SUPREME COURT OF INDIA

N. Mohanan

Vs.

State of Kerala

S.L.P.(C) No.24398 of 1996

(K.Ramaswamy and G.T.Nanavati JJ.)

20.12.1996

ORDER

1. This special leave petition has been filed against the judgment of the kerala High Court made on November 22, 1996 in O.P. No. 13328/92.*

*Reported in (1996) 2 Ker LJ 714

2. The petitioner therein while working as an Assistant in the Economics and Statistics Department had applied for recruitment as Legal Assistant, Grade II by transfer under Kerala Secretariat Subordinate Service Special Rules (for short, the 'Rules'). Rule 7 of the Rules prescribes the method of appointment to the post of category 7, viz., Legal Assistant, Grade II, (i) by direct recruitment; or (ii) appointment from Assistant Tamil Translators, and Assistant Kannada Translators; or (iii) appointment or promotion from any other category in Kerala Secretariat Subordinate Service; or (iv) transfer from any category in any Department under the Government or in the service of the High Court of Kerala. Pursuant thereto, the petitioner and other applied for appointment by transfer as Legal Assistant, Rules of rotation and quota have been prescribed in the Rules. Applications were

made through Departments, written test was conducted on August 8, 1989 and merit list was prepared on October 23, 1989 for filling up one post of Legal Assistant, Grade II by transfer from other Department. The petitioner was included, at No. 13, in the merit list. Though vacancies were existing, he was not appointed. Therefore, he filed a writ petition for direction for appointment. Pursuant to the interim direction, he came to be appointment on October 15, 1992. By notification dated December 15, 1992 applications were called for to fill up the post of Legal Assistant, Grade II from other Departmental candidates. Consequently, the waiting list was cancelled. It was contended that the list prepared in 1989 was still in operation. It was not intended that the list will be restricted to particular period. The petitioner was appointed to the existing vacancy pursuant to the direction. Therefore, he is required to be regularised irrespective of the notification published on December 15, 1992 calling for application from other departments. In this background, the High Court held that the appointment of the petitioner, though under the directions of the Court, could not be regularised. The petitioner relied upon Union of India v. Ishwar Singh Khatri, 1992 Supp (3) SCC 84 and contended that the existing vacancies should be filed up from the select list and that the omission therein is arbitrary and violative of his right. We find no force in the contention. In Shankarasan Dash v. Union of India, (1991) 2 SCR 567 : (1991 AIR SCW 1583), a Constitution Bench had held that mere inclusion of the name in the list of selected candidates does not confer any right upon any candidate to be selected unless the relevant rules so indicate. In Babita Prasad v. State of Bihar, 1993 Supp (3) SCC 268, though the life of the panel was not prescribed, it was directed to be confined to a reasonable time. A long waiting list cannot be kept in infinitum in view of the principle "infinitum in jure reprobatur". A distinction made for the purpose of appointment between those who have already been appointed and those who are in the waiting list or had undergone training and waiting for appointment. It cannot be treated as arbitrary. This Court has held that the panel was too long and was intended to last indefinitely barring the future generations for decades for being considered for the vacancies arising much later. In fact, the future generations would have been kept out for a very long period, if the panel would have been permitted to remain effective till it got exhausted. A panel of that type cannot be equated with a panel which is prepared having correlation to the existing vacancies or anticipated vacancies arising in the near future. In Union Territory of Chandigarh v. Dilbagh Singh, (1993) 1 SCC 154 : (1992 AIR SCW 3263), it was held that a candidate whose name finds place in the select list for appointment to a civil post does not acquire an indefeasible right to be appointed in such post in the absence of any specific rule entitling him for such appointment and he could be aggrieved by his non-appointment only when the Administration does so either arbitrarily or for no bona fide or valid reason. In Nagar Mahapalika, Kanpur v. Vinod Kumar Srivastava, AIR 1987 SC 847, it was observed that the reason underlying the limitation of the period of life of waiting list for one year is obviously to ensure that other qualified persons are not deprived of their chances of applying for the posts in the succeeding years and being selected for appointment. In State of Haryana v. Subash Chander Narwaha, (1974) 1 SCR 165 : (AIR 1973 SC 2216), this Court had held that though vacancies were existing selected candidates had no right to the appointment. It would be open to the Government not to appoint the candidates from the list for valid reasons. In State of Bihar v. Secretariat Assistant Successful Examinees Union 1986, (1994) 1 SCC 126 : (1994 Lab IC 573), this Court had held that a person having been selected, does not, on account of being empanelled alone, acquire any indefeasible right to appointment. Empanelment is, at the best, a condition of eligibility for purposes of appointment and by itself does not amount to selection or creating right to be appointed unless relevant rules state to the contrary. In that case, select list was prepared on the basis of merit in the examination without any qualifying marks. All the persons who wrote the examination were ranked in the merit list. They claimed the right to get appointment contending that till the list was exhausted, no fresh list could be prepared and that they were entitled to the appointment. The conteition was negatived and

it was held that there is no provision in the relevant rules giving indefeasible right to the persons whose names appeared in the list to get appointed. There is no provision under the Rules prohibiting authorities to fix the time limit.

3. Shri T.L.V. Iyer, learned senior counsel contends that the list was not published and so the life of the panel did not expire. We find no force. The fact that candidates were appointed from the panel is proof of its publication. It is then contended that even though the petitioner has no right to be appointed since he was appointed on the basis of the order of the Court provisionally, the appointment already made should be allowed to be continued and should be regularised. The High Court has negatived this contention, and in our view rightly. The interim order is subject to result of outcome of the final adjudication. If the petitioner is not successful in the final decision, the interim order would stand set aside. So appointment by interim order does not create any right nor the petitioner gets any right to regularisation on that basis. In Dr. M. A. Haque v. Union of India, (1993) 2 SCC 213, this Court had held that recruitment rules made under Article 309 of the Constitution have to be followed strictly and not in its breach. If disregard of the rules and the by passing of the Public Service Commissions are permitted, it will be open a backdoor for illegal recruitment without limit. Recruitment rules should be strictly followed and the Public Service Commission cannot keep the rules in cold storage. It was, therefore, held relying on the above ratio that since existing list was closed and recruitment was made through Public Service Commission, the petitioner has no right to that post. The reliance of the petitioner on the judgment of this Court in Ashok Kumar v. Chairman, Banking Service Recruitment Board, AIR 1996 SC 976 : (1996 AIR SCW 420), was rightly not accepted. Therein appointment to vacancies arising subsequently without being notified, was held to be violative of Article 14 and 16 since everyone is entitled to claim consideration for appointment to a post under the State. The vacant posts arising or expected should be notified and no one can be appointed without due notification of the vacancies and selection according to rules and the prescribed procedure. Therefore, appointments made from amongst the waiting list candidates would be illegal. In the above case also, this Court refused to interfere with the order passed by the High Court even on equitable grounds. In Surendra Kumar Gyani v. State of Rajasthan, AIR 1993 SC 115, this Court had held that termination of the services of the temporary employees on the availabiity of the candidates recruited through the Public Service Commission was held to be valid in law and was not vitiated by any error of law. Thus we see that the High Court has not committed any error nor announced any wrong principle of law warranting interference.

4. The special leave petition is accordingly dismissed.

Petition dismissed.