

herein however, admittedly does not possess the requisite qualifications for appearance in the selection process initiated. On the basis of the Supreme Court judgments, the amended Rules and the directions issued by this Court in C.W.P. No. 15693 of 1994, the present writ petition is without any substance which is accordingly dismissed in limine but with no order as to costs.

J.S.T.

Before Hon'ble G. S. Singhvi & T. H. B. Chalapathi, JJ.

OM PARKASH,—Petitioner.

versus

THE STATE OF HARYANA & ANOTHER,—Respondents.

C.W.P. No. 1077 of 1995

3rd August, 1995

Constitution of India, 1950—Arts. 226/227—Appointment—Select list prepared in 1982 of 28 eligible candidates for appointment of 11 Assistant Food & Supplies Officers—Appointment sought in 1995 on the basis of selection made by Board in 1982—Validity and tenure of main list and waiting list to be six months—Thereafter any vacancy arises to be filled by making fresh appointment.

Held, that various service rules framed by the Governor of Haryana under Proviso to Article 309 of the Constitution of India do not contain any provision regarding the tenure of the select list or the panel prepared by the Haryana Public Service Commission and the Subordinate Service Selection Board, Haryana. In order to fill up this lacuna, the Government of Haryana has issued various circulars on the subject.

(Para 11)

Further held, that the last circular on the subject has been issued on 28th October, 1993 and it has been clarified that the Commission shall also prepare a waiting list along with the main list and the validity of the main list shall be for six months and the waiting list shall also remain alive for six months. These circulars issued by the Government of Haryana though administrative in character are in no manner inconsistent with the Rules framed under Proviso to Article 309 of the Constitution and, therefore, these circulars are binding on the Public Service Commission as well as the Board.

(Para 11)

Constitution of India, 1950—Art. 226—Appointment on the basis of Select List—List prepared of 28 candidates against 11 advertised posts—Select list illegal—No right to claim appointment after a period of more than 12 years of preparation of list.

Held, that the Board committed a patent illegality in preparing a list of 28 candidates against the 11 advertised vacancies. Learned counsel for the petitioner has not placed on record any rule or order of the Government authorising the Board to prepare a select list which was almost 200 times more than the advertised vacancies. Therefore, on the basis of an illegally prepared select list, the petitioner cannot claim any right to be appointed and that too after a period of more than 12 years of the preparation of the select list.

(Para 19)

C. M. Chopra, Counsel for the Petitioner.

R. N. Raina, Deputy Advocate General, Haryana, for the Haryana State.

ORDER

G. S. Singhvi, J.

(1) The moot question which requires adjudication in this writ petition is—whether on the basis of selection made by the Subordinate Service Selection Board, Haryana (for short, 'the Board') in the year 1982, a writ can be issued in favour of the petitioner in the year 1995 for appointment on the post of Assistant Food and Supplier Officer.

(2) In response to an advertisement issued by the Board for recruitment of 11 Assistant Food and Supplies Officers, the petitioner had applied along with other persons. The Board interviewed the eligible candidates and prepared a select-list consisting of 28 names. The petitioner was placed at Serial No. 27 in the select-list.

(3) It appears from the record that on the basis of the select-list forwarded to the Government, 11 candidates (6 belonging to General Category, 2 belonging to Scheduled Caste, 2 belonging to the category of Ex-servicemen and one from the Backward Class) were appointed in the year 1982. Two more candidates belonging to General Category were appointed in December 1982, and January, 1983. Three more persons were given appointment some time in the year 1985 after the Government agreed to revalidate the select-list upto 31st May, 1985. In this manner, as many as 16 selected persons were given appointment against the 11 advertised vacancies. Thereafter, the Government wrote letter dated 17th March, 1986 (Annexure

R-2) and returned the remaining list to the Board. It further appears from the record that after more than one year of the return of the select-list by the Government, the Board wrote letter dated 6th May, 1987 to the Government that Ramesh Singh, whose name figured at Serial No. 25 in the select-list belongs to the category of ex-serviceman and, therefore, he should be appointed against the vacancies reserved for ex-servicemen.

(4) Aforesaid action of the Board led to a series of litigation. Azad Singh filed Civil Writ Petition No. 3504 of 1989 claiming appointment on the ground that the persons lower in merit than him, namely, Ramesh Singh and Narinder Kumar have been appointed ignoring his candidature. That writ petition was accepted by a learned Single Judge on 26th March, 1991 and a direction was given to the Government to appoint Azad Singh against a vacancy which was reserved under the Court's order. In compliance of the order of the High Court, the respondent No. 2 issued order dated 31st May, 1991 (Annexure P-4). Civil Writ Petition No. 9547 of 1989 filed by Ram Karan (whose name figured at Sr. No. 21) was also allowed by a learned Single Judge of this Court on 9th January, 1992 and a direction was given for his appointment as Assistant Food and Supplies Officer. In compliance of the Court's order, respondent No. 2 issued order (Annexure P-6) dated 3rd September, 1992 for appointment of Ram Karan. Encouraged by the success of two persons, Madan Gopal Marya filed Civil Writ Petition No. 6524 of 1992 and Nathu Ram filed Civil Writ Petition No. 10773 of 1992. Their names figured at Serial Nos. 12 and 22 respectively in the select-list. Both these petitions were accepted by a learned Single Judge on 29th April, 1994 and in compliance of the order of the High Court, the respondent No. 2 issued orders appointing those two petitioners.

(5) The petitioner also felt encouraged by the decisions of this Court and, therefore, some time in the year 1994 he made re-resentation (Annexure P-9) to the respondents for his appointment on the basis of selection made in the year 1982. Having failed to elicit a favourable response from the respondents, the petitioner has filed this petition and has prayed for issue of a writ of mandamus to the respondents to appoint him as Assistant Food and Supplies Officer with consequential benefits.

(6) The writ petition has been opposed by the respondents on the ground that after the return of the list by the Government,--*vide*

letter dated 7th March, 1986, the petitioner has no right to be appointed in the year 1995. The respondents have admitted that on the basis of the orders passed by the High Court in different writ petitions, Sarvshri Azad Singh, Ram Karan, Madan Gopal Marya and Nathu Ram whose names appeared at Serial Nos. 10, 21, 12 and 22 respectively, have been appointed. However, the case of the petitioner is being contested on the ground of inordinate delay and also on the ground that the petitioner, who appears down below at Serial No. 27, does not have any legal or constitutional right to be appointed in the service on the basis of selection made by the respondent-Board in the year 1982.

(7) The only argument urged by Shri Chopra, learned counsel for the petitioner, is that when the High Court has given relief to the four petitioners by directing the respondents to appoint them, similar relief should be given to the petitioner. Learned counsel argued that when the Government has acted on the select-list as late as in the year 1994, there can be no reason to deny appointment to the petitioner learned counsel relied on the decision of the Supreme Court in *Ms. Asha Kaul v. State of Jammu and Kashmir* (1). Shri Rajiv Raina, on the other hand, argued that the select-list prepared by the Board in the year 1982 cannot be treated as alive in the year 1995 and, therefore, no direction can be given by the High Court for appointment of the petitioner. He argued that in respect of the vacancies which became available in the year 1983 and 1984 onwards, the candidates who became eligible in those years had a constitutional right to be considered for employment and, therefore, no direction should be given in favour of the petitioner for his appointment in the year 1995.

(8) During the course of the arguments, we enquired from the learned counsel for the parties as to how many vacancies in the cadre of Assistant Food and Supplies Officers had become available after the issue of advertisement by the Board but neither of them could give any satisfactory answer. Of course, Shri Chopra stated that vacancies in the cadre of Assistant Food and Supplies Officers have become available in the year 1990 and thereafter and the very fact that the orders passed by this Court in the years 1991, 1992 and 1994 have been complied with by the respondents clearly shows that the vacancies in the cadre of Assistant Food and Supplies Officers have been regularly becoming available.

(1) 1993 (2) S.L.R. 560.

(9) Recruitment to the post of Assistant Food and Supplies Officer is regulated by the provisions contained in the Haryana Food and Supplies Department Sub-offices (Group C) Service Rules, 1982, which have been enacted by the Governor of Haryana in exercise of his powers under Proviso to Article 309 of the Constitution of India. Rule 2 of these Rules contains definitions of various terms, including "direct recruitment". Rule 3 specifies the number and character of posts. Rule 5 refers to the age for direct recruitment. Rule 6 says that the Director of the Food and Supplies Department, Haryana, shall be the appointing authority. Rule 7 specifies the qualifications for appointment by direct recruitment or by transfer. Rule 8 speaks of dis-qualifications. Rule 9 contains methods of recruitment. As per Rule 9(1) (c), recruitment to the post of Assistant Food and Supplies Officer is made by promotion and direct recruitment in the ratio of 67 : 33. For direct recruitment, a person must possess a degree of recognised University and knowledge of Hindi of Matric standard. Rule 9(3) lays down that when a vacancy occurs or is about to occur in the service, the appointing authority shall determine the manner in which the same, is to be filled. Rule 10 speaks of probation whereas Rule 11 deals with seniority. Rule 12 requires a member of service to serve at any place whether within or outside the State of Haryana. Other Rules contain general provisions which are not relevant to the subject-matter in controversy.

(10) Above analysis of the Rules shows that although the post of Assistant Food and Supplies Officer is required to be filled by promotion as well as by direct recruitment in the ratio of 67 : 33, the Rules of 1982 do not specify the procedure which is required to be followed for making appointment by direct recruitment. However, both the parties are in agreement that the appointment by direct recruitment is required to be made on the recommendation of the Board.

(11) Various service rules framed by the Governor of Haryana under Proviso to Article 309 of the Constitution of India do not contain any provision regarding the tenure of the select-list or the panel prepared by the Haryana Public Service Commission and the Sub-ordinate Service Selection Board, Haryana. In order to fill up this lacuna, the Government of Haryana has issued various circulars on the subject. One of the earliest circular issued on 27th May, 1972 makes a reference to an earlier circular issued by the Government of Joint Punjab on 22nd March, 1955 and goes on to say that the

recommendations made by the Commission/Board should be acted upon for making appointment against the additional vacancies becoming available within six months of the receipt of the recommendation and the vacancies arising thereafter shall be filled by making fresh selection. Circular dated 26th May, 1972 was clarified by another circular dated 8th September, 1972. The Government reiterated that the Commission or the Board should send names of five extra candidates of which three should be from the open market and one from amongst the Scheduled Castes and one candidate relating to the ex-serviceman. The Government also clarified that if candidature of any candidate is rejected by the Government on the ground that he has not joined in pursuance of the appointment order and if any other candidate is required to be appointed from the five additional names, then the matter should be referred to the Chief Secretary in the General Administration Department and the appointment order should be issued only after receipt of permission from the Chief Secretary. On 20th January, 1988, the Chief Secretary to Government of Haryana addressed letter No. 42/43/84-5 GSI to the Secretary, Subordinate Services Selection Board, Haryana, and clarified that the Board shall prepare a waiting-list of 25 per cent in case the number of vacancies is upto 25, for vacancies between 25 to 30 waiting-list of 15 per cent and for vacancies above 50 waiting-list of 10 per cent subject to minimum of two candidates. The Government also decided that the main list as well as the waiting-list shall remain valid for a period of one year from the date of recommendations. The Government also laid down that the Board should indicate in its recommendations-the number of the candidates included in the main list as well as the number of the candidates included in the waiting-list. Last circular on the subject has been issued on 28th October, 1993 and it has been clarified that the Commission shall also prepare a waiting-list along with the main list and the validity of the main list shall be for six months and the waiting-list shall also remain alive for six months. These circulars issued by the Government of Haryana though administrative in character are in no manner inconsistent with the Rules framed under Proviso to Article 309 of the Constitution and, therefore, these circulars are binding on the Public Service Commission as well as the Board. Therefore, the very act of the Board in preparing a list of 28 candidates against the 11 advertised vacancies cannot but be termed as wholly illegal and arbitrary and the inclusion of the petitioner's name at Serial No. 27 in the select-list cannot give any right to the petitioner to claim appointment on the post of Assistant Food and Supplies Officer.

(12) We are also of the opinion that in terms of the Government circulars, the Board could have prepared a waiting-list of five candidates and not beyond that and all the candidates, whose name figured below Serial No. 16 in the list, did not acquire any right of appointment on the posts of Assistant Food and Supplies Officers, which became available in the year 1984 and onwards.

(13) Even if we were to ignore the patent error committed by the Board in preparing a list of 28 candidates, we are of the opinion that the petitioner, whose name figured at Sr. No. 27 in the list, cannot derive any benefit from the orders passed by the learned Single Judges of this Court in four writ petitions filed by Sarvshri Azad Singh, Ram Karan, Madan Gopal Marya and Nathu Ram. All those petitions were decided only on the ground that the department had acted arbitrarily in ignoring the candidatures of the petitioners who were placed higher than Ramesh Singh and Narinder Kumar in the ranking-list and while giving appointment to those candidates, the department did not consider the candidature of the petitioners. In so far as the petitioner is concerned, he has not been able to show that any person placed below him in the ranking-list has been appointed by the Government. Thus, the plea of discrimination is not available to the petitioner for claiming that his right of equality before law has been infringed. Even otherwise, we are of the opinion that the petitioner is not entitled to issue writ of *mandamus* merely because in the cases of other petitioners, this Court has issued directions for appointment. In none of the three decisions of the learned Single Judges of this Court, the issue has been examined from the point of view of validity of the select-list. It appears that the respondents in those cases did not argue that after lapse of about one decade or more of the preparation of the select-list, order of appointment should not be issued in favour of the petitioners because such an order would result in encroachment of the right of consideration vested in other eligible persons. It also appears that no argument was advanced before the learned Single Judges that as per the instructions issued by the Government of Haryana, names of only 5 persons could be included in the waiting-list. Therefore, the three orders on which Shri Chopra has placed reliance cannot be treated as laying down a proposition of law that even though the Board has committed an illegality in preparing a waiting-list far in excess of the limit prescribed by the Government circulars and vacancies in the cadre of the Assistant Food and Supplies Officers had become available many years after the preparation of the select-list, the petitioner had a right to be appointed in the service. Any such

reading of the three orders passed by the learned Single Judges would render them contrary to the law laid down by the Supreme Court. In our view, the three orders passed by the learned Single Judges have to be confined to the facts of those cases and cannot have any precedent value.

(14) In *Babita Prasad v. State of Bihar* (2), their Lordships of the Supreme Court were dealing with a case where a select-list for appointment of teachers was prepared by the Education Department. This select-list was challenged in the High Court. While not disturbing the appointment already made, the High Court restrained the Government of Bihar from making further appointment. In pursuance of the High Court's orders, the Government issued circular prohibiting appointments on the basis of the existing list. Those whose names were included in the select list, challenged the decision of the Government and also filed writ petition before the Supreme Court. After making reference to its earlier judgments in *State of Haryana v. Subhash Chander Marwaha* (3), *Miss Neelima Shangla v. State of Haryana* (4), *Shankarasan Dash v. Union of India* (5), the Supreme Court held :—

“The panel in the instant case was too long and was intended to last indefinitely barring the future generations for decades from being considered in the vacancies arising much later. In fact, the future generations would have been kept out for a long period had the panel been permitted to remain effective till exhausted. A panel of the type prepared in the present case cannot be equated with a panel, which is prepared having correlation to the existing vacancies or anticipated vacancies arising in the near future and for a fixed time and prepared as a result of some selection process. As is apparent, the names of some of the teachers in the panel have existed for more than 16 years. A panel of this nature, in our opinion, cannot be treated as conferring any vested or indefeasible right to the teachers to be appointed as laid down by the Constitution Bench in *Shankarsan Dash's case* (supra).”

(2) 1993 (1) SLR 44.

(3) 1973 (2) S.L.R. 137.

(4) 1986 (3) S.L.R. 389.

(5) 1991 (2) S.L.R. 779.

(15) In *Hoshiar Singh v. State of Haryana* (6), their Lordships of the Supreme Court quashed the action of the Subordinate Service Selection Board, Haryana, in preparing a list of 19 persons against the 8 posts of Inspectors of Police. While quashing the list prepared by the Board, their Lordships of the Supreme Court held :—

“since the requisition was for 8 posts of Inspector of Police, the Board was required to send its recommendations for 8 posts only. The Board, on its own, could not recommend names of 19 persons for appointment even though the requisition was for 8 posts only because the selection and recommendation of larger number of persons than the posts for which requisition is sent. The appointment on the additional post on the basis of such selection and recommendation would deprive candidates who were not eligible for appointment to the post on the last date for submission of applications mentioned in the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional posts because if the said additional posts are advertised subsequently those who become eligible for appointment would be entitled to apply for the same. The High Court was, therefore, right in holding that the selection of 19 persons by the Board even though the requisition was for 8 posts only, was not legally sustainable.”

(16) In *Gujarat State Dy. Executive Engineers' Association v. State of Gujarat and others* (7), the Supreme Court once again held that the candidates included in the waiting-list do not get any right to be appointed in the service. About the nature of the waiting-list and its purpose, the Supreme Court observed :—

“A waiting list prepared in service matter by the competent authority is a list of eligible and qualified candidates who in order of merit are placed below the last selected candidate.

How a waiting list should operate and what is its nature may be governed by the rules. Usually, it is linked with the

(6) 1993 (5) S.L.R. 36.

(7) 1994 Supp. 2 S.C.C. 591.

selection or examination for which it is prepared. For instance, if an examination is held say for selecting 10 candidates for 1990 and the competent authority prepares a waiting list then it is in respect of those 10 seats only for which selection or competition was held. Such lists are prepared either under the rules or even otherwise mainly to ensure that the working in the office does not suffer if the selected candidates do not join for one or the other reason or "the next selection of examination is not held soon. Therefore, once the selected candidates join and no vacancy arises due to resignation etc. or for any other reason within the period the list is to operate under the Rules or within reasonable period where no specific period is provided then candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for it.

A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list.

(Underlining is ours)

(17) In *Madan Lal and others v. State of Jammu and Kashmir and others* (8), the Supreme Court considered the question relating to the validity of the select list prepared for appointment to the Jammu and Kashmir Civil Service (Judicial) and while holding that the list of the selected candidates exhausted on appointment of 11 candidates against the 11 advertised vacancies, their Lordships of the Supreme Court quoted with approval the following observations made in *State of Bihar v. Madan Mohan Singh* (9), :—

"Where the particulars advertisement and the consequent selection process were meant only to fill up 32 vacancies and not to fill up the other vacancies, the merit list of 129 candidates prepared in the ratio of 1 : 4 on the basis of

(8) 1995 (2) S.L.R. 209.

(9) 1993 (5) S.L.R. 601.

the written test as well as a viva voce will hold good only for the purpose of filling up those 32 vacancies and no further because said process of selection for those 32 vacancies got exhausted and came to an end. If the same list has to be kept subsisting for the purpose of filling up other vacancies also that would naturally amount to deprivation of rights of other candidates who could have become eligible subsequent to the said advertisement and selection process."

(Emphasis supplied).

(18) In *Bijender Singh v. State of Haryana* (10), a Full Bench of this Court has held that a selecting agency cannot select candidates far in excess of the posts available on the date of the advertisement and only a small percentage of the candidates or as may be desired by the Government can be kept on the waiting list to meet with a contingency where selected candidate may not join or where the selected candidates were found unsuitable on verification of their antecedents or on physical examination.

(19) In view of the above referred decisions, it must be held that the Board committed a patent illegality in preparing a list of 28 candidates against the 11 advertised vacancies. Learned counsel for the petitioner has not placed on record any rule or order of the Government authorising the Board to prepare a select list which was almost 200 times more than the advertised vacancies. Therefore, on the basis of an illegally prepared select-list, the petitioner cannot claim any right to be appointed and that too after a period of more than 12 years of the preparation of the select-list. In respect of the posts/vacancies in the cadre of Assistant Food and Supplies Officers which became available after 1982, all those who had become eligible by passing the graduation and who possessed knowledge of Hindi of Matric standard, acquired a right to be considered for selection. Right of all such persons would stand defeated if we were to give a direction in the year 1995 for the appointment of the petitioner against the vacancy which has become available in the near past. The judgment of the Supreme Court in *Asha Kaul v. State of Jammu and Kashmir* (Supra) has been considered by the Supreme Court in *Madan Lal v. State of Jammu and Kashmir* (supra) and has been distinguished. In that case Commission has

sent a list of 20 candidates. The Government approved a part of that list. Their Lordships of the Supreme Court held that the Government cannot pick and choose candidates out of the list except in a case where the antecedents of the candidates are found to be bad. However, even then the Supreme Court did not give relief to the petitioner because the candidate whose name was included at a higher position in the waiting list did not get relief from the Court.

(20) In view of the above discussion, the writ petition is dismissed. The parties are left to bear their own Costs.

J.S.T.

Before Hon'ble N. C. Jain & S. S. Sudhalkar, JJ.

GULAB SINGH,—*Petitioner.*

versus

DIVISIONAL CANAL OFFICER & OTHERS,—*Respondents.*

C.W.P. No. 6204 of 1995

4th October, 1995

Haryana Canal and Drainage Act, 1974—S. 24—Restoration of dismantled water course—Scope of powers under section 24—Whether a fresh water course can be ordered.

Held, that while dealing with the application under section 24 of the Act, the authorities under the Act cannot provide another water course. The scope of Section 24 of the Act is limited. Under this provision, the authorities are called upon to determine whether a water course was dismantled and whether the applicant is entitled to the restoration of water course. If the authorities dealing with an application under Section 24 of the Act are of the view that no water course was dismantled by a particular party and that the applicant by filing an application under Section 24 of the Act was not entitled to its restoration, the application could certainly be dismissed but under no circumstance, another water course can be provided in the interest of better irrigation. If the lands of particular land owners can be irrigated by another water course, the process of preparation a fresh scheme has to be gone into.

(Para 5)

R. M. Singh, Advocate, *for the Petitioner.*

A. S. Gulia, Advocate, J. V. Yadav, Advocate. *for the Respondents.*

Jagdev Sharma, Addl. A.G. Haryana, with Gulab Singh, AAG, Haryana.