

Before : V. Ramaswami, CJ and G. R. Majithia, J.

STATE OF HARYANA AND ANOTHER,—Appellants.

versus

SATYA PRAKASH VERMA AND OTHERS,—Respondents.

Letters Patent Appeal No. 434 of 1988

March 10, 1989.

Constitution of India, 1950—Arts. 320 and 321—Government sending requisition to Union Public Service Commission to fill up 19 posts of Assistant District Industries Officer—Thereafter government requesting Union Public Service Commission to advertise only 8 posts for selection—Union Public Service Commission disregarding the request and recommending 19 candidates and publishing result—Action of Union Public Service Commission is in excess of jurisdiction conferred by the Constitution.

Held, that the scheme of Article 320 of the Constitution abundantly makes it clear that the Commission has to be consulted in the matter of suitability of candidates for appointment, promotion or transfer. There is nothing in these provisions which makes it imperative for the Government to accept the advice tendered by the Commission. The action of the Commission in recommending more candidates for appointment than the one asked for by the State Government is not sustainable under any provision of law or on any binding precedent. The Commission has exceeded its jurisdiction and this conduct of the Commission has to be condemned and we do hope that in future the Commission will take notice of its functions as laid down by Articles 320 and 321 of the Constitution and would not assume any function which is not authorised by either of these two Articles. We do not find any justification for the Commission to insist on recommending more names for appointment than what has been asked for by the State Government. Consequently the appeal is allowed and the writ petition is dismissed.

(Para 5).

Letters Patent Appeal Under Clause X of the Letter Patent against the order dated 24th February, 1988 passed by Hon'ble Mr. Justice J. V. Gupta in C.W.P. No. 845 of 1986.

S. S. Ahlawat, D.A.G. Haryana, for the Appellants.

Ashok Bhan, Senior Advocate. Puneet Jindal Advocate with him, for the Respondents.

J. L. Gupta, Senior Advocate, T. S. Dindsa, Advocate with him, for respondent Commission.

State of Haryana and another *v.* Satya Prakash Verma and others
(G. R. Majitha, J.)

JUDGMENT

(1) Whether the Public Service Commission can assume any function which is not authorised by either by Articles 320-321 of the Constitution of India is the principal question which calls for answer in these two L.P.As Nos. 434 and 435 of 1988. These have been filed by the State of Haryana under clause X of the Letters Patent calling in question the direction issued by the learned Single Judge of this Court to it to fill up 19 posts of Assistant District Industries Officers/Development Officers (later designated as Industrial Promotion Officers) by direct recruitment out of the list submitted by the Haryana Public Service Commission.

(2) This question has arisen in the following circumstances. On October 15, 1984, the appellant sent a requisition to the Haryana Public Service Commission for selecting 19 Assistant District Industries Officers/Development Officers. However, later on October 26, 1984 and November 28, 1984, the appellant requested the Haryana Public Service Commission to advertise for only eight posts. Despite this request, the Haryana Public Service Commission hastened to advertise and sought applications from the eligible candidates for filling up 19 posts of Assistant District Industries Officers/Development Officers. The Haryana Public Service Commission wrote to the Financial Commissioner and Secretary to Government, Haryana, Industries Department on June 13, 1985, that it had fixed the interview for the above-mentioned posts in the Industries Department on June 25, 26 and 27, 1985, at Haryana Bhawan, Copernicus Road, New Delhi and requested the Financial Commissioner to assist the Commission in an advisory capacity. On June 22, 1985, the Financial Commissioner wrote to the Director of Industries, Haryana, to attend the interview but insist upon the Haryana Public Service Commission for filling up only eight posts of Assistant District Industries Officers/Development Officers as mentioned in their letters dated November 23, 1984, and April 25, 1985. It appears that the interview was not held on the date fixed. However, it was held on some subsequent date, but in all subsequent communications addressed by the appellant, it was emphasized that the representative of the Government, who was called upon to assist the Commission in an advisory capacity should insist upon the Government stand to fill up only eight posts of Assistant District Industries Officers/Development Officers. After the interview, the Haryana Public Service Commission made the selection and declared the result which was published in the Daily Tribune

on August 18, 1985. On August 17, 1985, the Commission recommended 19 candidates with the following Roll Numbers in the order of merit for appointment to the said posts :—

“2, 78, 94, 58, 64, 68, 79, 51, 78, 105, 57, 96, 61, 36, 103, 49, 50, 71; 54.”

The appellant, however, made offer of appointment only to eight candidates out of the recommend by the Commission. The candidates who were not offered appointment by the appellant, but were among the selected candidates recommended by the Commission, approached this Court for issuing a writ of *mandamus* to the State Government to order their appointment on the posts for which they had been selected by the Haryana Public Service Commission.

(3) The State in its reply took a firm stand that the Haryana Public Service Commission issued an advertisement for filling up 19 posts of Assitant District Industries Officers/Development Officers, though even before the advertisement was made, the Government have told the Commission to call for applications for selection of only 8 persons. Again, despite persistent requests from it, the Commission did not issue a corrigendum for inviting applications for eight posts instead of 19 already advertised. The Commission recommended 19 candidates for appointment. It further pleaded that the appellant was under no obligation to accept the recommendation of the Haryana Public Service Commission in view of the reduction in number of the posts from 19 to 8 and the writ-petitioners had no right for appointment to the posts.

(4) The learned Single Judge accepted the contention of the petitioners and directed the State Government to fill up these 19 posts by direct recruitment as provided in the Industrial Service (State Cadre) Class II Rules, 1966.

(5) Article 320 of the Constitution of India deals with two situations, namely, the power of the Public Service Commission to conduct examinations and the right of the Government to seek advice in all matters relating to methods of recruitment to Civil Service and Civil Posts. The requirement to seek advice of the Public Service Commission is not mandatory and non-compliance with it will not invalidate the action taken by the Government. The scheme of Article 320 abundantly makes it clear that the Commission has to be consulted in the matter of suitability of candidates for appointment,

State of Haryana and another v. Satya Prakash Verma and others
(G. R. Majithia, J.)

promotion or transfer. There is nothing in these provisions which makes it imperative for the Government to accept the advice tendered by the Commission. The action of the Commission in recommending more candidates for appointment than the one asked for by the State Government is not sustainable under any provision of law or on any binding precedent. The Commission has exceeded its jurisdiction and his conduct of the Commission has to be condemned and we do hope that in future the Commission will take notice of its functions as laid down by Articles 320 and 321 of the Constitution and would not assume any function which is not authorised by either of these two Articles. We do not find any justification for the Commission to insist on recommending more names for appointment than what has been asked for by the State Government.

(6) The establishment of an independent body like Public Service Commission is to ensure 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 may decline to accept it. In the case of non-acceptance of the recommendations of the Commission, the Constitution enjoins upon the State to state the reasons and laying the report before the House of Legislature for doing so. The Government is thus answerable to the House for any departure,—*vide* Article 321 of the Constitution. It does not, however, clothe the recommendee with any legal right.

(7) The above-noted conclusion of ours appears to be well supported by two decisions of the apex Court *State of Haryana v. Subhash Chander Marwaha and others* (1), and *Jatinder Kumar and others v. State of Punjab and others* (2). The former was a case under

(1) 1973 (2) S.L.R. 137.

(2) A.I.R. 1984 S.C. 1850.

the Punjab Civil Services (Judicial Branch) Service Rules. The State Government had published an advertisement to the effect that the Haryana Public Service Commission will hold an examination for recruitment of candidates for 15 vacancies in the Haryana Civil Service (Judicial Branch). Forty candidates obtained more than 45 per cent marks in that examination. The State Government, however, appointed the first seven candidates only to the service and it did not make appointments beyond that number on the ground that the High Court had previously intimated that the candidates getting less than 55 per cent marks in the examination should not be appointed as Subordinate Judges in the interest of maintaining high standard of competence in matter of judicial service. Candidates at Nos. 8, 9 and 13 of the list who expected to be appointed in the light of the vacancies advertised challenged the said action of the State Government on the ground that it could not resort to pick and choose in the sense that only 7 candidates out of 40 had been appointed and since they had also come up to the prescribed standard they were entitled to be appointed to the service in view of the number of vacancies notified. As against this, the stand of the Government was that it was open to them to appoint the first seven candidates in the interest of high standard of judicial competence. Negating the stand of the writ-petitioners, the Supreme Court observed :—

“It is rather difficult to follow the reasoning of the High Court in this case. It agreed that the advertisement mentioning 15 vacancies did not give a right to any candidate to be appointed to the post of a Subordinate Judge. Even so it somehow persuaded itself to spell out a right in the candidates because in fact there were 15 vacancies. At one place it was stated “so long as there are number of vacancies to be filled in and there are qualified candidates in the list forwarded by the Public Service Commission along with their Rolls, they have got a legal right to be selected under Rule 10(ii) in Part C. One fails to see how the existence of vacancies gives a legal right to a candidate to be selected for appointment. The examination is for the purpose of showing that a particular candidate is eligible for consideration. The selection for appointment comes later. It is open then to the Government to decide how many appointments shall be made. The mere fact that a candidate’s name appears in the list will not entitle him to a *mandamus* that he be appointed.”

State of Haryana and another v. Satya Prakash Verma and others
(G. R. Majithia, J.)

In the later-mentioned case, their Lordships of the apex Court were pleased to observe that "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 *mandamus*."

(8) The learned Single Judge has sustained his decision on *Neelima Shangla v. State of Haryana* (3). In that case, the facts were as under: The writ-petitioner ranked at Serial No. 24 as a result of the competitive test for selection and appointment to the Haryana Civil Service (Judicial Branch) to fill up the 54 vacancies in the service. The Haryana Public Service Commission, however, chose to recommend 26 candidates only, and these included 17 from the general category to which the petitioner belonged. The claim of the writ petitioner before the Court was that 32 candidates in order of merit from the general category should have been selected for appointment and that the Service Commission had illegally withheld the names of all the successful candidates from the Government and the High Court. She contended that if Rules 8 and 10 of the Haryana Civil Service (Judicial Branch) Rules had been adhered to by the Commission, she would have been selected. The stand of the Government of Haryana before the Court was that they were unable to select and appoint more candidates as the names of only a few candidates were sent to them by the Public Service Commission. The Government, not knowing the fact that the names of several candidates who had qualified but their names had been withheld by the Commission, wrote to the latter to hold a fresh competitive examination. It was in the light of these facts and examining the scheme of the Rules that their Lordships held :—

"Therefore, it appears that the duty of the Public Service Commission is confined to holding the written examination, holding the *Viva Voce* test and arranging the order of merit according to marks among the candidates who have qualified as a result of the written and the *Viva Voce* tests. Thereafter the Public Service Commission is required to publish the result in the Gazette and, apparently, to make the result available to the Government. The Public Service Commission is not required to make any

further selection from the qualified candidates and is, therefore, not expected to withhold the names of any qualified candidates. The duty of the Public Service Commission is to make available to the Government a complete list of qualified candidates arranged in order of merit. Thereafter the Government is to make the selection strictly in the order in which they have been placed by the Commission as a result of the examination. The names of the selected candidates are then to be entered in the register maintained by the High Court strictly in that order and appointments made from the names entered in that Register also strictly in the same order. It is, of course, open to the Government not to fill up all the vacancies for a valid reason. The Government and the High Court may, for example, decide that though 55 per cent is the minimum qualifying mark, in the interests of higher standards they would not appoint any one who has obtained less than 60 per cent of the marks. Something of that nature happened in State of Haryana *versus* Subhash Chander Marwaha and others.”

The petitioner was granted the relief in that case in the light of the violation of the Rules by the Haryana Public Service Commission. Otherwise, the apex Court opined that “it is, of course, open to the Government not to fill up all the vacancies for a valid reason. The Government and the High Court may, for example, decide that though 55 per cent is the minimum qualifying mark, in the interests of higher standards, they would not appoint anyone who had obtained less than 60 per cent of the marks” The ratio of this case has no bearing on the facts of the instant case.

(9) In *Mani Subrat Jain etc. etc. v. State of Haryana and others* (4), 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 recommended 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

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

State of Haryana and another v. Satya Prakash Verma and others
(G. R. Majithia, J.)

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 on 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 some one 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 = (AIR 1973 SC 2216); *Jasbai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed* (1976) 3 SCR 58 = A.I.R. SC 578 and Ferris Extraordinary Legal Remedies paragraph 198.”

(10) For the aforementioned reasons, the appeals are allowed and the writ petitions are dismissed. The State Government will fill in the requisite vacancies strictly in accordance with the Rules and also adhering to the rule of roster. However, the parties are left to bear their own costs.
