

WP(C) 519/2005

BEFORE

THE HON'BLE MR. JUSTICE R. B. MISRA

(1) Heard Mr. R. H. Nabam, learned counsel for the petitioner and also heard Mr. B. L. Singh, learned Sr. Govt. Advocate, Arunachal Pradesh.

(2) In this petition prayer has been made for issuance of writ in the nature of Mandamus commanding respondents to accept the recommendation of selection committee and issue appointment orders accordingly. Further prayer has been made for writ of certiorari to set aside the impugned communication dated 31st August 05 (Annexure-H), whereby, the Secretary, Govt. of Arunachal Pradesh, Department of Administration, had issued a circular for conducting selection to the post of group (D) employees from the contingency staff (semi-skilled and unskilled).

(3) It appears that the petitioners along with others have participated for selection to be made to the Class-IV/d category of posts under Civil Secretariat, Itanagar. The selection was conducted for adjusting the contingency staffs, who have rendered considerable number of years of service under the state Government and the recruitment were to be made to the general category as well as the reserved category. According to the petitioners, they were declared successful by the selection Committee after undergoing selection process in reference to the notification dated 19/3/77 (Annexure F-1) and waiting for appointment, however unsuccessful candidates wanted to be appointed for the same posts and, therefore, another recruitment process was proposed to be conducted as per the Circular dated 31. 8. 2005 (Annexure-H to the writ petition) issued by the Secretary (GA), Govt. of Arunachal Pradesh, Itanagar in reference to the complaint of unsuccessful candidates.

(4) The case was again listed for hearing when this Court was pleased to pass order the operative part which reads as below:

\with reference to the order dated 6. 9. 2005 records have been produced. However, an endeavour has been made to convince that the earlier selection was not found satisfactory to the State Government, therefore, a fresh selection in reference to circular dated 31/8/2005 (Annexure-H) is intended to be conducted. The proposed action of the respondents (according to the petitioners) are not free from discrimination which lack arbitrariness, fairness and reasonableness. The said actions are not supported by rules. In these circumstances the respondents is to satisfy this Court under what circumstances and justification, the fresh selection for the same posts for which the petitioners have already been selected are being made again. In the facts and circumstances, the respondents shall not allow to proceed to cancel the petitioners' selection during the pendency of the present writ petition as the earlier selection has not been cancelled in accordance to the law before initiation of fresh selection. In these circumstances the circular dated 31. 8. 2005 (Annexure-H) regarding conducting fresh selection shall remain stayed and the respondents shall file response by way of affidavit. However, the respondents are at liberty to make the appointment of the petitioners in reference to the selection dated 7/8/2005 (Annexure-F1). \

(5) On behalf of the some candidates who have been claiming their selection on the basis of seniority list, filed Misc. Application which was taken up on 22. 9. 05 along with wp (C) No 519 (AP)2005 and the petition was directed to be listed on subsequent date on 27. 9. 05 where this Court was pleased to observe and pass orders, the operative part reads as follows:

\in course of hearing, it was brought to the notice of the Court that the criteria of previous selection process have been ignored by the present selection committee. The learned State counsel has submitted that the criteria for selecting to the post of Class D/peon, are seniority, ability and performance. Whereas, the learned counsel for the petitioner submitted that while recommending the candid

ates to the Class iv/d, vide recommendation dated 15/3/2003, the earlier selection board has adopted the criteria of giving weightage to performance, ability and seniority as well as obedience of the candidates and on the basis of those criteria, the petitioners 1 to 5 were allocated total marks 369, 355, 349, 305 and 333, respectively. This Court, however, is anxious to know how these total marks were allocated in different aspects/subjects and items. This can be revealed through the original records of the selection committee and by the then Chairman of the relevant selection committee, namely Sri S. T. Bappu, Deputy Secretary (Law), who conducted the selection on 7. 8. 2005. If the records do not disclose these aspects, then the then Chairman of the selection board in question has to file an affidavit for the purpose. \

(6) In compliance to the above order dated 27. 9. 05, the original records have been produced before the Court for perusal. After going through the original records and proceeding of the selection committee, it is noted that the selection committee comprising four members have considered candidates along with the petitioners and assessed their performance basically on 3 (three) aspects (i) 'basic office procedure' of 50 marks (ii) 'personality' carrying 50 marks (iii) 'general knowledge' carrying 50 marks. An overall marks of 150 in respect of these three items were to be awarded separately by all the four members. It is worth mentioning that for allocating marks to all the candidates format of marking was categories 'basic office procedure', 'personality' and 'general Knowledge' such criteria and format prescribed for interview and selection was indicated by Under Secretary (SA) Govt. of Arunachal Pradesh for considering candidate to the post of Group (D) category. Seniority, ability and performance etc. were able to be kept in mind by the members of the committee on these above parameters. The four members of the selection committee had awarded respective marks as indicated above to the petitioners and they are found to be most proper candidates for appointment to the group (D) category.

(7) On behalf of the petitioner, it was argued that in 1995 Supp. (2) SCC 230 (R. S. Mittal Vs. Union of India) where the person after being selected and put in the panel of the selected candidates was not to be denied the appointment without a proper reason however, in peculiar facts and circumstances relief was refused by the Supreme court by observing in Para 10 as below:

\10. Although a person on the select panel has no vested right to be appointed to the post for which he has been selected, the appointing authority cannot ignore the select panel or on its whims decline to make the appointment. When a person has been selected by the Selection Board and there is a vacancy, which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to the candidate at Sl. No. 1 of the select list within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified. \

(8) It was also argued on behalf of the petitioners that in (2000)9 SCC 283 (Munna Roy Vs. Union of India and Ors.), the Supreme Court after acknowledging the mere inclusion in select list does not confer any right to the selectee and mandamus could not be issued but the court could interfere when an administrative authority took a decision on erroneous reasons namely dubious method was suspected in the selection inasmuch as the candidate was a graduate, whereas, the minimum qualification for selection was matriculation and then the reason was described as arbitrary, irrational and not germane. In those circumstances, the decision to cancel the panel on this score could be set aside. In view of the observatio

ns made by the Supreme court in R. S. Mittal (Supra) as well as in Munna Roy (supra) the action of respondent in not declaring the result of selection in question and subsequently giving appointment to the petitioners was arbitrary, inaction, discriminatory as the same are in derogation to the spirit of article 14 of the Constitution, as contended on behalf of the petitioners.

(9) In (2002); 4 SCC-726 (Vindan T. and ors. Vs. University of Calicut and Ors.) the supreme Court has held that the appointments to the vacancies must be made in accordance with law, if any, and the appointing authority cannot scrap the panel of select list during the period of its validity except for well founded reasons. It also observed in Para 14 as below:

\14. The principle that persons merely selected for a post do not thereby acquire a right to be appointed to such post is well established by judicial precedent. Even if vacancies exist, it is open to the authority concerned to decide how many appointments should be made. \

(10) In (2002; 5 SCC 195 (S. Renuka and ors. Vs. State of U.P. and Anr.) the Supreme court while acknowledging the decision made in above two cases R. S. Mittal (supra) and Munna Roy (supra) has however held that no right accrues to a person merely because a person is selected and his or her name is put on a panel and the candidates have no right to claim the appointment.

(11) In (2003; 2 UPLBEC-1697 (State of Andhra Pradesh and Ors. Vs. D. Dastagiri and Ors.) the Supreme Court has taken the similar view and has held that no vested right accrues to the candidates to be appointed even if selection process was completed and the supreme Court has observed in Para 4 as below:

\4. 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 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 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. The only claim was that the action of the appellants, in 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 respondents 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 submission cannot confer right on the respondents, which they otherwise did not have. \

(12) The Supreme Court in Union of India Ors. Vs. Iswar Singh Khatri and Ors., 1992 Suppl. (3) SCC 84, has held that selected candidates have right to appoint

tment only against vacancies notified\ and that too during the life of the select list as the panel of selected candidates cannot be valid for indefinite period . Moreover, empanelled candidates \in any event cannot have a right against future vacancies\. In State of Bihar vs Secretariat, Assistant S. E. Union and ors. , AIR 1994 SC 736, the Supreme Court has held that \a person who is selected does not, on account of being empanelled alone, acquire any indefeasible right of appointment. \ empanelment is at the best a condition of eligibility for purposes of appointment and by itself does not amount to selection or create a vested right to the appointment unless relevant service rules provide to the contrary.

(13) In Purshottam Vs. Chairman, maharashtra State Electricity Board and am:, (1999) 6 SCC 49, the Supreme Court has held as under:

\the right of the appellant to be appointed against the post to which he has been selected, cannot be taken away on the pretext that the said panel, in the meanwhile, expired and the posts had already been filled up by somebody else. Usurpation of post by somebody else is not on account of any fault on the part of the appellant but on the erroneous decision of the employer himself. In that view of the matter, appellant's right to be appointed on the post has been illegally taken away by the employer. \

(14) I have heard learned counsel for the parties and have perused the records . I find that no reason has been stated by the State government for not issuing appointment to the petitioners. From perusal of records it appears that same parameters and the criteria for awarding marks were adopted which were adopted in the selection of year 2003 in addition to that many other criteria and parameters e. g. ability, sincerity, obedience, performance and seniority, have also been kept in mind while awarding marks out of total 600 marks while assessing the merits of candidates. I do not find any force in the contentions of the State that the seniority should be the decisive factor. It is worth mentioning that the petitioners were awarded marks according to the merits as they have already served number of years of service as required by the State Government. Therefore, stand of the State Government is not consistent with the records and, the original records of the selection committee. I do not find any adverse material in the outcome of the selection process of the selection committee and since the petitioners by virtue of marks and merits are entitled to be considered for issue of appointment, therefore, in these circumstances mandamus is being issued to the respondents, particularly, the Secretary, (GA), Government of Arunachal Pradesh, to take immediate steps for giving approval of the outcome of the selection in question and accordingly steps to be taken to issue appointment order and consequent upon, the impugned order dated 31/8/2005 (Annexure-H) is set aside.

(15) The candidates once participated in the selection and were found unsuccessful cannot challenge the selection on the ground of unfairness or on the ground of defect in selection or in selection process in view of the decision of Supreme Court in (1995)3 scc 486 (Madan Lal and Ors. Vs. State of J andkand Ors.) which has approved its earlier view taken in 1986 Suppl. SCC 285 (Om prakash Shukla Vs. Akhilesh Kr. Shukla). Similarly, following the decision of Supreme Court in AIR 2001 SC 1691 (Vijai kumar Sharma Vs. Chairman, School Service Commission and Ors.) this High Court in (2004) (Supp.) GLT 538 (Association of candidates Vs . State of Manipur and Ors.)has held that candidates not empanelled, as they were found unsuccessful in the selection process for appointment to the post of Rifleman would have no right to claim any relief.

(16) In view of the above observations, MC no. 143/ (AP) 2005 is rejected and the above directions are to be carried on within three months. However, dismissal of Misc. application, shall not debar the candidates - applications of Misc. application No. M. C. No. 143 (AP) 2005 are to be considered on their merits in future. The writ petition is accordingly allowed. No order as to cost.