

STATE OF A.P. AND ORS.

v.

D. DASTAGIRI AND ORS.

APRIL 23, 2003

[SHIVARAJ V. PATIL AND ARIJIT PASAYAT, JJ.]

*Service Law:*

*Appointment—Right to—Notification issued by State of Andhra Pradesh containing guidelines and procedure for recruitment to 1715 posts of Excise Constables—Interviews held and verification of original certificates done—Meanwhile Election Notification issued and recruitment process stopped—Later, on introduction of total prohibition in the State, process of recruitment of Excise Constables cancelled—On writ petitions being filed the High Court taking note of the submission of Counsel for the State that cases of petitioners would be considered for appointment on existing vacancies, granted relief to the petitioners—Held, even if the selection process was complete and assuming that only select list was remained to be published, that does not advance the case of the candidates for the simple reason that even the candidates who are selected and whose names find place in the select list, do not get vested right to claim appointment based on the select list—It was open to the State Government to take a policy decision either to have prohibition or not to have it in the State—If pursuant to a policy decision taken to impose prohibition in the State there was no requirement for the recruitment of Constables in the Excise Department, nobody can insist that they must appoint the candidates as Excise Constables—It is not the case of the respondents that there was any malafide on the part of the appellants in refusing the appointment to the respondents after the selection process was complete—When it was open to the Government to take a policy decision, it is not open to the respondents to dub the action of the Government as arbitrary, particularly, when they did not have any right as such to claim appointments—In the absence of selection and publication of select list, mere concession or submission made by the Government Pleader on behalf of the appellant—State cannot improve the case of the respondents—Similarly, such a submission cannot confer right on the respondents, which they otherwise did not have—However, having regard to the peculiar facts and circumstances of the case and that the respondents had the benefit of the order of the High*

A *Court it is just and appropriate that as and when any fresh selection takes place to the post of Excise Constables, the respondents may apply for regular recruitment—In that event, age—bar will not be put against them.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 604 of 2000.

B From the Judgment and Order dated 23.6.1999 of the Andhra Pradesh High Court in Crl. W.P. No. 36036 of 1998.

WITH

C.A. No. 915 of 2000.

C Guntur Prabhakar for the Appellants.

P.V. Krishnaiah, R. Santhan Krishnan and D. Mahesh Babu for the Respondents.

The following Order of the Court was delivered :

D The State of Andhra Pradesh is before us in these appeals questioning the validity and correctness of the judgment and order passed by the Division Bench of the High Court. The appellant-State Government issued a notification containing guidelines and procedure for recruitment to the post of 1715 Excise Constables, pursuant to which the Commissioner of Excise notified the vacancies to the Employment Exchange initiating the process of recruitment. E Dates for interview were scheduled between 19.10.1994 and 23.10.1994 and dates were fixed for verification of original certificates between 25.10.1994 and 29.10.1994. Thereafter, on account of announcement of General Elections to the Legislative Assembly, recruitment process was stopped as Election F Notification had been issued on 1.11.1994. By the Memo dated 21.12.1994, in the light of the decision of introducing total prohibition in the State of Andhra Pradesh, the process for recruitment of 1715 Excise Constables was cancelled. The results of the interview were not declared and no selection list was published. The respondents filed Writ Petition in the High Court in the year G 1998 seeking mandamus directing the appellants to appoint them. Before filing the Writ Petition, the respondents had approached the Andhra Pradesh Administrative Tribunal. The Division Bench of the High Court disposed of the Writ Petition granting relief to the respondents, taking note of the submission made by the learned Government Pleader that the cases of the respondents will be considered for appointment in the existing vacancies. H Aggrieved by the orders passed by the Division Bench, these appeals are

filed by the State of Andhra Pradesh, as already stated above.

Learned counsel for the appellants contested that the High Court committed a serious error in issuing direction to the appellants to consider the cases of the respondents, for appointment to the post of Excise Constables, when the selection process itself was not complete and no select list had been published; the respondents could not claim appointments as a matter of right merely on the basis of so-called selection made; it was open to the State Government to make or not to make appointments to the existing vacancies. He also submitted that it was open to the State to take a policy decision either to fill up those posts or not to fill up those posts, depending upon the requirement of the State.

In opposition, learned counsel for the respondents made submissions supporting the impugned judgment of the High Court. He contended that the selection process was over inasmuch as the requisite tests were conducted, interviews were held, only select list was not published; having completed the selection process after holding necessary tests and taking interview, the appellants were not at all justified in not issuing appointment orders; the action of the appellants in not issuing appointment orders was arbitrary and unfair. According to him, the High Court did not issue a mandamus to appoint the respondents; the High Court had only directed the appellants to consider the case of the respondent to appoint them.

In the counter affidavit filed on behalf of the respondents in Civil Appeal No. 915/2000, in paragraph 16 it is stated that the process of selection was cancelled at the last stage, i.e., before publishing the list of selected candidates on the sole ground that the State Government wanted to introduce prohibition and obviously the Government felt that there was no need of Excise Constables during imposition of prohibition in the State. There is serious dispute as to the completion of selection process. According to the appellants, the selection process was not complete. No record has been placed before us to show that the selection process was complete, but, it is not disputed that the select list was not published. In paragraph 16 of the counter affidavit, referred above, the respondents themselves had admitted that the selection process was cancelled at the last stage. In the absence of publication of select list, we are inclined to think that the selection process was not complete. Be that as it may, even if the selection process was complete and assuming that only select list was remained to be published, that does not advance the case of the respondents for the simple reason that even the candidates who are

A selected and whose names find place in the select list, do not get vested right to claim appointment based on the select list. It was open to the State Government to take a policy decision either to have prohibition or not to have prohibition in the State. Certainly, the Government had right to take a policy decision. If pursuant to a policy decision taken to impose prohibition in the State there was no requirement for the recruitment of Constables in the Excise Department, nobody can insist that they must appoint the candidates as Excise Constables. It is not the case of the respondent that there was any *malafide* on the part of the appellants in refusing the appointment to the respondents after the selection process was complete. The only claim was that the action of the appellants, in not appointing the respondents as Excise Constables, was arbitrary. In the light of the facts that we have stated above, when it was open to the Government to take a policy decision, we fail to understand as to how the respondents can dub the action of the Government as arbitrary, particularly, when they did not have any right as such to claim appointments. In the absence of selection and publication of select list, mere concession or submission made by the learned Government Pleader on behalf of the appellant-State cannot improve the case of the respondents. Similarly, such a submission cannot confer right on the respondents, which they otherwise did not have.

E Under these circumstances, we find it difficult to sustain the impugned judgment and order. However, having regard to the peculiar facts and circumstances of the case and that the respondents had the benefit of the order of the High Court, we think it is just and appropriate that as and when any fresh selection takes place to the post of Excise Constables, the respondents may apply for regular recruitment. In that event, age-bar will not be put against them put, they shall satisfy other eligibility conditions and requirements, including qualification.

Under the circumstances, the impugned orders are set aside, subject to what is stated above. The appeals are allowed accordingly. No costs.

G At this stage, the learned counsel for the respondents submitted that the Government is even now considering the cases of the similarly placed respondents for appointment. If that be, so, this order of ours will not come in the way of the State Government considering the case of the respondents.

R.P.

Appeals allowed.