

SUPREME COURT OF INDIA

Bihar State Electricity Board

Vs.

Suresh Prasad

C.A.No.6084 of 1998

(V.N.Khare CJI. and S.H.Kapadia JJ.)

25.02.2004

JUDGMENT

S. H. Kapadia, J.

1. The short question which arises for determination in this appeal is:

"Whether the High Court was justified in law in giving direction to the appellant to fill up the vacancies which remained unfilled due to candidates not turning up to join the post?"

FACTS:

2. By Employment Notice No. 3/86 advertisement was issued on 15th December, 1986 whereby 100 vacant posts of Operators and 70 vacant posts of Assistant Operators were notified for appointment. In the said advertisement the qualification prescribed for the post of operator was diploma in Electrical and Mechanical Engineering having at least 70% marks. A written test was held by the Bihar State Electricity Board for selection of candidates on 29.11.1987. The oral interviews were held on 27-28th August, 1988. Some Assistant Operators of Bihar State Electricity Board (Appellant herein) filed a writ petition in the High Court bearing CWJC No. 6352/88 challenging the proposed direct recruitment in the posts of Operators as contrary to the Standing Orders. This petition was admitted on 18.11.1989 but dismissed on 19.4.1991. However, during the pendency of the said writ petition a Committee was constituted by the appellant on 21.3.1991 to submit a report regarding adjustment to be made in the matter of appointment of Operators and Assistant Operators. On 30.1.1992, a report was submitted by the Committee suggesting that it was not possible to absorb Assistant Operators as Operators. Despite the said report a fresh advertisement was issued vide Employment Notice No. 6/92 on 25.11.1992 calling for applications from candidates to fill up 50 posts of Operators. In terms of the said advertisement dated 25.11.1992, the earlier advertisement dated 15.12.1986 was cancelled. The advertisement dated 25.11.1992 was challenged vide civil writ jurisdiction case No. 12820/92. By judgment and order dated 23.3.1994, the High Court came to the conclusion that the appellant should fill up 50% of the

vacancies in the post of Operators from amongst the candidates who had applied pursuant to the advertisement dated 15.12.1986 and the remaining 50% of the existing vacancies in the post of Operators should be filled from candidates who had applied pursuant to the advertisement dated 25.11.1992. In the light of the above directions of the High Court the Appellant-Electricity Board notified the selection of 22 candidates pursuant to advertisement No. 3/86 dated 15.12.1986 and 25 candidates against advertisement No. 6/92 dated 25.11.1992.

3. However, out of 22 candidates selected for appointment vide advertisement No. 3/86 dated 15.12.1986 only 4 joined. Consequently 18 vacancies remained unfilled as candidates did not turn up. Consequently respondents Nos. 1 to 7 herein (employees) who had applied for appointment pursuant to advertisement notice No. 3/86 dated 15.12.1986 and who had qualified in the written test and oral interviews and who were on the merit list at serial no. 23 and downwards moved the High Court by way of CWJC Nos. 3732 and 9213/95 inter alia contending that since 18 out of 22 selected candidates did not join the said respondents Nos. 1 to 7 should be given appointment. This relief was granted by the High Court. Being aggrieved the Bihar State Electricity Board came by way of present appeal to this Court.

4. By judgment and order passed by the Division Bench of this Court the civil appeal filed by the Electricity Board was allowed and the impugned order of the High Court was set aside. Thereafter review petition No. 1073 of 1999 was filed. By order dated 18.11.2000 the review petition was allowed and the order of the Division Bench of this Court dated 4.12.1999 was recalled. Consequently, the Civil Appeal No. 6084/98 has now come once again before this Court.

ARGUMENTS

5. Shri Pramod Swarup, learned counsel appearing on behalf of the appellant submitted that candidates in the merit list have no indefeasible right to appointment even if a vacancy exists. In this connection he placed reliance on the judgment of this Court in the case of Shankarsan Dash Vs. Union of India. He contended that the High Court had erred in giving direction to the Appellant-Electricity Board to appoint respondent Nos. 1 to 7 against 18 vacancies which remained unfilled due to candidates not turning up though they were offered appointments. He contended that out of 22 candidates selected for appointment pursuant to advertisement No. 3/86 dated 15.12.1986 18 vacancies could not be filled as the candidates did not turn up. He submitted that in the merit list respondents one to seven were at serial no. 23 and below. That the Board had approved the panel of 22. That respondent Nos. 1 to 7 did not figure in the panel. He submitted that in terms of the judgment of the High Court given earlier dated 23.3.1994 the Appellant-Board recommended names of successful candidates under Employment Notice No. 3/86 and Employment Notice No. 6/92 and consequently on selection the Board notified the panel of 22 candidates pursuant to advertisement No. 3/86 and 25 candidates against advertisement No. 6/92. In the circumstances he submitted that the High Court by the impugned judgment had erred in directing the Appellant-Board to appoint respondents one to seven who were not in the panel. It was further contended that the

judgment of the Division Bench of this Court dated 4.12.1998 was based on correct appreciation of facts and therefore the order of recall was not warranted.

6. Shri Sujit K. Singh, learned counsel appearing on behalf of respondent Nos. 1 to 7 submitted that pursuant to the advertisement No. 3/86 respondents one to seven were put on the merit list at serial no. 23 onwards in the descending order. He contended that when 22 posts were notified by the appellant against advertisement dated 15.12.1986 out of which 18 did not join and therefore the vacancies could have been filled up by appointing the candidates at serial no. 23 and lower thereto. He submitted that the High Court was, therefore, right in directing the Appellant-Board to fill up the vacancies under advertisement No. 3/86 of 22 posts of Operators by proceeding in the descending order from 23 and beyond. In support of his arguments, Mr. Singh has relied upon the judgments of this Court in *Jai Narain Ram v. State of U.P. & Ors.* reported in and *Purushottam v. Chairman, MSEB* reported in .

FINDINGS:

7. We find merit in this appeal preferred by the Board. In the case of *Shankarsan Dash Vs. Union of India* (supra) it has been held by this Court that even if number of vacancies are notified for appointment and even if adequate number of candidates are found fit the successful candidates do not acquire any indefeasible right to be appointed against existing vacancies. That ordinarily such 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. It was further held that the State is under no legal duty to fill up all or any of the vacancies unless the relevant recruitment rules indicate. In the present case we are not shown any such relevant recruitment rules. In the present case pursuant to the direction of the High Court dated 23.3.1994, the appellant took steps for filling up 25 vacancies in the post of Operators from advertisement No. 3/86 and the remaining 25 vacancies from advertisement No. 6/92. The results were notified on 29.4.1994 on the notice board. The Board recommended names of successful candidates under advertisement No. 3/86 and advertisement No. 6/92. Out of 22 candidates selected by the Board for appointment under advertisement No. 3/86 18 candidates did not turn up. At this stage it is important to note that respondent Nos. 1 to 7 had applied for appointment under advertisement No. 3/86 dated 15.12.1986 and they had qualified but they were placed at serial no. 23 onwards in the descending order. As stated above a panel of 22 candidates was prepared for appointment under advertisement No. 3/86 and respondent Nos. 1 to 7 fell beyond cut off number. We are not shown any statutory recruitment rules which require the Appellant-Board to prepare a waiting list in addition to the panel. The argument advanced on behalf of respondent Nos. 1 to 7 was in effect that when 18 candidates failed to turn up the appellant was bound to offer posts to candidates in the waiting list. No such rule has been shown to us in this regard. In our view, the judgment of this Court in the case of *Shankarsan Dash Vs. Union of India* (supra) squarely applies to the facts of this case. Further there was no infirmity in the judgment of this Court delivered on 4.12.1998 and in our view with respect there was no need to recall the said judgment. Before concluding we may state that the judgments of this

Court in *Jai Narain Ram v. State of U.P. & Ors.* and *Purushottam v. Chairman, MSEB* (supra) have no application to the facts of this case.

8. In the result, the appeal is allowed and the impugned orders of the High Court are set aside. Consequently, CWJC Nos. 3732/95 and 9213/95 are dismissed.

9. In the facts and circumstances, the parties are directed to bear their own costs.