

# SUPREME COURT OF INDIA

Balwant Singh Narwal

Vs.

State of Haryana

C.A.No.2098 of 2007

(R. V. Raveendran and P. Sathasivam JJ.)

08.05.2008

## JUDGMENT

### **R. V. Raveendran J.**

1. This appeal by special leave is preferred by the writ petitioners in CWP No.18727 of 2003 being aggrieved by the dismissal of their writ petition by the Punjab & Haryana High Court by judgment dated 5.10.2004. The appellants, appointed as Principals between 1995 and 2000 (either by direct recruitment or promotion) are aggrieved by the seniority given to respondents 4 to 16 appointed as Principals on 26.5.2000, with retrospective effect from 2.6.1994.

2. The Haryana Public Service Commission - the third respondent ('Commission' for short) issued an advertisement in January, 1992 inviting applications for 18 posts of temporary Principals in higher secondary schools. The advertisement made it clear that the number of posts advertised was subject to variations to any extent. On 1.6.1993, the State Education Department made a fresh requisition to the Commission in regard to additional vacancies, thereby increasing the posts to be filled to 37. Respondents 4 to 16 were applicants against the said advertisement and underwent the process of selection. The Commission declared the merit list of 30 selected candidates on 30.9.1993 (published on 1.10.1993), which included Respondents 4 to 16. However, before the State Government could make appointment in terms of the said list, a non-selected candidate filed WP No.12700 of 1993 contending that only 18 posts were notified and the Commission could not make recommendations for selection of 30 candidates. The said writ petition was allowed by a learned Single Judge of the Punjab & Haryana High Court on 4.4.1994 and the recommendations in excess of the 18 vacancies were quashed on the ground that the Commission could not make recommendations beyond the number of posts advertised. A Division Bench dismissed the appeal against the judgment of the learned Single Judge on 18.1.1999. In the meanwhile, in view of the order of the learned Single Judge, the State Government appointed only 16 candidates from the list of 30 by order dated 2.6.1994. The State Government appointed only 16 as against 18 permitted by the High Court, not for want of vacancies but on account of some technical difficulty in appointing other two candidates.

3. Respondents 4 to 16 who were denied appointments, though their names were in the selected merit list of 30 candidates, challenged the order dated 18.1.1999 of the Division Bench. This Court by interim order dated 10.5.1999 directed that 12 vacancies may not be filled until final disposal by this Court. Ultimately, this Court disposed of the appeals filed by respondents 4 to 16 (Civil Appeal Nos.6976-6977 of 1999) by order dated 6.12.1999, reversing the decision of the High Court and dismissing the writ petition before the High Court. This Court held:

"In this view of the matter, on the admitted position that on the date of the recommendation made by the Public Service Commission on 1.10.1993 the Government's requisition was for the posts more than 18 (in fact 37), we see no bar on the power of the Commission in recommending 30 names which was the subject matter of challenge before the High Court. In fact the very judgment itself on which the learned Single Judge has relied upon in para 10 indicates the said position. Accordingly, we set aside the impugned order passed by the learned Single Judge and affirmed by the Division Bench in appeal and hold that the recommendations made by the Commission in accordance with law and therefore, all the 30 names recommended are entitled to be appointed." (Emphasis supplied)

4. In pursuance of the said judgment, the State Government by order dated 26.5.2000 appointed respondents 4 to 16 as Principals. The said respondents gave several representations dated 19.7.2000, 5.9.2000, 4.10.2000, 10.10.2000 and 11.10.2000 for fixing their seniority with reference to the merit list published by the Commission on 1.10.1993. They pointed out that but for the litigation, they would have been appointed along with the other 16 candidates on 2.6.1994 and as their selection was in regard to vacancies which were notified in January, 1992, they should be given seniority above those who were appointed against subsequent vacancies. The State Government considered and accepted their request and fixed their position immediately after the 16 candidates who were appointed from the same merit list on 2.6.1994. As a result, they have been shown above the appellants in the provisional seniority list of Principal H.E.S.-II.

5. Feeling aggrieved the appellants filed CWP No.18727 of 2003 before the Punjab & Haryana High Court. They contended that the selection by the Commission being merely recommendatory does not imply automatic employment and therefore candidates selected by the Commission are not entitled to claim seniority on the basis of selection or from the date of selection. They submitted that seniority of respondents 4 to 16 should be reckoned only from the date of their actual appointment, namely, 26.5.2000. They also contended that granting notional seniority to respondents 4 to 16 with retrospective effect would affect them as they had already entered into service prior to respondents 4 to 16.

6. The High Court rejected the writ petition by the impugned order dated 5.10.2004. It held that appointments of respondents 4 to 16 were in regard to an advertisement issued prior to the advertisement, in response to which the appellants were selected; that the actual appointment of respondents 4 to 16 was delayed not for want of any vacancies but on

account of litigation which were beyond their control; that but for the decision rendered by the learned Single Judge on 4.4.1994 declaring selections beyond 18 to be illegal, they would have been appointed on 2.6.1994 when the other candidates from the said merit list were appointed; and that therefore, the State Government was justified in giving respondents 4 to 16 benefit of notional seniority with effect from 2.6.1994 and placing them above the appellants who were appointed against subsequent vacancies/advertisements.

7. The said decision is challenged by the appellants reiterating the contentions urged before the High Court. Reliance was also placed on the decisions of this Court in the *State of Madhya Pradesh vs. Prem Prakash*<sup>1</sup>; *Dr. Chander Prakash vs. State of UP*<sup>2</sup> and *State of Uttaranchal vs. Dinesh Kumar Sharma*<sup>3</sup>, and other cases which lay down the general proposition that selection by Public Service Commission is merely recommendatory and does not imply automatic appointment and that the appointing authorities should not give notional seniority without valid reason, from a retrospective date, which would affect the seniority of those who have already entered service.

8. There is no dispute about these general principles. But the question here is in regard to seniority of the respondents 4 to 16 selected on 1.10.1993 against certain vacancies of 1992-93 who were not appointed due to litigation, and those who were selected against subsequent vacancies. All others from the same merit list declared on 1.10.1993 were appointed on 2.6.1994. Considering a similar situation, this Court, in *Surender Narayan vs. State of Bihar*<sup>4</sup>, held that candidates who were selected against earlier vacancies but who could not be appointed along with others of the same batch due to certain technical difficulties, when appointed subsequently, will have to be placed above those who were appointed against subsequent vacancies.

9. This Court while allowing the appeals by respondents 4 to 16 by order dated 6.12.1999 made it clear that all the 30 persons recommended by the Commission as per merit list dated 1.10.1993, including respondents 4 to 16 are entitled to be appointed. The State Government submitted that but for the order dated 4.4.1994 of the High Court, Respondents 4 to 6 would have been appointed on 2.6.1994 itself. The order dated 4.4.1994 was ultimately set aside by this Court and respondents 4 to 16 who were consequently appointed should not be denied the benefit of seniority. Therefore the State Government was justified in giving them only notional seniority and placing them immediately below the other 16 candidates selected in the common merit list (published on 1.10.1993) and appointed on 2.6.1994. Respondents 4 to 16 have been given retrospective seniority not from the date of their selection as wrongly assumed by appellants, but from 2.6.1994 when other selected candidates in their merit list were appointed.

10. In view of the above, we find no reason to interfere with the order of the High Court and these appeals are accordingly dismissed.

<sup>1</sup>1994 (1) SCC 432

<sup>2</sup>2002 (10) SCC 710

<sup>3</sup>2007 (1) SCC 687

<sup>4</sup>1998 (5) SCC 246