

VIJAY SINGH CHARAK
v.
UNION OF INDIA AND ORS.

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FEBRUARY 26, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

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Service Law: Selection—Preparation of select list—Requirement of—Held: Separate select list should be prepared for a particular year—Candidates eligible in that particular year alone to be considered for selection in the select list—There cannot be clubbing of vacancies of several years—Clubbing is illegal—Indian Forest Service (Recruitment) Rules, 1965—Regulation 5.

C

Practice and Procedure: Writ Petition—Issue with regard to the validity of select list—High Court sending the matter back to Selection Committee without deciding the issue—Held: High Court abdicated its functions—It was unjustified and unwarranted.

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The select list was prepared for induction of Officers into Indian Forest Service. There were 35 vacancies and appellant's name was at no. 26. He was not selected. Select list was challenged. Division Bench sent back the select list for consideration to the Selection Committee. State Government prepared a fresh select list dated 12.9.1995. Appellant's name was not there. Select list of 1995 had clubbed together vacancies for period 1991-1995. Single Judge of High Court dismissed the writ petition. Appeal was also dismissed. Hence the present appeal.

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Allowing the appeal, the Court

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HELD: 1. When a Select List is challenged the High Court can either quash the Select List if it finds it invalid, or it can uphold the validity of the List, but instead of taking recourse to either of these two courses of action, the Division Bench devised a third method of disposing of the case by sending back the select list to the Selection Committee. The High Court practically abdicated its functions. It was the duty of High Court to decide the controversy as to whether the select list of 1991 was valid or not, and it was wholly unjustified and improper on its part to refuse to perform its function.

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[Paras 4 and 5] [189-G; 190-A]

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A 2.1 A Select List can only be prepared for a particular year, and only those who are eligible in that particular year alone can be considered for selection in the Select List. Even if the Select List is not prepared in that very year, it will relate back to that particular year. Therefore, clubbing is illegal. [Paras 12 and 14] [191-G-H]

B 2.2. In the instant case, a Select List had to be prepared for the year 1991. Hence, only those officers who were eligible for induction into the IFS in the year 1991 could have been considered in the Select List for the year 1991 (even if it is prepared subsequent to 1991). The Select List dated 12.9.1995 has clubbed together the vacancies for the period 1991-1995 which was in violation of Regulation 5 of the Indian Forest Service (Recruitment) Rules, 1965. In the Select List of 12.9.1995 many persons who were not eligible for selection for the year 1991 have been included, while the appellant has been excluded. The clubbing done was clearly illegal and also any selection made in pursuance thereof. The impugned Select List dated 12.9.1995 is quashed. The State Government is directed to prepare a fresh Select List for each year separately considering only those persons/officers who were eligible for selection in that particular year.

[Paras 6, 13, 14 and 15] [190-C; 191-G-H; 192-B]

Union of India and Ors. v. Vipinchandra Hiralal Shah, [1996] 6 SCC 721, relied on.

H.R. Kasturi Rangan and Ors. v. Union of India and Ors., (1998) 1 SCALE SP 11 and *Nepal Singh Tanwar, etc. v. Union of India and Ors.*, (1998) 1 SCALE (SP) 7, referred to.

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6660 of 2000.

From the Final Judgment and Order dated 26.5.1999 of the High Court of Jammu & Kashmir at Jammu in L.P.A. (SW) No. 222/1999.

G Rajeev Sharma, Diwakar Sinha and Nihar Ranjan Mohapatra for the Appellant.

Shakeel Ahmed & Arna Das, Anis Suhrawardy, S. Mehndi Imam & Tabreez Ahmad, Indra Sawhney and Shreekant N. Terdal for the Respondents.

The Judgment of the Court was delivered by

H MARKANDEY KATJU, J. 1. This appeal has been filed against the

impugned judgment of the Jammu & Kashmir High Court dated 26.5.1999 in LPA (SW) No. 222/99. A

2. Heard learned counsel for the parties and perused the record.

3. The facts of the case are that a Select List dated 28.3.1991 was prepared for induction of State Forest Service officials of Jammu & Kashmir into the Indian Forest Service (hereinafter referred to as 'IFS'). The appellant's name figured in the Select List at serial Number 26. The total number of vacancies were 35, and hence ordinarily appellant should have been selected and appointed. However, the Select list was challenged in a batch of writ petitions which were disposed of by a Division Bench of the High Court dated 12.3.1993. The operative portion of that order states: B C

"This order will dispose of writ petitions Nos. 400/90, 80, 249, 618, 933, 619, 1395 of 1991, 264, 208, 287 and 266 of 1992, because they raise a common question of law and fact. Learned counsel for the respondent-State has placed on record a copy of the communication dated 11.3.1993 wherein it has been stated: D

In case the petitioners withdraw the writ petitions, Government shall refer the proposed select list of IFS of 1991 back to the Selection Committee where the points raised by the petitioners and respondents will be considered under rules by the said Selection Committee. The final list approved by the Selection Committee shall be final and binding on the parties. E

In view of the above assurance, learned counsel for the petitioners submit that they do not want to press the writ petitions and the same be dismissed as withdrawn. F

We order accordingly".

4. We were surprised to read the aforesaid order dated 12.3.1993. when a Select List is challenged the High Court can either quash the Select List in question if it finds it invalid, or it can uphold the validity of the List, but instead of taking recourse to either of these two courses of action, the Division Bench devised a third method of disposing of the case which, in our opinion, was wholly unjustified and unwarranted. G

5. The Division Bench by its order dated 12.3.1993 sent back the Select List to the Selection Committee for considering the points raised by the writ H

A petitioners. In the way, the High Court practically abdicated its function. It was the duty of the High Court to decide the controversy as to whether the Select List dated 28.3.1991 was valid or not, and it was wholly unjustified and improper on its part to refuse to perform its function and instead send the matter back to the Selection Committee.

B 6. However, what has happened. Subsequent to the High Court's order dated 12.3.1993 a fresh exercise was undertaken by the State Government and the State Government prepared a fresh Select List dated 12.9.1995. The appellant's name was not in that Select List. It appears that the Select List dated 12.9.1995 has clubbed together the vacancies for the period 1991-1995 which, in our opinion, was in violation of Regulation 5 of the Indian Forest Service (Recruitment) Rules, 1965 (hereinafter referred to as the 'Regulation'). In the Select List of 12.9.1995, many persons who were not eligible for selection for the year 1991 have been included, while the appellant has been excluded.

D 7. Thus, the persons at serial numbers 32 to 35 in the Select List of 1995 were not even eligible for selection in 1991. In the notification dated 12.9.1995, a copy of which has been annexed as annexure P-4 to this appeal shows that the persons at serial numbers 27 to 28 were not even eligible in 1991. However, by the impugned judgment dated 24.9.1998, the learned Single Judge of the High Court dismissed the writ Petition filed by the appellant herein. Thereafter, the appellant filed a Letters Patent Appeal before the Division Bench of the High Court which was also dismissed by the impugned dated 26.5.1999. Hence, this appeal by way of special leave.

F 8. Learned counsel for the appellant has invited our attention to the judgment of this Court in *Union of India & Ors. v. Vipinchandra Hiralal Shah*, [1996] 6 SCC 721. In paragraph 11 of the said judgment, it is stated:

G "It must, therefore, be held that in view of the provisions contained in Regulation 5, unless there is a good reason for not doing so, the Selection Committee is required to meet every year for the purpose of making the selection from amongst the state Civil Service officers who fulfil the conditions regarding eligibility on the first day of January of the year in which the Committee meets and fall within the zone of consideration as prescribed in clause (2) of Regulation 5. The failure on the part of the Selection Committee to meet during a particular year would not dispense with the requirement of preparing the Select List for that year. If for any reason the selection Committee is not able

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to meet during a particular year, the Committee when it meets next, should, while making the selection, Prepare a separate list for each year keeping in view the number of vacancies in that year after considering the state Civil Service officers who were eligible and fell within the zone of consideration for selection in that year. A

(emphasis supplied) B

9. On the other hand, learned counsel for the respondents has relied upon a judgment of this court in *H.R. Kasturi Rangan & Ors. v. Union of India & Ors.*, (1998) 1 SCALE SP 11, which was followed by the judgment in *Nepal Singh Tanwar, etc. v. Union of India & Ors etc.*, (1998) 1 SCALE SP 7. C

10. We have carefully considered the aforesaid decisions and we are of the opinion that the decisions in the case o *H.R. Kasturi Rangan and Nepal Singh Tanwar* (supra), only lay down that it is not an absolutely mandatory requirement of the Regulation that a Select List must be prepared every year. List was not prepared every year, that by itself would not invalidate the Select List for that year. D

11. However, the dicisions in *S.H. Kasturi Rangan and Nepal Singh Tanwat* (supra) do not, in our opinion, deal with the other principle laid down in the decision in *Union of India v. Vipinchandra Hiralal Shah* (supra), wherein it has been stated that the Selection Committee should prepare a separate Select List for each year. In our opinion, this means that there cannot be clubbing of vacancies of several years and there cannot be a common Select list for these years. E

12. A Select List can only be prepared for a particular year, and only those who are eligible in that particular year alone can be considered for selection in the Select List. Even if the Select List is not prepared in that very year, it will relate back to that particular year. F

13. In the present case, a Select List had to be prepared for the year 1991.Hence, only those officers who were eligible for induction into the IFS in the year 1991 could have been considered in the Select List for the year 1991 (even if it is prepared subsequent to 1991). G

14. It is obvious, therefore, that clubbing is illegal. Since clubbing has been done for vacancies arising between 1991-95 in the IFS, this was clearly H

A illegal in view of the decision in *Union of India v. Vipinchandra Hiralal Shah* (supra).

15. In view of the above, the appeal is allowed. The impugned judgments of the Division Bench as well as the Single Bench of the High Court are set aside. Resultantly, the impugned Select List dated 12.9.1995 is quashed. The State Government is directed to prepare a fresh Select list for each year separately considering only those persons/officers who were eligible for selection in that particular year. This exercise must be completed as expeditiously as possible. Any selection made in pursuance of the Select List dated 12.9.1995 stands quashed. Fresh selections and appointments will be made as directed above. No costs.

C N.J.

Appeal allowed.