

SUPREME COURT OF INDIA

State of A.P.

Vs.

D. Dastagiri

C.A.No.604 of 2000

(Shivaraj V.Patil and Arijit Pasayat JJ.)

23.04.2003

ORDER

1. The State of Andhra Pradesh is before us in these appeals questioning the validity and correctness of the judgment and order passed by the Division Bench of the High Court. The appellant-State Government issued a notification containing guidelines and procedure for recruitment to the post of 1715 Excise Constable, pursuant to which the Commissioner of Excise notified the vacancies to the Employment Exchange initiating the process of recruitment. Dates for interview were scheduled between 19.10.1994 and 23.10.1994 and dates were fixed for verification of original certificates between 25.10.199 and 29.10.1994. Thereafter, on account of announcement of General Elections to the Legislative Assembly, recruitment process was stopped as Election Notification had been issued on 1.11.1994. By the Memo dated 21.12.1994, in the light of the decision, of introducing total prohibition in the State of Andhra Pradesh, the process for recruitment of 1715 Excise Constable was cancelled. The results of the interview were not declared and no selection list was published. The respondents filed Writ Petition in the High Court in the year 198 seeking mandamus directing the appellants to appoint them. Before filing the Writ Petition, the respondents had approached the Andhra Pradesh Administrative Tribunal. The Division Bench of the High Court disposed of the Writ Petition granting relief to the respondents, taking note of the submission made by the learned Government Pleader that the cases of the respondents will be considered for appointment in the existing vacancies. Aggrieved by the orders passed by the Division Bench, these appeals are filed by the State of Andhra Pradesh, as already stated above.

2. Learned counsel for the appellants contended that the High Court committed a serious error in issuing direction to the appellants to consider the cases of the respondents, for appointment to the post of Excise Constable, when the selection process itself was not complete and no select list had been published; the respondents could not claim appointments as a matter of right merely on the basis of so-called selection made; it was open to the State Government to make or not to make appointments to the existing vacancies. He also submitted that it was open to the State to take a policy decision either to fill up those posts or not to fill up those posts, depending upon the requirement of the State.

3. In opposition, learned counsel for the respondents made submissions supporting the impugned judgment of the High Court. He contended that the selection process was over inasmuch as the requisite tests were conducted, interviews were held, only select list was not published; having completed the selection process after holding necessary tests and taking interviews, the appellants were not at all justified in not issuing appointment orders; the action of the appellants in not issuing appointment orders was arbitrary and unfair. According to him, the High Court did not issue a mandamus to appoint the respondents; the High Court had only directed the appellants to consider the case of the respondents to appoint them.

4. In the counter affidavit filed on behalf of the respondents in Civil Appeal No. 915/2000, in paragraph 16 it is stated that the process of selector was cancelled at the last stage, i.e., before publishing the list of selected candidates on the sole ground that the State Government wanted to introduce prohibition and obviously the Government felt that there was no need of Excise Constable during imposition of prohibition in the State. There is serious dispute as to the completion of selection process. According to the appellants, the selection process was not complete. No record has been placed before us to show that the selection process was complete, but, it is not disputed that the select list was not published. In paragraph 16 of the counter affidavit, referred above, the respondents themselves had admitted that the selection process was cancelled at the last stage. In the absence of publication of select list, we are inclined to think that the selection process was not complete. Be that as it may, even if the selection process was complete and assuming that only select list was remained to be published, that does not advance the case of the respondents for the simple reason that even the candidates who are selected and whose names find place in the select list, do not get vested right to claim appointment based on the select list. It was open to the State Government to take a policy decision either to have prohibition or not to have prohibition in the State. Certainly, the Government had right to take a policy decision. If pursuant to a policy decision taken to impose prohibition in the State there was no requirement for the recruitment of Constable in the Excise Department, nobody can insist that they must appoint the candidates as Excise Constable. It is not the case of the respondents that there was any mala fide on the part of the appellants in refusing the appointment to the respondents after the selection process was complete. The only claim was that the action of the appellant, in not appointing the respondent as Excise Constables, was arbitrary. In the light of the facts that we have stated above, when it was open to the Government to take a policy decision, we fail to understand as to how the respondents can dub the action of the respondents as arbitrary, particularly, when they did not have any right as such to claim appointments. In the absence of selection and publication of select list, mere concession or submission made by the learned Government Pleader on behalf of the appellant-State cannot improve the case of the respondents. Similarly, such a submission cannot confer right on the respondents, which they otherwise did not have.

5. Under these circumstances, we find it difficult to sustain the impugned judgment and order. However, having regard to the peculiar facts and circumstances of the case and the respondents had the benefit of the order of the High Court, we think it is just and appropriate

that as and when any fresh selection takes place to the post of Excise Constable, the respondents may apply for regular recruitment. In that event, age-bar will not be put against them, but, they shall satisfy other eligibility conditions and requirements, including qualification.

6. Under the circumstances, the impugned orders are set aside, subject to what is stated above. Thea appeals are allowed accordingly. No costs.

7. At this stage, the learned counsel for the respondents submitted that the Government a even now considering the cases of the similarly placed respondents for appointment. If that be so, this order of ours will not come in the way of the State Government considering the case of the respondents.