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MEENA VERMA

v.

STATE OF HIMACHAL PRADESH AND ANOTHER

(Civil Appeal No. 5710 of 2018)

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SEPTEMBER 19, 2018

**[DIPAK MISRA, CJI, A. M. KHANWILKAR AND
DR. D.Y. CHANDRACHUD, JJ.]**

Service Law:

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Selection – As part time female member of Consumer Disputes Redressal Commission – Respondent (Candidate) and the appellant (another candidate) obtained equal marks – In the Selection List respondent was placed higher than the appellant – List was drawn in accordance with performance – State Government selected the appellant on the basis of her better public experience – Writ petition challenging the selection – High Court set aside the selection – On appeal, held: As the respondent was higher in the Selection List by the Selection Committee on the basis of performance of the candidates, she was more suitable than the appellant – Addition of public experience, in absence of any Rule or any executive instruction was uncalled for – Selection was rightly set aside by High Court.

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Dismissing the appeal, the Court

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HELD: The Selection Committee was presided by the President of the Commission and the other members were Principal Secretary (FCS&CA) to the Government of H.P. and Principal Secretary (Law) to the Government of H.P. The Committee had used the phraseology “On the basis of the performance of the candidates”. The panel was drawn for the female members. It had placed respondent No. 2 at serial No. 2 and the appellant at serial No. 3. The Committee had drawn the list in accordance with performance and, therefore, respondent No. 2 was more suitable than the appellant. The State Government, while issuing the notification, had not ascribed any reasons. However, the Principal Secretary had given a note that the

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“present appellant had public experience” and on that basis, the Chief Minister signed the file and the notification was issued. The matter would have been different had there been a Rule to enable the State Government to choose a person from the panel. In the absence of any Rule or any executive instruction, when the Committee had drawn a panel on the basis of performance and placed the candidates in seriatim on the basis of the said performance, the High Court correctly expressed the opinion that the addition of public experience was uncalled for. [Para 12] [698-C-F]

S. Chandramohan Nair v. George Joseph and others
(2010) 12 SCC 687 – relied on.

State of Kerala and another v. K. Reghu Varma and others
AIR 2010 Kerala 28 – referred to.

Case law reference

AIR 2010 Kerala 28 referred to Para 7
(2010) 12 SCC 687 relied on Para 7

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5710 of 2018.

From the Judgment and Order dated 12.12.2017 of the High Court of Himachal Pradesh at Shimla in CWP No. 1571 of 2017

Ritesh Khatri, Adv. for the appellant.

Abhinav Mukerji, AAG, H.P., Bihu Sharma, Siddharth Garg, Amit Singh Chandel, Abhijat P. Medh, Aman Parth, Advs. for the respondents.

The Judgment of the Court was delivered by

DIPAK MISRA, CJI 1. The second respondent, being grieved by the appointment of the appellant as a part time female member in the Himachal Pradesh Consumer Disputes Redressal Commission (for short, ‘the Commission’), had assailed the same by way of a Writ Petition being C.W.P. No. 1571 of 2017 preferred under Article 226 of the Constitution before the High Court of Himachal Pradesh at Shimla. The High Court, by the impugned judgment and order dated 12.12.2017, quashed the appointment of the appellant and directed the Commission

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A to consider the case of the writ petitioner stating, *inter alia*, that she is otherwise meritorious and more experienced as compared to the appellant for appointment as a member in the Commission. Hence, the appeal by special leave.

2. The facts which are necessary to be enumerated are that on
B 25.04.2016, one post of part time female Member along with other
vacancies meant for various District Fora was advertised by the Principal
Secretary (Food, Civil Supplies & Consumer Affairs) of the Government
of Himachal Pradesh. The advertisement stipulated the qualifications,
C namely, that the candidate shall not be less than 35 years of age; that she
should possess a Bachelors degree from a recognized University; and
that she should be a person of ability, integrity and standing having
D knowledge and experience of at least ten years in dealing with problems
relating to economics, law, commerce, accountancy, industry, public
affairs or administration. It was further mentioned therein that the part
time Member so appointed shall hold office for a term of five years or
E up to the age of sixty seven years in the case of the Commission and
sixty five years in the case of District Consumer Forum, whichever is
earlier. The Selection Committee of which the President of the
Commission was the Chairman held the interview on 02.07.2016 and
the Committee recommended four names on the basis of the performance
F of the candidates for the member of the Commission. In the select list,
the names of the respondent no. 2 and the appellant appeared at serial
nos. 2 and 3 respectively. The candidate, who obtained the highest
mark, was not available for appointment, for she had already been engaged
against some post in the Himachal Pradesh University. The first
respondent selected the appellant as a part time member in the
G Commission. A representation was submitted by the second respondent
on which no action was taken and, therefore, she approached the High
Court for redressal of her grievances.

3. On behalf of the respondent no. 2, the writ petitioner, it was
contended before the High Court that when the recommendation of the
H Selection Committee clearly stated that it had prepared a panel on the
basis of the performance of candidates in the interview and when her
name was put at serial no. 2, she could not have been ignored.

4. The first respondent contested the aforesaid stand put forth by
the writ petitioner and submitted that the writ petitioner and the selected

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candidate had obtained equal marks and the State Government selected the candidate whose name featured at serial no. 3 on the basis of her public experience. That apart, it was asserted that the duty and responsibility of the Selection Committee is to empanel the eligible and suitable candidates for appointment as members of the Commission and the appointing authority is free to appoint any candidate recommended for appointment by the Selection Committee and named in the panel. According to the first respondent, solely because the writ petitioner was placed at serial no. 2 and is senior in age to the selected candidate, she could not claim to be appointed as a matter of right and, therefore, the appointment of the selected candidate could not be annulled.

5. The High Court called for the records pertaining to the selection process and the decision taken on the same. The notings in the file are reproduced as under:-

“N/155:-

It has come to the notice that in r/o State Consumer Commission, the recommended candidate at Sr. No. 1 (Dr. Karuna Machhan) has already joined her service on 24.09.2016 in HPU on her appointment as Assistant Professor. As such, she may now not like to accept this position if offered. Submitted pl.

Sd/-

5-10-2016

Pr. Secy. ((FCS&CA)

N/156:

For the State Commission two candidates have equal marks. Based on public experience Smt. Meena Verma can be appointed. For District Forums, N 147 to 150 be seen.

Sd/-

Principal Secretary

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Hon’ble Minister F&CS

Sd/-
(Minister) 6/10

Hon’ble CM”

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A 6. On the basis of the aforesaid decision, the appellant herein was appointed and continued to serve in the Commission as a part time member. In the course of hearing, the High Court was not satisfied with the reasons as regards the stand pertaining to public experience of the selected candidate and directed the Additional Chief Secretary (Food, B Civil Supplies and Consumer Affairs) to the Government of Himachal Pradesh to assist the Court. The Additional Chief Secretary made certain statements before the High Court which are reflected from the order dated 04.12.2017. The said statements are to the following effect:-

C “Mr. Tarun Kapoor, Additional Chief Secretary, Food, Civil Supplies and Consumer Affairs to the Government of Himachal Pradesh is present in person.

D We have been informed that as per the practice prevalent, the Selection Committee prepares the panel and submit the same to the Government for appointment of Member(s) in District Consumer Fora and H.P. State Consumer Disputes Redressal Commission, Shimla. In the past also, the Minister/Chief Minister has ordered the appointment of such Member(s) without adhering to the position of empanelled candidate in the panel so prepared. E No rules, guidelines or instructions governing the appointment of such Member(s) are yet framed. According to Mr. Kapoor, the matter qua framing rules for appointment of the Member(s), District Consumer Fora and State Redressal Commission is under consideration of the department. It is in this backdrop, this petition is to be heard further and for that list on 11.12.2017.”

F 7. As the impugned order would show, the High Court further heard the matter and opined that the State Government had discriminated against the writ petitioner and its action is arbitrary which invites the wrath of Articles 14 and 16 of the Constitution of India. It further observed that it is even beyond imagination that the appellant, that is, the private respondent before the High Court, is having better public experience than the writ petitioner when the latter is senior in age as compared to the former. The High Court was of the view that a person G senior in age would have better experience in all spheres of life including public experience and, therefore, the writ petitioner having enrolled as an Advocate in the year 1992 and in effective legal practice since then

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not only in the High Court but also in the State Administrative Tribunal and various quasi judicial authorities including the State Consumer Disputes Redressal Commission/District Consumer Disputes Redressal Forum, was certainly well versed with various social problems as compared to the private respondent who, as per the details in the documents furnished along with her application, was a post graduate in commerce and also did the Master's degree in business administration, which qualification she acquired in the year 2012. While the private respondent was studying up to 2012, the writ petitioner was in effective legal practice since 1992. The High Court observed that it was not comprehensible as to what prompted the first respondent to assess her public experience to be better than that of the writ petitioner. After so saying, the High Court recorded a finding that although the Rules governing the appointment of the member in the State Commission/District Consumer Fora had not been framed by the State, yet the Rules governing the service conditions of the Government employees could be taken note of. This reason was given to justify the placement of candidates on the basis of their performance in the interview by the Commission. The High Court noted that in a case of bracketed candidates as per the Government Rules, the senior in age and rank as compared to the bracketed candidate who is junior in age is to be given priority. It further observed that though the respondent-State is making the appointment out of the empanelled candidates to the members of the Commission, yet it is bound to adhere to their merit and the pick and choose policy has no sanctity in law. It further went on to adjudge the merit of the two candidates while stating that the writ petitioner was more meritorious, regard being had to experience in academic, professional and social spheres as compared to the selected candidate. It distinguished the decision rendered by the High Court of Kerala in *State of Kerala and another v. K. Reghu Varma and others*¹ on the ground that there is a prevalent Rule in the State of Kerala, while it is not so in the State of Himachal Pradesh. Placing reliance on the decision in *S. Chandramohan Nair v. George Joseph and others*², the High Court held that the principles stated therein supported the stand of the writ petitioner inasmuch as there was no justification on behalf of the State Government to select the candidate on the ground that she had more public experience.

¹ AIR 2010 Kerala 28

² (2010) 12 SCC 687

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A 8. We have heard Mr. Ritesh Khatri, learned counsel for the appellant, Mr. Abhinav Mukerji, learned Additional Advocate General for the respondent no. 1-State and Mr. Amit Singh Chandel, learned counsel for the respondent no. 2.

B 9. There is no dispute that the first respondent has not framed any Rules for the purpose of selection. In *S. Chandramohan Nair* (supra), a two-Judge Bench was dealing with a situation wherein the Division Bench of the High Court of Kerala had allowed the writ petition and quashed the appointment of the appellant therein as the member of the Kerala State Consumer Disputes Redressal Commission. This Court referred to the Rules, namely, Kerala Consumer Protection Rules, 2005 and opined:-

C “17. An analysis of these provisions shows that appointment of judicial and other members is required to be made by the State Government on the recommendation of the Selection Committee. If the Chairman and/or the members of the Selection Committee do not agree on the candidature of any particular person, then opinion of the majority would constitute recommendation of the Selection Committee. Though, the State Government is not bound to accept the recommendations made by the Selection Committee, if it does not want to accept the recommendations, then reasons for doing so have to be recorded. The State Government cannot arbitrarily ignore or reject the recommendations of the Selection Committee. If the appointment made by the State Government is subjected to judicial scrutiny, then it is duty-bound to produce the relevant records including recommendation of the Selection Committee before the court to show that there were valid reasons for not accepting the recommendation.”

D Further, adverting to the facts, the Court observed:-

E “19. While deciding Writ Appeal No. 968 of 2007, the Division Bench of the High Court was unduly influenced by the fact that the Chairman of the Selection Committee had initially recorded dissent and at the end of the minutes he separately appended a note suggesting that there was no difference of opinion between him and two members and concluded that name of the appellant was recommended only by the Chairman and not by the members.

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It appears that attention of the Division Bench was not drawn to the affidavit filed by Smt Sheela Thomas in Writ Petition No. 13058 of 2006 wherein she had categorically averred that a panel of three names including that of the appellant was recommended to the State Government and the difference of opinion was only on the candidature of Shri K.V. Thomas. We have no doubt that if the learned counsel appearing for the parties had properly assisted the Division Bench of the High Court, it may not have recorded the observation that the name of the appellant was recommended only by the Chairman and not by the members.

20. That apart, be that as it may, we are convinced that the name of the appellant had been recommended by entire body of the Selection Committee i.e. the Chairman and the members. If this was not so, either of the two members would have, after coming to know of the minutes recorded by the Chairman, lodged a protest or sent communication to the State Government that they had not recommended the name of the appellant and that the minutes recorded by the Chairman did not reflect the actual recommendations. However, the fact of the matter is that neither of them lodged any objection nor sent any communication to the State Government. Therefore, the contrary observations made by the Division Bench in Writ Appeal No. 968 of 2007 cannot but be termed as erroneous and the same could not have been relied upon for quashing the appointment of the appellant.”

10. In the case at hand, the appellant and the respondent no. 2 have obtained equal marks. The State Government chose to appoint the appellant who was at serial no. 3 on the foundation that she had better public experience. In *S. Chandramohan Nair* (supra), the Rule had conferred power on the Government to select any one of the candidates from the panel by ascribing reasons. The Court was of the opinion that the case of the appellant therein was arbitrarily ignored and, accordingly, it dislodged the judgment and order of the High Court.

11. In the instant case, the Selection Committee has observed:-

“On the basis of the performance of the candidates, we recommend appointment of following candidates as Members of the State Commission and various District Fora, out of the following panels, drawn separately, for each vacancy:

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A Female Member, H.P. State Consumer Commission:

| | Sr. No. | Name | Marks scored |
|---|---------|--------------------|--------------|
| | 1. | Dr. Karuna Machhan | 14/20 |
| B | 2. | Ms. Sunita Sharma | 11/20 |
| | 3. | Smt. Meena Verma | 11/20 |
| | 4. | Smt. Yogita Dutta | 10/20" |

C 12. On a perusal of the same, it is noticeable that the Committee was presided by the President of the Commission and the other members were Principal Secretary (FCS&CA) to the Government of H.P. and Principal Secretary (Law) to the Government of H.P. The Committee had used the phraseology "On the basis of the performance of the candidates". The panel was drawn for the female members. It had placed the respondent no. 2 at serial no. 2 and the present appellant at serial no. D 3. As it appears, the Committee had drawn the list in accordance with performance and, therefore, the respondent no. 2 was more suitable than the appellant. The State Government, while issuing the notification, had not ascribed any reasons. However, as is seen from the records produced before the High Court, the Principal Secretary had given a note that the "present appellant had public experience" and on that E basis, the Chief Minister signed the file and the notification was issued. The matter would have been different had there been a Rule to enable the State Government to choose a person from the panel. In the absence of any Rule or any executive instruction, when the Committee had drawn a panel on the basis of performance and placed the candidates in seriatim F on the basis of the said performance, we are disposed to think that the High Court correctly expressed the opinion that the addition of public experience was uncalled for.

G 13. In view of the aforesaid analysis, we do not perceive any merit in this appeal and the same is, accordingly, dismissed with no order as to costs.