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ROSHNI DEVI AND ORS. ETC.

v.

STATE OF HARYANA AND ORS.

SEPTEMBER 18, 1998

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[MRS. SUJATA V. MANOHAR AND G.B. PATTANAİK, JJ.]

Service Law :

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Appointment—Service Selection Board of Haryana—Selecting 5373 candidates as against 662 vacancies—Names from select list not sent in order of merit for appointment—Persons higher in merit than those appointed filed writ petition—High Court directing to appoint all such persons and that list would not lapse till last such candidate is appointed—In another writ petition the select list challenged—A Full Bench of High Court held that directions issued in earlier judgment were not in conformity with law—Held, a select list

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remains valid for one year—Board committed gross error in selecting much more candidates than those required and in not recommending names for appointment in order of merit—Directions modifying the judgment of Full Bench issued.

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The Service Selection Board of the State of Haryana received requisitions for 662 posts of Clerks from different departments of the State Government for the year 1987. The Board conducted written test and prepared a selection list of 5373 candidates on 15.10.1989 and recommended 1692 candidates to different departments. It was stated that

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recommendations were made at random and not in order of merit; and the persons so recommended included even a candidate shown at serial No. 4645 of the merit list. A writ petition was filed in the High Court. The said writ petition was allowed holding that all persons higher in merit and not appointed were entitled to appointment. It was directed that without disturbing the appointments already made, all future appointments would

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be made from the list dated 15.10.1989 and the list would not lapse.

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Some of the unsuccessful candidates filed another writ petition before the High Court challenging the validity of the selection list dated 15.10.1989, *inter alia*, on the ground that the Board could not prepare a list of 5373 candidates against 662 vacancies as informed by various depart-

ments, and that the select list would lapse after expiry of one year. This petition came to be heard by a Full Bench of the High Court which held that the Board could not made selection in excess of requisition made by different departments subject to the provision of waiting list; the directions given in *Sudesh Kumari's* case that the selection list dated 15.10.1989 would not lapse were not inconformity with law; that the said list was valid for one year and vacancies arising from 15.10.1990 onwards would be re-advertised. However, the High Court further directed that the Government would consider the claim of the candidates whose name appeared up to serial No. 662 in the merit list but did not get appointment. The appellants challenged this judgment in the present appeal.

It was contended for the appellants that the Full Bench could not have annulled the mandamus issued in *Sudesh Kumari's* case, as a writ of mandamus could be nullified only by preferring an appeal to a higher forum and by getting such judgment reversed and as such the Full Bench had no jurisdiction to give the impugned directions. For the respondent State it was contended that the directions given in *Sudesh Kumari's* case, were against public policy and implementation thereof would adversely affect the employment opportunity of future generations for years to come.

Disposing of the appeal, this Court

HELD : 1.1. A select list remains valid for one year and, therefore, after expiry of the said period normally a court would not be justified in issuing direction to give appointments from the list whose time has already expired unless it is established that notwithstanding existence of vacancies the appointing authority *malafidely* did not make appointment from the list. [720-F-G]

1.2. The Service Selection Board committed gross illegality in selecting and preparing a list of 5373 candidates against the requisition for 662 posts of clerk received by it. The Board also erred in sending the names of persons from the list not in order of their merit but at random, as a result of which persons with higher merit stood excluded whereas persons securing lower merit got appointed. This seriously prejudices the interest of future candidates and also jeopardised the administration to a great extent. [720-G-H]

A 1.3. The inaction on the part of the State Government in not assailing the judgment of the High Court in *Sudesh Kumari's* case and now coming up before this Court making submissions that the judgment is practically incapable of being implemented is not worthy of approval. [722-D-E]

B 2. Notwithstanding the judgment in *Sudesh Kumari's* case, a fresh list has been prepared by the Service Selection Board and parties have claimed their rights on the basis of inclusion of their names in the said list. However, bearing in mind all the relevant facts and circumstances and the equity in favour of those who have already been appointed from out of the list prepared on 15.10.1989 and have served for more than 9 years, the following directions are issued in substitution of the directions made by **C** the High Court in the impugned judgment : [721-D-F]

(i) The practice of selecting and preparing an unusual large list compared to the vacancy position is deprecated and the State Government should either amend the Recruitment Rules in that respect and till then **D** should issue positive administrative instructions to the Selection Board to select only some persons in excess than the requisition for which the Board is going to select people. [722-C-D]

(ii) The appointments already made from out of the list prepared on 15.10.1989 will not be annulled. [721-G]

(iii) The candidates occupying higher position than the last person who is stated to have been appointed being at serial No. 4645 of merit list dated 15.10.1989 would be considered for appointment to the post of clerk if there exists any vacancy and appointments would be made strictly on **F** the basis of their merit position. [721-H]

(iv) The vacancy in this context would mean the vacancies which were available in the State of Haryana prior to the advertisement issued for selecting persons for the year 1995. It is to be made clear that if no vacancies exist on the aforesaid date then no further appointment would **G** be made from out of the list prepared on 15.10.1989 notwithstanding the direction of the High Court in *Sudesh Kumari's* case. [722-A & B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4900 of 1998 Etc. Etc.

H From the Judgment and Order dated 13.7.94 of the Punjab &

Haryana High Court in C.W.P. No. 174 of 1992.

K.T.S. Tulsi, S.C. Mohanta and R. Venkataramani, (Ajay Siwach) for Prem. Malhotra, (Surya Kant) (NP), S.C. Patel, Mahabir Singh, S.R. Sharma, Arvind Kumar, C.S. Ashri, C.N. Sree Kumar and Rao Ranjit for the appearing parties.

The Judgment of the Court was delivered by

G.B. PATTANAİK, J. Application for permission to file Special Leave Petition is granted.

Delay condoned in Special Leave Petition No. 14660 of 1995.

Leave granted in all the Special Leave Petitions.

In all these cases the legality of the Full Bench judgment dated 13th July, 1994, passed by a Bench of Punjab and Haryana High Court and the directions given thereunder are under challenge. These cases depict a sordid state of affair in the State of Haryana in relation to recruitment to the post of Clerks and the State all along has been a mute spectator. As it appears from the records and the different documents appended thereto in the year 1987 there existed some vacancies in the post of Clerks in the State of Haryana and the impugned judgment indicates that the service Selection Board had received requisitions from different departments of the Government for a total number of 662 posts. The advertisement which had been issued inviting applications from the candidates, however, did not indicate the number of vacancies. The Service Selection Board conducted the written test and thereafter selected 5373 candidates and prepared a list of those candidates on 15.10.1989. In accordance with the prescribed procedure from out of the said list the Selection Board recommended the names of 1692 candidates to different departments; but while making such recommendation the candidates were not sent in accordance with their merits but at random. After appointment of these 1692 candidates recommended by the Service Selection Board when persons occupying higher position in the merit list did not receive any letter of appointment they approached the High Court in a Writ Petition which was registered as C.W.P. No. 8187 of 1990 (*Sudesh Kumari v. State Of Haryana*). The aforesaid Writ Petition was allowed by the High Court and it was directed that without disturbing the appointments already made, all future appointments shall be made from the same list and the selection list which was

- A prepared by the Service Selection Board on 15th October, 1989 would not lapse. This direction the High Court gave irrespective of instructions to the contrary had been issued by the State of Haryana keeping the life of a Select List alive for one year. The High Court also came to the conclusion that all persons who are higher in merit as compared to the last person who might have been appointed as a clerk are entitled to be appointed.
- B In course of hearing we had been informed that the last person who had been appointed from the list prepared on 15th October, 1989 was serial no. 4645. The State did not challenge the aforesaid decision of the High Court in *Sudesh Kumari's* case and, therefore, right accrued in favour of the remaining persons from the list prepared on 15th October, 1989 who had not been appointed and the list continued to remain valid. This judgment of the High Court in *Sudesh Kumari's* case was later on followed in few other cases of the said Punjab and Haryana High Court. Some unsuccessful candidates approached the High Court challenging the validity of the list itself which was prepared by the Service Selection Board on 15th October, 1989 on several grounds including the ground that as against the requisition of the different departments for 662 posts of clerk the Selection Board could not have selected and prepared a list of 5373 candidates as well as on the ground that the Select List lapses after expiry of one year. When this Writ Petition was placed before a Division Bench and they were confronted with the earlier decision of the High Court in *Sudesh Kumari's* case they thought
- C it appropriate to refer the matter to a Full Bench and the Full Bench after considering all the points raised delivered the judgment on July 13, 1994. The conclusions of the Full Bench and the directions given are extracted hereunder:-
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- F (i) The Selection Board cannot make the selection in excess of the number of posts for which a requisition has been placed before it. The waiting list prepared by the Board has to be confined to the number prescribed by the Government.
- G (ii) The selected candidates do not have any indefeasible right to be appointed to the posts for which they have been selected.
- H (iii) The directions given by the Bench in *Sudesh Kumari's* case particularly to the effect that the selection list prepared on October 15, 1989 would not lapse are not in conformity with law.

- (iv) The respondent-State of Haryana would examine the cases of persons, who were appointed even though they had not attained the requisite percentage of marks for inclusion in the merit list and were not within the number of posts for which a requisition had been sent to the Board. It would pass orders in accordance with law. A
- (v) The list prepared by the Board on October 15, 1989 was valid for a period of one year. If a candidate whose name appeared upto Sr. no. 662 has not been appointed so far the State shall consider his claim and appoint him. All vacancies arising from October 15, 1990 onwards shall be readvertised and recruitment against those vacancies shall be made from amongst the selected candidates. B C

The effect of the aforesaid direction is not only the accrued rights of the parties pursuant to the judgment of the High Court in *Sudesh Kumari's* case got wiped off but also even those who had been appointed and their appointment had not been annulled would also be liable to lose their job if they do not come within the number of posts for which requisition has been placed before the Selection Board. D

The appellants before us challenged the aforesaid judgment and direction of the Full Bench. E

Mr. Mahavir Singh, the learned counsel and all other learned counsel, appearing for the appellants in respective appeals, contended before us that the mandamus issued by the High Court in *Sudesh Kumari's* case cannot be annulled by a subsequent Full Bench judgment though the Full Bench may be competent to decide the questions of law earlier and in this view of the matter the directions given in the impugned judgment to the effect that the list prepared by the Selection Board in excess of the number of requisition which the Board has received cannot be held to be valid and operative and persons already appointed in excess of the said number are liable to evict their offices after the State Govt. considers their cases are without jurisdiction. According to the learned counsel a writ in the nature of mandamus issued by the High Court in a case can be nullified only by preferring an appeal to a higher forum and get the judgment reversed, but that course not having been adopted the impugned judgment of the Full H

A Bench must be held to be without jurisdiction and at any rate it cannot nullify the rights accrued to the appellants by virtue of the judgment in *Sudesh Kumari's* case.

B Mr. K.T.S. Tulsi, the learned senior counsel appearing for the respondent-State and the Service Selection Board, on the other hand contended, that though on principle he will not be in a position to refute the contention advanced, but in the case in hand this Court must consider the effect of judgment in *Sudesh Kumari's* case and must bear in mind the fact that an implementation of the direction of the High Court in *Sudesh Kumari's* case would make the future generations for years not to aspire for a job in the post of clerk and such direction is against the interest of the society. Mr. K.T.S. Tulsi, learned senior counsel also brought to our notice the different administrative circulars issued by the Government requesting the Service Selection Board only to prepare a list in excess of the requisition made by 25 persons as well as the circular indicating that a list remains valid for a period of one year. We would have ordinarily persuaded to accept the contention raised by the learned counsel for the appellants in view of the finality that has been attached to the judgment of Punjab and Haryana High Court in *Sudesh Kumari's* case, no appeal having been preferred by the State against the said judgment and would have permitted the directions given therein to be worked out, but in view of the illegality and irregularities perpetrated by the said judgment and in view of the enormity of the impact which the judgment would have on the future generation of candidates aspiring for a job in the post of clerk, we would modify the directions given by the Full Bench and while modifying the said directions and replacing them with our directions we bear in mind the fact that persons who have been appointed from out of the list prepared on 15.10.1989 have already served for more than 9 years. From the relevant circulars in the form of Administrative directions issued by the Government it can be safely said that life of a list remains valid for one year and, therefore, after expiry of the list normally a Court would not be justified in issuing direction to give appointments from the list whose life has already expired unless it is established that notwithstanding existence of vacancies the appointing authority *malafidely* did not make appointment from the list. We have also no hesitation to come to the conclusion that as against the requisition for 662 posts of clerk received by the Service Selection Board, the Board committed gross illegality in selecting and preparing a list of H 5373 candidates. Further mistake committed by the Board was in sending

the names of persons from the list not in order of their merit, but at random as a result of which persons with higher merit securing higher position in the list stood excluded where as persons securing lower merit got appointed. Having given our anxious consideration to all the facts and circumstances narrated above and having considered the fact that persons who may not have been appointed strictly in accordance with law have been appointed and continued in service for more than 9 years and further the fact that the direction in *Sudesh Kumari's* case not to get the list lapsed unless and until all persons from the list who are above the last man, who has already been appointed are appointed which really seriously prejudice the interest of the further candidates and also jeopardises the administration to a great extent, we think it appropriate to issue the following directions in disposing of these appeals. We may at this stage notice the fact which was brought before us at the fag end of the hearing that in the year 1995 there has been a fresh test by the same Service Selection Board and again a large number of persons have been included in the list and the High Court has given almost a similar direction as was one given in *Sudesh Kumari's* case. We, however, express no opinion on the legality of the said judgment particularly when we have not examined the same and the State also intends to challenge the same. The only purpose for noticing the aforesaid fact was to high light that notwithstanding the judgment in *Sudesh Kumari's* case, there had been a fresh advertisement and a fresh list has been prepared by the Service Selection Board and parties have claimed their rights on the basis of the inclusion of their names in the said lists. However, as stated earlier, bearing in mind all the relevant facts and circumstances and bearing in mind the equity in favour of those who have already been appointed from out of the list prepared on 15.10.1989 and have served for more than 9 years we issue the following directions in substitution of the directions made by the High Court in the impugned judgment:-

- (1) The appointments already made from out of the list prepared on 15-10-1989 will not be annulled.
- (2) The last person who is stated to have been appointed being at serial no. 4645, persons occupying higher position than him could be considered for appointment to the post of clerk if there exists any vacancy for them.

- A (3) The vacancy in this context would mean the vacancies which were available in the State of Haryana prior to the advertisement issued for selecting persons for the said post for the year 1995. It is to be made clear that if no vacancies exist on the aforesaid date, then no further appointment would be made from out of the list prepared on 15.10.1989 notwithstanding the directions of the Punjab and Haryana High Court in *Sudesh Kumari's* case.
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- (4) If vacancies did exist on the date as aforementioned then the appointments from out of the list prepared on 15.10.1989 could be made strictly on the basis of their merit position in the list.
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- (5) We strongly deprecate the practice of selecting and preparing an unusual large list compared to the vacancy position and the State Government should either amend the Recruitment Rules in that respect and till then should issue positive administrative instructions giving the right to the Selection Board to select only some persons in excess than the requisition for which the Board is going to select people.
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- (6) We also do not approve of the inaction on the part of the State Govt. in not assailing the judgment of the Punjab and Haryana High Court in *Sudesh Kumari's* case and now coming up before us making submissions that the judgment is practically incapable of being implemented.
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F These appeals are disposed of accordingly. But in the circumstances there will be no order as to costs

R.P.

Appeal disposed of.