Surinder Singh and Others

Vs

State of Punjab and Another

Civil Appeals Nos. 5807-5810 of 1997

(Sujata V. Manohar, D.P. Wadhwa JJ)

27.08.1997

JUDGMENT

D. P. WADHWA, J. –

1. Leave granted,

2. There are four appeals.

3. Two appeals arising out of SLP No. 23952 of 1996 and SLP No, 5570 of 1997 are against the judgment dated 28-9-1994 of the Punjab and Haryana High Court in a batch of Writ Petitions Nos. 5985 and 12105 of 1994 and others. By the impugned judgment, the High Court had cancelled the appointment of 7737 candidates for the posts of different categories of teachers which was over and above 2461 such posts which had been advertised for being filled up. While SLP No. 23952 of 1996 is barred by limitation of 673 days, SLP No. 5570 of 1997 is barred by 756 days. As we will presently see, there is no sufficient cause to condone the delay and rather the appellants have acted as opportunists in coming to this Court.

4. Two more appeals arising out of SLP No. 11939 of 1997 and SLP No. 562 of 1997 are against two other judgments of the Punjab and Haryana High Court in different writ petitions but the challenge again is in effect against the judgment dated 28-9-1994 of the High Court - mentioned above. These two SLPs are though within the period of limitation.

5. The State advertised on 19-8-1992 for filling up of 2461 vacancies of teachers but between this date and 22-6-1994 when the interview process was completed and postings were made, 7737 posts of various categories of teachers had become available for appointment. The State Government keeping in view the interest of the students filled up all the available posts of 1137 out of the applicants who had applied against advertisement published on 1978-1992. This action of the State Government was challenged in a batch of writ petitions in the High Court by the petitioners who claimed to be higher in merit than those who were appointed against 7737 posts. As noted above the High Court by its judgment dated 28-9-1994 quashed the appointment of 7737 candidates and upheld the selection and appointment of candidates up to the number of posts advertised.

6. Aggrieved by this judgment of the High Court dated 28-9-1994 some of the candidates whose appointments had thus been set aside filed special leave petitions in this Court, these being SLPs Nos. 11728-11773 of 1995 which were dismissed on 1-5-1995 by the following order : "Court fee in one set may be treated as sufficient.

SLP is heard on merits and is dismissed."

7. A review petition was also dismissed by order dated 7-2-1996. In our view, therefore, the judgment of the High Court dated 28-9-1994 became final and could nor, therefore, be the subject-matter of appeals arising out of SLPs Nos. 23952 of 1996 and 5570 of 1997. These appeals are also by candidates whose appointment had been set aside by the High Court being Over and above the number of posts advertised. The State Government, it would appear, accepted the judgment of the High Court as it did not come up in appeal to this Court.

8. The matter, however, did not end there. The State Government after the judgment dated 28-9-1994 took a decision that the candidates who were selected in order of merit and whose appointments had not been approved by the High Court might be appointed on ad hoc basis for 89 days at a time and that this would be a stopgap arrangement and that the process of further recruitment might be restarted by inviting fresh applications through advertisement. This action of the State Government was again challenged in various writ petitions in the High Court being Writ Petition No. 18331 of 1994 and batch of other writ petitions. These writ petitions were disposed of by order dated 28-3-1995 and the action of the State Government giving ad hoc appointments on 89 days' basis was upheld but at the same time the High Court issued various directions for filling up future vacancies. It Is, however, not necessary for us to set out those directions. The High Court in its judgment dated 28-3-1995 noted an order dated 10-1-1995 of another Division Bench in Civil Writ Petition No. 14347 of 1994 where also the High Court had directed the State Government to complete the fresh selection process and in the meanwhile allowed services of candidates on ad hoc basis to continue till the availability of candidates selected on regular basis. We may also note that contempt proceedings were initiated as the State Government did not fill up future vacancies within the time framework set up by the High Court to complete the fresh selection process. The High Court, however, extended time for the purpose and fixed a further date after which the ad hoc appointments of the candidates would terminate. The appellants before us are those candidates whose ad hoc appointments had been extended from time to time till regular appointments were made in I terms of various orders in the High Court.

9. Appeal arising out of SLP No. 562 of 1997 is against the judgment of the Punjab and Haryana High Court dated 21-10-1996 in Civil Writ Petition No. 16819 of 1996. In this writ petition there were 923 petitioners and they had claimed regular appointments on the basis of their selection made in pursuance of the advertisement dated 19-8-1992 though they had been appointed on ad hoc basis in terms of the decision of the State Government after the judgment dated 28-9-1994 of the High Court. In this petition the High Court held that earlier challenge of the candidates suitably selected from regular to their ad hoc appointments had failed in Civil Writ Petition No. 4623 of 1995 decided on 27-4-1995 and that there was no ground now for interference and that the petitioners would continue as ad hoc teachers etc., till regular appointments were made.

10. Appeal arising out or SLP No. 11939 of 1997 is also against the judgment dated 17-12-1996 of the Punjab and Haryana High Court in Civil Writ Petition No. 1382 of 1996. In this appeal, there is only one appellant and the issue involved before the High Court was different inasmuch as he had contended that he being No. 6 on the waitlist of lecturers for a particular institution and claimed right to appointment when one of the candidates selected did not join. This plea was negatived by the High Court in view of the judgment dated 28-9-1994 which is being impugned. The High Court also held that the petitioner had come to the Court too late and that he should have filed the writ petition either in 1994 or early 1995 but he came to the Court only in September 1996 by which time the select list had lapsed.

11. In pursuance of various orders of the High Court 10,000 fresh posts of various categories of teachers were advertised on 28-12-1994 and the process of selection had since been completed. These candidates, however, could not be appointed because of intervention of this Court in staying the impugned judgment dated 28-9-1994 in these appeals. Meanwhile two further advertisements for appointments of teachers to 10,000 and 12,220 posts were made on 12-1-1996 and 18-10-1996 respectively and it is stated by the State that the process of their selection is on. We may also again note that the appellants in the present appeals arising out of SLPs Nos. 23952 of 1996 and 5570 of 1997 are those who are being appointed on ad hoc basis for 89 days at a time and they had also applied for their appointments in pursuance of subsequent advertisements but it would appear since they could not be selected they filed these appeals after great deal of delay. They cannot have any equity in their favour even otherwise for having enjoyed the ad hoc status for about two years.

12. In view of what we have stilted above it may not be necessary for us to consider any further submissions of the appellants. However, we may refer to a decision of this Court in Prem Singh v. Haryana SEE [(1996) 4 SCC 319 : 1996 SCC (L&S) 934] on which strong reliance had been placed by the appellants. In this case the Court considered various judgments of this Court on the question whether appointments over and above those advertised could be justified and in this context para 26 of the judgment was referred to which is as under : (SCC pp. 331-32)

> "26. In the present case, as against the 62 advertised posts the Board made appointments on 138 posts. The selection process was started for 62 clear vacancies and at that time anticipated vacancies were not taken into account. Therefore, strictly speaking, the Board was not justified in making more than 62 appointments pursuant to the advertisement published on 2-11-1991 and the selection process which followed thereafter. But as the Board could have taken into account not only the actual vacancies but also vacancies which were likely to arise because of retirement etc., by the time the selection process was completed it would not be just and equitable to invalidate all the appointments made on posts in excess of 62. However, the appointments which were made against future vacancies - in this case on posts which were newly created - must be regarded as invalid. As stated earlier, after the selection process had started 13 posts had become vacant because of retirement and 12 because of deaths. The vacancies which were likely to arise as a result of retirement could have been reasonably anticipated by the Board. The Board through oversight had not taken them into consideration while a requisition was made for filling up 62 posts. Even with respect to the appointments made against vacancies which arose because of deaths, a lenient view can be taken and on consideration of expediency and equity they need not be quashed. Therefore, in view of the special facts and circumstances of this case we do not think it proper to invalidate the appointments made on those 25 additional posts. But the appointments made by the Board on posts beyond 87 are held invalid. Though the High Court was right in the view it has taken, we modify its order to the aforesaid extent. These appeals are allowed accordingly. No order as to costs."

13. We however, do not think that on the submission made in para 26 and quoted above the appellants can succeed. The statement of law has been stated in para 25 of this very judgment which is as under : (SCC p. 331)

> "25. From the above discussion of the case-law it becomes clear that the selection process by way of requisition and advertisement can be started for clear vacancies

and also for anticipated vacancies but not for future vacancies. If the requisition and advertisement are for a certain number of posts only the State cannot make more appointments than the number of posts advertised, even though it might have prepared a select list of more candidates. The State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is challenged the court may not, while exercising its extraordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment. What relief should be granted in such cases would depend upon the facts and circumstances of each case."

14. The High Court in the impugned judgment had noted a decision of this Court in Gujarat State Dy. Executive Engineers Assn., v. State of Gujarat [(1994 Supp (2) SCC 591 : 1994 SCC (L&S) 1159 : (1994) 28 ATC 8] and relying on that had quashed the appointment of the teachers over and above that advertisement. We may refer to paras 8 and 9 of the judgment which we reproduce as under : (SCC pp. 598-99)

"8. Coming to the next issue, the first question is what is a waiting list ?; can it be treated as a source of recruitment from which candidates may be drawn as and when necessary ?; and lastly how long can it operate ? These are some important questions which do arise as a result of direction issued by the High Court. A waiting list prepared in service matters by the competent authority is a list of eligible and qualified candidates who in order of merit are placed below the last selected candidate. How it should Operate and what is its nature may be governed by the rules. Usually it is linked with the selection or examination for which it is prepared. For instance, if an examination is held say for selecting 10 candidates for 1990 and the competent authority prepares a waiting list then it is in respect of those 10 seats only for which selection or competition was held. Reason for it is that whenever selection is held, except where it is for single post, it is normally held by taking into account not only the number of vacancies existing on the date when advertisement is issued or applications are invited but even those which are likely to arise in future within one year or so due to retirement etc. It is more so where selections are held regularly by the Commission. Such lists are prepared either under the rules or even otherwise mainly to ensure that the working in the office does not suffer if the selected candidates do not join for one or the other reason or the next selection or examination is not held soon. A candidate in the waiting list in the order of merit has a right to claim that he may be appointed if one or the other selected candidate does not join. But once the selected candidates join and no vacancy arises due to resignation etc., or for any other reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided then the candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for it. He has no vested right except to the limited extent, indicated above, or when the appointing authority acts arbitrarily and makes appointment from the waiting list by picking and choosing for extraneous reasons.

9. A waiting list prepared in an examination conducted by the Commission does not

> furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service."

15. Prem Singh case [(1996) 4 SCC 319 : 1996 SCC L&S) 934] was decided on the facts of that case and those facts do not hold good in the present case. In the case of Gujarat State Dy. Executive Engineers Assn. [(1994 Supp (2) SCC 591 : 1994 SCC (L&S) 1159 : (1994 28 ATC 78] this Court has explained the scope and intent of a waiting list and how it is to operate in service jurisprudence. It cannot be used as a perennial source of recruitment filling up the vacancies not advertised. The Court also did not approve the view of the High Court that since vacancies had not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed. Candidates in the waiting list have no vested right to be appointed except to the limited extent that when a candidate selected against the existing vacancy does not join for some reason and the waiting list is still operative.

16. It is in no uncertain words that this Court has held that it would he an improper exercise of power to make appointments over and above those advertised. It is only in rare and exceptional circumstances and in emergent situation that this rule can be deviated from. It should be clearly spelled out as to under what policy such a decision has been taken. Exercise of such power has to be tested on the touchstone of reasonableness. Before any advertisement is issued, it would, therefore, be incumbent upon the authorities to take into account the existing vacancies and anticipated vacancies. It is not as a matter of course that the authority can fill up more posts than advertised.

17. Keeping the above principles in view, if we analyse the facts and circumstances of the present case, we find that no exceptional circumstance existed nor was there any emergent situation for the State to deviate from the principle of limiting the number of appointments so advertised. In our view, the High Court was right in setting aside the appointments of teachers over and above those advertised. The State accepted the judgment of the High Court and did not come up in appeal in this Court. However, to get over the situation created because of the fact that more vacancies of teachers were noticed during the period of interview, it appointed candidates more than the number of posts advertised on ad hoc basis and continued them as such till fresh process of selection was gone into. Admittedly, that process is on and in various writ petitions the High Court has been issuing directions from time to time extending the ad hoc appointments and in the meanwhile to complete the process of fresh selection. As noticed above, selection of : 10,000 more candidates for appointment to various categories of teachers has already been completed and selection process of about 22,000 more such teachers has either been completed by now or is under completion. We do

not think at this stage that we should interfere in the matter and set the clock back particularly when we find no ground to invalidate the impugned judgment of the High Court. In the present appeals, there is no appellant who can claim to fall within the first 2461 posts for which advertisement was issued.

18. These appeals are dismissed with costs. Interim orders stand vacated. In this view of the matter the applications for impleadment do not require any consideration and are also dismissed.