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STATE OF BIHAR AND ORS.
v.
AMRENDRA KUMAR MISHRA

SEPTEMBER 26, 2006

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[S.B. SINHA AND DALVEER BHANDARI, JJ.]

Service Law:

C *Appointment—Permissibility of—Non-receipt of appointment letter by candidate—Representation requesting issuance of appointment letter made after 2 years of completion of selection process—Delayed filing of Writ Petition—Appointment permitted by Courts below—On appeal, held: The candidate did not have any legal right for appointment, the life of panel having expired—Even if the appointment letter was sent by ordinary post, that will raise a statutory presumption—In absence of legal right, court should not issue a writ of or in nature of mandamus on the basis of sympathy.*

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The respondent was appointed for the post in question. The selection process was over in 1992. The appointment letter was issued to the respondent. Respondent did not join his duty within specified time. In 1994, he made representation stating therein that so far he had not received any letter of appointment and he had come to know that even junior persons in the recommended merit list have got appointment. Thereafter he made representations in 1995, 1999 and 2000. He thereafter filed Writ Petition in 2001 after his representation of 1999 was rejected. Writ Petition was allowed by Single Judge of High Court, directing the State to permit him to join the duty. Letters Patent Appeal against the same was dismissed by Division Bench of High Court. Hence the present appeal.

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Allowing the appeal, the Court

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HELD: It may or may not be that Respondent herein had actually received his appointment letter. It may be true that the appointment letter was sent by ordinary post; but even in relation thereto a statutory presumption arises. Postal delay by itself may not be a ground to take a sympathetic view. It was, however, expected that he would make enquiries thereabout; particularly when on his own showing, those who were below him in the selection list had

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already been permitted to join. Admittedly, he came to know thereabout in 1994. He allegedly filed a representation and although no reply thereto was given, he did not take any step soon thereafter. He filed another representation only in 1995. He filed the writ petition after a long period i.e. in 2001 when his purported representation filed in the year 1999 was rejected. He did not have any legal right to be appointed. In absence of any legal right, the Court should not issue a writ of or in the nature of *mandamus* on the basis of sympathy. Life of a panel remains valid for a year. Once it lapses, unless an appropriate order is issued by the State, no appointment can be made out of the said panel. [653-F; 654-A; 655-C; 656-G]

Madan Lal and Ors. v. State of Jammu and Kashmir and Ors., [1995] 3 SCC 486; *State of U.P. and Ors. v. Harish Chandra and Ors.*, [1996] 9 SCC 309; *Surinder Singh and Ors. v. State of Punjab and Anr.*, [1997] 8 SCC 488 and *Maruti Udyod Ltd. v. Ram Lal and Ors.*, [2005] 2 SCC 638, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4261 of 2006.

From the Final Judgment and Order dated 3.3.2005 of the High Court of Judicature at Patna in L.P.A. No. 130 of 2005.

Gopal Singh for the Appellants.

M.P. Jha, Ram Ekbal Roy and Harshvardhan Jha for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J : Leave granted.

The Bihar State Subordinate Service Selection Board issued an advertisement for appointment of 225 posts of Live Stock Assistants in the Animal Husbandry Department. Respondent herein pursuant to or in furtherance of the said advertisement applied therefor. He was declared successful. On or about 21.12.1992, Respondent herein along with other successful candidates had been recommended by the Board. Appointment letters were issued to 195 successful candidates, out of the 200 candidates recommended by the Commission. By a Memo. No. 323 dated 21.02.1992, an appointment letter was sent to Respondent asking him to join the post within fifteen days. He failed to join. Allegedly, on 20.07.1994, he requested Director, Department of Animal Husbandry, to issue an appointment letter to him, stating :

A "I came to know that the Department had appointed maximum candidates till date and the appointment proceeding is going on for the remaining advertised 225 posts. My Serial Number is more above in the recommended merit list and junior persons to me have been appointed but I have not received any appointment letter till date for my joining. During the period of enquiry, I have come to know that

B the appointment letter of the selected candidates have been forwarded, whereas I have not received appointment letter till now.

In the above facts and circumstances, I, therefore, request you to kindly pass the appropriate order immediately for giving me appointment letter."

C No reply thereto was allegedly given. He did not take any steps in regard thereto and only on 22.06.1995, he again requested the Director of Animal Husbandry to issue him an appointment letter in order to enable him to join the said post, stating :

D "With respect, it is to say with regard to earlier application dispatched by me in the aforesaid subject matter that in the light of the subject matter, advertisement by the Bihar Public Service Commission, I had recommended for appointment.

E It comes to know that the department had appointed maximum candidates but till date, I have not received my appointment letter. I have been reminding to the Department for a very long period but I have not received any appointment letter by the department till date."

F A notice on similar terms was issued by him in the year 2000. As his prayer was not acceded to, he filed a writ petition in the High Court of Judicature at Patna, which was marked as CWJC No.801 of 2001. The State in its Counter Affidavit categorically raised a contention that the panel remained valid only for one year. It was contended that the purported representations made by him in the years, 1994, 1995 and 2000 were not available in the Department, stating:

G "That it is further stated that in the month of December, 1999, the petitioner had submitted another representation in this Department, the case of the petitioner was referred to the Law Department, Government of Bihar, for opinion and the opinion of the learned Advocate General, Bihar was also sought and tendered. In the light

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the representation of the petitioner was rejected vide Annexure-5 of the writ application.”

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The said writ petition was taken up for hearing in 2004. The High Court allowed the same, stating :

“While hearing the matter on 29.6.2004 I had verbally asked learned G.P. 6 to find out as to whether any post of Pashudhan Sahayak is vacant pursuant to which a supplementary counter affidavit has been filed. In paragraph 56 of the affidavit it is stated that some posts of Pashudhan Sahayak are vacant in the office. Since the petitioner was already selected for this post and he could not report his joining due to some unavoidable circumstances, in my opinion, his case should be considered for the post of Pashudhan Sahayak which is still vacant.

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In the given facts and circumstances of the case, therefore, the authorities concerned are directed to accept the joining of the petitioner on the post of Pashudhan Sahayak pursuant to his selection vide order as contained in Annexure 2 within a period of four weeks from the date of receipt/production of a copy of this order.”

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A Letters Patent Appeal preferred by Appellants was summarily dismissed by an order dated 03.03.2005.

A notice was issued by this Court on 16.12.2005. Despite pendency of the Special Leave Petition, Respondent was permitted to join his services in July 2006 subject to the decision of this Court in this matter.

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The post was advertised in the year 1987. The selection process was completed in the year 1992. It may or may not be that Respondent herein had actually received his appointment letter. It was, however, expected that he would make enquiries thereabout; particularly when on his own showing those who were below him in the selection list had already been permitted to join. Admittedly, he came to know thereabout in 1994. He allegedly filed a representation and although no reply thereto was given, he did not take any step soon thereafter. He filed another representation only in 1995. He filed the writ petition after a long period i.e. in 2001 when his purported representation filed in the year 1999 was rejected.

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In the aforementioned situation, in our opinion, he did not have any legal right to be appointed. Life of a panel, it is well known, remains valid for a year. Once it lapses, unless an appropriate order is issued by the State, no

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A appointment can be made out of the said panel.

In *Madan Lal and Ors. v. State of Jammu & Kashmir and Ors.*, [1995] 3 SCC 486, this Court held :

B “...It is easy to visualise that if requisition is for 11 vacancies and that results in the initiation of recruitment process by way of advertisement, whether the advertisement mentions filling up of 11 vacancies or not, the prospective candidates can easily find out from the Office of the Commission that the requisition for the proposed recruitment is for filling up 11 vacancies. In such a case a given candidate may not like to compete for diverse reasons but if requisition is for larger number of vacancies for which recruitment is initiated, he may like to compete. C Consequently the actual appointments to the posts have to be confined to the posts for recruitment to which requisition is sent by the Government. In such an eventuality, candidates in excess of 11 who are lower in the merit list of candidates can only be treated as D wait-listed candidates in order of merit to fill only the 11 vacancies for which recruitment has been made, in the event of any higher candidate not being available to fill the 11 vacancies, for any reason. Once the 11 vacancies are filled by candidates taken in order of merit from the select list that list will get exhausted, having served its purpose.”

E In *State of U.P. and Ors. v. Harish Chandra and Ors.*, [1996] 9 SCC 309, this Court stated the law in the following terms :

F “Coming to the merits of the matter, in view of the Statutory Rules contained in Rule 26 of the Recruitment Rules the conclusion is irresistible that a select list prepared under the Recruitment Rules has its life only for one year from the date of the preparation of the list and it expires thereafter....”

Yet again in *Surinder Singh and Ors. v. State of Punjab and Anr.*, [1997] 8 SCC 488, this Court stated the law thus :

G “*Prem Singh* case was decided on the facts of that case and those facts do not hold good in the present case. In the case of *Gujarat State Dy. Executive Engineers’ Assn.* this Court has explained the scope and intent of a waiting list and how it is to operate in service jurisprudence. It cannot be used as a perennial source of recruitment filling up the vacancies not advertised. The Court also did not approve

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the view of the High Court that since vacancies had not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed. Candidates in the waiting list have no vested right to be appointed except to the limited extent that when a candidate selected against the existing vacancy does not join for some reason and the waiting list is still operative.

The decisions noticed hereinbefore are authorities for the proposition that even the waitlist must be acted upon having regard to the terms of the advertisement and in any event cannot remain operative beyond the prescribed period.

It may be true that the appointment letter was sent by ordinary post; but even in relation thereto a statutory presumption arises. It is also well known that postal delay by itself may not be a ground to take a sympathetic view

In *Maruti Udyod Ltd. v. Ram Lal and Ors.*, [2005] 2 SCC 638, it was observed :

“While construing a statute, “sympathy” has no role to play. This Court cannot interpret the provisions of the said Act ignoring the binding decisions of the Constitution Bench of this Court only by way of sympathy to the workmen concerned.

In *A. Umarani v. Registrar, Coop. Societies* this Court rejected a similar contention upon noticing the following judgments: (SCC pp. 131-32, paras 68-70)

“68. In a case of this nature this Court should not even exercise its jurisdiction under Article 142 of the Constitution of India on misplaced sympathy.

69. In *Teri Oat Estates (P) Ltd. v. U.T.*, Chandigarh 18 it is stated: (SCC p. 144, paras 36-37)

’36. We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order which would be in contravention of a statutory

A provision.

37. As early as in 1911, *Farewell, L.J. in Latham v. Richard Johnson & Nephew Ltd.*, observed: (All ER p. 123 E)

B “We must be very careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous will o’ the wisp to take as a guide in the search for legal principles.”

70. Yet again, recently in *Ramakrishna Kamat v. State of Karnataka* this Court rejected a similar plea for regularisation of services stating: (SCC pp. 377-78, para 7)

C ‘We repeatedly asked the learned counsel for the appellants on what basis or foundation in law the appellants made their claim for regularisation and under what rules their recruitment was made so as to govern their service conditions. They were not in a position to answer except saying that the appellants have been working for quite some time in various schools started pursuant to resolutions passed by Zila Parishads in view of the government orders and that their cases need to be considered sympathetically. It is clear from the order of the learned Single Judge and looking to the very directions given, a very sympathetic view was taken. We do not find it either just or proper to show any further sympathy in the given facts and circumstances of the case. While being sympathetic to the persons who come before the court the courts cannot at the same time be unsympathetic to the large number of eligible persons waiting for a long time in a long queue seeking employment.’

F In the facts and circumstances of this case, in our opinion, the High Court should not have allowed Respondent herein to join his services only on the basis of sympathy.

G It is now also well settled that in absence of any legal right, the Court should not issue a writ of or in the nature of *mandamus* on the basis of sympathy.

We, therefore, are of the opinion that the High Court committed a manifest error in allowing the writ petition of Respondent. It is set aside accordingly. The appeal is allowed. However, no recovery shall be made for the period he has actually worked. No costs.

H K.K.T.

Appeal allowed.