Babita Prasad and Others

Vs

State of Bihar and Others

Civil Appeal No. 2082 of 1991

(L.M. Sharma, Dr. A.S. Anand JJ)

08.12.1992

JUDGMENT

DR A. S. ANAND, J. :-

1. The controversy in all these cases revolves around the appointment of Assistant-teachers in the primary schools and the fallout of circular-letter, dated July 2, 1989, issued by the State of Bihar. The questions being identical, the same are being disposes of by this common judgment. Before dealing with the individual cases, a reference to the historical background would be necessary.

2. In the State of Bihar, appointment of teachers to primary schools were being made since 1970 on the basis of residence of the candidates in a particular district, the objective being to cater to the educational needs of the districts by providing men and resources from that districts, inviting applications from the residents of the district having requisite qualifications, for appointment as Assistant-teachers in the primary schools within the jurisdiction of District Education Superintendent. The minimum qualification and other requirements were set out in the advertisement. Appointments were made from a panel prepared on the basis of qualifications and eligibility of the candidates who had applied for such appointments. The panels were prepared district-wise. The High Court of Patna in Anil Kumar v. Chief Secretary declared the panels, prepared on the basis of residence in a particular district, as unconstitutional. The High Court, however, directed that the appointments already made from those panels should not be disturbed but the State was restrained from making any further appointments from the panels, prepared for the different districts. In the wake of the judgment in Anil Kumar case the Government of Bihar first issued directions to stay further appointments from the panels prepared on district-wise basis on March 1, 1989 and subsequently vide Government circular-letter dated July 2, 1989, issued further instructions regarding the appointment of primary teachers. The said letter reads as follows :

> #"FromMr. Mahesh Prasad,Additional Commissioner-cum-Special Secretary.To All Collectors/Deputy Commissioner. Dated July 2, 1989. Sub. : Regarding the appointment of Primary Teachers.Sir,##

As per instructions it is to say on the aforesaid subject you were directed to stay the appointment of Primary School Teachers through Letter No. 981 dated August 1, 1989 of this department.

2. The Government has taken the following decision after consultation with the Advocate General of Bihar in respect of the order given by the Hon'ble High Court vide C. W. J. C. No. 5490/86 and C. W. J. C. No. 3882/1988 :

1. The panel of the candidates which have been prepared on the basis of the inhabitant of the Distt. be treated as rejected.

B. Those candidates who have already been appointed from this panel will continue their appointment.

For the preparation of a panel of the appointment of teachers, data should be collected from the officer of the Directorate of Primary Education. There should be no restriction for the inhabitant of the District. The decision has also been taken that in all proceedings relating to appointment, the decision will be taken by the committee formed by the Distt. Authority of general public notice will be issued from the office of the Directorate of Primary Education only for application.

According to that public advertisement, the last date for filing the application will be the same as well as the scrutiny of the form will also be the same in each district.

(d) Those candidates who are already in the panel but they could not be appointed due to this instruction will also be covered by the application.

On the basis of the required suitability, after including in the new panel they will be given age relaxation by the competent authority.

#Yours faithfully,Sd/- Illegible(Mahesh Prasad)"##

3. As a consequence of the letter, dated July 2, 1989, the Collectors and the Deputy Commissioners made no further appointments of Assistant-teachers in the primary schools from the existing panels. The aggrieved parties, namely, those who were not appointed in spite of being on the panel and some others filed various writ petitions in the High Court of Panel and some others filed various writ petitions in the High Court of Patna which came to be disposed of by different judgments, against which civil appeals have been filed by special leave in this Court. Besides, Writ Petition No. 911 of 1991 has been filed by unappointed trained primary school teachers of District Gopalganj directly in this Court under Article 32 of the Constitution.

4. Taking note of the aforesaid background, we shall now consider the individual cases.

Civil Appeal Nos. 3218 of 1991, 3219 of 1991, 3220 of 1991

5. Appellants in all these cases were appointed on June 16, 1988 or thereabout in District Siwan, from the panel prepared in 1985. Their appointments were quashed by the High Court in writ petition Birendra Kumar Srivastava v. State of Bihar filed by some of the non-appointed candidates of the same district, respondents 1 to 26 herein. The appellants have questioned that part of the judgment in Birendra Kumar Srivastava which quashes their appointments through these appeals on special leave being granted. All the appellants are admittedly continuing in service by virtue of the stay orders issued by this Court. Though Mr. Shanti Bhushan, learned Senior Advocate, appearing for the appellants, assailed the judgment of the High Court dated November 5, 1990 on various grounds, including the justification for continuation of district-wise selection, which according to him was not aimed at excluding anyone from selection and would be in the interest of local students because according to him the primary school teachers would be conversant with the different dialects in their own districts the familiarity with local environment etc. and therefore more suitable to teach, we need not deal with the contentions raised by Mr. Shanti Bhushan on merits, in view of the submission made by Mr. Sibal, learned senior counsel, appearing for the State of Bihar. Mr.

Sibal very fairly submitted that the teachers who had been appointed till July 2, 1989, before or after Anil Kumar judgment which was rendered on May 14, 1987 and were continuing in service by virtue of stay orders, issued by the courts, would be retained in service, and therefore, the questions raised by Mr. Shanti Bhushan, need not be decided as according to Mr. Sibal, those arguments may have a bearing on the rules which have since been promulgated by the State in 1991.

6. Mr. Shanti Bhushan, however, submitted that the appellants in all the three appeals deserve not only to be retained in service but also to be granted continuity of service and back wages. As already noticed, the appellants are continuing in service by virtue of the stay orders issued by this Court. Since, their appeals are being allowed in view of the concession made by the State of Bihar, their claim for continuity of service in our opinion is well founded. As, they are continuing in service, it is but appropriate that they should have the continuity of service for all purposes. However, so far as the prayer for grant of back wages for the interregnum of about four months is concerned, admittedly, they did not serve for that period and in our opinion, having regard to all the facts and circumstances of the case, their prayer for grant of back wages for the small period of four months is not justified. We, accordingly, decline to grant the relief of back wages, though direct their retention in service and grant them continuity of service throughout for all other purposes. Civil Appeal Nos. 3218-20 of 1991 are accordingly allowed to the extent indicated above and the judgment of the High Court in Birendra Kumar Srivastava is set aside to that limited extent only.

C. A. Nos. 3216 of 1991, 2082 of 1991 and W. P. (C) No. 911 of 1991

7. C. A. Nos. 3216 of 1991 and 2082 of 1991 are directed against the judgment of the High Court of Patna in CWJC No. 6595 of 1989, decided on November 12, 1990. While not granting any relief to the writ petitioners, the High Court also quashed the appointments of teachers who stood appointed out of the panel on the ground that no appointment made from an 'unconstitutional panel' could be allowed to stand. The appellants in both these appeals belong to District Gopalganj. While C. A. No. 3216 of 1991 has been filed by the appellants whose names had been brought on the panel but who had not been appointed till the panel was cancelled, C. A. No. 2082 of 1991 has been filed by the appellants who stood appointed out of the panel but have been ousted as a result of the High Court judgment, even though they were not parties before the High Court. W. P. No. 911 of 1991 has been filled by the trained primary school teachers who remained unappointed on account of the cancellation of the panel, vide G. O. dated July 2, 1989. Their position is akin to that of the appellants in C. A. No. 3216/1991.

8. The appellants in C. A. No. 3216 of 1991 had applied for being appointed as Assistant-teachers in the primary schools pursuant to an advertisement, issued in the year 1985. According to the advertisement, the residents of Gopalganj district alone, possessing the requisite qualifications, were entitled to make applications for such appointments. The appellants along with others were placed on a panel out of which 435 persons were appointed. In the wake of the judgment in Anil Kumar v. Chief Secretary declaring district-wise selection to be unconstitutional, the State Government of Bihar issued an July 2, 1989, after earlier staying the appointments from the panel vide order dated March 1, 1989, canceling the panel, while not disturbing the appointments already made. The appellants, who were 62 persons, before the High Court had apparently pleaded before the High Court for the quashing of the entire panel on the ground that it was unconstitutional and in the alternative to be treated on a par with the appointed teachers. The High Court addressed itself to those questions. Before the High Court respondents 9 and 10 had been impleaded in the writ petition in their representative capacity to represent the cases of the teachers who had already been appointed out of the panel, prepared in the year 1985. The High Court did not accept the stand of

the State that though the panel be quashed, the appointments already made be not disturbed. Relying upon an earlier judgment rendered by the High Court in the case of Birendra Kumar Srivastava v. State of Bihar (disposed of on November 5, 1990) wherein the entire panel of a particular district had been quashed and the appointments of the teachers from that panel declared invalid, the writ petition was allowed and the panel prepared for the district of Gopalganj including the appointments of 435 persons out of the said panel were quashed.

9. The grievance of the appellants in C. A. No. 3216 of 1991 is that the High Court had misunderstood the whole intent and nature of the writ petition as also the nature of the relief sought for therein. It was submitted by Mr. Tarkunde, the learned senior counsel, appearing for the appellants in C. A. No. 3216 of 1991, that the appellants had not sought the quashing of the panel prepared in 1985 and that on the other hand, their case was for quashing of the GO dated March 1, 1989, whereby, process of appointment from the panel prepared in 1985 had been stayed and GO dated July 2, 1989 whereby the existing panel had been cancelled, while retaining the persons in service already appointed from the same panel. Mr. Tarkunde submitted that the appellants had prayed for issuance of writ of mandamus commanding the respondents to forthwith appoint the appellants as Assistant-teachers in primary and middle schools in the district from the panel prepared in 1985 since they had been brought on the panels and had thereby acquired the right to be appointed because of the existence of vacancies. Mr. Tarkunde submitted that the names of the appellants had been sent through the employment exchange and they had been trained at the State expense and that once the training process had started, it should be taken to the logical conclusion culminating in the appointment of the appellants and, therefore, the circular issued by the State Government on July 2, 1989, cancelling the panel prepared as early as in 1985/1986, is illegal and unjustified. Learned counsel argued that though a person who is selected does not always have any indefeasible right of appointment, but since the appellants had been trained by the Government at their expense, such a general rule would not apply to their case and a valuable right had accrued to the appellants to be appointed and the cancellation of the panels violated that right. Apart from justifying the selection of primary school teachers on district-wise basis, the learned counsel submitted that the panel in which the names of the appellants figured was required to last till exhausted particularly since the vacancies existed. Emphasis was laid by Mr. Tarkunde on the discrimination which resulted by the Government Order of July 2, 1989 between the appointees and non-appointees and on that basis it was urged that the State Government Order, dated July 2, 1989, was violative of Article 14 of the Constitution of India and had to be struck down. According to Mr. Tarkunde, if the Government had decided to give the judgment in Anil Kumar case only prospective application an allowed all the persons on the panel to be appointed as and when the vacancies arose, no hardship would have occasioned to anyone. In substance the submission of Mr. Tarkunde is that all the persons whose names had figured in the panels, had acquired a vested right to be appointed as and when the vacancies arose and the cancellation of the panel took away the accrued rights of the panellists which is not permitted. He emphasised that the panel was required to remain effective till it was exhausted and its cancellation by the Government of July 2, 1989 was arbitrary and unjustified. In support of his submission, learned counsel relied upon certain judgments to which reference shall be made hereafter.

10. Mr. Kapil Sibal, learned Senior Advocate, appearing on behalf of the State of Bihar, countered the submissions of Mr. Tarkunde and argued that empanelment is only a condition of eligibility for purposes of appointment and that there can be no situation where empanelment itself can be equated with "selection", creating a vested right in an empanellist to an appointment. He submitted that the panel prepared was no more than arrangement of the particulars of the candidates, who had received training, and such a list could not be equated with even a fixed term panel which under certain

conditions may create some right in those empaneled to seek appointments during the life of the panel. Mr. Sibal fairly conceded that the appointments, made after the judgment in Anil Kumar case and till Government Order dated July 2, 1989 was issued, were against the law as laid down in Anil Kumar case but went on to say that those appointments were not to be disturbed because some equities had come in favour of those 'wrongly' appointed candidates and asserted that non-interference with their appointments cannot form the basis of an argument based on Article 14 as the appointed and non-appointed and non-appointed candidates formed two distinct classes. Mr. Sibal went on to urge that the empanelment was not made by any process of selection and having been sent for training, did not create any vested right to appointment in favour of the trainees as the training was designed to confer only eligibility to the empanellists for consideration.

11. In Anil Kumar case where the validity of the advertisement, dated May 7, 1985, issued by the District Superintendent of Education, Hazaribagh, inviting application for preparation of a panel of candidates for appointment to the posts of Assistant-teachers in the primary schools of the districts and order dated January 31, 1986, issued by the Special Secretary, Department of Education, Government of Bihar, laying down the requisite qualifications and conditions for being considered for appointment to the aforesaid posts, was put in issue, the High Court frowned upon district-wise selection and held that reservations made on the basis of residence in district were unconstitutional and consequently, the advertisement dated May 7, 1985 and order, dated January 31, 1986 as also the panel prepared on district-wise basis were quashed. Justice N. P. Singh, (as His Lordship then was) speaking for the Division Bench, however, observed :

> "... This writ application is, accordingly, allowed. But, as the person who have already been appointed are not party to this application, their appointments cannot be held to be invalid in their absence. However, the respondents are restrained from making any appointment from the panel prepared on the basis of the advertisement and the order aforesaid...."

12. The judgment in Anil Kumar case thus, saved the appointment of all those who had been appointed and were not party to the writ petition. The challenge in Anil Kumar case related to the appointments made from the panel prepared for District of Hazaribagh.

13. The judgment in Anil Kumar case was not challenged in any higher forum. It acquired finality. The State Government issued the circular, dated July 2, 1989 as a follow-up action of Anil Kumar judgment. The policy of holding district-wise selection was thereafter given up and in 1991 new rules dealing with subject have been promulgated. In this situation, we are unable to agree with Mr. Tarkunde that selections could still be made on district-wise basis, as according to him district-wise selection was just and fair and did not require to be given up. The question, however, which immediately comes up for our consideration is whether the persons who had been brought on the panel had acquired any indefeasible right of appointment on that account and incidentally, the other question would be whether the G. O. dated July 2, 1989 and the concession made by Mr. Sibal, appearing on behalf of the State of Bihar, discriminates between the persons appointed and not appointed out of the panel declared to be unconstitutional in Anil Kumar case thereby violating Article 14 of the Constitution of India.

14. Let us first consider the nature of the panel and the rights, if any, which could flow from it.

15. On April 3, 1964, vide letter No. PL/P/1-06/63-1726, the Secretary to the Government of Bihar directed all District Superintendents that "no untrained person should henceforth the appointed as a

teacher in any primary school". Accordingly to the programme stipulated for training, a person after having acquired the qualification of matriculation/intermediate/graduation was required to get enrolled in the Primary Teachers' Training College in any of the districts in Bihar. The training period was of two academic years. The training programme was followed by a written as well as viva-voce examination and the examination was held by Bihar State Primary Education Board for all the training colleges throughout the State of Bihar. The trainees, passing the examination, were awarded the certificate of BTC. Persons having qualification of B. Ed. were treated as equivalent to persons who had undergone and passed the aforesaid training and examination. The Government of Bihar issued directions based on a policy statement that in the primary schools of any district in Bihar, the residents of that district alone shall be entitled/eligible for appointment as a teacher. The training was undertaken by the candidates at the expense of the State Government. After successful completion of the training and the examination, a list of all qualified persons was arranged in a list according to their merit chronologically arranged year-wise. Thus, it would be seen that training was essential to give an eligibility to the person, otherwise qualified, to be brought on to the panel. Appointments were made on the basis if placement in the panel as and when a vacancy arose. However, the panel was not co-related either to the existing vacancies when the panel was prepared or even to the anticipated vacancies of the near future. The empanelment was not as a result of any process of selection either and none of the qualified trained teachers were excluded from being brought on the panel. The panel by the very nature of its preparation, was, therefore, no more than a list of all eligible qualified teachers arranged according to merit in a chronological order year-wise, which was utilised to make appointments of teachers as and when the vacancies arose. The panel prepared in different districts in a particular year had continued to remain in existence for year after year and the eligible and qualified trained teachers of the subsequent years were placed below the candidates of the earlier years, while appointments were made on the basis of placement in the panel. Did the person on such a panel acquire any indefeasible right to appointment?

16. In State of Haryana v. Subash Chander Marwaha as a result of a competitive examination held by the Haryana Public Service Commission for recruitment of candidates for 15 vacancies of Subordinate Judges, a list of 40 candidates, who had obtained 45 per cent or more marks in the examination which was the eligibility condition, was published. On of the selection list, only 7, who had secured more than 55 per cent marks were appointed in the serial order of the list according to merit. Candidates who ranked at 8, 9 and 13 respectively in the list but had not been appointed filed a writ petition under Article 226 for mandamus, claiming that since there were 15 vacancies and they had the necessary qualifications for appointment and had been brought on the 'select list', the State Government was not entitled to pick out only 7 out of them for appointment. The High Court agreeing with the petitioners issued a mandamus to the State of Haryana to select the candidates so that their names could be brought on the High Court register for appointment as Subordinate Judges in the State of Haryana. The State of Haryana challenged the judgment in this Court. Allowing the appeal, this Court inter alia observed : (SCC pp. 224-25, para 7)

> ".... that the mere entry in this list of the name of candidate does not give him the right to be appointed. The advertisement that there are 15 vacancies to be filled does not also give him a right to be appointed. It may happen that the Government for financial or other administrative reasons may not fill up any vacancies. In such a case the candidates, even the first in the list, will not have a right to be appointed. The list is merely to help the State Government in making the appointment showing which candidates have the minimum qualifications under the Rules. The stage for selection for appointment comes thereafter,...."

Thus, it was held that even the existence of vacancies does not confer a legal right on a candidate to be selected for appointment merely on the ground that the candidate's name was included in the select list.

17. Mr. Tarkunde, however, placed reliance on the judgment in Neelima Shangla (Miss) v. State of Haryana to urge that the 'selectees' whose names are entered in the select list get a vested right to be appointed as and when the vacancy arises. The claim of the petitioner in Neelima Shangla case was indeed allowed by the Court but it was not on the ground that she had acquired any right by her mere entry in the selection list and the existence of vacancies. The position in that case was that the matter of selection had been referred to the Public Service Commission, which recommended to the Government names of 17 candidates belonging to the general category for appointment on the assumption that only 17 posts were to be filled up and accordingly 17 appointments were made. At the time when the appointments were made, there existed more vacancies but the stand of the State Government before this Court was that they were unable to select and appoint more candidates as the Public Commission had not recommended any other candidate. It was held by this Court that it was not for the Public Service Commission to take a decision of recommending only 17 names and that the Public Service Commission was obliged to prepare a complete list of all successful candidates and communicate the same to the Government, the appointing authority. It was held that the Public Service Commission erred in withholding names of several successful candidates including the petitioner therein; on the wrong assumption of limited number of vacancies. The Court observed that though it was open to the Government not to fill up all the vacancies for a valid reason, the selection could not be arbitrarily restricted to a few candidates, notwithstanding the existence of number of vacancies and availability of qualified candidates. It was in this background that the Court directed the Government of Haryana to include the name of the petitioner in the 1984 list of candidates selected for appointment of Subordinate Judges and grant her due place in the seniority list of that batch. It would, thus, be seen that it was in the peculiar facts and circumstances of that case that relief was granted to the petitioner therein and it was not laid down in that judgment that a candidate acquires any indefeasible right by merely being brought on to the select list, even where a vacancy exists. That judgment, which was based on the peculiar facts of that case, cannot, thus advance the case of the appellants in any way. That apart, both the above-noted judgments came up for consideration before a Constitution Bench of this Court in Shankarsan Dash v. Union of India where one of us (Sharma, J.) (as His Lordship the Hon'ble Chief Justice then was) speaking for the Bench dealt extensively with right of candidates included in a "merit list" to an appointment.

18. The appellant in that case was selected in the combined Civil Service Examination held by the Union Public Service Commission for appointments to several services including the Indian Police Service (hereinafter referred to as the IPS) and Police Service Group 'B'. The examination was conducted in October 1977 and the result was announced in May 1978. A combined merit list for the IPS and the Police Service 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 had been reserved for Scheduled Castes/Scheduled Tribes candidates. Since, the appellant did not get a high rank in the merit list, so as to be included in the IPS, 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 Service Group 'B' not joining, the rank of the appellant improved and ultimately, he was on top of the list.

19. In June 1979, 14 vacancies arose in the IPS due to selected candidates not joining the service. Out of the total number of 14, 11 were in the general category and 3 were 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 against the general category vacancies. The appellant, by a representation, prayed that general category vacancies should also be filled up and he be appointed since he was on the top of the list. The request was turned down. The appellant approached the Delhi High Court by a writ petition under Article 226 of the Constitution, which was dismissed. He then approached this Court by special leave to appeal against the judgment of Delhi High Court and for a direction to be appointed to the IPS, being on the top of the merit list as a vacancy did exist.

20. On behalf of the appellant it was asserted before the Constitution Bench that since several vacancies in the general category of the IPS had remained unfilled, he was entitled to be appointed against one of those vacancies as his name figured in the list and was now at its top and the authorities were not justified in rejecting his representation. The Bench negatived the contention and observed : (SCC pp. 50-51, para 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. Subash Chander Marwaha, Neelima Shangla v. State of Haryana or Jatinder Kumar v. State of Punjab."

21. Thus, the Constitution Bench while referring with approval the judgment in Subash Chander Marwaha case in unequivocal terms reiterated the settled law that existence of vacancies does not confer a legal right on a selected candidate to be appointed unless the relevant Rules provide specifically to the contrary. The State, of course, must all through act bona fide and not arbitrarily both in making appointments and in not filling the existing vacancies.

22. Mr. Tarkunde and Mr. Gupta appearing for the petitioners in W. P. No. 911 of 1991, however, placed reliance on A. A. Calton v. Director of Education in support of their plea. The Division Bench in Calton case was considering the question of retrospectivity of statute law on the existing right of the employees and it was in that context that this Court opined that existing rights cannot be taken away by giving retrospective effect to a statutory provision unless the statute expressly or by necessary implication provides so. In the present case, the State does not claim the retrospectivity of the 1991 Rules to deny appointments to those who had been brought on the panels. The panel came to be cancelled, as already noticed, in view of the judgment in Anil Kumar case and, therefore, appointments from that panel after July 2, 1989 were not made. Even otherwise, the nature of the panel prepared in the present case was only that of a list of the eligible candidates possessing requisite qualifications arranged in a chronological order based on their merit in a particular year. No process of selection whatsoever had been undergone to prepare the panel as none who was otherwise eligible and qualified was excluded from being brought on the panel. The panel prepared,

therefore, was not even the product of any selection process, unlike in Calton case where a process of selection had been undergone as is apparent from the following observations of the Bench : (SCC pp. 36-37, para 5)

> "It is no doubt true that the Act was amended by U. P. Act 26 of 1975 which came into force on August 18, 1975 taking away the power of the Director to make an appointment under Section 16-F(4) of the Act in the case of minority institutions. The amending Act did not, however, provide expressly that the amendment in question would apply to pending proceedings under Section 16-F of the Act. Nor do we find any words in it which by necessary intendment would affect such pending proceedings. The process of selection under Section 16-F of the Act commencing from the stage of calling for applications for a post up to the date on which the Director becomes entitled to make a selection under Section 16-F(4) (as it stood then) is an integrated one. At every stage in that process certain rights are created in favour of one or the other of the candidates. Section 16-F of the Act cannot, therefore, be construed as merely a procedural provision. It is true that the legislature may pass laws with retrospective effect subject to the recognised constitutional limitations. But it is equally well settled that no retrospective effect should be given to any statutory provision so as to impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have such retrospective effect. In the instant case admittedly the proceedings for the selection had commenced in the year 1973 and after the Deputy Director had disapproved the recommendations made by the Selection Committee twice the Director acquired the jurisdiction to make an appointment from amongst the qualified candidates who had applied for the vacancy in question. At the instance of the appellant himself in the earlier writ petition filed by him the High Court had directed the Director to exercise that power. Although the Director in the present case exercised that power subsequent to August 18, 1975 on which date the amendment came into force, it cannot be said that the selection made by him was illegal since the amending law had no retrospective effect. It did not have any effect on the proceedings which had commenced prior to August 18, 1975. Such proceedings had to be continued in accordance with the law as it stood at the commencement of the said proceedings. We do not, therefore, find any substance in the contention of the learned counsel for the appellant that the law as amended by the U. P. Act 26 of 1975 should have been followed in the present case."

23. It was, therefore, in the context of the peculiar facts of that case that this Court declined to interfere with the judgment of the High Court and it has no application to the situation existing in the present case.

24. Mr. Tarkunde then placed strong reliance on Prem Prakash v. Union of India and particularly on the following observations appearing in paragraph 15 :

> "... Once a person is declared successful according to the merit list of selected candidates, the appointing authority has the responsibility to appoint him, even if the number of vacancies undergoes a change after his name is included in the list of selected candidates."

in support of his submission. Here again the facts were entirely different. The observations extracted

above were made on the special facts of the case as mentioned in paragraph 11 of the judgment. Moreover, selection had been made in that case after holding an examination and a panel for a limited time had been prepared. The number of candidates in the list was limited to the existence of vacancies, unlike in the present case where neither any period of expiry of the panel was fixed nor was the panel co-related to the number of vacancies or even prepared as a result of any process of 'selection'. The judgment in Prem Prakash case therefore, cannot advance the case of the appellants.

25. We find force in the submission of Mr. Sibal that the purpose of the panel prepared in the instant case was only to finalise a list of eligible candidates for appointment. The panel in the instant case was too long and was intended to last indefinitely barring the future generations for decades from being considered in the vacancies arising much later. In fact the future generations would have been kept out for a very long period had the panel been permitted to remain effective till exhausted. A panel of the type prepared in the present case cannot be equated with a panel which is prepared having co-relation to the existing vacancies or anticipated vacancies arising in the near future and for a fixed time and prepared as a result of some selection process. As is apparent, the names of some of the teachers in the panel have existed for more than 16 years. A panel of this nature, in our opinion, cannot be treated as conferring any vested or indefeasible right to the teachers to be appointed as laid down by the Constitution Bench in Shankarsan Dash case.

26. The mere fact that the candidates who had been brought on the panel had been sent for training at the Government expense, would also not imply that any indefeasible right had been created in their favour for appointment after they had completed their training and their names were entered in the panel because the training was merely intended to confer eligibility on the candidates for being brought on the list. In the facts and circumstances of the case, we, therefore, hold that the panel prepared in the present case was only in the nature of an eligibility list of qualified trained teachers arranged according to their merit in a chronological order. It had been prepared without any process of selection whatsoever as none who was a trained qualified teacher was excluded from being brought on the list. The list was neither related to existing vacancies nor to anticipated vacancies. Such a panel did not create any vested or indefeasible right on the empanelists to be appointed.

27. Faced with this above fact-situation, Mr. Tarkunde submitted that the G. O. dated July 2, 1989 and the concession made by Mr. Sibal in favour of the candidates who had been appointed, both before and after the judgment in Anil Kumar discriminated against the candidates from the panel who were unfortunate in not having received the letters of appointment. He submitted that the direction contained in the Government circular dated July 2, 1989 saving the appointments, from the panel, of candidates who had already been appointed was violative of Article 14 of the Constitution of India. Accordingly to the learned counsel, once the panel had been found to be unconstitutional in Anil Kumar no appointment made from that panel could be saved and in case some appointments had to be saved, in fairness all candidates on the panel deserve to be appointed particularly when more than 25,000 vacancies still exist. It was submitted that the State must act fairly and could not show favour to the persons who had been appointed and deny the benefit to those waiting to be appointed from the same panel because of the fortutious circumstance that the appointed ones had received their letters of appointment while the appellants had not received the appointment orders in spite of the existence of vacancies.

28. Mr. Gupta appearing for the petitioners in Writ Petition No. 911 of 1991 augmented the arguments of Mr. Tarkunde and submitted that even assuming that the district-wise appointments were bad, the GO dated July 2, 1989 discriminated between the pre-Government Order appointees, including post-Anil Kumar judgment appointees, by saving their appointments while not granting

similar relief to the non-appointees and the distinction between the two groups was not based on any rational or intelligible differential. He submitted that the date of the issuance of the Government Order was a matter of accident and the non-issuance of the letters of appointment to the appellant and the petitioners in Write Petition No. 911 of 1991 prior to July 2, 1989 was merely an unfortunate circumstance. It was submitted that all the candidates who had been brought on the panel formed one class and the distinction between those "appointed" and those "waiting appointments" was artificial, irrational and not based on any sound principle.

29. Mr. Sibal, learned senior advocate appearing for the State of Bihar did not dispute that as a result of the judgment in Anil Kumar the entire panel had been rendered unconstitutional but submitted that there is a clear distinction between those, who out of the panel had been appointed and those who had not been appointed. It was urged that while those who had been appointed, could be said to have acquired some vested right to continue in service, no right whatsoever was created in the non-appointees by merely being brought on the list. It was submitted that since the panel was nothing but a list of candidates found eligible and qualified after training and had not been framed under any statutory rules but prepared under executive instructions, as a result of a policy decision, it could have been scrapped even without the judgment in Anil Kumar case if the Government acting bona fide and fairly, found justification to change the policy decision and not to make appointments district-wise. He submitted that through the appointments made between 1987-89 were against the law as laid down in Anil Kumar case yet some equities had developed in favour of the appointees by their continuing in service and it was but fair not to interfere with their appointments particularly when they were not even parties before the High Court. He submitted that the State acting fairly and bona fide did not give retrospective effect to its circular dated July 2, 1989 and therefore the charge of discrimination was not well founded. Mr. Sibal stressed that the distinction between the appointees and non-appointees, who framed (sic formed) two distinct classes, was so apparent and clear that the charge of violation of Article 14 must fail as misconceived.

30. In our opinion there is force in the submission of Mr. Sibal that some equities had come into existence in favour of the appointees and since the judgment in Anil Kumar case itself had protected the appointment of those teachers out of the panel who had been appointed but were not before the court, it was a fair exercise of discretion on the part of the Government not to oust those who had been appointed and were serving.

31. The non-interference with the appointment of teachers from the panel who stood already appointed cannot in our opinion form the basis of the Article 14 argument. The fundamental right of equality implies that persons in like situations, under like circumstances, are entitled to be treated alike. Reasonable classification according to some principle to recognise intelligible inequalities or to avoid or correct inequalities is permissible. It is in this background that we must divert our attention to the charge of violation of Article 14. Indeed, if the action of the State can be shown to be arbitrary, then notwithstanding any classification it would offend Article 14 and be liable to be struck down. Those who had been appointed out of the panel as and when the vacancies arose and had continued in service did acquire some right to so continue and the action of the State Government in protecting their services cannot be said to infringe Article 14, which even though all pervasive, has to be considered in the facts and circumstances of each case. The appointed and the non-appointed teachers formed separate and distinct classes. In saving the appointments of those who stood already appointed and were serving there was no arbitrariness whatsoever on the part of the respondents. It indeed is nobody's case that the decision taken by the State was actuated by any motive or the scrapping of the panel after July 2, 1989 was mala fide. Even otherwise, when the

State decided to respect the equities which have arisen in favour of the teachers already appointed and serving, no fault can be found with it. Equity reforms and moderates the rigour and hardness of the law and the State acted fairly and bona fide to respect and balance the equities in favour of the appointed candidates. We must, therefore, reject the charge of arbitrariness in view of the peculiar facts of this case more particularly since we have already found that the persons on the panel had not acquired any indefeasible right to appointment merely by being placed on the panel. It also deserves to be noted here that the appellants had not questioned, as it is, the validity of appointment of the teachers, already appointed, but have on the other hand sought treatment similar to the one of the appointed teachers. The decision to save the appointments of the teachers already appointed, who form a distinct and separate class, is therefore, fair and reasonable and does not suffer from the vice of arbitrariness. It does not in any way offend Article 14. This view also accords with the judgment in Subash Chandra Marwaha case and the law down by the Constitution Bench in Shankarsan Dash. We must, therefore, reject the argument of discrimination between the two classes of teachers, namely, those who stood appointed and the others who were waiting be appointed and in whose favour no indefeasible right accrued, only be being brought on the panel, to be appointed.

32. As a result of the aforesaid discussion no relief can be granted to the candidates who were waiting to be appointed but could not be appointed because of the cancellation of the panel on July 2, 1989. These candidates shall, of course, be entitled to apply for consideration for appointments under the new Rule as and when the vacancies arise and are advertised subject of fulfilling the necessary conditions. The State Government, we hope, will consider the question of relaxation of age bar, in suitable cases, so as to minimise their hardship. Civil Appeal No. 3216 of 1991 fails and is dismissed. For the same reasons, Writ Petition (C) No. 911 of 1991 also fails and is dismissed.

Civil Appeal No. 2082 of 1991

33. This appeal by special leave has been filed by the appellants who had been appointed out of the panel in various schools in District Gopalganj but have been ousted as a result of the judgment of the High Court in CWJC No. 6595 of 1989 decided on November 12, 1990, even though they were not parties before the High Court. Mr Mukhoty learned senior counsel appearing for the appellant, while questioning that part of the judgment raised various pleas based both on law and in equity, and pointed out, what he considered to be the merits of district-wise selection of teachers for primary schools. He also submitted that the mere fact that respondents 9 and 10, in the writ petition had been impleaded in their 'representative capacity', without in any way establishing their so called 'representative capacity', could not improve the matter as they had neither the capacity nor the authority to represent the cases of all the teachers who stood already appointed out of the panel and were continuing in service. We, however, do not consider it necessary to refer to the arguments raised by Mr. Mukhoty in view of the concession made by Mr. Sibal to the effect that the teachers who had been appointed, prior to July 2, 1989, (before or after the judgment in Anil Kumar case) and were continuing is service, as a result of stay orders issued by this Court or the High Court, would not be disturbed notwithstanding the technicalities involved. The concession of Mr. Sibal, which appears to be based not only on the ground that these appellants had been condemned unheard but also because of the fact that equities had arisen in favour of that class of teachers and is in accord with Government circular of July 2, 1989, has been recorded. In view of the concession by the State, Civil Appeal No. 2082 of 1991 is allowed and the judgment of the High Court in CWJC 6595 of 1989 decided on November 12, 1990 to that extent is set aside. The appellants shall continue in service as teachers and shall be treated to have so continue throughout.

Civil Appeal No. 4254 of 1991

34. This appeal has been filed by 33 teachers belonging to Nalanda District. Pursuant to an advertisement, issued in October 1976 by the District Superintendent of Education, Nalanda, inviting applications in the prescribed form from eligible candidates of the district, the appellants herein who possess the requisite qualifications made applications through the District Employment Exchange. Subsequently, a panel, containing the names of the candidates found fit for selection on the basis of year of training and their marks in the matriculation/secondary schools examination and at the training, was prepared and the names of the appellants were included therein. Appointment were made in January 1988 for the first time, from that panel to the post of Assistant-teachers in primary schools in Nalanda District. The appellant, however, were not appointed, though some of the teachers figuring below them in the panel were appointed. The ground for non-selection of the appellants was generally stated to be on account of being over-age or not having passed the matriculation examination but having passed Pravishka Examination from Deoghar Vidyapeeth. Some more appointments came to be made even in February 1988. The appellants were again left out from appointments though, one Shri Dhirendra Kumar, who had on an earlier occasion been found to be over-age, was included in the list. Some more appointment came to be made on March 30, 1988. The appellants were once again left out while according to them, some of their juniors and similarly situate candidates being over-age, were appointed. Two of such candidates have been mentioned as Jai Prakash Narain Singh and Kishore Prakash Singh. The appellants have furnished details of persons who have been appointed but figured below them in the panels prepared by the State. Aggrieved, by the action of the respondents in excluding them from appointments while appointing persons figuring below them in the panel, 49 teachers approached the High Court by Writ Petition No. 3048 of 1988. Though the court noticed that the petitioner had been kept waiting for almost 14 years after having been empanelled but taking note of the judgment in Anil Kumar case found that no effective relief could be granted to them. Taking note of the letter, issued by the Director (Primary Education)-cum-Joint Secretary, Human Resources Development Department, Bihar, dated December 20, 1989, whereby he had issued instructions to the effect that as and when any fresh advertisement is made and fresh panel prepared, the case of the petitioners be considered and, if need be, the age bar be condoned, the court disposed of the writ petition observing :

> "4. Keeping in view the facts and circumstances of the case, it is hereby directed that when the advertisement comes out and the petitioners apply in response to the same, the opposite parties in accordance with the commitment which has been given under the aforesaid letter of the Director of Primary Education will, if need be, condone the age bar and consider the case on priority basis of all these petitioners as also of other similarly situated persons whose names have figured on similar panels and whose appointments could not be made for similar reasons."

35. The fact that some candidates figuring below the appellants in the panel had been appointed while the appellants were left out is not denied. It has, however, been urged by Mr. Sibal that the non-appointment of the appellants was not on account of any arbitrariness or caprice on the part of the respondent-State but on account of the delay in the verification of certain facts concerning those candidates and the desire of the State not to keep the vacancies unfilled. Mr. Verma, learned counsel for the appellants, however, submitted that the appellants were not responsible for the delay in the verification of facts and that they could not have been left out while their juniors in the panel were appointed for no fault of theirs. Mr. Sibal with utmost fairness submitted that some hardship had been caused to the appellants by the action of the State and conceded that the State would consider the cases of all such candidates whose juniors had been appointed by leaving them out and if found eligible would be prepared to relax the age bar in their favour and appoint them against the existing vacancies. Mr. Verma is satisfied with this assurance made on behalf of the State. Recording the

submission of Mr. Sibal, we make an order accordingly and allow C. A. No. 4254 of 1991 and direct the consideration of the cases of the appellants for appointment as primary school teachers wherever persons figuring below them in the panel have been appointed and if necessary in relaxation of the age-bar against the existing vacancies.

Civil Appeal No. 3217 of 1991

36. This civil appeal is directed against the judgment of the Patna High Court in CWJC No. 4843 of 1988 decided on November 5, 1990. It has been filed by some of the teachers belonging on District Siwan whose names had been included in the panel but who had not been appointed. Mr. Javali, learned counsel for the appellants submitted that in view of the concession made by Mr. Sibal in Civil Appeal Nos. 3218-20 of 1991, and the concession in the case of teachers from Nalanda District, (Civil Appeal No. 4254/91) to the effect that those teachers would also be granted fresh appointments, whose juniors had been appointed and who could not be appointed on account of delay in the verification of certain facts, the appellants also deserve the same benefit. According to the learned counsel, the appellants and the applicants in the impleadment application I. A. No. 3 and I. A. No. 6 are 73 in number and all of them are senior to the last candidate appointed out of 212 teachers in whose case concession has been made in C. A. Nos. 3218-20 of 1991. Learned counsel submitted that all the appellants, on account of their seniority deserve to be appointed. Mr. Javali referred to the letter dated June 2, 1988 which had been issued after Anil Kumar judgment to support his submissions. Para 2 of the letter reads thus :

> "For the appointment of the teachers in any scale of matric trained, separate waiting lists of art and science teachers have been prepared, that is not made according to the Departmental Rules because matric trained teachers do not fall in class of science teachers. Therefore, for the purposes of making appointment in pay scale of matric trained, having prepared seniority wise combined waiting list of arts and science subject, appointment should be made seniority wise from the said waiting list. Prior to 1981 also there was no departmental provision to make separate waiting lists of the applicants of the matric arts and science and one combined waiting list was prepared. Appointment of matric science applicants had to be made on the minimum 25 per cent posts. Having prepared the waiting list on the basis of marks obtained, there was no provision for making appointment on the basis of seniority. In this regard kindly see G. O. No. 4557 dated December 15, 1976."

According to the learned counsel, the above letter was issued with a direction to make appointments on the basis of the combined seniority list of the arts and science teachers and since in the district of Siwan two panels had been prepared, one for the science teacher and the other for the art teachers, the cases of appellant teachers had been overlooked as appointments had not been made from the combined waiting list but out of separate lists and that too not according to seniority. He then referred to letter dated September 1, 1988 from the Director, Primary Education-cum-Additional Secretary to the District Superintendent of the Education, Siwan, wherein this position had been clearly brought in. The said letter reads :

> "In reference to your letter No. 29/M dated 25th June on the aforesaid subject, I have to say that the candidates belonging to science category who have been deprived of getting the benefit of appointment on the post of teachers by violating the Government Rules and orders, their appointment should be made immediately by the Establishment Committee after making enquiry in regard to the entire facts and their

> certificates. A combined panel of all the candidates of matric art and science has to be prepared on the basis of the sessions and marks obtained and there is departmental rule for making appointment on seniority wise. It has been found during the enquiry that there are 48 such candidates in approved waiting list who are seniors to the teachers who have been recently appointed in the light of the departmental rules. Accordingly to the rules, their appointment should have been made.
>
> Therefore, it is directed in the light of the order of the Government that the appointments of all such senior candidates should necessarily be made within a month and compliance report may be sent."

Learned counsel urged that the appellants were senior to those 212 candidates who had been appointed (having figured above them in the panel) and therefore deserved to be appointed at least afresh, if not from the date the candidates figuring below them in the panel were appointed. A perusal of the judgment of the High Court in CWJC No. 4843 of 1988 shows that the High Court did not address itself to the question of 'seniority' of the appellant vis-a-vis the 212 appointed teachers and no combined waiting list was considered while disposing of the case. Mr. Sibal appearing for the State of Bihar submitted that there is no material on the record to establish conclusively that the appellants were "senior" to those 212 appointed teachers or placed above them in the panels or were even otherwise fully qualified to be appointed as teachers. He also pointed out that since in the High Court, no such plea had been raised, the appellants be not permitted to raise the plea here for the first time.

37. Taking note of the concession made by the State in Civil Appeal No. 2484 of 1991 and Civil Appeal No. 4254 of 1991 as also the order in C. A. Nos. 3218-20 of 1991, in our opinion it is a fit case which should be remitted to the High Court for the limited purpose to render a judgment on the question of seniority of the appellants vis-a-vis those who stand appointed and whose appointments have not been disturbed in view of the concession made in the above-noted appeals in this Court. Should the High Court find, after hearing both sides, that any or all of the appellants in this case are senior to the ones who had been appointed and are continuing in service, as a result of the orders made in the aforesaid appeals and are otherwise qualified in all respects according to the scheme existing prior to 1991 Rules, it shall direct the State Government to appoint such teachers, in relaxation of the age bar wherever applicable. Civil Appeal No. 3217 of 1991 is therefore allowed and the judgment of the High Court is set aside and the matter is remitted to the High Court for decision on the question of seniority and grant of relief in the terms indicated hereinabove.

38. As a result of the above discussion C. A. No. 3216 of 1991 and W. P. No. 911 of 1991 fail and are dismissed. C. A. No. 2082 of 1991; C. A. Nos. 3218-3220 of 1991; C. A. No. 3217 of 1991 and C. A. No. 4254 of 1991 are allowed to the extent and in the terms indicated in the judgment. There shall, however, be no order as to costs.

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