open to the Government to decide how many appointments would be made. The plea of arbitrariness was rejected in view of the facts of the case and it was held that the candidates did not acquire any right merely by applying for selection or even after selection. It is true that the claim of the petitioner in the case of Miss Neelima Shangla v. State of Haryana, (AIR 1987 SC 169) was allowed by this Court but not on the ground that she had acquired any right by her selection and existence of vacancies. The fact was that the matter had been referred to the Public Service Commission which sent to the Government only the names of 17 candidates belonging to the general category on the assumption that only 17 posts were to be filled up. The Government accordingly made only 17 appointments and stated before the Court that they were unable to select and appoint more candidates as the commission had not recommended any other candidate. In this background it was observed that it is, of course, open to the Government not to fill up all the vacancies for a valid reason, but the selection cannot be arbitrarily restricted to a few candidates notwithstanding the number of vacancies and the availability of qualified candidates; and there must be a conscious application of mind by the Government and the High Court before the number of persons selected for appointment is restricted. The fact that it was not for the Public Service Commission to take a decision in this regard was emphasised in this judgment. None of these decisions, therefore, supports the appellant.

9. Mr. Goswami appearing in support of the appeal has contended that in view of the relevant statutory rules, the authorities were under a duty to continue with the process of filling up all the vacancies until none remained vacant. Reference was made to R. 4 of the Indian Police Service (Cadre) Rules, 1954, Rr. 3, 4, 6 and 7 of the Indian Police Service (Recruitment) Rules, 1954 and Rr. 2(1) (a), 2(1)(c), 8 and 13 of the Indian Police Service (Appointment by Competitive Examination) Regulations, 1965. We do not think any of these rules comes to the aid of the appellant. Rule 3 of the Cadre Rules directs constitution of separate cadres for States or group of States, and R. 4 empowers the Central Government to determine the strength in consultation with the State Governments. The strength has to be re-examined at intervals of 3 years. Rule 3 of Recruitment Rules deals with the constitution of the service, and R. 4 the method of recruitment. Rules 6 and 7 give further details in this regard. The learned counsel could not point out any provision indicating that all the notified vacancies have to be filled up. Similar is the position with respect to the Competitive Examination Regulations. Regulation 2(1)(a) defines available vacancies as vacancies determined by the Central Government to be filled on the results of the examination described in Regulation 2(1)(a). Regulation 8 prescribes that the candidates would be considered for

appointment to the available vacancies subject to provisions 9 to 12 and Regulation 13 clarifies the position that a candidate does not get any right to appointment by mere inclusion of his name in the list. The final selection is subject to satisfactory report on the character, antecedent and suitability of the candidates. We, therefore, reject the claim, that the appellant had acquired a right to be appointed against the vacancy arising later on the basis of any of the rules.

10. The main contention on behalf of the appellant has been, however, that the authorities in keeping the vacancies arising later unfilled acted arbitrarily. Mr. Goswami referred to several documents annexed to the special leave petition and affidavits filed on behalf of the parties and contended that although appointments of many candidates in the other services were made in the later vacancies, the vacancy in the Indian Police Service which subsequently became available to the appellant was refused without any just cause, resulting in illegal discrimination. This was emphatically denied on behalf of the respondent. Since the matter did not appear to be free from ambiguity on the basis of the affidavits before us, we decided to examine the factual aspects more thoroughly by examining the other available materials on the records of the Union of India, and accordingly the learned counsel for the respondent got the relevant departmental files called. Two further affidavits were also filed along with Photostat copies of a large number of documents, which we examined at some length with the aid of the learned advocates for both sides. From the materials produced before us it is fully established that there has not been any arbitrariness whatsoever on the part of the respondent in filling up the vacancies in question or the other vacancies referred to by the learned counsel for the appellant. The process of final selection had to be closed at some stage as was actually done. A decision in this regard was accordingly taken and the process for further allotment to any vacancy arising later was closed. Mr. Goswami relied upon certain appointments actually made subsequent to this stage and urged that by those dates the further vacancies in the Indian Police Service had arisen to which the appellant and the other successful candidates should have been adjusted. We do not find any merit in this contention. It is not material if in pursuance of a decision already taken before closing the process of final selection, the formal appointments were concluded later. What is relevant is to see as to when the process of final selection was closed. Mere completing the formalities, cannot be of any help to the appellant. We do not consider it necessary to mention all the details in this connection available from the large number of documents which we closely examined during the hearing at considerable length and do not have any hesitation in rejecting the argument of the learned counsel in this regard based on the factual aspect.

11. So far the decision to adopt a different policy with respect to filling up of the reserved vacancies is concerned the same is justified on account of the special circumstances mentioned in the respondent's affidavits. The decision to depart from the confirmed policy was taken after a consideration by the authorities of the position in regard to unavailability of qualified candidates from year to year adversely affecting the desired strength of the reserved candidates in the services and cannot be condemned on the grounds of arbitrariness and illegal discrimination.

12. In the result, we do not find any merit in the appeal which is accordingly dismissed, but in the circumstances without costs.

Appeal dismissed.

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