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BUDDHI NATH CHAUDHARY AND ORS.

v.

ABAHU KUMAR AND ORS.

FEBRUARY 21, 2001

B

[S. RAJENDRA BABU AND S.N. PHUKAN, JJ.]

Service Law :

C

Motor Vehicle Inspectors—Appointment of—Recruitment Rules provided for certain length of experience—However, some candidates without requisite experience appointed—Validity of—Held : The Motor Vehicle Inspectors have been in employment for a long time—Lack of experience at the time of recruitment has been made good—Hence, the appointments need not be disturbed.

D

Motor Vehicle Inspectors—Appointment of—Pursuant to selection by State Public Service Commission—Challenge of—High Court directed Transport Commissioner to examine the correctness of selection—Validity of—Held, matter of selection of appointment cannot be entrusted to Transport Commissioner when the Commission, as an autonomous authority, has selected the candidates—If the selection was improper it could have been set aside or at best Government could have been directed to take appropriate steps—Hence, direction of High Court set aside.

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The appellants were selected by the State Public Service Commission as Motor Vehicle Inspectors. The respondents filed a writ petition before the High Court challenging the appointments of the appellants on the ground that they did not possess the requisite experience. Single Judge of the High Court directed the Transport Commissioner to examine the contentions raised by the respondents. However, the Division Bench set aside the report sent by the Transport Commissioner and directed fresh consideration of the matter by the Transport Commissioner. Hence this appeal.

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Allowing the appeal, the Court

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HELD : 1. The matter of selection and appointment to a post could not have been entrusted to the Transport Commissioner when the State Public Service Commission had been specifically entrusted with such a job and such Commission, which is an autonomous authority having a constitutional status, has selected the candidates whose appointments were in

challenge. If the selection of these candidates was improper the same should have been set aside with appropriate directions to redo the process of selection or at best, the High Court could have directed the Government, which is the appointing authority, to take appropriate steps in the matter. [21-B-C]

2. The selected candidates, who have been appointed, are now in employment as Motor Vehicle Inspectors for over a decade. Now that they have worked in such posts for a long time, necessarily they would have acquired the requisite experience. Lack of experience, if any, at the time of recruitment is made good now. Therefore, the new exercise ordered by the High Court will only lead to anomalous results. The appointments made long back pursuant to a selection need not be disturbed. [21-E; H]

Ram Sarup v. State of Haryana, [1979] 1 SCC 168; *District Collector & Chairman, Vizianagaram Social Welfare School Society v. M. Tripura Sundari Devi*, [1990] 3 SCC 655 and *H.C. Puttaswamy v. The Hon'ble Chief Justice of Karnataka High Court*, [1991] Supp. 2 SCC 421, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1397 of 2001.

From the Judgment and Order dated 6.1.2000 of the Patna High Court in L.P.A. No. 776 of 1999.

WITH

Civil Appeal No. 1398/2001 and 1399 of 2001.

P.S. Mishra, R.K. Jain, P.P. Rao, K.K. Mishra, Upendra Mishra, Vishnu Sharma, Anil K. Jha, Arvind Kumar, Ms. Niranjana Singh, V.B. Joshi, Ms. Shweta Sharma, Saket Singh, Navin Prakash, Akhilesh Kumar Pandey and B.B. Singh for appearing parties.

The Judgment of the Court was delivered by

RAJENDRA BABU, J. Leave granted.

In these cases the appellants were selected by the Bihar Public Service Commission [hereinafter referred to as 'Commission'] for appointment as Motor Vehicle Inspectors pursuant to an advertisement issued by the Commission on 12.5.1989. The advertisement indicated that candidates possessing the following qualification and experience are eligible for appointment to the said post:

A "Qualification:- (Required minimum technical qualification-educational qualification).

(Ka) Matriculation

B (Kha) Diploma in Automobile Engineering or Mechanical Engineering after completing three years course would be necessary from a recognized Institution/Board/University.

(G) The diploma holder or post diploma holder in Automobile Engineering would be preferred.

C Note:- Such candidates, who have mechanic level qualification related to Motor trade, would not be competent.

Experience:-

D (Ka) For the candidates, who after completing three years course of Automobile Engineering have obtained diploma, must possess three years practical experience in an Automobile Engineering Workshop registered under the Factories Act.

E (Kha) Such candidates, who have obtained diploma in Mechanical Engineering after completing three years course compulsorily, must possess five years practical experience in an Automobile Engineering Institution registered under the Factories Act.

F (Ga) Candidates having post diploma in Automobile Engineering compulsorily possess two years practical work experience in a workshop of Automobile Engineering institution registered under the Factories Act."

F When the process of selection was pending, a new rule was introduced in Recruitment Rules requiring the person to be selected as a Motor Vehicle Inspector to possess a driving licence. Pursuant to the selection made by the Commission, the appellants were appointed as Motor Vehicle Inspectors in the year 1991 and they have continued to hold the said posts till date.

G On the ground that the selected candidates do not possess the qualification or experience in appointment in an appropriate automobile institution registered under the Factories Act, 1948 or they did not possess driving licence, their appointments were challenged by some of the candidates who were not selected in several writ petitions. The learned Single Judge of the High Court who dealt with these writ petitions did not examine the contentions raised

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on behalf of the writ petitioners in the necessary detail with reference to each selected candidate but directed the Transport Commissioner to do that exercise. On appeal, the Division Bench of the High Court set aside the report sent by the Transport Commissioner pursuant to the order made by the learned Single Judge which was received during the pendency of the appeal and directed fresh consideration of the matter by the Transport Commissioner.

We fail to understand as to how the matter of selection and appointment to a post could have been entrusted to the Transport Commissioner when the Commission had been specifically entrusted with such a job and such Commission, which is an autonomous authority having a constitutional status, has selected the candidates whose appointments were in challenge. If the selection of these candidates was improper the same should have been set aside with appropriate directions to redo the process of selection or at best, the High Court could have directed the Government, which is the appointing authority, to take appropriate steps in the matter. However, in the facts and circumstances of this case, we need not dilate on this aspect nor do we need to examine various elaborate contentions addressed by either side. Suffice to say that all the selected candidates, who are in employment, except one, possess necessary qualification and in regard to that one excepted candidate, it cannot be disputed that he possesses equivalent qualification. Thus the dispute narrows down to one aspect, that is, the selected candidates may not possess necessary experience which is now required to be examined by the Transport Commissioner.

The selected candidates, who have been appointed, are now in employment as Motor Vehicle Inspectors for over a decade. Now that they have worked in such posts for a long time, necessarily they would have acquired the requisite experience. Lack of experience, if any, at the time of recruitment is made good now. Therefore, the new exercise ordered by the High Court will only lead to anomalous results. Since we are disposing of these matters on equitable consideration, the learned counsel for the contesting respondents submitted that their cases for appointment should also be considered. It is not clear whether there is any vacancy for the post of Motor Vehicle Inspectors. If that is so, unless any one or more of the selected candidates are displaced, the cases of the contesting respondents cannot be considered. We think that such adjustment is not feasible for practical reasons. We have extended equitable considerations to such selected candidates who have worked in the post for a long period, but the contesting respondents do not come in that class. The effect of our conclusion is that appointments made long back pur-

A suant to a selection need not be disturbed. Such a view can be derived from several decisions of this Court including the decisions in *Ram Sarup v. State of Haryana & Ors.*, [1979] 1 SCC 168; *District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram & Anr. v. M. Tripura Sundari Devi*, [1990] 3 SCC 655; and *H.C. Puttaswamy & Ors. v. The Hon'ble Chief Justice of Karnataka High Court, Bangalore & Ors.*, [1991] Supp. 2 SCC 421. Therefore, we must let the matters lie where they are.

B In the special features of this case, we set aside the order of the High Court and dismiss the writ petitions. The appeals are, therefore, allowed. No costs.

C V.S.S.

Appeals allowed.