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STATE OF PUNJAB

v.

RAGHBIR CHAND SHARMA AND ANR.

OCTOBER 30, 2001

B

[S. RAJENDRA BABU AND DORAISWAMY RAJU, JJ.]

C

Public functionaries—Assistant Advocate General of State—Appointment—Select Panel of three candidates—First candidate appointed but later resigned—Second candidate showing no inclination to join service—Third candidate not offered appointment and a service cadre appointed on the basis of seniority-cum-merit—Claim for appointment by third candidate in the select panel—Held, cannot be entertained as by appointment of first empanelled candidate, the select panel ceased to exist and outlived its utility.

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Appellant-State issued a notification inviting applications for appointment to the post of Assistant Advocate General of State. A select panel of three candidates was prepared by the Committee. First candidate in the select list joined the services but subsequently resigned. The second candidate in the select panel expressed his inability to accept the appointment. Thereupon, appellant State appointed Respondent No. 2, serving in the office of Advocate General for the said post on the basis of seniority-cum-merit. Respondent No.1, the third candidate in the select panel filed a writ petition claiming that he should have been offered appointment and not the second respondent. A Single Judge of High Court allowed the claim of respondent No. 1 relying upon the Government Circular dated 23.3.1957. Appellant-State unsuccessfully filed an appeal before the Division Bench of High Court. Hence the present appeal.

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On behalf of appellant-State it was contended that mere empanelment in a select list does not confer upon such a person in the panel any right to get appointed to a post under the State and if for good and valid reason, the State does not choose to appoint the said person in the panel, no right inheres in such a person to seek a mandate from the Courts for an appointment.

Allowing the appeal, the Court

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HELD : 1.1. Both the Single Judge as well as the Division Bench of

High Court were not justified in directing the appellant-State to appoint respondent No. 1 as the Assistant Advocate General. [505-B]

1.2. The Notification issued inviting applications was in respect of one post and the first candidate in the select panel was not only offered but on his acceptance of offer came to be appointed and it was only subsequently that he came to resign. With the appointment of the first candidate the select panel ceased to exist and has outlived its utility and, at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently. The Circular Orders dated 22.3.1957 relates to select panels prepared by the Public Service Commission and not a panel of the nature under consideration. That apart, even as per the Circular Orders no claim can be asserted and countenanced for appointment after the expiry of six months. [505-C-D]

Virender S. Hood and Ors. v. State of Haryana and Anr., AIR (1999) SC 1701, held inapplicable.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8034 of 1994.

From the Judgment and Order dated 24.1.94 of the Punjab and Haryana High Court in L.P.A. No. 1339 of 1991.

Rajeev Kumar Sharma for the Appellant.

Mrs. Amita Gupta for the Respondents.

The Judgment of the Court was delivered by

RAJU, J. This appeal by the State of Punjab has been filed against the Order dated 24.1.94 of a Division Bench of the High Court of Punjab and Haryana confirming the order of a learned Single Judge of the said High Court, allowing CWP No.13347 of 1989 filed by the first respondent herein and as a consequence thereof, directing the appellant-State to appoint him as the Assistant Advocate General, Punjab.

The indisputable and relevant facts, necessary to be noticed for an appreciation of claims of the parties, are that the State of Punjab by a Notifi-

A cation issued in August, 1987 invited applications from amongst practising
advocates of Punjab and Haryana High Court and Law Officers of Government
of Punjab for a post of Assistant Advocate General, Punjab, in the scale of
Rs.2000-2300; that from amongst the applicants, who responded, a select
panel of three candidates was made by the Committee, which interviewed
B them in which one M.L. Agnihotri was arrayed as No.1, one Baldev Singh as
No.2 and the first respondent as No.3. The first in the panel, M.L. Agnihotri
accepted the same and on being appointed, he joined the service also on
16.10.1987, but subsequently resigned on 13.11.1987. The second candidate,
Baldev Singh, on the select panel also on his own, by his letter dated 13.1.1988
expressed that he was not interested and even if offered his inability to accept
C the appointment. Thereupon, the State took a decision to fill up the post from
the service cadre by promotion and that is how the second respondent, who was
serving in the Office of Advocate General, was on the basis of seniority-cum-
merit appointed and he also retired on 31.7.1988. The grievance of the first
D respondent as writ petitioner was that he being the third candidate in the select
panel, should have been offered the appointment and not the second respondent.
Though representations had been made by the first respondent asserting
such a claim, the same were considered and rejected. It was at that stage the
first respondent approached the High Court and the learned Single Judge was
of the view that after the candidate at Serial No.2 in the select panel declined
E to accept the appointment, the first respondent should have been offered the
same and relying upon an administrative Circular issued by the State Govern-
ment on 23.3.1957, the learned Single Judge allowed the claim, as noticed
earlier. The challenge made by the State in appeal before a Division Bench
having failed, this appeal has been filed.

F Heard the learned counsel appearing on either side. Strong reliance has
been placed by the appellant on some decisions of this Court, wherein it has
been held that mere empanelment in a select list does not confer upon such a
person in the panel any right to get appointed to a post under the State and if
for good and valid reason, the State does not choose to appoint the said person
in the panel, no right inheres in such a person to seek a mandate from the Courts
G for an appointment. Per contra, the learned counsel for the first respondent
placed strong reliance upon a decision of this Court, to which one of us
(Rajendra Babu, J.) was a member, reported in *Virender S. Hood and Ors. v.
State of Haryana & Anr.*, AIR (1999) SC 1701, wherein it was held relying
upon the Circular Orders dated 22.3.1957 that when vacancies existing were
H filled in by appointing candidates recommended by the Public Service Com-

mission, further vacancies arising and available within six months from the receipt of recommendation of Public Service Commission have to be filled up out of the wait list maintained by the Public Service Commission.

We have carefully considered the submissions of the learned counsel on either side. In our view, the judgment rendered by the learned Single Judge as well as the Division Bench of the Punjab and Haryana High Court cannot be sustained. As rightly contended for the appellant-State, the Notification issued inviting applications was in respect of one post and the first candidate in the select panel was not only offered but on his acceptance of offer came to be appointed and it was only subsequently that he came to resign. With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select panel prepared, the panel ceased to exist and has outlived its utility and, at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently. The Circular Orders dated 22.3.1957, in our view, relates to select panels prepared by the Public Service Commission and not a panel of the nature under consideration. That apart, even as per the Circular Orders as also the decision relied upon for the first respondent, no claim can be asserted and countenanced for appointment after the expiry of six months. We find no rhyme or reason for such a claim to be enforced before Courts, leave alone there being any legally protected right in the first respondent to get appointed to any vacancy arising subsequently, when somebody else was appointed by the process of promotion taking into account his experience and needs as well as administrative exigencies.

For all the reasons stated above, we are unable to approve the judgment under appeal. The appeal is allowed. The writ petition filed by the first respondent in the High Court will stand dismissed. No costs.

S.V.K.

Appeal allowed.