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GANGAL RAM

v.

STATE OF HARYANA AND ORS.

DECEMBER 7, 1995

B

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Service Law :

C *Appointment—Process of selection—Examination for post of Road Inspector conducted—2 candidates declared selected Later, 14 persons appointed on vacancies stated to have arisen in promotion quota—No record furnished before Court as to how 14 persons were appointed—Held, adverse inference would be drawn against appointing authorities for non production of record—Since appointees not made parties in appeal, their appointments become final—No relief could be granted to appellant, as he was neither*
D *selected in the examination nor kept in waiting list.*

In December 1992 the respondent-State Government conducted an examination for the posts of Road Inspectors. On 1.1.1993 the result was declared and two candidates were selected. However, in July 1993, 14 more candidates were appointed by promotion as Road Inspector. The appellant one of the candidates having appeared in the examination, filed a writ petition before the High Court claiming his right to be considered for selection as Road Inspector. It was alleged that the latter 14 persons were appointed by taking bribe and without any selection process. The High Court dismissed the writ petition.

F In the appeal filed by the appellant, the respondents filed counter affidavits before this Court stating that 14 persons were appointed as a result of vacancies subsequently arising in promotion quota. The Court granted time to respondents to furnish details of the vacancies, and the process followed in appointment of 14 persons, but no record was produced.

G Disposing of the appeal, this Court

H **HELD : 1.** In view of the fact that the record has not been produced, an adverse inference is drawn against the respondents for non-production

of the record and it would be assumed that had the record been produced the same would have proved unfavourable to them and their actions are brittle with illegalities and to cover up the same no record has been produced. [312-G-H]

2.1. Examination having been conducted in December 1992 and the result declared and two selected candidates having been appointed on January 1, 1993, the result of the examination stands concluded. No fresh examination was conducted giving opportunity to all the candidates to offer their candidature for consideration, but 14 candidates were selected. It would be obvious that promotions of those 14 persons came to be made after demand and acceptance of illegal gratifications in that behalf by the persons involved in the appointments. Otherwise, nothing prevented the respondents from producing the record before the Court to justify the correctness and legality of the action taken by them. However, the appointments of the 14 persons have become final, since they are not impleaded as party-respondent to this appeal. [312-H; 313-A; C; B]

2.2. However, no relief can be given to the appellant as he was neither selected nor was kept in the waiting list. [313-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11856 of 1995.

From the Judgment and Order dated 10.2.94 of the Punjab & Haryana High Court in W.P. No. 10306 of 1993.

D.K. Garg for the Appellant.

Ms. Nisha Bagchi for Ms. Indu Malhotra for the Respondents.

The following Order of the Court was delivered :

Leave granted.

The appellant specifically raised a plea that on January 1, 1993 result of the examination conducted in December 1992 was declared and two candidates were duly declared to have been selected and appointed. Appellant is one of the candidates who claimed their right for consideration for selection as Road Inspector in the said examination. It is now an admitted fact that on July 16, 1993, 14 more candidates came to be

A appointed by promotion as Road Inspectors. When the appellant claimed relief by filing Writ Petition No. 10306/93, the High Court dismissed the Writ Petition on February 10, 1994. After the notice was served, he filed a counter-affidavit contending that subsequently 14 vacancies had arisen in the promotion quota and, therefore, they were duly declared to have been selected and appointed. With a view to satisfy ourselves about the correctness and legality of the action taken by the respondents, on September 11, 1995 we passed the following order :

C "Though in the counter-affidavit it is stated that the results of the rest of the candidates were announced on July 16, 1993 for the reason that subsequent to the appointment of the two candidates on January 1, 1993 some vacancies reserved for promotion quota from Mastrys had arisen, no documentary evidence in support of the averment has been placed by the respondents. Learned counsel seeks for an is granted four weeks' time for producing the record to justify whether the vacancies had arisen and if so, how many and on what basis the appointments by promotion came to be made."

E No record has been produced. Ms. Nisha, learned counsel appearing for the State sought further opportunity to produce the file but we decline to grant further time since no explanation has been given as to under what circumstances the record has not been produced even till date. Under these circumstances, we are left with no option but to proceed with the matter on the basis of the material on record.

F Shri D.K. Garg, learned counsel appearing for the appellant, contended that the appellant apprehends that the action was taken by the respondents only after committing illegal act of taking bribe and 14 candidates were appointed without any selection. We fine force in the contention. In view of the fact that the record has not been produced, we have to draw adverse inference against the respondents for non-production of the record and proceed on the footing that had the record been produced the same would have proved unfavourable to them and their actions are brittled with illegalities and to cover up the same no record has been produced. Obviously, examination having been conducted in December 1992 and the result declared and two selected candidates having been H appointed on January 1, 1993 the result of the examination stands con-

cluded. It is not the case, however, that any fresh examination was conducted giving opportunity to all the candidates to offer candidature for consideration and that 14 candidates were selected, who were respondents in other writ petition disposed of by the High Court, though not impleaded in this case. We do not propose to set aside their selection as their appointments have become final since they are not impleaded as party-respondents to this appeal. However, things are not appearing to be innocuous as stated in the counter-affidavit filed by the Chief Engineer. It would be obvious that those promotions to 14 persons came to be made after demand and acceptance of illegal gratifications in that behalf by the concerned persons involved in the appointments. Otherwise, nothing prevented the respondents from producing the record before the Court to justify the correctness and legality of the action taken by them. In these circumstances, we are constrained to make these observations. However, no relief can be given to the appellant as he was neither selected nor was kept in the waiting list.

The appeal is disposed of accordingly. No costs.

R.P.

Appeal disposed of.