

**SUPREME COURT OF INDIA**

Kerala State Road Transport Corporation

Vs.

Akhilesh V.S.

C.A.No.3347 of 2019

(Arun Mishra and Navin Sinha,JJ.,)

01.04.2019

**JUDGMENT**

**Navin Sinha,J.,**

SLP(C)No.8395 of 2019

1. Delay condoned.
2. Leave granted. I.A. No.137467 of 2018, application for impleadment, is allowed.
3. The appellant is aggrieved by the direction to make appointments against 97 vacancies on the post of Blacksmith Grade II. The sanctioned cadre strength of the post was 800, of which 395 vacancies were already filled by substantive appointments. The appellant made a requisition for 405 vacancies to the Kerala Public Service Commission (hereinafter referred to as 'the Commission'), which forwarded a recommendation with regard to 351 vacancies initially, and later for another six posts followed by twenty-three more against non-joining vacancies. The facts, for the purpose of convenience, shall be taken primarily from Civil Appeal arising out of SLP(C) Diary No.21878 of 2018. Respondent Nos. 1 and 2, being applicants, were empaneled at serial nos. 284 and 294 respectively in the rank list. Appointments were made till rank No. 278 only. The rank list has expired on 21.10.2017. The respondents did not allege discrimination or arbitrariness by violation of the rank list in making appointments. The High Court opined that the appellant was obliged to make appointments against requisitioned vacancies including those that may have arisen subsequently, but during the life of the rank list.
4. The short question arising for consideration in these appeals is whether mere empanelment can justify a mandamus to make appointments because vacancies may exist. Additionally, whether mandamus can be issued to make appointments from the panel on vacancies which may have arisen subsequently due to superannuation etc. during the life of the rank list. The question assumes significance in view of the stand of the appellant that it did not wish to make any further appointments due to a financial crunch and a skewed bus to passenger ratio, and for which purpose it had also appointed a committee to recommend

remedial measures.

5. We have heard the counsel for the parties and opine that the order of the High Court is unsustainable. The cadre strength has rightly been held not to be a relevant consideration. The High Court has erred in issuance of mandamus to fill up a total of 97 vacancies, including those arising subsequently but during the life of the rank list. Vacancies which may have arisen subsequently could not be clubbed with the earlier requisition and necessarily had to be part of another selection process. The law stands settled that mere existence of vacancies or empanelment does not create any indefeasible right to appointment. The employer also has the discretion not to fill up all requisitioned vacancies, but which has to be for valid and germane reasons not afflicted by arbitrariness. The appellant contends a financial crunch along with a skewed staff/bus ratio which are definitely valid and genuine grounds for not making further appointments. The court cannot substitute its views over that of the appellant, much less issue a mandamus imposing obligations on the appellant corporation which it is unable to meet.

6. Suffice to observe from *Kulwinder Pal Singh Vs. State of Punjab*<sup>1</sup>,:

“12. In *Manoj Manu v. Union of India*<sup>2</sup>, it was held that (para 10) merely because the name of a candidate finds place in the select list, it would not give the candidate an indefeasible right to get an appointment as well. It is always open to the Government not to fill up the vacancies, however such decision should not be arbitrary or unreasonable. Once the decision is found to be based on some valid reason, the Court would not issue any mandamus to the Government to fill up the vacancies...”

7. Resultantly, we are unable to sustain the orders of the High Court which are accordingly set aside. The appeals are allowed.

Judgment Referred.

<sup>1</sup>(2016) 6 SCC 0532

<sup>2</sup>(2013) 12 SCC 0171