

U.P. BHUMI SUDHAR NIGAM LTD.

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v.

SHIV NARAIN GUPTA

JULY 11, 1994

[KULDIP SINGH AND DR. A.S. ANAND, JJ.]

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*Service Law—Rights of candidate on panel—Mere existence of vacancy does not confer an indefeasible right to appointment—When subsequent to preparation of panel the post was abolished bona fide by employer, direction by High Court to appoint candidate on panel, held invalid.*

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*Constitution of India, 1950: Article 141.*

*Law laid by Supreme Court—Duty of High Court to follow.*

The appellant-Corporation prepared a panel for the post of Financial Controller. The respondent was at number two position in the said panel. In terms of the panel the post was offered to the candidate at number one position who did not join the post. Thereafter, the appellant abolished the said post and consequently it was not offered to the respondent who filed a writ petition in the High Court challenging the appellant's action in abolishing the post. The Corporation contested the case stating that it advertised the post in view of the possibility of the World Bank entrusting a Reclamation Project to the Corporation but subsequently when it was conveyed to it that the setting up of the project was likely to be delayed considerably the post was abolished. The High Court issued a Mandamus directing the Corporation to appoint the respondent.

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The Corporation preferred an appeal before this Court contending (i) that a candidate included in the merit list has no indefeasible right to appointment even if a vacancy exists; (ii) in the facts and circumstances of this case, the Corporation acted *bona fide* and was justified in not offering the appointment to the respondent.

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Allowing the appeal and setting aside the order of the High Court, this Court

**HELD :** 1. Even if a vacancy is available and the employer *bona fide* declines to make an appointment, the candidate on the select list has no

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A right whatsoever to claim appointment. In the present case the post was abolished by the Board of Directors. Therefore, neither the facts of this case nor the law on the subject warranted any interference by the High Court in the petition filed by respondent. The High Court fell into patent error in issuing the Mandamus to the appellant. [320-H, 321-A, B, 320-H]

B *Shankarsan Dash v. Union of India*, [1991] 3 S.C.C. 47; *State of Haryana v. Subhash Chander Marwaha*, [1974] 1 S.C.R. 165; *Neelima Shangla v. State of Haryana*, [1986] 4 S.C.C. 268; *Jatendra Kumar v. State of Punjab*, [1985] 1 S.C.R. 899 and *Sabita Prasad & Ors. v. State of Bihar & Ors.*, J.T. (1992) Supp. S.C. 135, applied.

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4677 of 1994.

From the Judgment and Order dated 26.3.93 of the Allahabad High Court in W.P. No. 3215 (SS) of 1991.

D Gopal Subramaniam, Vineet Maheshwari and R.K. Maheshwari for the Appellant.

Sunil K. Jain for the Respondent.

E The Judgment of the Court was delivered by

**KULDIP SINGH, J.** Special leave granted.

F Uttar Pradesh Bhumi Sudhar Nigam Limited (the Corporation) advertised for the post of Financial Controller in the year 1990. As a result of the interviews held by the selection committee, a panel of three names was recommended to the Corporation. One S.K. Sachdeva was at number one and Shiv Narain Gupta, respondent in the appeal herein, was at number two in the said panel. An appointment letter was issued to S.K. Sachdeva and he was asked to join the post by October 31, 1990. S.K. Sachdeva having failed to join the post, Shiv Narain Gupta represented before the Corporation that he, being next on the merit panel, be considered for appointment to the post. When no action was taken by the Corporation for considerable time, Shiv Narain Gupta filed a writ petition under Article 226 of the Constitution of India before the Lucknow Bench of the Allahabad High Court. The writ petition was allowed by a learned single Judge of the High Court and a *Mandamus* was issued to the

Corporation to appoint Shiv Narain Gupta to the post of Financial Controller. This appeal by the Corporation is against the judgment of the High Court. A

Mr. Gopal Subramaniam, learned counsel for the appellant has contended that a candidate included in the merit list has no indefeasible right to appointment even if a vacancy exists. The Corporation, according to him, was under no legal obligation to fill the post simply because a panel of the selected candidates had been prepared by the selection committee. It was further pointed out by the learned counsel that due to changed circumstances it was no longer viable for the Corporation to fill the post of the Financial Controller. We see considerable force in the contentions of learned counsel for the appellant. B C

A Constitution-Bench of this Court in *Shankarsan Dash v. Union of India*, [1991] 3 SCC 47, referred to the earlier judgments of this Court in *State of Haryana v. Subhash Chander Marwaha*, [1974] 1 SCR 165, *Neelima Shangla v. State of Haryana*, [1986] 4 SCC 268 and *Jatendra Kumar v. State of Punjab*, [1985] 1 SCR 899 and laid down the law on the subject in the following terms : D

"It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken *bona fide* for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subhash Chander Marwah*, [1974] 1 SCR 165, *Neelima Shangla v State of Haryana*, [1986] 4 SCC 268, or *Jatendra Kumar* E F G H

A v *State of Punjab*, [1985] 1 SCR 899."

B A Division Bench of this Court in *Sabita Prasad & Ors. v. State of Bihar & Ors.*, JT (1992) Supp. SC 135, where one of us (Dr. A.S. Anand, J.) speaking for the Bench dealt extensively with the rights of the candidates, included in a "merit list", to an appointment. This Court following the Constitution Bench in *Shankarsan Dash's* case (supra) held as under :-

C "Thus, the Constitution Bench while referring with approval the judgment in *Subhash Chander Marwaha's* case (supra) in unequivocal terms reiterated the settled law that the existence of vacancies does not confer a legal right on a selected candidate to be appointed unless the relevant Rules provide specifically to the contrary. The State, of course, must all through act *bona fide* and not arbitrarily both in making appointments and in not filling the existing vacancies."

D We may briefly notice the factual stand taken by the Corporation before the High Court. It is stated that in January 1990 the World Bank assessed the possibility of entrusting a Reclamation Project to the Corporation. Keeping in view the proposed project the Corporation advertised for the post of Financial Controller. At the time when the panel was prepared by the selection committee, the project had not started but since the candidate at number one of the merit-panel, Sunil Kumar Sachdeva, was in addition qualified Company Secretary, it was thought appropriate by the Corporation to offer the appointment to him. By December 1990 it transpired that the project was not likely to start at least for a period of two/three years. The World Bank Mission visited India in July 1991 and conveyed that the setting up of the project was likely to be delayed considerably. Under these circumstances, the Board of Directors of the Corporation decided to abolish the post of Financial Controller till further projects are made available and entrusted to the Corporation. It was contended by Mr. Gopal Subramaniam that in the facts and circumstances of this case, the Corporation acted *bona fide* and was justified in not offering the appointment to the respondent. We agree with the learned counsel. We are of the view that the High Court fell into patent error in issuing the Mandamus in the facts and circumstances of this case. This Court has authoritatively laid down that even if a vacancy is available and

H the employer *bona fide* declines to make an appointment, the candidate on

the select list has no right whatsoever to claim appointment. In the present case the post was abolished by the Board of Directors in the year 1991. Shiv Narain Gupta in fact challenged before the High Court the action of the Corporation in abolishing the post. Neither the facts of this case nor the law on the subject warranted any interference by the High Court in the writ petition filed by Shiv Narain Gupta. The Constitution- Bench judgment in *Shankarsan Dash's* case (supra) was cited before the learned single Judge of the High Court. We are constraint to say that the learned Judge failed to appreciate the binding ratio of the said judgment. A  
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We, therefore, allow the appeal, set aside the impugned judgment of the High Court dated March 26, 1993 and dismiss the writ petition filed by Shiv Narain Gupta before the High Court with costs. We quantify the cost as Rs. 10,000. C

T.N.A.

Appeal allowed.