

A candidate can be held guilty under Ordinance 10(h) if he is found copying from some objectionable material found in his possession or copying from the answer sheet of another candidate or assisting other candidate to copy from the objectionable material in his possession or from his answer book. There is no allegation much less proof that any objectionable material was found from the possession of the petitioner from which he had copied while answering the question paper or that he assisted another candidate from copying from the objectionable material or from his answer sheet. Ordinance 10(h) of the Ordinances postulates that a candidate will be held guilty for using unfair means in the examination if he receives help for answering the question paper from any source in any manner inside or outside the examination hall. There is no material on record which can even remotely suggest that the petitioner received help from some material while answering the question paper. The Standing Committee could arrive at the conclusion on evidence before it. The learned counsel for the University could not refer to any evidence on record on the basis of which the Standing Committee has arrived at the conclusion that the charge against the petitioner for use of unfair means in the examination under Ordinance 10(h)(j) read with Ordinances 11 of the Ordinances stood proved. The Standing Committee to say the least is expected to act fairly and not arbitrarily. In the instant case, there is no escape from the conclusion that the Standing Committee has acted illegally. The order of disqualifying the petitioner under Ordinance 10(h)(j) read with Ordinance 11 of the Ordinances of Guru Nanak Dev University Calendar, Volume II 1986 cannot be sustained and the same is quashed.

(4) The writ petitions are accordingly allowed but with no order as to costs.

J.S.T.

Before : G. C. Mital & S. S. Grewal, JJ.

KAMAL KANT AND OTHERS,—*Petitioners.*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 7991 of 1990.

5th February, 1991.

Punjab Civil Service (Judicial Branch) Rules, 1951 as amended by the State of Haryana—Rls. 7, 8, 10(i) & (ii) of part 'C', 1, 7 & 8 of

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part 'D'—Filling up of vacancies in judicial services—Public Service Commission is duty bound to intimate names of all candidates who secured 55 per cent marks in aggregate—State Government required to publish such names in the gazette under intimation to High Court for entering their names in the High Court register—Petitioners aggrieved by non-inclusion of their names on High Court Register, therefore, denied right of consideration against advertised and anticipated vacancies—Action of State Government in not forwarding their names to the High Court for inclusion is illegal and not in accordance with law laid down in Neelima Shangla's case—High Court directing State Government to forward names of all qualified candidates—Thereafter, High Court directed to bring the said names on the register—High Court should then fill up remaining vacancies in accordance with rules.

Held, that in terms of the law laid down by the Supreme Court in Neelima Shangla's case, we direct the State of Haryana to forward the list of 42 candidates who qualified in the examination (32 in general and 10 reserved) held in December, 1988 forthwith and the High Court would enter the names of such number of candidates as would be necessary in terms of Rule 8 of Part D of the Rules in the Register in order of merit. The names of the candidates of the reserved categories would also be brought on the Register in the same manner. The High Court would then consider to fill up the remaining vacancies and would forward the names of the requisite number of candidates to the State Government for appointment as per Rule 7(1) of Part D of the rules as Subordinate Judges under Article 234 of the Constitution. While doing so it will be open to the High Court in the interest of higher standard not to recommend the names of all the candidates who obtained 55 per cent marks and the appointment can be restricted to such number of candidates who obtained higher percentage than 55 per cent as may be decided by the High Court and agreed to by the Government.

(Para 14)

Held, that the selection process on the basis of requisition sent in January, 1991 should go on, as it is time consuming, and this would ensure for filling up of the vacancies as would be available at the time, of selection of candidates and for the anticipated vacancies likely to occur within two years of the date of selection as per rule 8 of Part D of the Rules.

(Para 16)

Petition under Article 226 of the Constitution of India, praying that in the facts and circumstances of the case stated above and in the interest of ensuring efficient dispensation of justice by the Subordinate Judicial courts: this Hon'ble Court may be pleased:—

- (i) *to issue a writ of mandamus directing respondent No. 1 to select candidates at Sr. No. 12, 26, 28, 29, 32 and 35 to 37*

belonging to general category shown at Sr. No. 12 to 26, 28, 29 32 and 35 to 37 in the notification dated 15th September, 1989 Annexure P-2 who are qualified for appointment to the Haryana Subordinate Judicial Service as they had obtained more than 55 per cent marks in the aggregate to the written examination and viva voce test held by the Haryana Public Service Commission; in compliance of its statutory obligation as envisaged by rule 10 of Part C read with rule 8 of Part D of the service rules and to forward the names of the qualified candidates shown at Sr. No. 12 to 26, 28, 29, 32 and 35 to 37 for entering their names in the register maintained by the High Court as envisaged by rule 1 of Part D of the service rules so as to enable the High Court to fill all the existing vacancies and also the vacancies which are anticipated to arise during the period of 2 years from the date of the publication of the result of the examination i.e. upto September, 1991:

- (ii) directing the High Court to enter the names of all the qualified candidates in the register which is required to be maintained by High Court as envisaged by rule 1 of Part D of the service rules and to fill up all the existing vacancies whether permanent, temporary or officiating and also the vacancies which have already occurred or are anticipated to occur upto September, 1991 from amongst the qualified candidates shown at Sr. No. 12 to 26, 27, 29, 32 and 35 to 37 and forward the names of the qualified candidates to the State Government for issuing orders of appointment to the remaining qualified candidates;*
- (iii) directing respondent No. 1 to issue orders of appointment to the remaining qualified candidates on receipt of their names from the High Court for issuing the orders of appointment of the remaining qualified candidates for filling up the remaining existing vacancies and the vacancies which are likely to occur in the cadre of the Subordinate Judicial Service upto September, 1991 as and when the names of the remaining qualified candidates are forwarded by the High Court to the State Government;*
- (iv) directing the respondent No. 2 to issue the order of posting after receiving the orders of appointment of the remaining qualified candidates from respondent No. 1;*
- (v) any other appropriate writ order or direction which this Hon'ble Court may deem fit may also be granted in favour of the petitioners and against the respondents;*
- (vi) the requirement of filing of the certified copies of the annexures attached with the writ petition may kindly be dispensed with;*

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- (vii) *the requirement of serving the advance notices of motion of the writ petition on the respondents may also be dispensed with;*
- (viii) *costs of this writ petition also be awarded to the petitioners against the respondents.*

It is further prayed that an ad-interim order directing respondent No. 1 to forebear from initiating the process for recruitment to the Haryana Subordinate Judicial Services may kindly be granted during the pendency of this writ petition.

M. S. Jain, Sr. Advocate with Sanjeev Sharma, Advocate, for the petitioners.

S. C. Mohunta, A.G. Haryana and S. K. Sood, A.A.G. Haryana, for respondent No. 1.

G. C. Garg, Sr. Advocate with Mr. Rajan Gupta, Advocate, for respondent No. 2.

JUDGMENT

Gokal Chand Mital, J.

(1) The point raised in Civil Writ Petition Nos. 7991, 9096 and 16681 of 1990 is on all fours covered by the decision of the Supreme Court in *'Neelima Shangla v. State of Haryana'* (1). We are at pains to notice that in spite of clear exposition of law in the aforesaid decision it is not being followed by the State Government.

(2) On 15th July, 1988 Haryana Public Service Commission (for short 'the Commission') advertised posts for the recruitment of 24 officers in the Haryana Civil Service (Judicial Branch). Later on, the State Government sent intimation to the Commission that the existing vacancies are 28. Accordingly, a fresh advertisement was published for the recruitment of 28 officers.

(3) In December, 1988 written examination was held and after the result was over the candidates who obtained 45 per cent marks in the aggregate in all the written papers and 33 per cent marks in the language paper were called for interview in July, 1990 as per rule 7 of part 'C' of the Punjab Civil Service (Judicial Branch)

(1) A.I.R. 1987 S.C. 169.

Rules, 1951, as amended by the State of Haryana (for short the 'Rules'). According to Rule 8 of part 'C' of the Rules those candidates who obtained not less than 55 per cent marks in the aggregate of all the papers including the *viva voce* test are considered to have qualified in the examination. Under rule 10(i) of part 'C' the result of such candidates is to be published in the Haryana Government Gazette and under sub rule (ii) the candidates have to be selected for appointment strictly in the order in which they are placed by the Commission in the list of qualified candidates. This is subject to the reservation of certain seats for Scheduled Castes, Backward Classes and Ex-servicemen.

(4) Thirty two candidates of the general category and ten of the reserved category qualified in the examination. On 16th September, 1989 the result was published in the government gazette (Annexure P/2).

(5) Then we are concerned with Rules 1, 7 and 8 of Part 'D' of the Rules. Under rule 1 the names of the candidates selected by Government for appointment as Subordinate Judges are to be entered in the High Court Register in the order of their selection. Rule 7(1) provides that whenever it appears to the Judges of the High Court that a vacancy or vacancies in the cadre of Judicial Branch of the Haryana Civil Service, whether permanent, temporary or officiating, should be filled, they will make a selection from the High Court Register in the order in which names have been entered and forward the names of the selected candidates to Government for appointment as Subordinate Judges under Article 234 of the Constitution of India.

(6) Then we are concerned with Rule 8 of the Rules which is of greater importance.

(7) Under Rule 8 of the Rules there is no limit to the number of names to be borne on the High Court Register but ordinarily no more names will be included than are estimated to be sufficient for the filling of vacancies which are anticipated to be likely to occur within two years from the date of selection of candidates as a result of an examination. This Rule gives option to the High Court to forward the names of selected candidates to the State Government for appointment of such number of Subordinate Judges out of the Register to fill the vacancies existing at the time of selection of the candidates and to fill the anticipated vacancies which are likely to occur within two years from the date of selection.

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(8) Earlier the Commission was not following these Rules. That is why in *Neelima Shangla's case* (supra) while interpreting the rules, a clear dictum of law was laid down that Public Service Commission is duty bound to intimate the names of all the candidates to the State Government who secured not less than 55 per cent marks in the aggregate in all the papers including the *viva voce* test and the State Government was to publish their names in the government gazette. It was also ruled that the government will intimate their names to the High Court for entering them in the High Court Register and the High Court will recommend from that Register the names of the candidates on merit to fill up the vacancies existing at the time of selection of the candidates plus the vacancies which are anticipated and likely to occur within two years from the date of selection of the candidates. In spite of this dictum although the Commission intimated all the names to the State Government and the State Government published the names of all the qualified candidates in the gazette but did not forward the list to the High Court for entering their names in the High Court Register to enable the High Court to forward the names of the selected candidates in the general quota and reserved categories in the order of merit to the State Government for their appointment as Subordinate Judges. Instead the Government in December, 1989 ordered the appointment of 8 candidates out of the general quota and 8 out of the reserved quota of three categories viz. the Scheduled Castes, Backward Classes and Ex-Servicemen. After the appointment orders were issued the names of 16 candidates were entered in the High Court Register and their posting orders were issued by the High Court.

(9) The State Government on 15th March, 1990 appointed two more candidates of general category and still two more in April, 1990, one each from Scheduled Castes and Backward Class. On receipt of the intimation from the State Government the names of these four candidates were also entered in the High Court Register and posting orders were issued by the High Court. In this manner, 20 candidates, 10 from general category and 10 from the reserved categories were given appointments/postings. Since the vacancies notified were 28 and some more vacancies had arisen and some more were anticipated within two years of the selection, the candidates who were lower in merit and expecting their appointments in case all the vacancies were to be filled in have come to this Court in writ petitions for issuing directions for complying with the rules

and for filling the vacancies on the direction of the High Court in terms of Rules 7(1) of Part D of the Rules.

(10) The stand of the State Government, in para 10 of the written statement, is that 11 vacancies in the general quota is under consideration of the State Government because out of the list of 28 advertised posts 11 posts were to be filled up from the general category candidates and a decision in this behalf is likely to be taken in the near future.

(11) It is also the stand of the State Government, in para 8 of its written statement, that for filling up 11 vacancies 3 belonging to general category and 8 to reserved categories, requisition has been sent to the Commission in January, 1991 and therefore the question of appointment of any more candidate from the merit list of the examination which was published in September, 1989 does not arise.

(12) According to the stand taken by the High Court in its written statement there is a cadre strength of 128 posts of Sub-Judges against which at the time of publication of the result 105 officers were working. On this basis there were 23 vacancies. In the meantime, one Officer resigned and some officers were promoted to the posts of Additional District and Sessions Judges. In May, 1990 the High Court informed the State Government that after the appointment of 19 candidates from the current merit list there were still 13 vacancies to be filled up and 4 vacancies were anticipated upto September, 1991.

(13) The factual data as emerges today is that the State Government has appointed 20 officers so far and therefore the existing vacancies will be 12 and anticipated 4. The State Government is considering one candidate of general category for appointment but is not considering to fill up the remaining vacancies; although the candidates are available who secured 55 per cent marks or more in the aggregate.

(14) In terms of the law laid down by the Supreme Court in *Nelima Shangla's case* (supra), we direct the State of Haryana to forward the list of 42 candidates who qualified in the examination (32 general and 10 reserved) held in December, 1988 forthwith and the High Court would enter the names of such number of candidates as would be necessary in terms of Rule 8 of Part D of the

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Rules in the Register in order of merit. The names of the candidates of the reserved categories would also be brought on the Register in the same manner. The High Court would then consider to fill up the remaining vacancies and would forward the names of the requisite number of candidates to the State Government for appointment as per Rule 7(1) of Part D of the Rules as Subordinate Judges under Article 234 of the Constitution. While doing so it will be open to the High Court in the interests of higher standard not to recommend the names of all the candidates who obtained 55 per cent marks and the appointment can be restricted to such number of candidates who obtained higher percentage than 55 per cent as may be decided by the High Court and agreed to by the Government.

(15) Before parting we may deal with one more stand taken on behalf of the State Government. The State Government has sent a requisition to the Commission in January, 1991 for filling 11 posts of H.C.S. (Judicial Branch), 3 of general and 8 of reserved categories. The Government's stand is that the vacancies which remained unfilled after the last selection should not be filled up from the candidates next below in merit from the last selection list of qualified candidates. We see no merit in the contention in view of clear exposition of law by the apex Court in *Neelima Shangla's case* (supra).

(16) The selection process on the basis of requisition sent in January, 1991 should go on, as it is time consuming, and this would ensure for filling up of the vacancies as would be available at the time of selection of candidates and for the anticipated vacancies likely to occur within two years of the date of selection as per rule 8 of Part D of the Rules.

(17) Since the same rules are applicable for selection/appointment of Subordinate Judges in the State of Punjab, we direct that a copy of this judgment be sent to the Government of Punjab in the Home/Judicial Department so that they may also carry out the order and directions given by us and comply with the requisite rules.

(18) With the aforesaid order and directions all the three writ Petitions stand disposed of with no order as to costs.

R.N.R.