deciding the matter afresh in accordance with law. The parties have been directed to appear before the Rent Controller on 6th October, 1989. Records of the case be sent back forthwith. It may be made clear that it will be open to the landlord to move an application to the Rent Controller as to whether he wants to proceed with the present application under section 13-A of the Act only and in case such an application is filed, the learned Rent Controller will pass the appropriate orders. If the application is allowed the procedure prescribed under section 13-A of the Act will be followed for disposing of the same. But since the nature of the premises have been disputed, the tenants would be entitled to contest the same.

R.N.R.

Before V. Ramaswami, C.J. and G. R. Majithia, J.

UNION OF INDIA,—*Appellant.*

versus

GURKIRPAL SINGH,—*Respondent.*

Letters Patent Appeal No. 186 *of* 1989

October 4, 1989.

Constitution of India, 1950—*Art.* 16—*Equal opportunity— Meaning of—Opportunity to be considered only—No right to an offer of appointment.*

Held, that the equality which is guaranteed under the Constitution is the opportunity to make an application for a post and to be considered for it on merits. The right does not extent to being actually appointed. The process of selection and selection for the purposes of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a *mandamus.* No one can ask for a mandamus without a legal right. (Para 5)

Held, that the present case is a case of initial appointment. A person who has been selected has got no legal right to an offer of appointment. (Para 8).

Letter Patent Appeal under Clause X of the Letter Patent of the High Court against the judgment of Hon'ble Mr. Justice M. R.

Agnihotri, dated 15th December, 1988 passed in the above mentioned Civil Writ Petition.

Civil Misc. No. 3141 of 1989.

Application under Section 151 Code of Civil Procedure praying that the operation of the impugned judgment of the Hon'ble Single Judge dated 15th December, 1988 may kindly be stayed till the decision of the appeal.

H. S. Brar, Senior Standing Counsel, *for Govt. of India.*

P. S. Patwalia, Advocate, *for the Respondent.*

JUDGMENT

G. R. Majithia, J.

(1) Whether a person who has been selected against anticipated vacancies, acquire a right to be appointed to the post which can be enforced by mandamus is the principal question which arises for determination in the appeal under clause X of the Letters Patent against the judgment of the learned Single Judge who allowed the writ petition filed by the respondent and issued a mandate directing the appellants to offer him the appointment to the post of Deputy Superintendent of Police in the Central Reserve Police Force.

(2) The facts : In 1985, 45 posts of Deputy Superintendent of Police in the Central Reserve Police Force and Indo Tibetan Border Police were advertised. In response thereto, the respondent (hereinafter referred to as the petitioner) also applied and underwent written test, physical test, interview etc. On April 9, 1986, a select list of 14 persons for appointment as Deputy Superintendent of Police Group 'A.1' post in Central Reserve Police Force (for short C.R.P.F.) was prepared and the petitioner's name figured at S. No. 11 in the list. The candidates selected were required to be examined by a Medical Board. The petitioner was medically examined and was declared medically fit on May 2, 1986 and he was informed accordingly. On June 12, 1986, the Director General, C.R.P.F. enquired from the petitioner that though his name found place in the list of selected candidates for appointment to the post of Deputy Superintendent of Police in the C.R.P.F., was he willing to be appointed as Deputy Superintendent of Police in the Indo Tibetan Border Police, and if so, he should forward his written preference

for the C.R.P.F. In response thereto, the petitioner forwarded his preference for the C.R.P.F. Out of the select list, candidates at S. Nos. 12, 13 and 14 were deputed for training, the petitioner, whose name figured at S. No. 11 of the select list did not receive the requisite offer. On enquiry, the Director General, C.R.P.F. informed the petitioner on November 9, 1986, that "it is not possible to give you any offer of appointment in the force." This decision of the appellants intimated to the petitioner through the Director General, C.R.P.F. was challenged in the writ petition on the ground that after the petitioner had been selected, followed by declaration of his fitness by the medical board and clearance of the verification of his character and antecedents by the Senior Superintendent of Police, Jalandhar, it was wholly arbitrary on the part of the appellants to refuse the appointment to him. The cryptic information without disclosing any reasons offended the principle of natural justice as the petitioner was not afforded any opportunity of hearing before taking the aforesaid decision.

(3) Written statement was filed on behalf of the respondents. The factual position insofar as the selection of the petitioner was concerned was admitted. However, the decision of not offering the appointment to the petitioner was justified on the ground that reports of serious nature were received against the petitioner. In the reports it was stated that after the Operation Bluestar, he had been indulging in antinational activities and have been keeping association with the extremists and it was hazardous to appoint the petitioner as Deputy Superintendent of Police in C.R.P.F. which has to perform vital role in the maintenance of law and order and security duties.

(4) The learned Single Judge allowed the writ petition on the sole ground that there was no legal justification for refusing appointment to the petitioner and that concrete and tangible material had not been disclosed on the basis of which it was concluded that the petitioner was not fit to be appointed to the force.

(5) The equality which is guaranteed under the Constitution is the opportunity to make an application for a post and to be considered for it on merits. The right does not extend to being actually appointed. The process of selection and selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a mandamus. No one can ask for a mandamus without a legal right. It will be useful to refer to *Mani Subrat Jain etc. etc.* v. *State of Haryana*

and others (1), in which the apex Court stated the scope of mandamus. In this case, the question arose under the following circumstances : The High Court invited applications from eligible members of the Bar to fill up two vacancies in the quota of direct recruits from the Bar in the Haryana Superior Judicial Service. The High Court recomended to the Haryana Government the names of the two appellants in the appeals before the Supreme Court for appointment as District/Additional District and Sessions Judges. The Government of Haryana rejected the recommendation. Thereupon, the two appellants filed a writ petition in the High Court challenging the order of rejection and asked for a mandamus to the State Government for appointment as District/Additional District and Sessions Judges. The High Court dismissed the writ petition and the matter was taken to the Supreme Court wherein it was held thus :—

> "The initial appointment of District Judges under Article 233 is within the exclusive jurisdiction of the Government after consultation with the High Court. The Governor is not bound to act on the advice of the High Court. The High Court recommends the names of the persons for appointment. If the names are recommended by the High Court, it is not obligatory on the Governor to accept the recommendation."

And to these premises, the apex Court declined to issue the writ of mandamus and held as under :—

> "It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something (see Halsbury's Laws of England 4th Ed. Vol. 1, paragraph 122); *State of Haryana* v. *Subhash Chander*, (1974) 1 SCR 165 = (A.I.R. 1973 SC 2216); *Jasbhai Motibhai Desai* v. *Roshan Kumar Haji Bashir Anmed* (1976) 3 SCR 58=A.I.R. 1976 S.C. 578 and Farris Extraordinary Legal Remedies paragraph 198."

(1) A.I.R. 1977 S.C. 276.

This judgment was again followed in a recent decision of the apex Court in *State of Kerala* v. *A. Lakshmikutty and others* (2), and it arose in the following circumstances : The High Court of Kerala sent up to the Chief Minister of Kerala State a penal of 14 names settled by the High Court for appointment as District Judges from the bar. It was stated that the appointments had to be made according to the cycle of rotation governing reservation of posts as laid down in R. 14(c), Kerala State and Subordinate Services Rules 1958. as required by R. 2 (b) Kerala State Higher Judicial Service Rules, 1961. Accordingly, the appointments had to start with the first vacancy going to candidate belonging to the 'Latin-Catholics and Anglo-Indians' community, 8th turn in the cycle of rotation. As there was no candidate belonging to the 'Latin-Catholics and Anglo-Indians', 'Other Backward Classes' and 'Scheduled Castes and Scheduled Tribes', 8th, 10th and 12th in the cycle of rotation, the first vacancy had to be filled by reason of R. 15 (a) of the Rules by a suitable candidate belonging to the community or group of communities immediately next to the passed over community or group, i.e., by respondent 1 Smt. A. Lakshmikutty a member of the 'Ezhava' community, 6th in order of merit, falling in the group 'Ezhavas, Thiyyas and Billavas' 14th in the cycle of rotation. The second vacancy, i.e., 9th in the cycle of rotation had to be filled by respondent 3, Krishnan Nair, 1st in order of merit, by open competition. The State Government did not accept the recommendation of the High Court. The candidates whose names were borne on penal of selected candidates for appointment as District Judges moved the High Court of Kerala. The writ petition was allowed. On appeal, the judgment of the Kerala High Court was reversed. Reiterating the view expressed in *Mani Subrat Jain's* case (supra), it was held thus :—

> "The existence of a right is the foundation of the jurisdiction of a Court to issue a writ of mandamus. The present trend of judicial opinion appears to be that in the case of non-selection to a post, no writ of mandamus lies. We however do not wish to rest the decision on the technical ground."

This matter was also dealt with by us in L.P.A. No. 434 of 1988 (*State of Haryana* v. *Satya Parkash etc.*), decided on March 10, 1989. It was observed in that case that Public Service Commission is to ensure

(2) A.I.R. 1987 S.C. 331.

selection of best available persons for appointment to a post to avoid arbitrariness and nepotism in the matter of appointment. The selection is to be made by the Commission and the Government has to fill up the posts by appointing those selected and recommended by the Commission according to the order of merit in the list of candidates sent by the Public Service Commission. The Commission is required to make the recommendations only and the final authority for appointment is Government. The Government may accept the recommendation or any decline to accept it. In arriving at that conclusion, references was made to two decisions of the apex Court—*State of Haryana* v. *Subhash Chander Marwaha and others* (3), and *Jatinder Kumar and others* v. *State of Punjab and others* (4).

(6) The view taken by the learned Single Judge that the petitioner has a legal right for an offer of appointment to the post of Deputy Superintendent of Police of C.R.P.F. is not sustainable at law.

(7) In fairness to the learned counsel for the respondent, he strongly relied upon the following judgments: *P. Nalini and another* v. *The Divisional Manager, LIC of India* (5), and *State of Madhya Pradesh* v. *Ramashankar Raghuvanshi and another* (6). In *P. Nalini's case* (supra), the learned Judges after refering to *Subhash Chander Marwaha's case* (Supra) observed thus :—

> "The principle emphasized by the Supreme Court has highlighted the relevant legal position which is to govern this case. The application of the said principle in the light of the facts and circumstances must conclude the matter in favour of the petitioners as far as the validity of the order Ex. P.8 is concerned."

The learned Judges granted the relief to the writ petitioner in view of the clear facts of that particular case but on principle followed the judgment in *Subhash Chander Marwaha's case* (supra) where it was held that existence of a vacancy gives no right to a candidate to be selected for appointment. In *Ramashankar Raghuvanshi's case* (supra), the apex Court dismissed the appeal filed by the State

(3) 1973 (2) S.L.R. 137.
(4) A.I.R. 1984 S.C. 1850.
(5) 1978 (1) S.L.R. 623.
(6) 1983 (1) S.L.R. 575.

of Madhya Pradesh in limine but on merits. O. Chinnappa Reddy J. observed thus :—

> "The right to fredom of speech and expression, the right to form associations and unions, the right to assemble peaceably and without arms, the right to equality before the law and the equal protection of the laws, the right to equality of opportunity in matter relating to employment or appointment to any office under the State are declared Fundamental Rights. Yet the Government of Madhya Pradesh seeks to deny employment to the respondent on the ground that the report of a Police Officer stated that he one belonged to some political organisation. It is important to note that the action sought to be taken against the respondent is not any disciplinary action on the ground of his present involvement in political activity after entering the service of the Government, contrary to some service Conduct Rule. It is further to be noted that it is not alleged that the respondent ever participated in any illegal, vicious or subversive activity. There is no hint that the respondent was or is a perpetrator of violent deeds, or that he exhorted anyone to commit violent deeds. There is no reference to any addition to violence or vice or any incident involving violence, vice or other crime. All that is said is that before he was absorbed in Government service, he had taken part in some 'RSS or Jan Sangh activities'. What those activities were have never been disclosed. Neither the RSS nor the Jan Sangh is alleged to be engaged in any subversive or other illegal activity; nor are the organisations banned."

(8) There is a vast distinction between a political activity and anti-national activity. A Government servant after entering into service may involve himself in political activity. It may or may not be contrary to the Government Service Conduct Rules, but activity which is anti-national will be a legitimate ground for refusing to offer an appointment. Moreover, the judgment in that case related to termination of service founded on the report of police that the employee was not a fit person to be retained in Government service. The present case is a case of initial appointment. As stated supra, a person who has been selected has got no legal right to an offer of appointment. The view expressed in *Ramashankar Raghuvanshi's case* (supra) has no bearing on the facts of this case.

(9) For the reasons stated supra, the appeal is allowed. The judgment of the learned Single Judge is set aside and the writ petition is dismissed. However, we leave the parties to bear their own costs. C.M. 3141/1989 is dismissed as having become infructuous.

P.C.G.

Before : M. M. Punchhi and A. L. Bahri, JJ.

DALJIT SINGH AHLUWALIA,—*Petitioner.*

versus

CHANDIGARH HOUSING BOARD —*Respondent.*

Civil Writ Petition No. 3757 of 1989.

October 4, 1989.

Constitution of India, 1950—Art. 14—Haryana Housing Board Act of 1971—Reg. 26—10 per cent allotment by way of discretionary quota—Unallotted flats on ground floor—Application for change of floor—Decision of Administrator final—Such decision—Whether amounts assuming more jurisdiction—Draw of lots for such unallotted plots held to be proper method.

Held, that the Board's suggested ratifying the decision of the Committee later vesting discretion with the Chairman to alter the result of draw of lots by changing the floor, in our view, was a naked usurpation of power and an object presupposed surrender by the Board. Our view is further fortified by the fact that the Administrator and the Board amongst themselves under Regulation 26 have 10 per cent discretionary quota reserved for allotment to any one they like. And the present effort to carve out another sphere of discretion towards allotment of flats on the ground floor, violating the result of the draw of lots, is nothing but a measure to assume more discretionary allotments than permissible under Reg. 26 and to that extent not only is the action of the Board and its Chairman illegal and against the Regulations but otherwise arbitrary and unfair.

(Para 11)

Held, that we unhesitatingly allow these petitions at the stage of notice of motion itself, having regard to the age factor of the litigants, and quash the allotments made in favour of the private respondents, leaving it open to the Board to allot the ground floor flats, and such other remainder flats, strictly in accordance with the provisions of Regulation 24, which has been interpreted by us, so