

STATE OF M.P. AND ORS.
v.
SANJAY KUMAR PATHAK AND ORS.

OCTOBER 10, 2007

[S.B. SINHA AND H.S. BEDI, JJ.]

Service Law—Recruitment of teachers—Under a project—By amendment of recruitment rules—Selection of some candidates stopped—By interim order of Court while considering validity of the amendment—Appointment of selected candidates after the amendment was upheld—Candidates whose selection was stopped, claiming appointment—Denied by State—Administrative Tribunal directing completion of selection process—High Court directing their appointment on sympathetic considerations—On appeal, held: No appointment could be made by the State in view of incomplete selection process—Action of the State being bonafide could not be challenged—Ordinarily a Writ Court should not act on the basis of sympathy alone, in absence of any legal right—Madhya Pradesh Non-Gazetted Class III Education Service (Non-Collegiate Service) Recruitment and Promotion Rules, 1973—r. 10 (3).

Government of India launched a Project which was required to be implemented within Eighth Plan period. In terms thereof teachers were required to be appointed. With a view to expedite the implementation in the State of Madhya Pradesh, Rule 10(3) of Madhya Pradesh Non-Gazetted Class III Education Service (Non-Collegiate Service) Recruitment and Promotion Rules, 1973 was amended for recruitment of Assistant Teachers. Selection Committees were constituted for recruitment in every district for selection to be made districtwise. Appointments were to be made in phases. Administrative Tribunal in a case wherein validity of s. 10(3) was challenged, by an interim order stayed the appointments of selected candidates made in terms of the Scheme. Preparation of Select List for Damoh District was stopped in view of the interim

- A order. No tabulation was done in respect of the interviews of the candidates. Tribunal subsequently declared the amendment illegal. However the order of Tribunal was stayed by this court. Pursuant thereto State Government offered appointments in favour of the selected candidates except those who had been interviewed by the
- B Selection Committee of Damoh District. Ultimately the selection process was upheld by this court. The candidates who have been interviewed filed application before the Tribunal for issuance of appointment letter to them. Tribunal directed to complete the aborted process of selection. State's Writ Petition thereagainst was
- C dismissed by High Court in view of the peculiarity of the case without going into the merit. Hence the present appeals.

Allowing the appeals, the Court

- D HELD: 1. No appointment could be made by the State in absence of the Select List. The State could not substitute itself for the Selection Committee. It is not disputed that the tabulation of the marks obtained by the candidates was not finalized. For the purpose of selection, the marks allotted to each of the candidates should be known to the members of the Selection Committee. Members of the
- E Selection Committee before preparing the Select List were entitled to undergo a consultative process so as to enable them to arrive at a consensus in regard to the candidates who should be appointed. As the tabulation process itself was not completed, the question of preparing any Select List also did not arise.

F [Paras 10 and 19] [959-C-D; 963-A]

- G 2. Recruitment to the posts of Assistant Teacher is governed by statutory rules. Rule 10 of Madhya Pradesh Non-Gazetted Class III Education Service (Non-Collegiate Service) Recruitment and Promotion Rules, 1973 was amended only for the purpose of implementation of the Scheme of the Central Government. It is trite law that while the recruitment process is governed by the Rules, the same should be scrupulously complied with. The condition of selection was to remain unchanged. One of the conditions for recruitment was, therefore, selection of the candidates.

H [Para 12] [959-H; 960-A-B]

3. The Tribunal as also the High Court did not call for the documents pertaining to the selection process. No finding of fact has been arrived at that the respondents herein were bound to be selected and consequently appointed. Whether all of them had fared better than the other candidates who had not approached the Tribunal had not been found. As the selection process itself was not complete, there was nothing before the Tribunal as also the High Court to indicate that they had acquired legal right of any kind whatsoever. Even where, it is trite, the names of the persons appeared in the selection list, the same by itself would not give rise to a legal right unless the action on the part of the State is found to be unfair, unreasonable or *mala fide*. The State, thus, subject to acting *bona fide* as also complying with the principles laid down in Articles 14 and 16 of the Constitution of India, is entitled to take a decision not to employ any selected candidate even from amongst the Select List. It is not the contention of the respondents that the State Government acted *malafide*. [Para 13] [960-B-F]

Shankarasan Dash v. Union of India, [1991] 2 SCR 567; *Asha Kaul (Mrs.) and Anr. v. State of Jammu and Kashmir and Ors.*, [1993] 2 SCC 577; *K. Jayamohan v. State of Kerala and Anr.*, [1997] 5 SCC 170; *All India SC & ST Employees' Association and Anr. v. A. Arthur Jeen and Ors.* [2001] 6 SCC 380; *Food Corporation of India and Ors. v. Bhanu Lodh and Ors.*, [2005] 3 SCC 618 and *Pitta Naveen Kumar and Ors. v. Raja Narasaiah Zangiti and Ors.*, [2006] 10 SCC 261, relied on

Munna Roy v. Union of India and Ors., [2000] 9 SCC 283, referred to.

4. If the action of the State was not *bonafide* and/or otherwise unfair, the Tribunal and consequently the High Court could exercise their jurisdiction to issue a writ of or in the nature of *Mandamus*, as has been sought to be done, but neither any such plea was raised nor the same was otherwise found to be existing. Ordinarily, the writ court should not, in absence of any legal right, act on the basis of sympathy alone. [Paras 14 and 20] [960-F-G; 963-A-B]

A *Ramakrishna Kamat and Ors. v. State of Karnataka and Ors.*, [2003] 3 SCC 374, **relied on.**

B *Maruti Udyod Ltd. v. Ram Lal and Ors.*, [2005] 2 SCC 638; *State of Bihar and Ors. v. Amrendra Kumar Mishra*, (2006) 9 SCALE 549, *Regional Manager, SBI v. Mahatma Mishra*, (2006) 11 SCALE 258 and *State of Karnataka v. Ameerbi and Ors.*, (2006) 13, SCALE 319, referred to

C **5. However, keeping in view the peculiar facts and circumstances of the case, it is directed that the respondents shall be entitled to relaxation of age in the event they intend to take part in the next selection process. The State is also directed to pay a sum of Rs. 10,000/- each to the respondents concerned.**

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1062 of 2005.

From the final Judgment and Order dated 27.1.2003 of the High Court of Madhya Pradesh at Jabalpur in W.P. No. 2946 of 2002.

WITH

E C.A. Nos. 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1073, 1074, 1075, 1076, 1077, 5737 of 2005 and 4754/2007.

Vibha Datta Makhija and B.S. Banthia (N.P.) for the Appellants.

F Prakash Shrivastava for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted in SLP.

G 2. The Government of India sponsored a project commonly known as Operation Black Board during the Eighth Plan period, i.e. 1992-1997 in terms whereof financial clearance was to be given for appointment of Additional Teachers in all primary/middle schools which had only one teacher in order to improve the standard of education. With a view to implement the said project, the State intended to appoint 7000 to 11000

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teachers.

3. Indisputably, the matter relating to recruitment of Assistant Teachers in Madhya Pradesh is governed by Madhya Pradesh Non-Gazetted Class III Education Service (Non-Collegiate Service) Recruitment and Promotion Rules, 1973 (hereinafter called and referred to for the sake of brevity as "said Rules"). In terms of the said Rules, the method of recruitment was to be by holding competitive examination followed by interview. With a view to expedite implementation of the project having regard to the fact that the same was to be implemented within the Eighth Plan period, Rule 10(3) of the Recruitment Rules was amended on or about 10.05.1993 by adding a proviso thereto which reads, thus:

"Provided that in any specific circumstance of the State Government may, in consultation with the General Administrative Department prescribe the criteria and procedure for selection of candidates."

4. For the aforementioned purpose, Selection Committees were constituted for recruitment of Assistant Teachers in each and every district. Selections were to be made district-wise by inviting applications from the Employment Exchanges. The Selection Committee was to prepare a panel upon considering the eligibility criteria of the candidates concerned as also upon taking viva voce list.

5. Recruitment process was started in the State on or about 5.08.1993. Selection process was to be started from 13.08.1993 and was to be completed within a period of about one month, viz., 13.08.1993 to 15.09.1993. Appointments were to be made in phases.

In these appeals, we are concerned with recruitment of 64 Assistant Teachers in Phase 3 and 66 Assistant Teachers in Phase 4.

As per the recruitment process, interviews were held in Damoh District for selection of Assistant Teachers from 1.09.1993 to 9.09.1993. Questioning, however, the validity of the amendment to Rule 10(3) of the Recruitment Rules, one 'Zila Mansevi Shikshak Sangh' filed an original application before the Administrative Tribunal. The said application was

- A marked as Application No. 2395 of 1993. An interim order was passed therein directing that no appointment should be made to the persons selected for the appointment as Assistant Teachers in terms of the said Scheme. When the Select List for Assistant Teachers for Damoh District was under preparation, a telephonic information was received by the
- B appropriate authority as regards the interim order passed by the Tribunal. Further selection process was directed to be stayed pursuant thereto. No Select List, therefore, was prepared by the District Selection Committee. No tabulation was done in respect of the interviews of the candidates and in absence of preparation of tabulation, the Select List could not have
- C been and was not prepared.

- By an order dated 18.03.1994 the State Administrative Tribunal declared the said amendment to be illegal being violative of Articles 14 and 16 of the Constitution of India. Aggrieved thereby, the State Government and other aggrieved candidates filed Special Leave Petitions
- D before this Court and by an order dated 04.01.1995, this Court stayed the said order of the Tribunal. It is not in dispute that on 24.04.1995 the State Government issued offers of appointments in favour of the candidates who had been selected in the year 1993 except those who had appeared in the interview before the Selection Committee of the Damoh District.
- E By an order dated 1.12.1997 this Court in *Arun Tewari v. Zila Mansevi Shikshak Sangh*, [1998] 2 SCC 332, upheld the selection process.

6. 39 Assistant Teachers filed an original application before the Tribunal for a direction upon the State to issue appointment letters to the selected candidates. Before the Tribunal, Appellant – State specifically
- F raised the plea that the matter relating to recruitment of Assistant Teachers has since been entrusted to Janpad Panchayats under the Madhya Pradesh Panchayat Raj Adhiniyam, in the existing vacancies of the Assistant Teachers which were since then known as Samvida Shala Shikshak Varg – III and Shiksha Karmi Varg – III, and teachers were appointed by the
- G Janpad Panchayats in December, 1995. The said application was allowed by an order dated 19.05.1999 stating:

- “In view of the above discussion it is directed that the aborted process of selection in Damoh District be now completed and the select list be drawn out as per the laid down procedure and those
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placed on the select list be offered appointment after following the usual formalities for appointments under the Government. The entire exercise of drawing out the select list and issue of appointment orders shall be completed within two months of the date of this order. Respondents No. 3 and 4 that is Collector and Deputy Director Education Damoh shall be personally responsible for complying with these directions.”

The Chairman of the Tribunal, however, passed a separate order observing that the defence taken by the State that there was no vacancy for recruitment to the post of Assistant Teacher was not acceptable. The Administrative Member of the Tribunal expressed his views separately.

7. By reason of the impugned judgment, the High Court has dismissed the writ petition filed by the appellant. It, however, did not go into the merit of the matter and based its decision on the purported ‘peculiarity of the case’. It although took into consideration the legal question that even if a person’s name appears in the Select List, ordinarily, no right accrues but proceeded to opine:

“10. After hearing the learned counsel for the parties, we think that the present cases have their own peculiarity. It is well settled in law that if the name appears in the select list ordinarily no right accrues. There may be cases which would depend on different facts and circumstances of the case. We do not intend to dilate on that score because of the pertaining factual matrix which are enumerated hereunder:

(a) The State Government had taken steps to appoint 11000 Assistant Teachers in the entire undivided Madhya Pradesh and appointments have been made in number of districts before the Tribunal granted stay.

(b) After the final order was passed by the Tribunal, the matter travelled to Apex Court and, thereafter, their Lordships passed the order of stay. The State Government promptly filled up the posts in respect of other districts.

(c) The selection process in the districts of Damoh lingered and,

A therefore, the persons who were in the select list or on the third phase could not get the benefit.

(d) The persons who have rendered services for a brief period long back because of the direction given by the Tribunal to consider their cases, they have been appointed.”

B The High Court restricted the matter relating to grant of relief only to the case of the original applications directing:

C “(a) The State Government shall prepare a list of candidates who had approached the Tribunal in the original applications in the order of merit as per the select list.

(b) The State Government shall offer them appointments in respect of Assistant Teachers or equivalent posts within a reasonable period of time.

D (c) The State shall start taking action within a period of three months from today so that *bonafide* of the State would be demonstrative.

E (d) The candidates who have not approached the Tribunal could not be benefited by this order for the simple reason that he who is not vigilant loses his right.”

F 8. Ms. Vibha Datta Makhija, learned counsel appearing on behalf of the appellants, would submit that the High Court committed a manifest error in passing the impugned judgment insofar as it failed to take into consideration:

(i) the respondents did not have any legal right to be appointed:

G (ii) there exists a distinction between two categories of candidates, viz., those in whose favour letters of appointments had been issued but had to be cancelled in view of the order of the Tribunal and the respondents herein whose names did not figure in the Select List at all.

(iii) writ petition should not have been allowed on equity alone as it must flow from a legal right.

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9. Mr. Prakash Shrivastava, learned counsel appearing on behalf of the respondents, on the other hand, would submit that the Tribunal and consequently the High Court having passed the impugned judgments in the peculiar fact situation obtaining therein, the matter must be considered in the backdrop of the following facts:

(i) the Recruitment Rules had been struck down;

(ii) a stay was operating upto 4.01.1995.

(iii) the State had issued instructions directing appointment of all the successful candidates as a result whereof the impugned judgment had been passed.

10. Respondents do not dispute before us that the tabulation of the marks obtained by them was not finalized. For the purpose of selection, the marks allotted to each of the candidates should be known to the members of the Selection Committee. Members of the Selection Committee before preparing the Select List were entitled to undergo a consultative process so as to enable them to arrive at a consensus in regard to the candidates who should be appointed. As the tabulation process itself was not completed, the question of preparing any Select List also did not arise.

11. It is true that after the order of stay was vacated by this Court in *Arun Tewari* (supra), the State issued a circular letter dated 24.04.1995 which reads as under:

“On the above subject vide referred departmental memo, it is directed that of all those teachers whose services were terminated should be reinstated in compliance with the judgment of the Hon’ble Court. In connection with this as per reconsidered decision taken after obtaining opinion of the Advocate General appointment should be given to all such persons who have been selected legally under operation black board, in accordance with the rules and after compliance of all the formalities. Remaining condition shall remain unchanged.”

12. Recruitment to the posts of Assistant Teacher is governed by

A statutory rules. Rule 10 of the Rules was amended only for the purpose of implementation of the Scheme of the Central Government "Operation Black Board". It is trite law that while the recruitment process is governed by the Rules, the same should be scrupulously complied with. The State, having regard to the ultimate decision rendered by this Court, was bound to reinstate those whose services had been terminated and appoint those who had been selected legally. The condition of selection was to remain unchanged. One of the conditions for recruitment was, therefore, selection of the candidates.

13. The Tribunal as also the High Court did not call for the documents pertaining to the selection process. No finding of fact has been arrived at that the respondents herein were bound to be selected and consequently appointed. Whether all of them had fared better than the other candidates who had not approached the Tribunal had not been found. As the selection process itself was not complete, there was nothing before the Tribunal as also the High Court to indicate that they had acquired legal right of any kind whatsoever. Even where, it is trite, the names of the persons appeared in the selection list, the same by itself would not give rise to a legal right unless the action on the part of the State is found to be unfair, unreasonable or *mala fide*. The State, thus, subject to acting *bona fide* as also complying with the principles laid down in Articles 14 and 16 of the Constitution of India, is entitled to take a decision not to employ any selected candidate even from amongst the Select List. Furthermore, we have noticed hereinbefore, that selections were made in 4 phases. It is not the contention of the respondents that the State Government acted *malafide*. The dispute, as noticed hereinbefore related to appointment in Phase 3 and Phase 4 only.

14. If the action of the State was not *bonafide* and/ or otherwise unfair, in our opinion, the Tribunal and consequently the High Court could exercise their jurisdiction to issue a writ of or in the nature of Mandamus, as has been sought to be done, but neither any such plea was raised nor the same was otherwise found to be existing.

15. It is well-known that even selected candidates do not have legal right in this behalf. [See *Shankarasan Dash v. Union of India*, [1991] 2 SCR 567, *Asha Kaul (Mrs.) and Anr. v. State of Jammu and*

Kashmir and Ors., [1993] 2 SCC 577]

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16. In *K. Jayamohan v. State of Kerala and Anr.*, [1997] 5 SCC 170, this court held:

“5. It is settled legal position that merely because a candidate is selected and kept in the waiting list, he does not acquire any absolute right for appointment. It is open to the Government to make the appointment or not. Even if there is any vacancy, it is not incumbent upon the Government to fill up the same. But the appointing authority must give reasonable explanation for non-appointment. Equally, the Public Service Commission/recruitment agency shall prepare waiting list only to the extent of anticipated vacancies. In view of the above settled legal position, no error is found in the judgment of the High Court warranting interference.”

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[See also *Munna Roy v. Union of India and Ors.*, [2000] 9 SCC 283]

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17. In *All India SC & ST Employees' Association and Anr. v. A. Arthur Jeen and Ors.*, [2001] 6 SCC 380, it was opined:

“10. Merely because the names of the candidates were included in the panel indicating their provisional selection, they did not acquire any indefeasible right for appointment even against the existing vacancies and the State is under no legal duty to fill up all or any of the vacancies as laid down by the Constitution Bench of this Court, after referring to earlier cases in *Shankarsan Dash v. Union of India*. Para 7 of the said judgment reads thus :-

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“It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence

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A of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken *bona fide* for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subhash Chander Marwaha*, *Neelima Shangla v. State of Haryana* or *Jatendra Kumar v. State of Punjab*.”

C 18. The principles laid down in the aforementioned cases have been upheld by this Court in *Food Corporation of India and Ors. v. Bhanu Lodh and Ors.*, [2005] 3 SCC 618 stating:

D “14. Merely because vacancies are notified, the State is not obliged to fill up all the vacancies unless there is some provision to the contrary in the applicable rules. However, there is no doubt that the decision not to fill up the vacancies, has to be taken *bona fide* and must pass the test of reasonableness so as not to fail on the touchstone of Article 14 of the Constitution. Again, if the vacancies are proposed to be filled, then the State is obliged to fill them in accordance with merit from the list of the selected candidates. Whether to fill up or not to fill up a post, is a policy decision, and unless it is infected with the vice of arbitrariness, there is no scope for interference in judicial review...”

F 19. In *Pitta Naveen Kumar and Ors. v. Raja Narasaiah Zangiti and Ors.*, [2006] 10 SCC 261, this Court observed :

G “The legal position obtaining in this behalf is not in dispute. A candidate does not have any legal right to be appointed. He in terms of Article 16 of the Constitution of India has only a right to be considered therefor. Consideration of the case of an individual candidate although ordinarily is required to be made in terms of the extant rules but strict adherence thereto would be necessary in a case where the rules operate only to the disadvantage of the candidates concerned and not otherwise...”

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In a situation of this nature, no appointment could be made by the State in absence of the Select List. The State could not substitute itself for the Selection Committee.

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20. Furthermore, ordinarily, the writ court should not, in absence of any legal right, act on the basis of sympathy alone.

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In *Ramakrishna Kamat and Ors. v. State of Karnataka and Ors.*, [2003] 3 SCC 374 albeit in the light of right of regularization in service, this Court opined:

“...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 (SIC) seeking employment...”

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[See also *Maruti Udyod Ltd. v. Ram Lal and Ors.*, [2005] 2 SCC 638, *State of Bihar & Ors. v. Amrendra Kumar Mishra*, (2006) 9 SCALE 549, *Regional Manager, SBI v. Mahatma Mishra*, (2006) 11 SCALE 258 and *State of Karnataka v. Ameerbi & Ors.*, (2006) 13 SCALE 319]

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21. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. However, keeping in view the peculiar facts and circumstances of the case, we direct that the respondents shall be entitled to relaxation of age in the event they intend to take part in the next selection process. The State is also directed to pay a sum of Rs. 10,000/- each to the respondents concerned. The appeals are allowed. No costs.

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Appeals allowed.