

Virender S. Hooda

Vs

State of Haryana

Civil Appeal No. 2286 of 1999

(G.T. Nanavati, S. Rajendra Babu JJ)

13.04.1999

JUDGMENT

S. Rajendra Babu, J.

1. Haryana Public Service Commission, respondent No. 2 herein, [hereinafter referred to as 'the Commission'] advertised for recruitment to the Haryana Civil Service (Executive Branch) and other allied services which included 12 posts of Haryana Civil Service [Executive Bench], 7 in general category and 5 in reserved category. The appellants submitted their applications. Appellant No. 1 was, in fact, holding the post of Excise and Taxation Officer. All the appellants gave their preference to the Haryana Civil Service (Executive Branch), while appellant No. 1 gave reference only for such service. The Commission held the written examination for the 1991 and interviewed the candidates who had passed the written examination in May, 1992 and a final result was published on June 19, 1992. The appellants did not rank sufficiently high, but appellants Nos. 2 and 3 were offered appointments as Excise and Taxation Officer and Tehsildar respectively. They joined duty also. Thereafter, the first appellant filed a writ petition being Civil Writ Petition No. 6057 of 1994 which was summarily dismissed by a Division Bench of the High Court on May 12, 1994. The matter was carried to this Court when appellants Nos. 2 and 3 got themselves impleaded. By an order made on October 30, 1995, this Court disposed of the matter but gave liberty to the appellants to file a proper writ petition before the High Court for getting appointments on the basis of earlier selection bearing in mind the circulars issued on March 22, 1957 and March 26, 1972. Subsequently, the three appellants presented a writ petition. The contention put forth before the High Court and reiterated before us is that the Government of composite Punjab had issued instructions prescribing the procedure to be adopted by the Commission that apart from those selected against the vacancies all notified 37_ additional vacancies which arise within six months from the recommendation of the names could be filled up from amongst the names recommended by the Commission. Similar instructions were also issued by the Government of Haryana on May 26, 1972. Respondent No. 1 requested the Commission for concurrence to fill up 30 vacancies of Haryana Civil Service (Executive Branch) for the year 1992 under proviso to Rule 5 of the Punjab Civil Services (Executive Branch) Rules. The cadre strength of the Haryana Civil Service (Executive Branch) was stated to be 240 and at present its total strength was only 129 and there was a shortfall of 111. There were 23 vacant posts to be filled up by direct recruitment and it was clear that 12 posts for direct recruitment were vacant when the advertisement was made for examination which was held in 1991. Appellant No. 1 received a letter from the Commission that he was not selected as he had not come in the merit and he came to know that he had secured rank at serial No. 8 in the general category and that he could not be selected for the post because there were only seven vacancies. The case put forward by the appellants is that, as per Annexure P-8, the

Public Service Commission issued in 1992 an advertisement No. 7 for recruitment to 9 posts of Haryana Civil Service (Executive Branch) in general category. The result of the selection of candidates pursuant to advertisement issued in 1989 was declared on June 19, 1992 and advertisement No. 7 was issued in 1992 within a period of six months and so there was necessity of further selection and the said 9 vacancies in general category in advertisement No. 7 has to be accommodated by candidates who are already in the waiting list/panel of 1989 recruitment.

2. The High Court dismissed the writ petition on the basis that (i) the appellants have not given any explanation for the time gap of almost four years between their appointment to the service and the date on which the writ petition was filed and the unexplained delay of over three years and eight months disentitled them from seeking relief; (ii) the administrative instructions cannot be read as making it obligatory for the appointing authority to appoint candidates in excess of the advertised posts; and (iii) the claim for directing the respondent to make appointment against posts which became available after the initiation of the process of recruitment is not justified. On behalf of the appellants all these three conclusions reached by the High Court are assailed, while the learned counsel for the respondents supported the view taken by the High Court.

3. So far as the first conclusion recorded by the High Court is concerned, it is clear that this Court, while disposing of the appeal filed by appellants, made clear that it would be open to the appellants to file a proper writ petition before the High Court for putting forth appropriate contentions on the basis of earlier selection in the context of circular dated March 22, 1957 read with circular dated May 26, 1972. This order was passed by this Court on October 13, 1995 and the appellants filed a writ petition on January 29, 1996. Particularly when appellants Nos. 2 and 3 were allowed as co-petitioners in the special leave petition before this Court, we do not think that the High Court was justified in deciding against the appellants on the ground of laches. The fact that there were further vacancies available and when 9 vacancies were advertised to be filled up within a period of six months after announcement of the previous selection cannot be disputed at all. In terms of circulars issued by the Government on March 22, 1957 and May 26, 1972 when such vacancies arise within six months from the receipt of the recommendation of the Public Service Commission they have to be filled up out of the waiting list maintained by the Commission. In respect of the vacancies which arise after the expiry of six months it is necessary to send the requisition to the Commission. It is also made clear that if the Commission makes recommendations regarding a post to the department and additional vacancies occur in the department within a period of six months on the receipt of the recommendations, then the vacancies which occur later on can be filled in from amongst the additional candidates recommended by the Commission. It is urged on behalf of the appellants that letter dated January 7, 1992 indicated that the cadre strength in the Haryana Civil Service (Executive Branch) was 440 and the officers filling these posts were around 129 and there was shortfall of 111 and 23 posts had to be filled up by direct recruitment. Thus 12 posts for direct recruitment were vacant when the advertisement for recruitment was made which was held in 1991. Therefore, the appellants' case ought to have been considered when some of the vacancies arose by reason of non-appointment of some of the candidates. Therefore, the Government ought to have considered the case of the appellants as per the rank obtained by them and the appellants had to be appointed if they came within the range of selection. Thus when these vacancies arise within the period of six months from the date of previous selection the circulars are attracted and hence the view of the High Court that vacancies arose after selection process commenced has no relevance and is contrary to the declared policy of the Government in the matter to fill up such posts from the waiting list.

4. The view taken by the High Court that the administrative instructions cannot be enforced by the

appellant and that vacancies became available after the initiation of the process of recruitment would be looking at the matter from a narrow and wrong angle. When a policy has been declared by the State as to the manner of filling up the post and that policy is declared in terms of rules and instructions issued to the Public Service Commission from time to time and so long as these instructions are not contrary to the rules, the respondents ought to follow the same.

5. Therefore, we have no hesitation in directing the respondent to consider the cases of the appellants for appointment to posts of Haryana Public Service (Executive Branch). However, it is made clear that the appellants shall be fitted to the post ranking below to those who had been selected along with the appellants at the time of recruitment made pursuant to result declared on June 19, 1992. The appellants will be fitted in appropriate posts and they will accord appropriate scale of pay by giving them the benefit of increments, if any, but they will not be entitled to any monetary benefits for the period for which they have been kept out of employment. Let such action be taken by the Government expeditiously but not later than a period of three months.

6. The appeal is accordingly allowed. However, in the circumstances of the case, there will be no order as to costs.